

PROPOSED RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 3680, 3710, 3760, 3800, 3810, 5310 AND 6400]

Child Residential and Day Treatment Facilities

The Department of Public Welfare (Department), under the authority of Articles IX and X of the Public Welfare Code (62 P. S. §§ 901—922 and 1001—1080) proposes to adopt amendments to read set forth in Annex A.

Background

The purpose of the proposed amendments is to establish requirements that will protect the health, safety and well-being of children who receive residential care or day treatment within this Commonwealth.

The amendments being proposed represent an effort on behalf of the Department to eliminate or reduce duplication and inconsistencies within licensing regulations, strengthen health and safety requirements, consolidate chapters of regulations when appropriate and relocate items currently in regulations that go beyond minimum health and safety to more appropriate locations such as contract standards, training and technical assistance programs and voluntary accreditation.

This regulatory reform effort is an initiative of the Cross-Systems Licensing Project (Project) which is a cross-agency work group of licensing professionals within the Department and the Departments of Aging and Health. The group represents all human service disciplines, including mental retardation, mental health, drug and alcohol, child welfare, child care, personal care and adult daily living. The Project was created during the Spring of 1995 in response to concerns raised by consumers and providers of human services regarding the status of licensing functions within this Commonwealth.

The charge of the Project was to: 1) examine the Commonwealth's multiple licensing functions to identify problems experienced by staff both in the field and in Harrisburg and to survey consumers and providers to better understand their concerns; 2) inventory National trends, state-of-the-art licensing practices, and successes/failures of other states' licensing functions; and 3) develop substantive and feasible solutions.

Although ambitious, the following agenda is recognized by external stakeholders as very necessary to improve consumer protection, streamline administrative functions and make government user-friendly for affected parties: 1) strengthen enforcement by passing new comprehensive licensing Legislation; 2) review and revise human service licensing regulations; 3) automate licensing functions across agencies; 4) coordinate rule development, application and enforcement across agencies; 5) utilize "inferential" inspection techniques; and 6) implement a training program for new and veteran licensing staff.

The Project has solicited input from various external stakeholders across all programs to suggest areas for regulation consolidation. The first priority for the regulation revisions effort is the child residential and day treatment facility licensing regulations, which includes

consolidation of eight chapters or portions of chapters of regulations into one comprehensive chapter of licensing regulations.

Regulatory Development Process

A work plan describing the process and time frames that would be followed leading to final promulgation of Chapter 3800 was completed in January 1997. The plan provided for regular consultation with many external advocacy, consumer and provider organizations.

In February and March 1997, individual meetings were held with Statewide provider, advocacy and consumer organizations. The meetings were convened to give briefings on the scope of the new chapter and to obtain input on major issues of particular concern to the different organizations.

To allow for dialogue and to obtain specific feedback from those most directly affected by the proposed amendments, a 3 day meeting was convened in May 1997. Prior to the meeting, invited participants were sent a preliminary draft of the proposed amendments. They were asked to review the document, submit written comments and come to the meeting prepared to make suggestions to improve the proposed amendments. Fifty people were invited to attend the meeting. They represented service providers, advocacy organizations, consumer groups, experts in related fields and licensing professionals.

Based on group recommendations, the proposed amendments were revised and sent back to the work group for written comment. Written comments were considered and further regulation revisions were made prior to submission of this document as proposed rulemaking. A 1-day briefing meeting was held in July 1997 to update the work group on revisions made and to respond to comments received.

Scope

These proposed amendments are intended to apply to a diverse variety of residential program types currently operating within this Commonwealth, including both profit and nonprofit facilities. The proposed amendments will apply to facilities currently governed by Chapter 3810 (relating to residential child care facility), including, but not limited to, facilities and programs such as group homes generally serving no more than 12 children in a small, home-like setting; residential treatment facilities serving children with mental illness or serious emotional disturbance in a short-term specialized mental health treatment environment; and nonsecure residential facilities serving both dependent and delinquent children in various sizes and types of physical structures and diverse program models ranging from the more traditional residential settings to alternative programs and settings such as boot camps, outdoor wilderness programs, mobile programs and transitional living located in large settings. There are about 450 residential facilities licensed under Chapter 3810.

The proposed amendments will also apply to non-State operated, secure residential facilities currently licensed under Chapter 3680 (relating to administration and operation of a children and youth social service agency) and previously governed by requirements for training schools (formerly uncodified Title 6500) in which the building itself is kept locked or there is secure fencing around the perimeter of the building, or both. There are fewer than 20 secure residential facilities currently licensed in this

Commonwealth. The proposed amendments also govern 23 secure detention facilities currently licensed in accordance with Chapter 3760 (relating to secure detention facility), where children are held temporarily awaiting court disposition, in which the facility is locked or the perimeter is fenced.

Also included within the scope of these proposed amendments are maternity homes, which are currently licensed in accordance with Chapter 3710 (relating to maternity homes serving an average of 5 expectant or new mothers who are under 18 years of age. There are only 11 maternity homes) currently licensed in this Commonwealth. The Department has been transitioning to license these maternity homes in accordance with Chapter 3810 because Chapter 3810 is more appropriate for this population.

These proposed amendments also will apply to community residential mental retardation facilities serving exclusively children. There are approximately 40 facilities currently licensed under Chapter 6400 (relating to community homes for individuals with mental retardation). These facilities provide specialized care for children with mental retardation.

The proposed amendments will also apply to approximately 45 community mental health residential facilities serving exclusively children currently licensed under Chapter 5310 (relating to community residential rehabilitation facilities). The mental health children's facilities are residential care facilities providing community care for children with mental illness.

In addition to the various types of residential programs that the proposed amendments govern, the proposed amendments also apply to approximately 75 child part-day service facilities currently licensed under Chapter 3680. These are full-day and extended-day alternative education and service programs for children who are transitioning from a more intense residential program back to their families or who need special services for the child to remain at home and avoid more intensive residential placement.

The decision to develop a single set of regulations to apply to a variety of program models and settings was made to eliminate or reduce duplication and inconsistency among chapters of regulations that are intended to care for children who are exposed to similar health and safety risks.

Three groups of children, which may appear to be similarly situated are not included within the applicability of these proposed amendments. The first group of children are those receiving care in State-operated facilities for delinquent children. The facilities provide both secure and nonsecure care. While State Youth Development Centers and Youth Forestry Camps will not receive a license based on compliance with these proposed amendments, it is the Department's intent to apply the proposed amendments to the extent possible in our operation of these facilities.

A second group of facilities serving children that are not included are facilities that provide drug and alcohol treatment. These facilities are excluded because of the specialized treatment focus of the programs geared to serving children with drug and alcohol related problems. The majority of licensed drug and alcohol programs serve both children and adults, rather than serving children exclusively.

The third group of children's facilities that are excluded, are residential schools which are licensed by the

Department of Education. To avoid duplication with licensing activity already occurring within the Department of Education, these facilities are not included in the scope of the proposed amendments.

Format

Chapter 3800 is written to be applied to a variety of facilities. The various types of facilities have different program approaches to the care and supervision of children and they operate in varied types of physical site settings. The document contains regulations in §§ 3800.1—3800.245 that are written to be generally applied to all facilities governed by the chapter. In §§ 3800.251—3800.312, exceptions or additional requirements for special facility types such as outdoor programs, secure facilities or transitional living are addressed. In these sections, some individual regulations are written to exempt a facility from generally applied regulations that appear in earlier sections. In other cases, the proposed amendments are written to add additional requirements that special types of facilities must meet.

Need for Amendments

Children, who are not under the direct care and supervision of responsible parents or family members, are exposed to health and safety risks. The children can not reasonably be expected to have the resources necessary to fully protect themselves while receiving care in a facility. The regulatory requirements as proposed in Chapter 3800 will protect the health, safety and well-being of these children until the parents can reassume parenting responsibility.

Privately-operated secure facilities are being established in several locations throughout this Commonwealth. These facilities will provide care and supervision to adjudicated delinquent children. These proposed amendments will provide that the children receive care in a safe manner.

General Requirements

Unusual Incidents § 3800.16

This is a new proposed section that is intended to protect child health and safety by requiring that notice be provided to authorities outside the facility when serious incidents occur affecting a child. These incidents are referred to as unusual incidents and include the death of a child; an action taken by a child to commit suicide; an injury, trauma or illness of a child requiring inpatient or outpatient treatment at a hospital; a violation of a child's rights; intimate sexual contact between children; an assault of a staff person by a child that requires medical treatment for the staff person; outbreak of a serious communicable disease; an incident requiring the services of the fire or police department; and any incident that results in the closure of the facility.

The facility shall complete a written unusual incident report and send it to the appropriate regional office of children, youth and families and the funding agency within 24 hours of the incident. The facility shall initiate an investigation of an unusual incident immediately following the filing of a report.

Waivers § 3800.20.

The proposed amendments permit requests for waivers and require that waiver requests be submitted on forms provided by the Department. The Department may only grant waivers when all of the following conditions are met: there is no significant danger to the children; there is an alternative for providing an equivalent level of

health, safety and well-being protection for the children; and the benefit of waiving the regulation outweighs any risk to the healthy, safety and well-being of the children.

Waivers to the regulations are not permitted regarding the scope, definitions or applicability of the regulations.

Child Rights

§§ 3800.31—3800.34.

There are new proposed sections of regulations. Specific child rights are listed. The child's family and the child, while being served by a facility governed by these regulations can expect the listed rights will be protected. A grievance procedure is established. The procedure will be applied if the child or the child's family believe a right is being violated.

Staffing

§§ 3800.51—3800.57.

Regulations relating to staff education and experience are similar to existing Chapter 3810. Staff to child ratio and supervisor to staff ratio are also very similar to existing regulations.

These sections were reformatted to make them easier to read and apply.

Physical Site

§§ 3800.81—3800.105.

The proposed physical site sections are strengthened to reflect current health and safety issues. Greater detail was added and greater emphasis was placed on assuring that the child's physical environment is conducive to protecting health and safety.

Fire Safety

§§ 3800.121—3800.132.

Firesafety regulations are strengthened and formatted in a somewhat different manner. Strengthened requirements include:

1. A means of egress in the event of a fire must be free of obstruction and doors may not be equipped with any locking device that would interfere with occupants being able to immediately exit the facility.
2. Unsafe heating devices are prohibited.
3. A more clear description of the required use of smoke detectors and fire extinguisher is provided.

Child Health

§§ 3800.141—3800.147.

A two-step process is established to assure that child health is protected from the point of admission. First, a written health and safety assessment must be completed on each child within 24 hours of admission. This assessment is completed, signed and dated by medical personnel or a staff person who has been trained by medical personnel. Children for whom the assessment indicates a health or safety risk must have a written plan to respond to the risk that is developed and implemented within 24 hours.

The second step in the process requires that children shall have complete physical examinations within 15 days of admission and annually thereafter. Provision is made to accept the transfer of an existing physical examination if the child had the examination within the past 12 months.

The use of tobacco is prohibited for both children and staff persons. The prohibition applies on the premises of the facility and during transportation that is provided by the facility.

Staff Health

§§ 3800.151—3800.152.

Staff shall have a statement signed and dated by a physician, a nurse practitioner or a physician's assistant stating that the person is free from serious communicable disease that could be spread through casual contact.

Medications

§§ 3800.181—3800.189.

The proposed amendments require the maintenance of a medication log. In addition to information about the medication, the log also keeps a record of medication administered, dosage, date, time and name of person administering.

Persons who may administer medication are specified. In addition to medical personnel, medications may be administered by staff who have completed and passed a Department approved medications administrations course.

Behavior Intervention Procedure

§§ 3800.201—3800.213.

The time when a child's health and safety is most at risk is during a time of crisis behavior. The method of intervention applied by staff to manage a behavior event can help a child return quickly to stable and safe functioning. The choice of an excessively restrictive or dehumanizing procedure can escalate the event and has the potential to bring harm to the child and staff who are involved.

Activities relating to managing these situations are central to how agencies maintain orderly functioning of their programs. Comments received during the drafting phase of these amendments were numerous. Child advocates argued for more stringent requirements. Advocates believe more structured and restrictive requirements would better protect child health and safety. Some service providers argued for greater flexibility when dealing with crisis behavior. From their point of view, each situation that they handle is very unique. These service providers feel that if they are not allowed a reasonable degree of flexibility in dealing with each incident, the end result will be more behavior events spiraling out of control.

