

# RULES AND REGULATIONS

## Title 55—PUBLIC WELFARE

### DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 3130, 3680, 3710, 3800, 3810, 5310 AND 6400]

#### Child Residential and Day Treatment Facilities

##### *Statutory Authority*

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

Notice of proposed rulemaking was published at 28 Pa.B 953 (February 14, 1998).

##### *Background*

The purpose of these amendments is to establish requirements to protect the health, safety and well-being of children who receive services in residential or day treatment facilities within this Commonwealth. These amendments strengthen health and safety requirements based on current information and research and reduce duplication and inconsistencies within multiple chapters of licensing regulations.

This regulatory reform initiative is the first of many regulatory reform initiatives of the Cross-System Licensing Project (Project). The purpose of the Project is to improve existing human service licensing functions within State government by strengthening health and safety protections and reducing duplication and inefficiency within the licensing process. The Departments of Public Welfare, Health and Aging are working jointly with external stakeholders to improve, strengthen and streamline the licensing function for all human service disciplines including child welfare, child care, personal care, mental health, mental retardation, drug and alcohol and aging. While the Project includes many initiatives, such as the development of new human service licensing legislation, automation, inferential inspection systems and training of licensing staff, the regulatory reform initiative is one of the most critical of the Project's activities.

These regulatory amendments are the first of ten regulatory amendments planned by the Project to be completed over the next 4 years. In February 1998, the Project presented a regulatory consolidation proposal to external stakeholders to consolidate and combine at least 28 chapters of existing licensing regulations into ten chapters. These regulations are intended to protect the health, safety and well-being of consumers receiving services by the regulated facilities and agencies.

The development and adoption of a single set of regulations applicable to a variety of program models and settings is being done to reduce duplication and inconsistency among chapters of regulations that are intended to care for children who are exposed to similar health and safety risks. The consolidation of multiple chapters of regulations is an effort to reduce the many, and often conflicting and duplicative sets of regulations that now apply to a single corporation or business. Many human service providers operate different types of human service facilities and therefore must meet several sets of regulations. This is very difficult and requires administrative

and staff time and attention to devote to regulatory compliance. Moreover, from a health and safety perspective, there is little value to having multiple sets of regulations where the risks to the consumers is similar. It is anticipated that eliminating some of the burden of complying with multiple sets of disparate regulations will enable facilities to improve their ability to comply with regulations and to spend more time and effort in providing direct services to consumers. The primary intent of regulation consolidation is to improve services and protections to consumers by focusing provider effort on fundamental health and safety regulatory compliance and thus improving the provision of consumer services.

##### *Scope*

These amendments apply to a variety of child residential and part-day program types currently operating within this Commonwealth. The amendments apply equally to profit and nonprofit facilities, including service providers who do and do not receive public funds.

The amendments 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. Approximately 450 residential facilities are currently certified under Chapter 3810.

The 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. Fewer than 20 secure residential facilities are currently certified in this Commonwealth. The amendments also govern 21 secure detention facilities currently certified 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 amendments are maternity homes, which are currently certified 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. Only 11 maternity homes are currently certified in this Commonwealth. The Department has been transitioning certification of these maternity homes from Chapter 3710 to Chapter 3810.

These amendments also will apply to community residential mental retardation facilities serving exclusively children. There are approximately 30 facilities currently certified under Chapter 6400 (relating to community homes for individuals with mental retardation). These facilities provide specialized care for children with mental retardation.

The amendments will also apply to approximately 45 community mental health residential facilities serving exclusively children currently certified under Chapter 5310 (relating to community residential rehabilitation services for the mentally ill). 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 amendments will govern, the amendments also apply to approximately 75 child part-day service facilities currently certified 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.

These amendments do not apply to Department-operated facilities that provide secure and nonsecure care to children who are adjudicated delinquent. While Department Youth Development Centers and Youth Forestry Camps will not be certified, it is the Department's intent to apply the same regulatory and inspection instruments to these facilities as those applied with private facilities.

#### *Regulatory Formulation Process*

A work plan describing the process and time frames for the regulatory development and promulgation of these amendments was developed in January 1997. The plan provided for ongoing and active consultation and involvement with many external advocacy, consumer and provider organizations. Throughout the 2-year regulatory formulation process, the plan called for external stakeholder participation through many and varied opportunities such as formal and informal meetings, discussing issues and submitting written comment.