The Department reviewed the literature regarding this topic and considered other regulations that are being applied to similar services.

The Department has considered both perspectives and the literature and regulations review. What is described in these proposed amendments is considered to be a balanced response to this sensitive issue. The proposed amendments will protect child health and safety, while allowing agency staff the flexibility they require to manage an orderly program.

In nonsecure care, crisis intervention procedures include the use of exclusion, manual restraint and chemical restraint. Exclusion means removing a child from the child's immediate environment and restricting the child alone to a room or area. Manual restraint is a physical hands on technique that lasts more than a minute and restricts the movement or function of a child. Chemical restraint involves using drugs to control episodic behavior.

In addition to the crisis intervention procedures permitted in nonsecure care, secure care facilities are permitted to employ mechanical restraints and seclusion when dealing with children in a state of crisis. A mechanical restraint is a device that restricts the movement of a child or a portion of a child's body. Seclusion is placing a child in a locked room. Facilities are required to have child specific plans for managing crisis behavior events.

Specifically prohibited procedures when responding to a crisis behavior are aversive conditioning and pressure points techniques. Aversive conditioning means the application of startling, painful or noxious stimuli. Pressure point prohibition involves applying pressure at certain points of the body known to cause pain.

Each staff person who administers a crisis intervention procedure shall have completed a Department approved training program within the past year on the use of crisis intervention procedures. A summary of the content that must be included in the training is specified in the proposed amendments.

Services

§§ 3800.221—3800.226.

The content of the Individual Service Plan (ISP) was somewhat reorganized, but the basic content was primarily maintained.

Other areas that could be considered as service related include child discipline, visitation, communication and continuing care. While some detail regarding how these service provisions should be applied by facilities was removed from the regulations, the main protection which these sections were intended to provide were not omitted. The protection was shifted into the category of child rights. Their inclusion involves less detail, while maintaining the basic intent of the requirements. The manner in which service provisions are addressed is intended to offer more flexibility to service providers and at least equal protection to the children being served.

Child Records

§§ 3800.241—3800.245.

Modification to the child records sections is minor. The section was reformatted for the purpose of clarity and streamlining the document.

Facilities Serving Nine or More Children

§§ 3800.251—3800.257.

Large facilities require additional physical site protection to assure that child health and safety are protected. This regulatory protection is already being routinely followed by larger facilities. No comments were heard in opposition to these large facility specific provisions during the regulation drafting process.

Secure Care

§§ 3800.271—3800.273.

The children served in secure care facilities require a more intense level of care and supervision. The children must be directly supervised at all times and one staff person must be present for every six children during awake hours. A minimum of two child care workers shall be present in the facility at all times. No more than two children may share a bedroom. The site must be furnished in a manner that is sensitive to the possibility of suicide attempts. While mechanical restraints and seclusion are authorized as a means of dealing with crisis

situations in secure care facilities, the proposed amendments establish specific limits on the use of the techniques.

Secure Detention

§§ 3800.281—3800.283.

The requirements and exceptions for secure care also apply for secure detention.

In addition to serving children who are experiencing more severe problems, the children in secure detention are in a more transitory setting. For this reason, all the requirements of secure care apply and some additional regulations are established. No more than one child may occupy a bedroom. No more than 12 children may be in a group at any one time. The child safety assessment must be completed within 1 hour of admission. The physical examination must be completed with 96 hours of admission.

Transitional Living

§§ 3800.291—3800.293.

A transitional living residence is a home or living unit for less than five children, who are 16 years of age or older, with or without their own children, who are able to live in a semi-independent living setting. For the purpose of these proposed amendments, transitional living facilities include only those facilities where more than one living residence is in the same building. If only one living residence is in a building, the facility is not within the applicability of these regulations.

For a child to be considered eligible to live in a transitional living residence, the child must have completed a Department approved training program and demonstrate competency in the following life areas:

- (1) Health, general safety and firesafety practices.
- (2) Money management.
- (3) Transportation skills.
- (4) Child health and safety, child development and parenting skills, if the child has a child living with him at the residence.

Since children in these facilities are living in a semi-independent status, staffing and supervisory requirements are somewhat relaxed.

Outdoor and Mobile Programs

§§ 3800.301—3800.303.

Outdoor programs are residential programs where children sleep outdoors or in structures intended for an outdoor experience. Mobile programs are residential programs that provide services in a variety of nonstationary sites.

Exceptions and additional requirements for these two types of facility are included. The proposed amendments make a distinction between two types of outdoor settings; those which are operated from a stationary site such as cabins and tepees and those which are offered as a mobile activity. Programs offered from a mobile setting include covered wagons or services offered from a ship.

Day Treatment

§§ 3800.311 and 3800.312.

A child day treatment facility is a premise that is operated for a portion of a 24-hour day in which alternative education, intervention or support programs are provided to one or more children to prevent the child's

placement in a more restrictive setting or to facilitate the child's reunification with his family. Child day treatment does not include:

- (1) Mental health outpatient or partial hospitalization facilities.
- (2) Drug and alcohol outpatient facilities.
- (3) Facilities that provide only aftercare services provided after regular hours of education.

Physical site requirements are less demanding than the facility situations where children live on a 24 hour a day basis. The supervisor to staff ratio is also less demanding than for other facilities to which Chapter 3800 applies.

Affected Individuals and Organizations

Chapter 3800 will affect children and the families of children, who are referred for placement in child residential facilities and day treatment centers. The providers of these facility based services will also be affected. The proposed amendments will affect public children and youth agencies that refer children for placement in these facilities. Providers of mental health and mental retardation services will also be affected. Juvenile courts and law enforcement officials will be affected by the proposed amendments.

Rescinded Regulations

When these proposed amendments are promulgated as final, the following chapters or parts thereof, will be deleted. The chapters to be deleted in whole include the following:

1. Chapter 3810.
2. Chapter 3710.
3. Chapter 3760.
4. Training School Requirements (Formerly referred to as Chapter 6500) While these requirements are not officially promulgated regulation, the requirements have been used in the past to monitor facilities.
5. Secure Care Requirements (Referred to as Chapter 3820) While these requirements are not officially promulgated regulations, the requirements are used to monitor facilities.

The chapters to be deleted in part include the following:

1. Chapter 3680. This chapter is deleted in part, as it applies to facilities that are regulated under the new Chapter 3800.
2. Chapter 6400. This chapter is deleted in part, as it applies to facilities serving exclusively children.
3. Chapter 5310. This chapter is deleted in part, as it applies to facilities serving exclusively children, with the exception of host homes.

Fiscal Impact

In drafting these proposed amendments careful consideration was given to the effect the regulations will have on the cost of providing care. The issues that will have potential to most influence the cost of implementing Chapter 3800 are the following:

1. *Staffing.* Staff cost considerations include the staff to child ratio and the qualifications of staff members.
2. *Physical site.* Square footage requirements and water safety are significant.
3. *Staff training.* The amount of training required and the frequency of training has a direct effect on the cost of providing care.

4. *Administration and paperwork requirements.* Administrative and paperwork costs can have an impact on almost all aspects of providing care.

Each of these four cost issues will be considered as follows. The cost of implementing the proposed amendments will be compared to the cost of continuing to implement existing Chapter 3810. The manner in which costs could be effected is described.

1. *Staffing.* Proposed Chapter 3800 will not change current regulatory requirements relating to staffing ratios for children who are 6 years of age or older. For children under 6 years of age, the staffing requirements are made less stringent than current Residential Child Care Facility regulations. Since small numbers of preschool age children are served by the regulated facilities, only limited cost savings are anticipated.

Staff qualifications were changed slightly. Current Chapter 3810 requires 50% of supervisory staff to have at least 4 years of college or 4 years of experience working with children or an equivalent combination of the two. The proposed amendments eliminate the 50% provision. The proposed amendments authorize facilities to appoint supervisors with a bachelor's degree and 1 year work experience or an associate degree and 3 years of child work experience.

Current regulations require 50% of direct care staff to have 2 years of college and 2 years experience working with children. Proposed amendments mandate that child care staff have a high school diploma or a general education development certificate.

Elimination of the 50% provision and acceptance of the staff qualification standards being proposed is expected to eliminate cumbersome administrative problems created by the 50% provision. The direct care staff qualifications proposed are less stringent than current regulations and therefore less costly.

The proposed amendments are not anticipated to increase the cost of staffing a facility. Some facilities may realize a cost savings.

2. *Physical site.* The minimum square footage requirement for individual bedrooms was reduced from 74 to 70 feet. The requirement that facilities have a minimum of 300 square feet of overall indoor living space for each child in residence was deleted. The proposed amendments separate indoor activity space for activities such as studying and recreation. Since square footage requirements are reduced, this will be a decreased financial burden to service providers.

With regard to water safety, a new requirement was added. The new requirement mandates, that above-ground and in-ground pools as well as lakes and ponds on the premise of the facility, shall be fenced with a gate that is locked when the water site is not in use. A few facilities may exist with lakes, ponds or pools on their premises. For these facilities the cost of fencing could be somewhat significant. Information is currently not available on the number of facilities or the size of water areas in these facilities that would be affected by these proposed amendments. The safety risk for drowning, however, is high when children have regular access to unprotected water areas. The overall benefit of preventing water accidents and injuries outweighs potential costs involved.

The Department will consider requests for waivers regarding fencing around water areas if alternative safety measures are assured.

3. *Training.* Current child care facility regulations do not specify the amount of training time that a new employe must have prior to working alone with children. Current regulations do specify training content areas that must be covered in an orientation for new employes. Current regulations do specify that in addition to the orientation, a new employe must receive 40 hours of training during the first year of employment.

The proposed amendments specify that in addition to orientation, new employes shall have at least 30 hours of training before working alone with children. The content of the training is specified and less training time is required for part-time and temporary staff. After the 30-hour orientation requirement is met, no additional training is required for employes during their initial year of employment.

After the first year of employment, both the current and proposed amendments require 40 hours of training annually.

Some facilities have raised a concern that the proposed amendments will result in increased costs associated with training. Their concern is that current regulations specify that up to 20 hours of the required training may be provided through supervisory conferences. The interpretation of the concerned facilities is that all of the required 40 hours of annual training must be offered outside the scope of supervisory conferences. This interpretation is not accurate. The proposed amendments do not prohibit supervisory conferences as an acceptable training source.

The cost of training is expected to be comparable to what agencies are currently spending. If staff are expected to be able to respond in a manner that will routinely protect child health, safety and well-being, it is important that the staff who are in direct contact with children are adequately trained and that their training is current at all times. The two training courses that the Department must specifically approve are medication administration and crisis intervention procedures.

4. *Administration Requirements*

Private agencies governed by residential child care facility regulations currently must also meet the administrative requirements in Chapter 3680. With the deletion of Chapter 3680, administrative costs such as independent audits, hiring practices, personnel recording, and the like are no longer required. For example, in § 3680.23, each legal entity is required to maintain written personnel policy covering eight specific topic areas such as salaries or wages, duties for each job classification, grievance and discipline procedures, and the like. These requirements will no longer be applied.

Also administrative requirements relating to hiring practices, personnel records and program requirements relating to criteria for admission of children have been deleted. These deletions will result in a cost reduction to facilities.

It is difficult to anticipate the level of savings that will be realized through the reduction in administrative requirements. Clearly however cost savings will be realized by the affected facilities.

Summary of Fiscal Note

Overall the Department can conclude, with a reasonable degree of certainty, that the first three cost areas discussed; staffing, physical site requirements and staff training will at a minimum be cost neutral. It is possible that the cost of providing care will be somewhat less than

could be expected if the current residential child care facility regulations were to remain in effect.

More significant cost reduction is expected in the area of administrative costs.

Paperwork Requirements

The Department will develop a form to be completed by facilities to report any unusual incidents. What constitutes an unusual incident is defined in § 3800.16. Child abuse must be reported in the manner as prescribed in Chapter 3490 (relating to child protective services) and 23 Pa.C.S. §§ 6301—6385 (relating to Child Protective Services Law).

Facilities must notify local fire officials in writing of the address of the facility, the location of bedrooms and assistance needed to evacuate the building.