In February 1997, March 1997, October 1997, March 1998 and June 1998, individual meetings were held with several Statewide provider, advocacy and consumer organizations. The meetings were convened to give briefings on the scope and content of the amendments 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 amendments, a regulation work group was formed and met for several days during May 1997, July 1997 and August 1998. Work group members included over 55 individuals representing consumers, families, advocates, providers, county government, other professionals in the field of child residential and day treatment services and regional licensing inspectors. Provider participants represented a cross section of geographic areas, program types and sizes of facilities. Written drafts of the amendments were also sent to work group members on several occasions for written review and comment.

In accordance with section 201 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1201) (CDL), the amendments were also published as proposed rulemaking in the *Pennsylvania Bulletin* on February 14, 1998, with a 60-day public comment period. The Department received 145 letters submitting recommendations for changes to the proposed amendments.

Through the regulatory process, including the various public comment forums and the proposed rulemaking public comment period, many valuable comments and suggestions were received from the many external stakeholders who participated in the process. The Department values the comments submitted and has incorporated

many of the suggested changes in the final-form regulations. The Department appreciates the time and expertise external stakeholders have given to make the final regulatory document an effective regulatory tool for protecting the children served in these facilities.

#### *Format*

These amendments apply to a variety of types of facilities with diverse program approaches to the care and supervision of children, operated in varied types of physical site settings. The final-form regulations are formatted so that the first 75% of the requirements are universal requirements for all facility types (§§ 3800.1—3800.245). The last 25% of the final-form regulations include exceptions or additions that apply for special facility types such as facilities serving nine or more children, secure care, secure detention, outdoor and mobile programs, transitional living and day treatment (§§ 3800.251—3800.312).

#### *Need for Amendments*

These amendments are needed to protect children who receive care and services in residential or day treatment settings away from their homes and families. The amendments will protect the health, safety and well-being of children who are not under the direct care and supervision of responsible parents or caregivers, until such time as the caregivers reassume parenting responsibility.

These amendments cover some types of facilities, such as secure care, day treatment, transitional living, outdoor programs and mobile programs, for which no facility-based requirements now exist. These amendments are needed to protect the health, safety and well-being of the children. Current regulations for several facility types, including maternity homes and community residential rehabilitation facilities, were promulgated over 17 years ago and do not address current issues and research related to health and safety risks. These amendments will ensure that children receive care in a safe and healthy manner in the various facility types covered by this chapter.

#### *Affected Individuals and Organizations*

Child residential and day treatment facilities as defined in the scope of the amendments are directly affected and must comply with these amendments to operate. The children receiving care and services in licensed facilities are directly affected by these amendments since they are the consumers the amendments are aimed at protecting. Families of the children receiving care and services are affected in their interest to assure healthy, safe and quality care for their children. Purchasers of service and placement agencies such as county government agencies and State entities, are affected by the amendments in that they purchase and monitor the quality of the services. Juvenile courts are affected in that they use these facilities as a resource when making placement decisions regarding children who are adjudicated dependent or delinquent.

#### *Paperwork Requirements*

Paperwork requirements have been reduced from the existing child residential regulations. Paperwork reductions include the elimination of requirements for some policies and procedures, independent audits, hiring practices, personnel records, job descriptions and staff discipline procedures from the current regulations governing administration and operation of children and youth facilities (Chapter 3680). While the existing regulations may support best practice for facility operation, they are not considered to be directly related to the health, safety and

well-being protection of children. Providers or funding sources may choose to continue to maintain current practices in these areas.

Departmental forms that are required, such as the reportable incident form, will be shared in draft form with external stakeholders for review and comment prior to implementation.

#### *Summary of Public Comment and Changes*

Written comments, suggestions and objections regarding the proposed amendments were requested within a 30-day period following publication of proposed rulemaking. In response to requests from several external stakeholders, the Department extended the public comment period by an additional 30 days. A total of 145 letters were received by the Department within the 60-day public comment period, in response to the proposed rulemaking. Following is a summary of the major comments received and the Department's response to those comments. A summary of all major changes from proposed rulemaking is also included.