Facilities must complete a child health and safety assessment within 24 hours of a child entering a facility. Depending upon the results of the assessment a health and safety plan may be needed for a child. The requirements relating to the assessment and the plan are contained in §§ 3800.141 and 3800.142 (relating to child health and safety assessment; and health safety plan).

Facilities are required to maintain a log of all dispensed medicines. The requirements pertaining to the maintenance of the log are contained in § 3800.184 (relating to medication log).

Each child receiving care must have an ISP. This plan continues to contain the basic content as required in the current Chapter 3810. When a crisis intervention procedure is determined to be necessary, the procedure is included in the ISP.

These paperwork requirements are significantly less than those required in Chapter 3810.

Effective Date

The Chapter 3800 work plan projects January 1999 as the date when the new Chapter 3800 will take effect.

Sunset Date

No sunset date has been established for these proposed amendments.

Public Comment Period

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to the Department of Public Welfare, Robert L. Gioffre, P. O. Box 2675, Harrisburg PA 17105-2675, phone (717) 787-7756, fax (717) 787-0414 within 30-calendar days after the date of publication in the *Pennsylvania Bulletin*. Comments received within 30-calendar days will be reviewed and considered in the preparation of the final-form regulations. Comments received after the 30-day comment period will be considered for any subsequent revisions of these proposed amendments.

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 4, 1998, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Welfare and the Senate Committee on Public Aging and Youth. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with

Executive Order 1996-1. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the final-form regulations of objections raised, by the Department, the General Assembly and the Governor.

FEATHER O. HOUSTOUN,
Secretary

Fiscal Note: 14-442. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 55. PUBLIC WELFARE
PART V. CHILDREN, YOUTH AND FAMILIES
MANUAL
Subpart E. RESIDENTIAL AGENCIES, FACILITIES
AND SERVICES
ARTICLE I. LICENSING/APPROVAL
CHAPTER 3680. ADMINISTRATION AND
OPERATION OF A CHILDREN AND YOUTH
SOCIAL SERVICE AGENCY
GENERAL PROVISIONS

§ 3680.1. Applicability.

(a) With **[three] four** exceptions, this chapter applies to the administration and operation of an agency, whether public or private, for profit or not-for-profit, which provides the social services specified in subsection (c). This chapter does not govern the administration or operation of probation offices; county children and youth social service agencies governed by Chapter 3130 (relating to administration of county children and youth services programs); **child residential and day treatment facilities governed by Chapter 3800 (relating to child residential and day treatment facilities);** or child day care facilities governed by Chapters 3270, 3280 and 3290 (relating to child day care centers; group day care homes; and family day care homes) **[and Chapter II, Section 8E of the Social Services Manual to be codified at Chapter 3620]**.

(b) **[Agency licensure or approval under this chapter is required—regardless of whether or not the social services provided are subject to licensure or approval under other chapters promulgated by the Department as are listed by example in subsection (c), because this chapter establishes the administrative requirements under which agencies identified in subsection (a) shall operate.**

(c) **[Social services provided for a child by an agency subject to [the requirements of] this chapter include[, but are not limited to,] the following:**

- (1) **[Secure or nonsecure group residential child care.**
- (2) **[Foster family care.**
- [(3) Maternity care.**
- (4) **Part-day services, such as day treatment.]**
- [(5)] (2) Adoption services.**

[(6) Alternative programs or services.]

[(d)] (c) An agency that operated solely to provide services to children in their own homes as defined in § 3680.4 (relating to definitions) is not subject to **[the requirements of]**this chapter.

(Editor's Note: The Department proposes to deleted the follow chapters.

Chapter 3710, pages 3710-1 to 3710-19, serial pages (88817) to (88818), (98009) to (98010), (88821) to (88823), (98011) to (98012) and (168977).

Chapter 3760, pages 3760-1 to 3760-34, serial pages (114615) to (114617), (90823) to (90844), (96187) to (96188), (90847) to (90852) and (16979) to (16980).

CHAPTER 3710. (Reserved)

CHAPTER 3780. (Reserved)

CHAPTER 3800. CHILD RESIDENTIAL AND DAY TREATMENT FACILITIES

GENERAL PROVISIONS

Sec.	Purpose.
3800.1.	Applicability.
3800.2.	Definitions.
3800.3.	

GENERAL REQUIREMENTS

3800.11.	Licensure or approval of facilities.
3800.12.	Appeals.
3800.13.	Maximum capacity.
3800.14.	Firesafety approval.
3800.15.	Child abuse reporting.
3800.16.	Unusual incidents.
3800.17.	Incident record.
3800.18.	Consent to treatment.
3800.19.	Applicable health and safety laws.
3800.20.	Waivers.

CHILD RIGHTS

3800.31.	Notification of rights.
3800.32.	Specific rights.
3800.33.	Prohibition against deprivation of rights.
3800.34.	Grievance procedures.

STAFFING

3800.51.	Child abuse and criminal history check.
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GENERAL**§ 3800.1. Purpose.**

The purpose of this chapter is to protect the health, safety and well-being of children receiving care in a child residential facility through the formulation, application and enforcement of minimum licensing requirements.

§ 3800.2. Applicability.

(a) This chapter applies to child residential facilities and child day treatment centers, except as provided in subsection (g).

(b) This chapter contains the minimum requirements that shall be met to obtain a certificate of compliance to provide child residential care or child day treatment in this Commonwealth.

(c) This chapter applies equally to profit, nonprofit, publicly funded, privately funded, church operated and nonchurch operated facilities.

(d) Each facility to which this chapter applies shall be individually inspected at least once a year, unless otherwise specified by statute.

(e) A separate certificate of compliance shall be issued for each physical structure that qualifies for a certificate.

(f) This chapter applies to the following:

(1) Any premise or part thereof, operated in a 24-hour living setting in which care is provided for one or more children who are not relatives of the facility operator, except as provided in subsection (g).

(2) Child residential facilities that are either secure or nonsecure settings, including child detention centers.

(3) Child residential facilities that are either located in a fixed structure, that are mobile or any combination of fixed and mobile settings.

(4) Child day treatment centers.

(5) Transitional living facilities with more than one transitional living residence in the same building.

(6) Facilities serving children with disabilities, that serve exclusively children.

(g) This chapter does not apply to the following:

(1) Child residential and child day treatment facilities operated directly by the Department.

(2) Transitional living residences which are located in freestanding private residences.

(3) Residential camps for children who are enrolled in a grade or educational level higher than kindergarten which operate for fewer than 90 days per year.

(4) Residential children's schools which are licensed and operated solely as private academic schools or registered and operated solely as nonpublic nonlicensed schools by the Department of Education.

(5) Foster care homes that are licensed in accordance with Chapter 3700 (relating to foster family care agency).

(6) Family living homes for children with mental retardation that are licensed under Chapter 6500 (relating to family living homes).

(7) Community homes for individuals with mental retardation who provide care to both children and adults in the same facility and that are licensed under Chapter 6400 (relating to community homes for individuals with mental retardation).

(8) Community residences for individuals with mental illness who provide care to both children and adults in the same facility or community residential host homes for individuals with mental illness that are certified under Chapter 5310 (relating to community residential rehabilitation services for the mentally ill).

(9) Drug and alcohol residential facilities who provide care to children, that are licensed under 28 Pa. Code Chapters 701, 704 and 709 (relating to general provisions staffing requirements for drug and alcohol treatment facilities; and standards for licensure of freestanding treatment facilities).

(10) Child day care facilities certified or registered in accordance with Chapter 3270, 3280 or 3290 (relating to child day care centers; group child day care; and family child day care).

(11) Private homes of persons providing care to a relative, except for children who are not living with a relative and who have their own children unless the home is a transitional living residence that is exempt from this chapter under paragraph (2).

§ 3800.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Child—An individual who is under 18 years of age or under 21 years of age with one of the following circumstances:

(i) Committed an act of delinquency before reaching 18 years of age and remains under the jurisdiction of the juvenile court.

(ii) Adjudicated dependent before reaching 18 years of age, while engaged in instruction and treatment, if the child through counsel requests the court to retain jurisdiction until the instruction and treatment is completed.

(iii) Has mental retardation, mental illness or a serious emotional disturbance, with a transfer plan to move to an adult setting by 21 years of age.

Child day treatment center (facility)—A premise or part thereof, operated for a portion of a 24 hour day in which alternative education, intervention or support programs are provided to one or more children in order to prevent the child's placement in a more restrictive setting or to facilitate the child's reunification with his family. A child day treatment center does not include:

(i) Mental health outpatient or partial hospitalization facilities.

(ii) Drug and alcohol outpatient facilities.

(iii) Facilities that provide only aftercare services provided after regular hours of education.

Child residential facility (facility)—A premise or part thereof, operated in a 24-hour living setting in which care is provided for one or more children who are not relatives of the facility operator, except as provided in § 3800.3 (g) (relating to applicability).

Department—The Department of Public Welfare of the Commonwealth.

Firesafety expert—A local fire Department, fire protection engineer, Commonwealth certified fire protection instructor, college instructor in fire science, a county or Commonwealth fire school, volunteer person trained and certified by a county or Commonwealth fire school or an insurance company loss control representative.

ISP—Individual Service Plan.

Mobile program—A residential program that provides services in a variety of moving settings that do not occupy a stationary site.

Outdoor program—A residential program where children sleep outdoors or in structures intended for an outdoor experience, where the primary program focus is on outdoor experiences.

Relative—A parent, child, stepparent, stepchild, grandparent, grandchild, sibling, half-sibling, aunt, uncle, niece, nephew or spouse.

Secure care—Residential care provided in a setting in which voluntary egress is prohibited through one of the following mechanisms:

(i) Egress from the building is prohibited through internal locks within the building or exterior locks.

(ii) Egress from the premises is prohibited through secure fencing around the perimeter of the building.

Secure detention—A type of secure care located in a temporary residential setting, in which one or more children are detained, generally in a preadjudication status.

Transitional living residence—A home or living unit for less than five children, who are 16 years of age or older, with or without their own children, who are all able to live in a semi-independent living setting. A child's own children are counted to determine the maximum number of four children per transitional living residence.

GENERAL REQUIREMENTS

§ 3800.11. Licensure or approval of facilities.

The requirements of Chapter 20 (relating to licensure or approval of facilities) shall be met.

§ 3800.12. Appeals.

Appeals related to the Department's licensure or approval shall be made in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

§ 3800.13. Maximum capacity.

(a) The maximum capacity specified on the certificate of compliance shall be based on available bedroom square footage and the number of toilets and sinks.

(b) The maximum capacity specified on the certificate of compliance may not be exceeded.

§ 3800.14. Firesafety approval.

(a) If the facility is located outside Philadelphia, Pittsburgh and Scranton and serves four or more children or if the facility is located in a multiple family dwelling, the facility shall have a valid firesafety approval listing the type of occupancy from the Department of Labor and Industry or the Department of Health.

(b) If the facility is located in Philadelphia, Pittsburgh or Scranton, the facility shall have a valid firesafety approval listing the type of occupancy from the Department of Licensing and Inspection of the city of Philadelphia, the Department of Public Safety of the city of Pittsburgh or the Department of Community Development of the city of Scranton or from the Department of Health, if required by law, regulation or local codes.

(c) If the firesafety approval is withdrawn or restricted, the facility shall notify the Department orally within 24 hours and in writing within 48 hours.

(d) If a building is structurally renovated or altered after the initial fire safety approval is issued, the facility shall submit the new firesafety approval or written certification that a new firesafety approval is not required, from the appropriate department specified in subsections (a) and (b).

§ 3800.15. Child abuse reporting.

The facility shall immediately report abuse or suspected abuse of a child in accordance with Chapter 3490 (relating to child protective services) and 23 Pa.C.S. §§ 6301—6305 (relating to Child Protective Services Law).

§ 3800.16. Unusual incidents.

(a) An unusual incident is a death of a child; an action taken by a child to commit suicide; an injury, trauma or illness of a child requiring inpatient or outpatient treatment at a hospital; a violation of a child's rights; intimate sexual contact between children, consensual or otherwise; an assault on a staff person by a child that requires medical treatment for the staff person; a child who leaves the premises of the facility for 30 minutes or more without the approval of staff persons; abuse or misuse of a child's funds or property; outbreak of a serious communicable disease as defined in 28 Pa. Code § 27.2 (relating to reportable diseases); an incident requiring the services of the fire or police Departments; and any condition which results in closure of the facility.

(b) The facility shall develop written policies and procedures on the prevention, reporting, investigation and management of unusual incidents.

(c) The facility's policies and procedures shall require staff persons to immediately report unusual incidents.

(d) The facility shall complete a written unusual incident report on a form prescribed by the Department and send it to the appropriate regional office of children, youth and families and the funding agency, within 24 hours.

(e) The facility shall initiate an investigation of an unusual incident immediately following the report of the unusual incident.

(f) The facility shall submit a final unusual incident report to the agencies specified in subsection (d) immediately following the conclusion of the facility's investigation.

(g) A copy of unusual incident reports shall be kept.

(h) The facility shall immediately notify the child's parent, guardian or custodian immediately following an unusual incident relating to a specific child, unless restricted by applicable confidentiality laws, regulations and court orders.

§ 3800.17. Incident record.

The facility shall maintain a record of all medication errors; seizures; suicidal gestures; property damage of more than \$500; a child who leaves the premises of the facility for less than 30 minutes without the approval of staff persons; and injuries, traumas and illnesses of children that do not require inpatient hospitalization, which occur at the facility.

§ 3800.18. Consent to treatment.

Consent for treatment is required under 42 Pa.C.S. §§ 6301—6365 (relating to Juvenile Act), the Mental Health Procedures Act (50 P.S. §§ 7101—7503), other applicable laws and the act of February 13, 1970 (P. L. 19, No. 10) (35 P.S. §§ 10101—10105).

§ 3800.19. Applicable health and safety laws.

The facility shall have a valid certificate or approval document from the appropriate State or Federal agency relating to health and safety protections for children required by another applicable law, not to include local zoning ordinances.

§ 3800.20. Waivers.

(a) The facility may submit a written request for a waiver on a form prescribed by the Department and the Department may grant a waiver, of a specific section of this chapter if following conditions exist:

(1) There is no significant jeopardy to the children.

(2) There is an alternative for providing an equivalent level of health, safety and well-being protection of the children.

(3) The benefit of waiving the regulation outweighs any risk to the health, safety and well-being of the children.

(b) The scope, definitions or applicability of this chapter may not be waived.

CHILD RIGHTS**§ 3800.31. Notification of rights.**

(a) Upon admission, each child and available parent, guardian or custodian, unless court ordered otherwise, shall be informed of the child rights and the right to lodge grievances.

(b) A statement signed by the child and parent, guardian or custodian acknowledging receipt of the information on rights and grievance procedures, or documentation of efforts made to obtain the signature, shall be kept.

§ 3800.32. Specific rights.

(a) A child may not be discriminated against because of race, color, religious creed, disability, handicap, ancestry, sexual orientation, national origin, age or sex.

(b) A child may not be abused, mistreated, threatened, harassed or subject to corporal punishment.

(c) A child has the right to be treated with fairness, dignity and respect.

(d) A child has the right to be informed of the rules of the facility.

(e) A child has the right to communicate with others by visit, telephone and mail subject to reasonable facility

policy and written instructions from the funding agency or court if applicable, regarding circumstances, frequency, time, payment and privacy.

(f) A child shall have the opportunity to visit with family at least once every 2 weeks, unless visits are restricted by court order.

(g) A child has the right to be protected from unreasonable search and seizure. A facility may conduct search and seizure procedures, subject to reasonable facility policy.

(h) A child has the right to practice the religion or faith of choice.

(i) A child has the right to appropriate medical and dental treatment.

(j) A child has the right to rehabilitation and treatment.

(k) A child has the right to be free from excessive medication.

§ 3800.33. Prohibition against deprivation of rights.

A child may not be deprived of specific or civil rights.

§ 3800.34. Grievance procedures.

(a) A child has the right to lodge a grievance against the facility for an alleged violation of the specific or civil rights.

(b) The facility shall develop and implement written grievance procedures for the child, the child's family and staff persons to assure the investigation and resolution of grievances regarding alleged violation of child rights.

STAFFING

§ 3800.51. Child abuse and criminal history checks.

Child abuse and criminal history checks shall be completed in accordance with Chapter 3490 (relating to child protective services) and 23 Pa.C.S. §§ 6301—6385 (relating to Child Protective Services Law).

§ 3800.52. Staff hiring, retention and utilization.

Staff hiring retention and utilization shall be in accordance with Chapter 3490 (relating to child protective services) and 23 Pa.C.S. §§ 6301—6385 (relating to Child Protective Services Law).

§ 3800.53. Director.

(a) There shall be one director responsible for the facility. A director may be responsible for more than one facility.

(b) The director shall be responsible for administration and management of the facility, including the safety and protection of the children, implementation of policies and procedures and compliance with this chapter.

(c) A director of a facility shall have one of the following:

(1) A master's degree from an accredited college or university and 2 years work experience in administration or human services.

(2) A bachelor's degree from an accredited college or university and 4 years work experience in administration or human services.

§ 3800.54. Child care supervisor.

(a) There shall be one child care supervisor available either onsite or by telephone at all times children are at the facility.

(b) For facilities serving 24 or more children, whenever 24 or more children are present at the facility during awake hours, there shall be at least one child care supervisor present at the facility.

(c) The child care supervisor shall be responsible for developing and implementing the program and schedule for the children and supervision of child care workers.

(d) The child care supervisor shall have one of the following:

(1) A bachelor's degree from an accredited college or university and 1 year work experience with children.

(2) An associate's degree or 60 credit hours from an accredited college or university and 3 years work experience with children.

§ 3800.55. Child care worker.

(a) There shall be one child care worker present with the children for every eight children who are 6 years of age or older, during awake hours.

(b) There shall be one child care worker present with the children for every 16 children who are 6 years of age and older, during sleeping hours.

(c) There shall be one child care worker present with children for every four children who are under 6 years of age, during awake hours.

(d) There shall be one child care worker present with children for every eight children who are under 6 years of age, during sleeping hours.

(e) If there are children who are under 6 years of age and 6 years of age and older in the same group, the ratios specified in subsections (c) and (d) apply.

(f) The child care worker shall be responsible for implementing daily activities and supervision of the children.

(g) The child care worker shall have a high school diploma or general education development certificate.

(h) A child care worker who is counted in the worker to child ratio shall be 21 years of age or older.

§ 3800.56. Supervision.

(a) While children are at the facility, children shall be supervised during awake and sleeping hours by conducting observational checks of each child at least every hour.

(b) Observational checks of children specified in subsection (a) shall include actual viewing of each child.

(c) Staff persons may not sleep while being counted in the staff/child ratios.

(d) The requirements in subsections (a)—(c) regarding supervision of children during sleeping hours do not apply if the facility serves 12 or fewer children, there are no children in an adjudicated delinquency status at the facility and one of the following is met:

(1) Each of the children have lived at any facility within the legal entity for at least 6 months and each child's health and safety assessment indicates there are no high risk behaviors during sleeping hours.

(2) There are live-in staff persons at the facility.

§ 3800.57. Staff training.

(a) Prior to working with children, each staff person who will have direct contact with children, including part-time and temporary staff person and volunteer, shall have an orientation to their specific duties and responsibilities and the policies and procedures of the facility,

including unusual incident reporting, discipline, care and management of children, medications administration and use of crisis intervention procedures.

(b) Prior to working alone with children and within 60-calendar days after date of hire, each full-time staff person who will have direct contact with children and the director, shall have at least 30 hours of training to include at least the following areas:

- (1) The requirements of this chapter.
 - (2) The Child Protective Services Law, 23 Pa.C.S. §§ 6301—6385.
 - (3) Fire safety.
 - (4) First aid, Heimlich techniques and cardiopulmonary resuscitation.
 - (5) Crisis intervention and suicide prevention.
 - (6) Health issues affecting the population.
- (c) Prior to working alone with children and within 120-calendar days after date of hire, each part-time and temporary staff person who will have direct contact with children, shall have at least 10 hours of training to include at least the areas specified in subsection (b).
- (d) If a staff person has completed the training required in subsection (b) or (c) within 12 months prior to the staff person's date of hire, the requirement for training in subsection (b) or (c) does not apply.

(e) After initial training, each full-time staff person, who will have direct contact with children including the director, shall have at least 40 hours of training annually relating to the care and management of children. This requirement for annual training does not apply for the initial year of employment.

(f) After initial training, each part-time and temporary staff person who will have direct contact with children and works more than 10 days annually, shall have at least 20 hours of training annually relating to the care and management of children. This requirement for annual training does not apply for the initial year of employment.

(g) Each staff person who will have direct contact with children, shall complete training in first aid, Heimlich techniques and cardiopulmonary resuscitation at least every year.

(h) Training in first aid, Heimlich techniques and cardiopulmonary resuscitation shall be completed by each staff by an individual certified as a trainer by a hospital or other recognized health care organization.

(i) Training in firesafety shall be completed by a firesafety expert or in facilities serving 20 or fewer children by a staff person trained by a firesafety expert. Video tapes prepared by a firesafety expert are acceptable for the training if accompanied by an onsite staff person trained by a firesafety expert.

(j) A record of training shall be kept including the person trained, date, source, content, length of each course and copies of any certificates received.

PHYSICAL SITE

§ 3800.81. Physical accommodations and equipment.

If the facility serves a child with a physical disability, blindness, a visual impairment, deafness or a hearing impairment, there shall be physical site accommodations

and equipment necessary to ensure the child's safety and reasonable access for the child to enter, exit and move within the facility.

§ 3800.82. Poisons.

(a) Poisonous materials shall be kept locked and inaccessible to children.

(b) Poisonous materials shall be stored in their original, labeled containers.

(c) Poisonous materials shall be kept separate from food, food preparation surfaces and dining surfaces.

§ 3800.83. Heat sources.

Heat sources, such as hot water pipes, fixed space heaters, hot water heaters and radiators, exceeding 120° F that are accessible to children, shall be equipped with protective guards or insulation to prevent children from coming in contact with the heat source.

§ 3800.84. Sanitation.

(a) Sanitary conditions shall be maintained.

(b) There may be no evidence of infestation of insects or rodents in the facility.

(c) Trash shall be removed from the premises at least once a week.

(d) Trash in kitchens and bathrooms shall be kept in covered trash receptacles that prevent the penetration of insects and rodents.

(e) Trash outside the facility shall be kept in closed receptacles that prevent the penetration of insects and rodents.

§ 3800.85. Ventilation.

Living areas, recreation areas, dining areas, bathrooms, bedrooms and kitchens shall be ventilated by at least one operable window or mechanical ventilation.

§ 3800.86. Lighting.

Rooms, hallways, interior stairs, outside steps, outside doorways, porches, ramps and fire escapes shall be lighted to avoid accidents.

§ 3800.87. Surfaces.

(a) Floors, walls, ceilings, windows, doors and other surfaces shall be free of hazards.

(b) If the facility was constructed before 1978 and serves one or more children who are 2 years of age or younger or who are likely to ingest inedible substances, the facility shall test all layers of interior paint in the facility and exterior paint and soil accessible in the play and recreation areas, for lead content. If lead content exceeds .06% in wet paint, .5% in a paint chip sample or 400 ppm in the soil, lead remediation activity is required based on recommendations of the Department of Health. Documentation of lead testing, results and corrections made shall be kept.

(c) The facility may not use asbestos products for any renovations or new construction.

§ 3800.88. Water.

(a) The facility shall have hot and cold water under pressure.

(b) Hot water temperature in areas accessible to children may not exceed 120° F.

(c) A facility that is not connected to a public water system shall have a coliform water test at least every 3 months, by a Department of Environmental Protection

certified laboratory stating that the water is safe for drinking. Documentation of the certification shall be kept.

§ 3800.89. Temperature.

(a) Indoor temperature shall be at least 65° F during awake hours when children are present in the facility.

(b) Indoor temperature may not be less than 58° F during sleeping hours.

(c) When indoor temperature exceeds 90° F, mechanical ventilation such as fans or air conditioning shall be used.

§ 3800.90. Communication system.

(a) The facility shall have a working, noncoin-operated, telephone with an outside line that is accessible to staff persons in emergencies.

(b) The facility shall have a communication system to allow staff persons to contact other staff persons in the facility for assistance in an emergency.

§ 3800.91. Emergency numbers.