#### *General—consolidation*

Many comments were received both in support of and in opposition to the consolidation of eight chapters of regulations into one. The Independent Regulatory Review Commission (IRRC) recommended that separate regulations for day treatment and secure detention be developed. Those who supported the consolidation did so due to the ease of regulatory burden for providers who now operate under various duplicative and conflicting regulations. Those who opposed the consolidation raised concern about the need to address differences for day treatment and secure detention facilities and concern that the result of the consolidation was lessened requirements from existing regulations.

#### *Response*

While the amendments include the requirements for several service types in one chapter, unique program differences are retained. The amendments include special requirements for programs such as secure care, detention, day treatment, outdoor programs, mobile programs and transitional living. As the Department discussed this issue further with external stakeholders, the commentators in opposition to the consolidation explained that their concerns were largely based on content issues that they believed were not addressed for specific program types, rather than objections based on *Pennsylvania Code* format and style issues.

While the Department is proceeding with the consolidation effort, concerns expressed by those in opposition were reviewed and considered. In response to concerns about the differences in day treatment and secure detention facilities, significant time was devoted to additional research, visits to facilities and discussions related to secure detention and day treatment both at individual meetings with commentators during the spring of 1998, and at the regulation work group meeting in August 1998. As a result of public comment and subsequent discussions with commentators, many additional requirements and new exceptions were added for day treatment and secure detention facilities as described in §§ 3800.271—3800.312 of this comment and response section.

In response to concerns about lessening of requirements, the amendments are not reduced protections for children. Rather, they include many new and strengthened protections from those that exist in current regula-

tions. Improved and strengthened areas of the regulations include: new facility-specific requirements for many service types such as secure care, transitional living, day treatment and outdoor and mobile programs; reportable incident requirements; medication administration; restrictive procedures; fire safety; physical plant; program planning; child health; staffing; and staff training.

The Department believes that consolidation of regulations increases safeguards to consumers. Many of the providers of service regulated by these regulations operate various types of day and residential programs for children. For example, of the 21 licensed secure detention facilities, nine operate nonsecure care within the same building as secure detention, one is a private corporation that operates many other types of facilities under the scope of these regulations, and two new applications for secure detention to be operated by multifacility, private companies are being processed. The regulatory consolidation allows providers of various service types to focus less time on unnecessary regulatory compliance with multiple and inconsistent sets of regulations, and more time on quality direct services for children.

In addition, many of the children served in programs covered by these amendments move regularly within these various service types. For example, it is not uncommon for a child to move from a secure detention facility, to a secure facility, and then back home with his family to receive day treatment services. Currently, varied and sometimes conflicting requirements apply that are confusing for the child and the child's family to understand, as well as for the provider to understand and comply. By having one set of consistent requirements applicable for all types of children's facilities, the Department believes that the interests and needs of the child are best met. The consolidation supports equal and consistent protections for children and continuity of care and services for children who receive various services. The need for health, safety and well-being protections for children served in these facilities is similar regardless of any treatment need, while program and treatment needs of the child should be met on an individualized basis based upon each child's unique needs.

#### *General—program and quality of care*

IRRC and several commentators raised concern about reduction in program standards, placement issues and the difficulty of adopting universal program standards for children with many different needs.

#### *Response*

In response to these concerns, the Department reevaluated the existing regulations to determine where, if any, reductions in program standards occurred. As suggested by commentators, the Department found the reductions largely in the areas of service description, admissions and placement. Based on public comment, the Department has made additions to the final-form regulations to address these areas (§§ 3800.221—3800.223). In response to the concerns about the prevention of inappropriate placement of children in facilities that cannot meet the child's needs, application of these three new sections will assure that a child is placed in an appropriate facility that can meet the child's needs. The Department also added several new sections to the content of the individual program plan in § 3800.226 in response to public comments. With these amendments, the regulations do not reduce program protections to children, but instead include many additional and updated requirements to protect the health, safety and well-being of children in care.

The approach used in the amendments is to provide similar, comprehensive health and safety protections for all children, while maintaining, and even requiring, individual program planning for each child based on the child's needs. The amendments require individualized health and safety assessments for each child upon admission (§ 3800.141), detailed individual health assessments and screenings for each child (§§ 3800.143—3800.146), individual service plans based upon the needs of the child with content of the plan expanded from all chapters of existing regulations (§ 3800.226), and individual restrictive procedure plans for each child that now exist only in regulations for community mental retardation facilities (§ 3800.203). These requirements, coupled with the new additions of admission, service description, placement (§§ 3800.221—3800.223) and increased program plan content (§ 3800.226) that were added from proposed rulemaking to final-form regulations include a comprehensive package of service protections based upon each child's needs.