Telephone numbers for the nearest hospital, police department, fire department, ambulance and poison control center shall be posted on or by each telephone with an outside line.

§ 3800.92. Screens.

Windows, including windows in doors, shall be securely screened when doors or windows are open.

§ 3800.93. Handrails and railings.

(a) Each ramp, interior stairway and outside steps exceeding two steps shall have a well secured handrail.

(b) Each porch that has over an 18 inch drop shall have a well secured railing.

§ 3800.94. Landings and stairs.

(a) There shall be a landing which is at least as wide as the doorway, beyond each interior and exterior door which opens directly into a stairway.

(b) Interior stairs shall have nonskid surfaces.

§ 3800.95. Furniture and equipment.

(a) Furniture and equipment shall be free of hazards.

(b) There shall be enough furniture to accommodate the largest group of children that may routinely congregate in a room any given time.

(c) Power equipment shall be kept in safe condition.

(d) Power equipment, excluding normal household appliances, shall be stored in a place that is inaccessible to children.

(e) Power equipment excluding normal household appliances, may not be used by children except under supervision of a staff person.

§ 3800.96. First aid supplies.

The facility shall have a first aid manual, nonporous disposable gloves, antiseptic, adhesive bandages, gauze pads, thermometer, tape, scissors and syrup of Ipecac that are stored together.

§ 3800.97. Elevators.

Each elevator shall have a valid certificate of operation from the Department of Labor and Industry.

§ 3800.98. Indoor activity space.

The facility shall have separate indoor activity space for activities such as studying, recreation and group activities.

§ 3800.99. Recreation space.

The facility shall have regular access to outdoor or large indoor, recreation space and equipment.

§ 3800.100. Exterior conditions.

(a) The exterior of the building and the building grounds or yard shall be free of hazards.

(b) Outside walkways shall be free of ice, snow and obstruction.

§ 3800.101. Firearms and weapons.

Firearms, weapons and ammunition are not permitted in the facility or on the facility grounds, except for those carried by law enforcement personnel.

§ 3800.102. Child bedrooms.

(a) Each single bedroom shall have at least 70 square feet of floor space per child measured wall to wall, including space occupied by furniture.

(b) Each shared bedroom shall have at least 60 square feet of floor space per child measured wall to wall, including space occupied by furniture.

(c) No more than four children may share a bedroom.

(d) Ceiling height in each bedroom shall be at least an average of 7 1/2 feet.

(e) Each bedroom shall have a window with a source of natural light.

(f) Each child shall have the following in the bedroom:

(1) A bed with solid foundation and fire retardant mattress in good repair.

(2) A pillow and bedding appropriate for the temperature in the facility.

(3) A storage area for clothing.

(g) Cots or portable beds are not permitted. This prohibition does not apply for the first 30 days of a child's placement if a facility is given 7 days or less notice of the placement.

(h) Bunk beds shall allow enough space in between each bed and the ceiling to allow the child to sit up in bed.

(i) Bunk beds shall be equipped with securely attached ladders capable of supporting a staff person.

(j) The top bunk of bunk beds shall be equipped with a secure safety rail on each open side and open end of the bunk.

(k) A bedroom may not be used as a means of egress or access to another part of the facility.

§ 3800.103. Bathrooms.

(a) There shall be at least one flush toilet for every six children.

(b) There shall be at least one sink for every six children.

(c) There shall be at least one bathtub or shower for every six children.

(d) There shall be slip-resistant surfaces in all bathtubs and showers.

(e) Privacy shall be provided for toilets, showers and bathtubs by partitions or doors.

(f) There shall be at least one wall mirror for every six children.

(g) Individual towels and washcloths shall be provided for each child.

(h) Bar soap is not permitted unless there is a separate bar clearly labeled for each child.

(i) Toiletry items including toothbrush, hairbrush, comb, toothpaste, shampoo, deodorant and soap shall be provided for each child.

§ 3800.104. Kitchen areas.

(a) A facility shall have a kitchen area with a refrigerator, sink, cooking equipment and cabinets for storage.

(b) Utensils for eating, drinking and food serving and preparation shall be washed and rinsed after each use.

(c) Food shall be protected from contamination while being stored, prepared, transported and served.

(d) Uneaten food from a person's dish may not be served again or used in the preparation of other dishes.

(e) Cold food shall be kept at or below 40° F. Hot food shall be kept at or above 140° F. Frozen food shall be kept at or below 0° F.

§ 3800.105. Laundry.

Bed linens, towels, washcloths and clothing shall be laundered at least weekly.

§ 3800.106. Water areas.

(a) Aboveground pools, in-ground outdoor pools, ponds and lakes located on the premises, shall be fenced with a gate that is locked when the water area is not in use.

(b) Indoor pools shall be made inaccessible to children when not in use.

(c) A certified lifeguard shall be present with the children at all times children are using the water areas.

(d) The certified lifeguard specified in subsection (c) may not be counted in the staff person to child ratios specified in §§ 3800.54 and 3800.55 (relating to child care supervisor; and child care worker).

FIRE SAFETY

§ 3800.121. Unobstructed egress.

(a) Stairways, hallways, doorways, passageways and egress routes from rooms and from the building shall be unlocked and unobstructed, unless the firesafety approval specified in § 3800.14 (relating to firesafety approval) permits locking of certain means of egress.

(b) Doors used for egress routes from rooms and from the building may not be equipped with key-locking devices, electronic card operated systems or other devices which prevent immediate egress of children from the building.

§ 3800.122. Exits.

If more than four children sleep above the ground floor, there shall be a minimum of two interior or exterior exits from each floor. If a fire escape is used as a means of egress, it shall be permanently installed.

§ 3800.123. Evacuation procedures.

There shall be written emergency evacuation procedures that include staff responsibilities, means of transportation and emergency location.

§ 3800.124. Notification of local fire officials.

The facility shall notify local fire officials in writing of the address of the facility, location of bedrooms and

assistance needed to evacuate in an emergency. The notification shall be kept current.

§ 3800.125. Flammable and combustible materials.

(a) Combustible materials may not be located near heat sources.

(b) Flammable materials shall be used safely, stored away from heat sources and inaccessible to children.

§ 3800.126. Furnaces.

Furnaces shall be inspected and cleaned at least annually by a professional furnace cleaning company or trained maintenance staff persons. Documentation of the inspection and cleaning shall be kept.

§ 3800.127. Portable space heaters.

Portable space heaters, defined as heaters that are not permanently mounted or installed, are not permitted in the facility.

§ 3800.128. Wood and coal burning stoves.

The use of wood and coal burning stoves is not permitted.

§ 3800.129. Fireplaces.

The use of wood burning fireplaces is not permitted.

§ 3800.130. Smoke detectors and fire alarms.

(a) A facility shall have a minimum of one operable automatic smoke detector on each floor, including the basement and attic.

(b) There shall be an operable automatic smoke detector located within 15 feet of each bedroom door.

(c) The smoke detectors specified in subsections (a) and (b) shall be located in common areas or hallways.

(d) Smoke detectors and fire alarms shall be of a type approved by the Department of Labor and Industry or listed by Underwriters Laboratories.

(e) If the facility serves four or more children or if the facility has three or more stories including the basement and attic, there shall be at least one smoke detector on each floor interconnected and audible throughout the facility or an automatic fire alarm system that is audible throughout the facility.

(f) If one or more children or staff persons are not able to hear the smoke detector or fire alarm system, all smoke detectors and fire alarms shall be equipped so that each person with a hearing impairment will be alerted in the event of a fire.

(g) If a smoke detector or fire alarm is inoperative, repair shall be completed within 48 hours of the time the detector or alarm was found to be inoperative.

(h) There shall be a written procedure for firesafety monitoring in the event the smoke detector or fire alarm is inoperative.

§ 3800.131. Fire extinguishers.

(a) There shall be at least one operable fire extinguisher with a minimum 2-A rating for each floor, including the basement and attic.

(b) If the indoor floor area on a floor including the basement or attic is more than 3,000 square feet, there shall be an additional fire extinguisher with a minimum 2-A rating for each additional 3,000 square feet of indoor floor space.

(c) A fire extinguisher with a minimum 2A-10BC rating shall be located in each kitchen. The kitchen extinguisher meets the requirements for one floor as required in subsection (a).

(d) Fire extinguishers shall be listed by Underwriters Laboratories or approved by Factory Mutual Systems.

(e) Fire extinguishers shall be accessible to staff persons. Fire extinguishers may be kept locked if access to the extinguisher by a child may cause a safety risk for the child. If fire extinguishers are kept locked, each staff person shall be able to immediately unlock the fire extinguisher in the event of a fire emergency.

(f) Fire extinguishers shall be inspected and approved annually by a firesafety expert. The date of the inspection shall be on the extinguisher.

§ 3800.132. Fire drills.

(a) An unannounced fire drill shall be held at least once a month.

(b) Fire drills shall be held during normal staffing conditions and not when additional staff persons are present.

(c) A written fire drill record shall be kept of the date, time, the amount of time it took for evacuation, the exit route used, the number of children in the facility at the time of the drill, problems encountered and whether the fire alarm or smoke detector was operative.

(d) Children shall be able to evacuate the entire building or to a fire safe area designated in writing within the past year by a firesafety expert, within 2 1/2 minutes or within the period of time specified in writing within the past year by a firesafety expert. The firesafety expert may not be an employe of the facility.

(e) A fire drill shall be held during sleeping hours at least every 6 months.

(f) Alternate exit routes shall be used during fire drills.

(g) Fire drills shall be held on different days of the week, at different times of the day and night and on different staffing shifts.

(h) Children shall evacuate to a designated meeting place outside the building or within the fire safe area during each fire drill.

(i) A fire alarm or smoke detector shall be set off during each fire drill.

CHILD HEALTH

§ 3800.141. Child health and safety assessment.

(a) A child shall have a written health and safety assessment within 24 hours of admission.

(b) The assessment shall be completed or coordinated, signed and dated by medical personnel or staff persons trained by medical personnel.

(c) The assessment shall include the following:

(1) Medical information and health concerns such as allergies; medications; immunization history; illnesses; injuries; dental, mental or emotional problems; body positioning and movement stimulation for children with disabilities, if applicable; and ongoing medical care needs.

(2) Known or suspected suicide or self-injury attempts or gestures and emotional history which may indicate a predisposition for self-injury or suicide.

(3) Known incidents of aggressive or violent behavior.

(4) Substance abuse history.

(5) Sexual history or behavior patterns that may place the child or other children at a health or safety risk.

(d) A copy of the assessment shall be kept in the child's record.

§ 3800.142. Health and safety plan.

If the health and safety assessment in § 3800.141 (relating to health and safety assessment) identifies a health or safety risk, a written plan to protect the child shall be developed and implemented within 24 hours after the assessment is completed.

§ 3800.143. Child physical examination.

(a) A child shall have a physical examination within 15 days after admission and thereafter in accordance with the periodicity schedule recommended by the American Academy of Pediatrics, "Guidelines for Health Supervision," available from 141 Northwest Point Boulevard, Post Office Box 927, Elk Grove Village, Illinois, 60009-0927.

(b) If the child had a physical examination prior to admission that meets the requirements of subsection (e) within the periodicity schedule specified in subsection (a), an initial examination within 15 days after admission is not required. The next examination shall be required within the periodicity schedule specified in subsection (a).

(c) If the child will participate in a program that requires significant physical exertion, a physical examination shall be completed before the child participates in the physical exertion portion of the program.

(d) The physical examination shall be completed, signed and dated by a licensed physician, certified registered nurse practitioner or licensed physician's assistant.

(e) The physical examination shall include:

(1) A comprehensive health and developmental history.

(2) A complete, unclothed physical examination.

(3) Immunizations, screening tests and laboratory tests for children 17 years of age or younger, as recommended by the American Academy of Pediatrics, "Guidelines for Health Supervision."

(4) A gynecological examination including a breast examination and a Pap test if recommended by medical personnel.

(5) Communicable disease detection if recommended by medical personnel based on the child's health status and with required written consent in accordance with applicable laws.

(6) Specific precautions to be taken if the child has a communicable disease, to prevent spread of the disease to other children.

(7) An assessment of the child's health maintenance needs, medication regimen and the need for blood work at recommended intervals.

(8) Special health or dietary needs of the child.

(9) Allergies or contraindicated medications.