In addition, these licensing regulations by definition are minimum requirements necessary to operate a child residential or day treatment facility in this Commonwealth, they are just one piece of a total quality of care system. Other protections continue to apply, such as the Mental Health Procedures Act (50 P. S. §§ 7101—7503) and Chapter 5100 (relating to mental health procedures) addressing consent issues and program planning, county children and youth program regulations and Chapter 3130 (relating to administration of county children and youth social services programs) governing family service planning, placement, and case management, and the mental retardation system include long-term planning for children. These licensing regulations apply in tandem with many other existing applicable laws, regulations, monitoring systems and training programs.

#### *General—cost*

Some commentators suggested that the amendments will create a significant financial burden on providers of service, particularly related to staff training, reportable incident reporting and physical site changes.

#### *Response*

While there are some additional requirements in the staffing and physical site areas, many providers are already meeting higher standards than currently required. The cost impact of meeting any new regulations is outweighed by the potential benefits to children. Reference the Fiscal Impact section of this preamble for further fiscal analysis and discussion.

#### *§ 3800.1. Purpose*

One commentator suggested that the purpose section of the amendments reference the Child and Adolescent Service System Program (CASSP) as a foundation for the amendments.

#### *Response*

The Department fully supports the principles of CASSP in the provision of services for children, and these amendments reflect CASSP principles. CASSP principles advance family involvement, child-centered programming, multisystem service planning, cultural competence, least restrictive settings and community-based services, and these amendments include tangible requirements that support CASSP principles.

#### *§ 3800.3(1). Exemptions—Department-operated facilities*

Five commentators suggested that facilities operated by the Department be required to meet these amendments.

IRRC requested clarification as to why the Department's facilities should not meet the same standards as private facilities, and whether these amendments apply to State-owned buildings that are operated by a private corporation.

#### *Response*

These amendments apply to State-owned buildings if the facility is operated by a private company. The exemption applies only for facilities that are directly operated by the Department.

The Department believes that the same standards should be applied to Department-operated facilities as to private facilities to provide equal protection to children. The Department will manage, supervise and monitor the Department-operated facilities to achieve and maintain compliance with the amendments. While Department Youth Development Centers and Youth Forestry Camps will not be certified, it is the Department's intent to apply the same regulatory and inspection instruments to these facilities as those applied with private facilities.

In addition to the application of the amendments, the Department's facilities have rigorous and extensive reportable incident procedures. The Department intends to maintain this rigorous reporting system that provides for routine and immediate follow-up whenever there are unusual occurrences. Also, the Department plans to continue its peer review system in which a comprehensive monitoring tool is applied to each Department-operated facility, using juvenile probation officers and other State facility staff to conduct the reviews. These intensive peer reviews address regulatory compliance, as well as compliance with internal Departmental policies and procedures.

With these protections, the Department is confident that children served in facilities that are operated by the Department will be provided protection equal to that of children served in private facilities.

#### *§ 3800.3(9). Exemptions—drug and alcohol facilities*

Seventeen comments were received about drug and alcohol facilities not being covered by this chapter. Eight commentators suggested that children's drug and alcohol facilities should be included in the scope of the amendments, while nine commentators supported the proposed exemption for drug and alcohol facilities.

#### *Response*

The Department of Health in accordance with 28 Pa. Code Chapters 709 and 711 (relating to standards for licensure of freestanding treatment facilities; and standards for certification of treatment activities which are a part of a health care facility) currently licenses, and will continue to license, child residential drug and alcohol facilities. Due to the requirements of section 202 of the CDL (45 P. S. § 1202), expansion of the scope of these amendments to include facilities not covered in the proposed rulemaking, may not be considered. Further discussion of this issue and the appropriate licensure for children's drug and alcohol facilities will likely occur in the future in a separate regulatory forum.

Based on public comment, one change was made to further clarify the exemption. Concern was expressed that the amendments as proposed would no longer allow dual licensure by the Departments of Health and Public Welfare if both types of programs were provided in one setting. This is clearly allowed and there is no intent to change current practice. Therefore, the exemption was clarified to exempt programs in which the residents' sole need is the treatment of drug and alcohol dependence.