(10) Medical information pertinent to diagnosis and treatment in case of an emergency.

(11) Physical or mental disabilities of the child, if any.

(12) Health education.

(f) Immunizations, screening tests and laboratory tests may be completed, signed and dated by a registered nurse

or licensed practical nurse instead of a licensed physician, certified registered nurse practitioner or licensed physician's assistant.

§ 3800.144. Dental care.

(a) A child who is 3 years of age or older shall have a dental examination performed by a licensed dentist and teeth cleaning performed by a licensed dental technician, at least semiannually.

(b) A written record of the dental examination, including the date of the examination, the dentist's name, procedures completed and follow-up treatment recommended, shall be kept.

(c) Follow-up dental work indicated by the examination, such as treatment of cavities, shall be provided in accordance with recommendations by the licensed dentist.

§ 3800.145. Tobacco prohibited.

Use or possession of tobacco products by children and staff persons is prohibited in the facility, on the premises of the facility and during transportation provided by the facility.

§ 3800.146. Health services.

(a) The facility shall arrange for or provide medical treatment for acute and chronic conditions of a child.

(b) Medically necessary health services, such as medical, nursing, pharmaceutical, dental, dietary and psychological services that are planned or prescribed for the child shall be arranged for or provided.

§ 3800.147. Emergency medical plan.

The facility shall have a written emergency medical plan listing the following:

- (1) The hospital or source of health care that will be used in an emergency.
- (2) The method of transportation to be used.
- (3) An emergency staffing plan.

STAFF HEALTH

§ 3800.151. Staff health statement.

A staff person or volunteer who comes into direct contact with the children or who prepares or serves food, shall have a statement signed and dated by a licensed physician, certified registered nurse practitioner or licensed physician's assistant, within 12 months prior to working with children or food service and every 2 years thereafter, stating the person is free of serious communicable disease that may be spread through casual contact or that the staff person has a serious communicable disease that may be spread through casual contact but is able to work in the facility if specific precautions are taken that will prevent the spread of the disease to children.

§ 3800.152. Serious communicable diseases.

(a) If a staff person or volunteer has a serious communicable disease that may be spread through casual contact, written authorization from a licensed physician, certified nurse practitioner or licensed physician's assistant is required for the person to be present at the facility.

(b) Written authorization from a licensed physician, certified nurse practitioner or licensed physician's assistant shall include a statement that the person will not pose a serious threat to the health of the children and specific instructions and precautions to be taken for the protection of the children.

(c) The written instructions and precautions specified in subsection (b) shall be followed.

NUTRITION

§ 3800.161. Three meals a day.

At least three meals and one snack a day shall be provided to the children.

§ 3800.162. Quantity of food.

(a) The quantity of food served shall meet minimum daily requirements as recommended by the United States Department of Agriculture, unless otherwise recommended in writing by a licensed physician for a specific child.

(b) Additional portions of snacks and meals shall be available for the children.

§ 3800.163. Food groups.

Each meal shall contain at least one item from the dairy, protein, fruits and vegetables and grain food groups, unless otherwise recommended in writing by a licensed physician for a specific child.

§ 3800.164. Withholding or forcing of food prohibited.

(a) A facility may not withhold food or drink, including snack and dessert, as punishment.

(b) A child may not be forced to eat food.

TRANSPORTATION

§ 3800.171. Safe transportation.

The following requirements apply whenever the facility, facility staff persons or facility volunteers provide transportation for the children. These requirements do not apply if transportation is provided by a source other than the facility.

(1) The child care worker ratios specified in § 3800.55 (relating to child care worker) apply.

(2) Each child shall be in an individual, age and size appropriate, safety restraint at all times the vehicle is in motion.

(3) The crisis intervention procedures specified in §§ 3800.201—3800.213 (relating to crisis intervention procedures) apply.

(4) The driver of a vehicle shall be 21 years of age or older.

MEDICATIONS

§ 3800.181. Storage of medications.

(a) Prescription and over-the-counter medications shall be kept in their original containers.

(b) Prescription and potentially poisonous over-the-counter medications shall be kept in an area or container that is locked.

(c) Prescription and potentially poisonous over-the-counter medications stored in a refrigerator shall be kept in a separate locked container.

(d) Oral and topical prescription and over-the-counter medications shall be stored separately.

(e) Prescription and over-the-counter medications shall be stored under proper conditions of sanitation, temperature, moisture and light.

(f) Discontinued and expired medications, and prescription medications for children who are no longer served at the facility, shall be disposed of in a safe manner.

§ 3800.182. Labeling of medications.

(a) The original container for prescription medications shall be labeled with a pharmaceutical label that includes the child's name, the name of the medication, the date the prescription was issued, the prescribed dosage and the name of the prescribing physician.

(b) Over-the-counter medications shall be labeled with the original label.

§ 3800.183. Use of prescription medications.

Prescription medications shall only be used by the child for whom the medication was prescribed.

§ 3800.184. Medication log.

(a) A medication log shall be kept to include the following for each child:

- (1) A list of prescription medications.
- (2) The prescribed dosage.
- (3) Possible side effects.
- (4) Contraindicated medications.
- (5) Specific administration instructions, if applicable.
- (6) The name of the prescribing physician.

(b) For each prescription and over-the-counter medication including insulin administered or self-administered, documentation in the log shall include the medication that was administered, dosage, date, time and name of person who administered or self-administered the medication.

(c) The information in subsection (b) shall be logged immediately after each dosage of medication is administered or self-administered.

§ 3800.185. Medication errors.

Documentation of medication errors and follow-up action taken to prevent future medication errors shall be kept.

§ 3800.186. Adverse reaction.

If a child has a suspected adverse reaction to a medication, the facility shall notify the prescribing physician immediately. Documentation of adverse reactions and the physician's response shall be kept.

§ 3800.187. Administration.

(a) Prescription medications and injections of any substance shall be administered by one of the following:

(1) A licensed physician, licensed dentist, licensed physician's assistant, registered nurse, certified registered nurse practitioner, licensed practical nurse or licensed paramedic.

(2) A graduate of an approved nursing program functioning under the direct supervision of a professional nurse who is present in the facility.

(3) A student nurse of an approved nursing program functioning under the direct supervision of a member of the nursing school faculty who is present in the facility.

(4) A staff person who meets the criteria in § 3800.188 (relating to medications administration training) for the administration of oral, topical and eye and ear drop prescriptions, insulin injections and epinephrine injections for insect bites.

(5) A child who meet the requirements in § 3800.189 (relating to self administration of medications).

(b) Prescription medications and injections shall be administered according to the directions specified by a licensed physician, certified registered nurse practitioner or licensed physician's assistant.

§ 3800.188. Medications administration training.

(a) A staff person who has completed and passed a Department approved medications administration course within the past 2 years is permitted to administer oral, topical and eye and ear drop prescription medications and epinephrine injections for insect bites.

(b) A staff person who has completed and passed a Department approved medications administration course and who has completed and passed a diabetes patient education program within the past 12 months that meets the National Standards for Diabetes Patient Education Programs of the National Diabetes Advisory Board, 7550 Wisconsin Avenue, Bethesda, Maryland 20205, is permitted to administer insulin injections.

(c) A record of the training shall be kept including person trained, date, source, name of trainer, content and length of training.

§ 3800.189. Self-administration of medications.

A child is permitted to self-administer medications, insulin injections and epinephrine injections for insect bites, if the following requirements are met:

(1) The child is 13 years of age or older.

(2) A person who meets the qualifications of § 3800.187(a)(1)–(4) (relating to administration) is physically present observing the administration and immediately records the administration in accordance with § 3800.184 (relating to medication log).

(3) The child recognizes and distinguishes the medication and knows the condition or illness for which the medication is prescribed, the correct dosage and when the medication is to be taken.

BEHAVIOR INTERVENTION PROCEDURES**§ 3800.201. Behavior intervention procedure.**

A behavior intervention procedure includes chemical restraint, exclusion and manual restraint and for secure care mechanical restraint and seclusion.

§ 3800.202. Appropriate use of behavior intervention procedures.

(a) A behavior intervention procedure may not be used in a punitive manner or for the convenience of staff persons.

(b) A behavior intervention procedure, with the exception of exclusion as specified in § 3800.212 (relating to exclusion), may be used only to prevent a child from injuring himself.

(c) For each incident in which use of a behavior intervention procedure is considered:

(1) Every attempt shall be made to anticipate and de-escalate the behavior using methods of intervention less intrusive than behavior intervention procedures.

(2) A behavior intervention procedure may not be used unless less intrusive techniques and resources appropriate to the behavior have been tried but have failed.

(3) A behavior intervention procedure shall be discontinued when the child demonstrates he has regained self-control.

§ 3800.203. Behavior intervention procedure plan.

(a) For each child for whom behavior intervention procedures will be used beyond unanticipated use specified in § 3800.204 (relating to unanticipated use), a behavior intervention plan shall be written and included in the ISP specified in § 3800.223 (relating to content of the ISP), prior to use of behavior intervention procedures.

(b) The plan shall be developed and revised with the participation of the child, parent, guardian or custodian if available, child care staff persons, funding agency representative and other appropriate professionals.

(c) The plan shall be reviewed every 6 months and revised as needed.

(d) The plan shall be reviewed, approved, signed and dated by persons involved in the development and revision of the plan, prior to the use of a behavior intervention procedure, whenever the plan is revised and at least every 6 months.

(e) The plan shall include:

(1) The specific behavior to be addressed, observable signals that occur prior to the behavior and the suspected reason for the behavior.

(2) The single behavioral outcome desired stated in measurable terms.

(3) The methods for modifying or eliminating the behavior, such as changes in the child's physical and social environment, changes in the child's routine, improving communications, teaching skills and reinforcing appropriate behavior.

(4) The types of procedures that may be used and the circumstances under which the procedures may be used.

(5) The amount of time the procedure may be applied, not to exceed the maximum time periods specified in this chapter.

(6) Health conditions that may be affected by the use of specific procedures.

(7) The name of the staff person responsible for monitoring and documenting progress with the plan.

(f) The plan shall be implemented as written.

(g) Copies of the plan shall be kept in the child's record.

§ 3800.204. Unanticipated use.

If behavior intervention procedures are used on an unanticipated basis, § 3800.203 (relating to behavior intervention procedure plan) does not apply until after a behavior intervention procedure is used four times for the same child in any 3-month period.

§ 3800.205. Staff training.

(a) If behavior intervention procedures are used, each staff person who administers a behavior intervention procedure shall have completed and passed a Department approved training program within the past year in the use of behavior intervention procedures.

(b) Training shall include:

(1) The use of de-escalation techniques and alternative nonrestrictive strategies and addressing the child's feelings after use of a behavior intervention procedure.

(2) Child development principles appropriate for the age of the children served, to understand normal behavior reactions to stress at various ages.

(3) The proper use of the specific techniques or procedures that may be used.

(4) Techniques and procedures appropriate for the age and weight of the children served.

(5) Experience of use of the specific procedures directly on themselves and demonstration of use of the procedure.

(6) Health risks for the child associated with use of specific procedures.

(7) A testing process to demonstrate understanding of and ability to apply specific procedures.

(c) A record of the training including person trained, date, source, name of trainer and length of training shall be kept.

§ 3800.206. Seclusion.

Seclusion, defined as placing a child in a locked room, is prohibited. A locked room includes a room with any type of door locking device, such as a key lock, spring lock, bolt lock, foot pressure lock or physically holding the door shut.

§ 3800.207. Aversive conditioning.

The use of aversive conditioning, defined as the application of startling, painful or noxious stimuli, is prohibited.

§ 3800.208. Pressure points.

The application of pain through pressure point techniques or pain compliance is prohibited.

§ 3800.209. Chemical restraints.

(a) A chemical restraint is a drug used to control acute, episodic behavior that restricts the movement or function of a child. A drug ordered by a licensed physician as part of ongoing medical treatment is not a chemical restraint.

(b) Administration of a chemical restraint is prohibited except for the administration of drugs ordered by a licensed physician and administered by licensed/certified/registered medical personnel on an emergency basis.

(c) If a chemical restraint is administered as specified in subsection (b), the following apply:

(1) Immediately prior to each incidence of administering a drug on an emergency basis, a licensed physician shall have examined the child and given a written order to administer the drug.

(2) Immediately prior to each readministration of a drug on an emergency basis, a licensed physician shall have examined the child and ordered readministration of the drug.

(d) If a chemical restraint is administered as specified in subsection (c), the following apply:

(1) The child's vital signs shall be monitored at least once each hour.

(2) The physical needs of the child shall be met promptly.

(e) A Pro Re Nata (PRN) order for controlling acute, episodic behavior is prohibited.

(f) A drug ordered by a licensed physician as pretreatment prior to medical or dental examination or treatment is not a chemical restraint.

(g) Documentation of compliance with subsections (b)—(f) shall be kept.

§ 3800.210. Mechanical restraints.

(a) A mechanical restraint is a device that restricts the movement or function of a child or portion of a child's body. Examples of mechanical restraints include hand-cuffs, anklets, wristlets, camisoles, helmets with fasteners, muffs and mitts with fasteners, poseys, waist straps, head straps, restraining sheets and similar devices.

(b) The use of a mechanical restraint is prohibited.

(c) A device used to provide support for functional body position or proper balance and a device used for medical treatment, such as sand bags to limit movement after medical treatment, a wheelchair belt that is used for body positioning and support or a helmet for prevention of injury during seizure activity, are not considered mechanical restraints.

§ 3800.211. Manual restraints.

(a) A manual restraint is a physical hands-on technique that lasts more than 1 minute, that restricts the movement or function of a child or portion of a child's body. A manual restraint does not include a manual assist of any duration for a child during which the child does not physically resist or a therapeutic hold for a child who is 8 years of age or younger for less than 10 minutes during which the child does not physically resist.

(b) Manual restraints that apply pressure or weight on the child's respiratory system are prohibited.

(c) Prone position manual restraints are not permitted for girls who are pregnant.

(d) The position of the manual restraint or the staff person applying a manual restraint, shall be changed at least every 10-consecutive minutes of applying the manual restraint.

(e) A staff person who is not applying the restraint shall complete observation and documentation of the physical and emotional condition of the child, at least every 10 minutes the manual restraint is applied.

§ 3800.212. Exclusion.

(a) Exclusion is the removal of a child from the child's immediate environment and restricting the child alone to a room or area. If a staff person remains in the exclusion area with the child, it is not exclusion.

(b) Exclusion may not be used for more than 60 minutes, consecutive or otherwise, within a 2-hour period.

(c) Exclusion may not be used for a child more than 4 times within a 24-hour period.

(d) A staff person shall observe a child in exclusion at least every 5 minutes.

(e) A room or area used for exclusion shall have the following:

- (1) At least 40 square feet of indoor floor space.
- (2) A minimum ceiling height of 7 feet.
- (3) An open door or a window for observation.
- (4) Lighting and ventilation.
- (5) Absence of any items that might injure a child.

§ 3800.213. Behavior intervention procedure records.

A record of each use of a behavior intervention procedure, including the emergency use of a behavior intervention procedure, shall be kept and shall include the following:

- (1) The specific behavior addressed.
- (2) The methods of intervention used to address the behavior less intrusive than the procedure used.
- (3) The date and time the procedure was used.
- (4) The specific procedure used.
- (5) The staff person who used the procedure.
- (6) The duration of the procedure.
- (7) The staff person who observed the child.
- (8) The child's condition following the removal of the procedure.

SERVICES**§ 3800.221. Development of ISP.**

(a) An ISP shall be developed for each child within 30-calendar days of the child's admission.

(b) The ISP shall be developed by the child, parent, guardian or custodian if available, child care staff persons, funding agency representative and other appropriate professionals.

(c) Reasonable effort shall be made to involve the child and parent, guardian or custodian in the development of the plan ISP.

(d) Persons who participated in the development of the ISP shall sign and date the ISP.

§ 3800.222. Review, revision and rewrite of the ISP.

(a) A review of each child's progress on the ISP and a revision of the ISP, if necessary, shall be completed at least every 6 months.

(b) The ISP shall be revised in accordance with subsection (a) if there has been no progress on a goal, if a goal is no longer appropriate or if a goal needs to be added.

(c) Persons completing the revision shall sign and date the revised ISP.

§ 3800.223. Content of the ISP.

An ISP shall include:

- (1) Goals and time-limited objectives for the child.
- (2) Evaluation of the child's skill level for each goal.
- (3) Services that meet the child's needs.
- (4) A behavior intervention procedure plan, if appropriate.
- (5) A component addressing family involvement.
- (6) A plan to teach the child health and safety, if the child has a child living with them at the facility.
- (7) The anticipated duration of stay at the facility.
- (8) A discharge or transfer plan, if applicable.
- (9) The name of the person responsible for coordinating the implementation of the ISP.

§ 3800.224. Implementation of the ISP.

An ISP shall be implemented as written.

§ 3800.225. Copies of the ISP.

(a) Copies of ISPs and revisions to the plan shall be provided to the parent, guardian or custodian if available, the funding agency and persons who participated in the development and revisions of the ISP.

(b) Copies of ISPs and revisions to the ISP shall be kept in the child's record.

§ 3800.226. Education.

Each child who is of compulsory school age shall participate in a Department of Education approved school program or an educational program under contract with the local public school district.

CHILD RECORDS**§ 3800.241. Emergency information.**

(a) Emergency information for children shall be easily accessible at the facility.

(b) Emergency information for each child shall include the following:

(1) The name, address, telephone number and relationship of a designated person to be contacted in case of an emergency.

(2) The name, address and telephone number of the child's physician or source of health care.

(3) The name, address and telephone number of the person able to give consent for emergency medical treatment, if applicable.

(4) A copy of the child's most recent annual physical examination.

§ 3800.242. Child records.

(a) A separate record shall be kept for each child.

(b) Entries in a child's record shall be legible, dated and signed by the person making the entry.

§ 3800.243. Content of records.

Each child's record shall include:

(1) Personal information including:

(i) Name, sex, admission date, birth date and Social Security Number.

(ii) Race, height, weight, color of hair, color of eyes and identifying marks.

(iii) Dated photograph of the child taken within the past year.

(iv) Language or means of communication spoken and understood by the child and the primary language used by the child's family, if other than English.

(v) Religious affiliation.

(vi) Name, address and telephone number of the relative or person to be contacted in the event of an emergency.

(2) Physical examinations.

(3) Dental examinations.

(4) Health and safety assessments.

(5) ISPs.

(6) Behavior intervention procedure plans.

(7) Behavior intervention procedure records relating to the child.

(8) Reports of unusual incidents.

(9) Consent for treatment.

(10) Court order, if applicable.

§ 3800.244. Record retention.

(a) Information in the child's record shall be kept for at least 4 years or until any audit or litigation is resolved.

(b) A child's record shall be kept for at least 4 years following the child's departure or until any audit or litigation is resolved.

§ 3800.245. Locked records.

A child's record shall be kept locked when unattended.

FACILITIES SERVING NINE OR MORE CHILDREN**§ 3800.251. Additional requirements for facilities serving nine or more children.**

This section and §§ 3800.252—3800.257 apply to facilities serving nine or more children. These provisions are in addition to the other provisions of this chapter.

§ 3800.252. Sewage system approval.

A facility that is not connected to a public sewer system shall have a written sanitation approval for its sewage system by the sewage enforcement official of the municipality in which the facility is located.

§ 3800.253. Evacuation procedures.

Written emergency evacuation procedures and an evacuation diagram specifying directions for egress in the event of an emergency, shall be posted in a conspicuous place.

§ 3800.254. Exit signs.

(a) Signs bearing the word "EXIT" in plain legible letters shall be placed at exits.

(b) If the exit or way to reach the exit is not immediately visible, access to exits shall be marked with readily visible signs indicating the direction of travel.

(c) Exit sign letters shall be at least 6 inches in height with the principal strokes of letters at least 3/4 inch wide.

§ 3800.255. Laundry.

(a) There shall be a laundry area which is separate from kitchen, dining and other living areas.

(b) The laundry area shall have an entrance that does not require transportation of soiled linen through food preparation and food storage areas or soiled linen shall be covered while being transported through food preparation and food storage areas.

§ 3800.256. Dishwashing.

(a) Utensils used for eating, drinking, preparation and serving of food or drink shall be washed, rinsed and sanitized after each use by a mechanical dishwasher or by a method approved by the Department of Agriculture.

(b) A mechanical dishwasher shall use hot water temperatures exceeding 140°F in the wash cycle and 180°F in the final rinse cycle or shall be of a chemical sanitizing type approved by the National Sanitation Foundation.

(c) A mechanical dishwasher shall be operated in accordance with the manufacturer's instructions.

§ 3800.257. Bedrooms.

A child's bedroom may not be more than 200 feet from a bathtub or shower and a toilet.

SECURE CARE**§ 3800.271. Criteria.**

Secure care is permitted only for children who are court ordered to a secure facility.

§ 3800.272. Exceptions.

The following requirements do not apply to facilities in which secure care is provided:

(1) Section 3800.55 (a)—(d) (relating to child care worker).

(2) Section 3800.56 (d) (relating to supervision).

(3) Section 3800.102 (c) (relating child bedrooms).

(4) Section 3800.103 (f) (relating to bathrooms).

(5) Section 3800.171(1) (relating to safe transportation).

(6) Section 3800.206 (relating to seclusion).

(7) Section 3800.210 (relating to mechanical restraints).

§ 3800.273. Additional requirements.

The following additional requirements apply to facilities in which secure care is provided:

(1) The facility shall have a valid C-5 firesafety occupancy approval from the Department of Labor and Industry or a firesafety occupancy approval appropriate for locked facilities from the Department of Licensing and Inspection of the city of Philadelphia, the Department of Public Safety of the city of Pittsburgh or the Department of Community Development of the city of Scranton.

(2) An unusual incident as specified in § 3800.16(a) (relating to unusual incidents) includes a child who is absent without leave for any period of time.

(3) Children shall be directly supervised at all times during awake hours.

(4) A minimum of two child care workers shall be present in the facility at all times.

(5) There shall be one child care worker present with the children for every six children during awake hours.

(6) There shall be one child care worker present with the children for every 12 children during sleeping hours.

(7) Children shall be supervised by conducting observational checks of each child within 15 minute intervals during sleeping hours.

(8) Observational checks of children during sleeping hours shall include actual viewing of each child.

(9) Observational checks of children during sleeping hours shall be recorded in writing noting the date, time, person making the check and any unusual circumstances observed.

(10) The driver and at least one additional staff person shall be present in the vehicle at all times one or more children are being transported. There shall be one child care worker present with the children for every three children during transportation of children either by the facility or another transportation source. The driver of the vehicle may not be counted in the staffing ratio.

(11) No more than two children may share a bedroom.

(12) The following physical site requirements apply:

(i) Glass windows, windows in doors, shower doors and light fixtures and other glass surfaces shall be protected with a secure, nonbreakable covering or composed of shatterproof glass.

(ii) Glass mirrors are not permitted.

(iii) Furnishings or other items such as drapery cords, electrical outlets, shower curtains, shoe strings and noncollapsing clothing hooks, that may create a risk for self-injury or suicide may not be accessible to the children.

(13) The following requirements apply to the use of mechanical restraints:

(i) Handcuffs behind the back, leg restraints and locking transportation waist belts with handcuffs in front of the child used during transportation, are the only types of mechanical restraints that are permitted.

(ii) A child may not be handcuffed to an object or another person.

(iii) Oral or written authorization by supervisory staff is required prior to each use of a mechanical restraint, except for those restraints used during transportation.

(iv) The use of handcuffs and leg restraints, except for those used during transportation, may not exceed 6 hours, unless a licensed physician, licensed physician's assistant or registered nurse examines the child and gives written orders to continue the use of the restraint. Reexamination and new written orders are required for each 6-hour period the restraint is continued. If a restraint is removed for any purpose other than for movement and reused within 24 hours after the initial use of the restraint, it is considered continuation of the initial restraint.

(v) The restraint shall be checked for proper fit by a staff person at least every 15 minutes.

(vi) The physical needs of the child shall be met promptly.

(vii) Handcuffs and leg restraints, except for those used during transportation, shall be removed completely for at least 10 minutes during every 2 hours the restraint is used.

(viii) Handcuffs and leg restraints, except those used during transportation, shall be checked and observed by a supervisory staff person who is not administering the restraint, at least every 2 hours the restraint is used.