The Department of Health has reviewed and concurred with this amended language.

*§ 3800.4. Inspections and certificates of compliance*

IRRC suggested that this section be moved from the applicability section and placed in a separate section.

*Response*

This change was made.

*§ 3800.5. Definition of "child"*

Two commentators suggested that "through counsel" be deleted.

*Response*

This change was made.

*§ 3800.5. Definition of "child"*

The Department clarified the definition to be consistent with 42 Pa.C.S. § 6302 (relating to definitions).

*§ 3800.5. Definition of "ISP—individual service plan"*

IRRC suggested a more complete definition of "ISP—individual service plan."

*Response*

This change was made.

*§ 3800.5. Definition of "relative"*

Three commentators suggested adding "legal guardian." One commentator suggested adding "or other extended family member as defined and designated by the child and family."

*Response*

The terms "child's guardian or custodian" was added to accurately reflect the meaning of "relative" as used in § 3800.3(11) (relating to exceptions).

*§ 3800.5. Definition of "secure care"*

Based on informal discussions with stakeholders, and a review of existing secure detention facilities, the Department clarified that secure care can be in a portion of a building. A facility can provide both secure care and nonsecure care within the same building. The special requirements for secure care apply for the secure portion of the building.

*§ 3800.5. Definitions of "secure care" and "secure detention"*

A comment was received suggesting clarification that secure care and secure detention are limited to delinquent or alleged delinquent children.

*Response*

This change was made.

*§ 3800. Definitions—new*

IRRC suggested adding definitions for "child care supervisor," "child care worker," "day treatment center," "pressure point techniques" and "serious communicable disease." No public comments were received relating to defining these terms.

*Response*

The term "child day treatment center" is clearly defined in § 3800.3. All staffing positions, including supervisor and worker positions, are clearly explained by the responsibilities specified in §§ 3800.54(c) and 3800.55(f) (relating to child care supervisor; and child care worker). Further definition of "pressure point techniques" has been added in § 3800.208(a) (relating to pressure points),

which is the correct location of a definition used only in one or a few specific sections of the chapter. "Serious communicable disease" is clarified as one which may be spread through causal contact, where these terms are used, including §§ 3800.151 and 3800.152 (relating to staff health statement; and serious communicable diseases).

*§ 3800.14 Fire safety approval*

The Department revised this section to reference applicable State law and regulation, rather than specifically address current fire and panic law and regulation. This change was made so that the regulations would remain current in the event of an amendment in the State fire and panic law or regulations.

*§ 3800.15(b) Child abuse.*

The Department added a new subsection to reference requirements of 23 Pa.C.S. §§ 6301—6385 (relating to Child Protective Services Law) requiring a plan of supervision if there is an allegation of child abuse involving facility staff persons.

*§ 3800.16(a) Reportable incidents*

Sixty-three comments were received on the definition of "reportable incident." IRRC also submitted comments on this subsection. One commentator suggested changing the proposed term "unusual" to "reportable." Six commentators stated the definition was too broad and would require increased paperwork. Eight commentators requested clarification of "action taken by a child to commit suicide," with three of those suggesting the addition of the term "physical" action. Seventeen commentators and IRRC suggested a more narrow definition and clarification of "injury, trauma or illness." Two commentators requested clarification of "intimate sexual contact." One commentator suggested adding civil rights as examples of child's rights. Two commentators suggested deletion of assault on staff persons. Eleven commentators and IRRC either raised questions about, or objected to, the 30-minute time frame for child absences. One commentator requested deletion of abuse or misuse of child funds or property. Two commentators and the IRRC requested further limitation on reporting of incidents requiring the services of a fire department.

*Response*

The majority of the requested changes were made. The term "unusual" was changed to "reportable" as suggested to more accurately reflect the meaning of this subsection.

The Department agrees with the commentators that the proposed definition of "reportable incident" was too broad and burdensome. Further, the Department agrees that by requiring more reports than are necessary, more important incidents that need to be quickly and carefully investigated may go unnoticed and unattended to in a paperwork backlog, thus placing children at risk.

The Department added the word "physical" to further clarify suicide acts as suggested.

The Department narrowed the definition of "injury, trauma or illness" by requiring reporting of all inpatient hospital care, but only outpatient hospital care for serious injuries or traumas. Illnesses, sprains, cuts and other less serious treatment received on an outpatient basis are no longer included as reportable. The regulation work group, which included advocates, providers and other professionals, supported this revised definition.

As requested by commentators, an assault on a staff person was removed from the definition of "reportable

incident” as it relates to nonsecure care, but it continues to apply for secure care as specified in § 3800.274(2) (relating to additional requirements). Since this relates largely to staff safety, this was removed from the definition. It was retained in secure care however, to indicate potential staff supervision issues that are more likely to occur with the secure care population.

The Department revised and narrowed the circumstances under which child absences must be reported to include those where a child is absent for more than 4 hours or for more than 30 minutes if the child may be in immediate jeopardy.

In response to specific concerns, the Department did remove abuse or misuse of a child’s “property,” while retaining “funds.”

The Department did not change the terms covering intimate sexual contact, violation of rights or fire department services. Regarding the comment about the fire department services, these regulations have been in effect for over 10 years for community mental retardation facilities and the Department has found no unreasonable reporting. Reporting only incidents where a fire has caused actual damage or injury is not sufficient. Even when a child pulls a false alarm, or when a fire department arrives in time to avert major property damage, children are placed at risk and the incident should be reported. Frequent false fire alarms could indicate serious staff supervision issues at the facility, as well as create the risk of failure to evacuate in the event of a real fire.

*§ 3800.16(c) Reportable incidents*

IRRC and one commentator requested clarification of the proposed subsection regarding the meaning of “immediately” and who must do the reporting.

*Response*

The Department agrees that this was confusing and deleted this requirement. This was intended to refer to internal facility reporting procedures leading up to the 12 or 24 hour reporting requirement in subsections (c) and (d). However, in accordance with subsection (b) the facility must write its own internal reporting procedures which may reasonably vary from facility to facility. It is not necessary for the Department to dictate internal reporting procedures, as long as appropriate offices are notified within 12 or 24 hours.

*§ 3800.16(d). Reportable incidents*

Several comments were received suggesting an oral report for more serious incidents.

*Response*

The Department agrees and has made this change to require oral reporting within 12 hours for a fire requiring relocation of the children, an unexpected death of a child and a missing child if police have been notified for assistance.

*§ 3800.16(e). Reportable incidents*

One commentator suggested that the investigation be completed within 10 days.

*Response*

The Department clarified that investigations must be completed within a reasonable period of time.

*§ 3800.16(f). Reportable incidents*

One commentator suggested a specific time frame for submission of final reports and three questioned the necessity and cost of submitting a final report.

*Response*

No change was made. Because initial reports of reportable incidents must be filed very quickly, there are often additional internal and external investigations and follow-up corrective action that need to occur. A final report is necessary for the Department and the contracting agency to be informed of the resolution of the incident. It would be unreasonable to specify a time frame for the final report since investigation and follow-up for each incident may vary greatly.

*§ 3800.16(h). Reportable incidents*

One commentator suggested adding “individual” to modify court order. Two commentators requested immediate notification of the child’s parent and attorney in the event of a reportable incident.

*Response*

The word “individual” was added as suggested. The child’s parent must be notified immediately as specified in this subsection. The child’s attorney was not added as this is not appropriate for routine reporting procedures for all children.

*§ 3800.17. Recordable incidents*

Eleven comments were received on this section. Some commentators suggested that medication errors, suicidal gestures and child absences be eliminated. Others suggested adding use of restrictive procedures.

*Response*

The Department eliminated medication errors, since recording of medication errors is required in § 3800.185(a) (relating to medication errors). The Department clarified reporting of child absences, injuries, traumas and illnesses, in accordance with the changes made in § 3800.16(a). The use of restrictive procedures was not added, since separate, very comprehensive reporting of each restrictive procedure use is required in § 3800.213 (relating to restrictive procedure records). Suicidal gestures was not eliminated since these are incidents of warnings of problems and must be logged and monitored to avoid serious injury or death.

*§ 3800.18. Child funds*

One commentator suggested adding a section under child rights to protect a child’s funds.

*Response*

The Department agrees this was an oversight in the proposed amendments and has added a new section covering protection of child funds. This section is based on current regulations found in § 6400.22 (relating to individual funds and property).