(14) The following requirements apply to the use of seclusion:

(i) Oral or written authorization by supervisory staff is required prior to each use of seclusion.

(ii) The use of seclusion may not exceed 6 hours, unless a licensed physician, licensed physician's assistant or registered nurse examines the child and gives written orders to continue the use of seclusion. Reexamination and new written orders are required for each 6-hour period the seclusion is continued. If seclusion is interrupted for any purpose and reused within 24 hours after the initial use of seclusion, it is considered continuation of the initial seclusion period.

(iii) A staff person shall observe a child in seclusion at least every 5 minutes.

(iv) The physical needs of the child shall be met promptly.

(v) A child in seclusion shall be checked and observed by a supervisory staff person who is not continually observing the child as required in subparagraph (iii), at least every 2 hours the seclusion is used.

(vi) The use of seclusion may not exceed 12 hours in any 48-hour period without a written court order.

(15) Documentation of compliance with paragraphs (6) and (7) shall be kept.

SECURE DETENTION

§ 3800.281. Requirements for secure detention.

The requirements and exceptions for secure care apply for secure detention.

§ 3800.282. Exception for secure detention.

The following requirements do not apply for secure detention:

(1) Section 3800.143(b) (relating to child physical examination).

(2) Sections 3800.221—3800.225.

§ 3800.283. Additional requirements.

The following additional requirements apply to facilities in which secure detention is provided:

(1) No more than one child may occupy a bedroom.

(2) No more than 12 children may be in a group at any one time.

(3) No more than 12 children may occupy a sleeping unit or area.

(4) The child health and safety assessment required in § 3800.141 (relating to child health and safety assessment) shall be completed within 1 hour of admission.

(5) The child physical examination as required in § 3800.143 (relating to child physical examination) shall be completed within 96 hours after admission.

TRANSITIONAL LIVING**§ 3800.291. Criteria.**

A child shall complete a Department-approved training program and demonstrate competency in the following areas to be eligible for transitional living:

(1) Health, general safety and firesafety practices.

(2) Money management.

(3) Transportation skills.

(4) Child health and safety, child development and parenting skills, if the child has a child living with them at the residence.

§ 3800.292. Exceptions for transitional living.

The following requirements do not apply for transitional living:

(1) Section 3800.2(d) (relating to applicability). Each building in which transitional living is provided shall be inspected at least once a year. Annual inspection of each individual transitional living residence is not required.

(2) An incident specified in § 3800.17 (relating to incident records) does not include a child who leaves the premises of the facility for any period of time without the approval of staff persons, but does include a child whose whereabouts is unknown for more than 24 hours.

(3) Sections 3800.55 and 3800.56 (relating to child care worker; and supervision).

(4) Sections 3800.82, 3800.83 and 3800.88(b) (relating to poisons; heat sources; and water), unless infants or toddlers live at the residence.

(5) Section 3800.90 (relating to communication systems).

(6) Sections 3800.98 and 3800.99 (relating to space; and recreation space).

§ 3800.293. Additional requirements.

(a) There shall be one child care worker present on the premises for every 12 children during awake hours. A child's own children present at the residence shall be counted in the staffing ratio.

(b) There shall be one child care worker present on the premises for every 24 children during sleeping hours. A child's own children present at the residence shall be counted in the staffing ratio.

(c) If there are 8 or fewer children present on the premises at any one time, one child care worker may be available by telephone instead of physically present on the premises.

OUTDOOR AND MOBILE PROGRAMS**§ 3800.301. Applicability.**

The exceptions for outdoor and mobile programs specified in §§ 3800.302 and 3800.303 (relating to exceptions for outdoor and mobile programs; and additional requirements for outdoor and mobile programs) apply during the time in which children receive services in outdoor or mobile settings.

§ 3800.302. Exceptions for outdoor and mobile programs.

(a) The following requirements do not apply for mobile and outdoor programs that operate from nonstationary settings.

(1) Section 3800.13(a) (relating to maximum capacity).

(2) Section 3800.14 (relating to firesafety approval).

(3) Section 3800.56 (relating to supervision), for outdoor programs.

(4) Section 3800.83 (relating to heat sources).

(5) Sections 3800.84(b)—(e) (relating to sanitation).

(6) Section 3800.84—3800.88.

(7) Section 3800.90(a) (relating to communication system).

(8) Sections 3800.91—3800.93 (relating to emergency numbers; screens; and handrails and railings) physical site).

(9) Sections 3800.96—3800.99.

(10) Sections 3800.101—3800.105.

(11) Section 3800.124 (relating to notification of local fire officials).

(12) Section 3800.130 (relating to smoke detectors and fire alarms).

(13) Section 3800.131 (relating to fire extinguishers) for outdoor programs.

(14) Section 3800.132 (relating to fire drills).

(15) Sections 3800.251—3800.257 (relating to facilities serving nine or more children).

(b) The following requirements do not apply for mobile and outdoor programs that operate from stationary settings such as tepees and cabins:

(1) Section 3800.13(a).

(2) Section 3800.56 for outdoor programs.

(3) Section 3800.84(b) (relating to sanitation).

(4) Section 3800.84—3800.86 (relating to sanitation; ventilation and lighting)

(5) Sections 3800.88 and 3800.89 (relating to water; and temperature).

(6) Section 3800.90(a).

(7) Sections 3800.91—3800.94.

(8) Sections 3800.97—3800.100.

- (9) Sections 3800.101—3800.106.
- (10) Section 3800.124.
- (11) Sections 3800.251—3800.257.

§ 3800.303. Additional requirements for outdoor and mobile programs.

(a) The following additional requirements apply for outdoor and mobile programs:

(1) There shall be a supply of food and water for drinking, cleaning and bathing for the number of days until the program will reach the next supply of water and food.

(2) Potable drinking water shall be available to children at all times.

(3) There shall be an opportunity for children to bathe at least once a week and wash their hands and brush their teeth once a day.

(4) There shall be a communication system such as a CB radio to communicate with public emergency sources in the event of a medical, police, fire or other emergency.

(5) There shall be a source for routine weather information for advance warning of severe or dangerous weather conditions.

(6) There shall be a written emergency transportation and staffing plan and equipment such as a litter to transport a child in a medical emergency.

(7) There shall be a written plan for conducting a search for a missing child and requesting assistance from local authorities.

(8) Each staff person shall have a map of the area.

(9) Each staff person shall have a written anticipated schedule of the dates, times and estimated locations for the next 7 days.

(10) Each child shall wear footwear, that is well-constructed, in good condition and appropriate for the activity being conducted.

(b) The following additional requirements apply for outdoor programs:

(1) Each child shall have personal hygiene supplies, shelter such as a fire retardant tent or tarpaulin, a fire retardant sleeping bag or other sleeping equipment, bedding appropriate to the temperature and at least one change of clothing.

(2) While the child is engaged in an activity away from a stationary site, each child shall have a daily water supply and a whistle for use in emergencies.

(3) Safe and well-maintained equipment shall be provided for activities.

(4) Staff persons responsible for teaching children high-risk activities such as boating, biking, horseback riding, swimming and climbing shall be trained by an appropriate, recognized source in safe practices regarding these activities. Documentation of the training shall be kept.

(5) At least one staff person shall be present with the children at all times who has current certification from a hospital or other recognized health care organization in first aid, Heimlich techniques and cardiopulmonary resuscitation

(c) The following additional requirement applies for mobile and outdoor programs that operate from stationary settings such as tepees and cabins: The maximum

capacity specified on the certificate of compliance shall be based on 30 square feet per child, including measurement of all floor space.

DAY TREATMENT

§ 3800.311. Exceptions for day treatment.

The following requirements do not apply for child day treatment centers:

- (1) Section 3800.13(a) (relating to maximum capacity).
- (2) Section 3800.14(a) (relating to fire safety approval).
- (3) Section 3800.32(f), (g) and (i) (relating to specific rights).
- (4) Section 3800.54(a) and (b) (relating to child care supervisor).
- (5) Section 3800.56 (relating to supervision).
- (6) Section 3800.98 (relating to indoor activity space).
- (7) Section 3800.102 (relating to child bedrooms).
- (8) Sections 3800.103(a)—(e), (g), (h) and (j) (relating to bathrooms).
- (9) Section 3800.104(a) (relating to kitchen areas).
- (10) Section 3800.105 (relating to laundry).
- (11) Section 3800.124 (relating to notification of local fire officials).
- (12) Section 3800.130(b) and (e) (relating to smoke detectors and fire alarms).
- (13) Section 3800.144 (relating to dental care).
- (14) Section 3800.161 (relating to three meals a day).
- (15) Section 3800.171(1) (relating to safe transportation).
- (16) Section 3800.255 (relating to laundry).
- (17) Section 3800.257 (relating to bedrooms).

§ 3800.312. Additional requirements.

The following additional requirements apply for child day treatment centers:

- (1) The maximum capacity specified on the certificate of compliance shall be based on the available indoor square footage and the number of sinks and toilets.
- (2) If the facility is located outside Philadelphia, Pittsburgh and Scranton, the facility shall have a valid firesafety approval listing the type of occupancy from the Department of Labor and Industry.
- (3) There shall be one child care supervisor present at the facility for every 36 children, whenever children are present at the facility.
- (4) Children shall be directly supervised at all times.
- (5) The facility shall have at least 50 square feet of indoor activity space per child, measured wall to wall including space occupied by furniture. Indoor activity space includes areas accessible to children such as dining areas, recreation areas and other general living areas. Indoor activity space does not include kitchens, bathrooms, counseling rooms, offices or hallways.
- (6) There shall be at least one flush toilet for every 18 children
- (7) There shall be at least one sink for every 24 children.
- (8) A meal shall be provided to the children at least every 5 hours they are at the facility.

(9) An evening snack shall be provided to children who are at the facility more than 3 hours beyond the evening meal.

(10) Certified teachers may be substituted for a child care supervisor to meet the requirements of paragraph (3).

CHAPTER 3810. (Reserved)

(Editor's Note: The Department proposes to delete Chapter 3810, pages 3810-1 to 3810-31, serial pages (109569) to (109572), (168981) to (168982), (109575) to (109598) and (168983).)

CHAPTER 5310. COMMUNITY RESIDENTIAL REHABILITATION SERVICES FOR THE MENTALLY ILL

Subchapter A. GENERAL PROVISIONS

§ 5310.3. Applicability.

(a) This chapter applies to providers of full-care or partial-care community residential rehabilitation services, or both, as defined in § 5310.6 (relating to definitions).

(b) **This chapter does not apply to child residential facilities which serve exclusively children, with the exception of host homes, governed by Chapter 3800 (relating to child residential and day treatment facilities).**

§ 5310.6. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

* * * * *

[*Group home for children*—A single dwelling or apartment in the community, which is staffed by the provider and owned, held, leased or controlled by the provider or a provider-affiliate. Each group home cares for one group of four to eight children.]

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**Subchapter C. CHILDREN SERVICES
GENERAL PROVISIONS**

§ 5310.92. Applicability.

(a) This subchapter applies to all community residential rehabilitation services (CRRS) that provide full-care

for children **in host home settings**. Persons under 18 years of age, with the exception of emancipated minors, may not be cared for in partial-care CRRS nor in a CRRS site in which adults are served.

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PHYSICAL FACILITY STANDARDS

§ 5310.161. [Group homes] (Reserved).

[**The requirements of §§ 5310.71—5310.73 (relating to physical facilities standards) apply to community residential rehabilitation service (CRRS) group homes for children. The following also applies:**

(1) **Space must be provided for the care of ill children who require separation from the group.**

(2) **All electrical equipment must be in good repair. Equipment such as washers and garbage disposals must have protective safety devices which prevent use when open. All electric power tools must be locked in a cabinet, closet or storage room when not in use and must be used only by staff. Electrical kitchen equipment may be operated by children only when under direct supervision of staff.]**

Subpart E. RESIDENTIAL AGENCIES/FACILITIES/SERVICES

ARTICLE I. LICENSING/APPROVAL

CHAPTER 6400. COMMUNITY HOMES FOR INDIVIDUALS WITH MENTAL RETARDATION

§ 6400.3. Applicability.

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(f) This chapter does not apply to the following:

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(8) **Child residential facilities which serve exclusively children, regulated under Chapter 3800 (relating to child residential and day treatment facilities).**

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