*§ 3800.19. Consent to treatment*

Three commentators requested clarification relating to consent to treatment.

*Response*

This change was made.

*§ 3800.20. Confidentiality*

Two commentators and IRRC requested additional requirements clarifying confidentiality requirements.

*Response*

The Department agrees this issue was not addressed in the proposed amendments and added a new section on confidentiality. The section requires compliance with applicable laws and regulations as well as specifies require-

ment for specific circumstances where there is no other statutory or regulatory protection. As suggested by IRRC, the new requirements are based on §§ 3680.35 and 3760.92 (relating to release of information in client records; and confidentiality).

*§ 3800.31. Notification of rights and grievances*

Several commentators suggested that additional protections for children and families be added including the right to lodge grievances without fear of retaliation, communicating in an easily understood manner, communicating in the primary language or mode of communication of the child and parent, providing copies of rights and grievance procedures to the child and parent, providing notice of consent to treatment protections and posting of rights and grievance procedures. One commentator suggested that reference to “parent, guardian or custodian” be changed to include the parent as a necessary rather than an optional person to involve through the regulations. It was suggested that the grievance procedure requirements (§ 3800.34 as proposed) be relocated to the section relating to notification of rights and grievance procedures.

*Response*

These changes were made.

*§ 3800.32(f). Specific rights—visits*

IRRC and several commentators submitted comments regarding visits to the child. Some suggested that 2 week visits were minimal and that more frequent visits should be required or encouraged. One commentator suggested that visits every 2 weeks are difficult to arrange for mobile programs. One commentator suggested that visits should be individualized and required as specified in the individual service plan (ISP) rather than as a child right. Three commentators suggested that at times visits are clinically inappropriate. One commentator raised concerns about the child’s right to refuse visits. Commentators also suggested visits that are mutually convenient for the child’s family and the facility. IRRC questioned how the 2-week minimum was established.

*Response*

The Department carefully considered the many varying views on the issue of child visits and discussed this issue with interested groups. The Department added the requirement that visits must be at a mutually convenient time and location. The Department clarified that visits are a right and not just an opportunity. While more frequent visits are encouraged, the 2 week minimum is required to assure that family ties are not broken during the time the child is receiving services away from his/her family. In response to IRRC’s question, the 2 week minimum requirement for child visits is based on the current regulations regarding child visits in § 3680.44(2) (relating to visiting and communications) and is recommended by the Department as the frequency of time necessary for the child and family to be in contact so that family ties and bonds are not broken; more frequent visits with the child’s family are encouraged.

*§ 3800.32(g). Specific rights—mail*

IRRC and several commentators requested changes to the right regarding mail and the circumstances the child’s mail may be opened in the presence of staff persons.

*Response*

In response to public comment, the Department revised the entire subsection on the child’s rights to receive and send mail. The Department clarified the circumstances

under which a child’s mail may be opened in the presence of staff persons, including when there is suspicion that contraband or other materials or information that may place the child at risk may be enclosed.

*§ 3800.32. Specific rights—additional*

Commentators suggested the addition of several rights including communication and visits with attorneys and clergy, behavioral health treatment, appropriate clothing, protection from inappropriate discipline, privacy and the right to practice no religion.

*Response*

The Department added rights relating to communication with clergy and attorneys, behavioral health, clothing, religion and discipline. The right to privacy in bathrooms is included in § 3800.103(e) (relating to bathrooms).

*§ 3800.33. Prohibition against deprivation of rights*

A suggestion was received to add that rights may not be used as a reward or sanction.

*Response*

This change was made. In addition, the Department clarified that family visits may not be used as a reward or sanction.

*§ 3800.34. Rights—general*

One commentator recommended the addition of a requirement for each facility to have an independent ombudsman.

*Response*

This change was not made. Although an independent ombudsman for each facility may be a good standard for the oversight of the child’s interests, this is not an appropriate minimum requirement for licensure regulations.

*§ 3800.54(a) and (b). Child care supervisor—number present*

IRRC and two commentators recommended that a supervisor be onsite at all times for all sizes of facilities. One commentator suggested that a supervisor does not need to be present while children are sleeping. Another commentator suggested that there should be no requirement for presence of a supervisor at all, since technology such as beepers can be used to contact a supervisor if needed.

*Response*

The Department strengthened the proposed amendments to change the conditions and the minimum number of children present requiring the presence of a supervisor. A supervisor must be onsite at all times 16 or more children are present in the facility. Requiring a supervisor present at all times, regardless of the size of the facility, is not necessary for the protection of the children and would be cost prohibitive for county government and providers of service.

*§ 3800.54(d). Child care supervisor—qualifications*

Twelve comments were received on the qualifications for child care supervisor. Four commentators did not support any lowering of the qualifications. Seven commentators suggested adding an option of additional years of experience in lieu of college credit hours.

*Response*

In response to the concern requesting lowering of qualifications by adding an option that would require

experience but no college credits, the Department prepared a draft of the final-form regulations including this option (5 years work experience). However, when the draft was shared with the regulations work group in August 1998, the majority of the work group members did not support the experience option for supervisor positions. The final-form regulations therefore reflect no change from the proposed rulemaking in regard to supervisor qualifications.

*§ 3800.55(a)—(d). Child care worker—ratios*

One comment was received suggesting a reduction of the ratio of staff to children to 1 staff to 6 children for facilities with 24 or more children. One commentator suggested that ratios are too low during sleeping hours. One commentator suggested that overnight staffing is not necessary.

*Response*

These changes were not made since it does not reflect the consensus of the regulations work group and they are not necessary for the protection of children in all types of facilities. Facilities or funding agencies are permitted and encouraged to exceed the minimum certification requirements whenever appropriate to best meet the needs of the children. The staffing ratios in these amendments are not less stringent, and in some cases are more stringent, than existing licensure regulations.

*§ 3800.55(h). Child care worker-age*

Eight commentators requested the minimum age for child care workers to be 18 as opposed to 21 years of age, citing various program and hiring pool concerns.

*Response*

The Department has carefully considered this suggestion and has revised this section to require staff persons to be at least 18 years of age if all of the children in the facility are under 18 years of age. However, if any of the children in the facility are 18 years of age or older, staff must be at least 21 years of age due to the staff maturity required to effectively provide care and services in those facilities serving young adults. In response to concern about currently employed staff persons who may be 18, 19 or 20 years of age, the Department has included a grandparent clause in § 3800.56(b) (relating to exceptions for staff qualifications) to permit these young staff persons to continue to work at facilities.

*§ 3800.55(g). Child care worker-qualifications*

IRRC requested consideration of why child care workers are not required to have college training or work experience. Six commentators do not support lowering of qualifications for child care workers.

*Response*

No change was made. The qualifications of a high school degree or GED certificate were discussed and supported in large part by the regulations work group. Overall, these worker qualifications are not reduced from the current regulations. Chapter 3810 requires 50% of the workers to have at least 2 years of college or experience, while the other 50% of the workers have no minimum qualifications at all. Chapters 6400 and 5310 (relating to community homes for individuals with mental retardation; and community residential rehabilitation services for the mentally ill) have no minimum staff qualifications for workers. Hiring and retention of employees in child care worker positions continue to be major challenges for human service providers. To limit the pool of potential employees in an already stressed and thin employment

pool is not responsible and could result in reduced protection to children if qualified staff could not be recruited.

*§ 3800.56. Exceptions for staff qualifications*

Sixteen commentators requested that the new staff qualifications not be applied to currently employed staff persons.

*Response*

This change was made.

*§ 3800.57(a). Supervision—checks*

Two commentators suggested that checking on children every hour is excessive. One commentator suggested checks on children every 10 minutes as opposed to every hour.

*Response*

No change was made. A minimum of hourly checks of children is necessary to protect the health and safety of the children.

*§ 3800.57(d). Supervision—sleeping hours*

Eight commentators requested that the exceptions for child supervision during sleeping hours not be limited to those facilities serving no children who are adjudicated delinquent.

*Response*

This change was made. The Department agrees it is not reasonable to limit this exception as proposed.

*§ 3800.58(a). Staff training—orientation*

Several questions were raised about who would require training.

*Response*

In response, the Department further clarified this requirement by adding "regular and significant" before "direct contact with children."

*§ 3800.58(b). Staff training—training hours*

IRRC suggested that both part-time and full-time staff persons should be required to have the same amount of training hours, since both staff persons may be alone with the children and would perform the same duties. Five commentators asked for an extension of time for completion of the 30 hours of training, while one commentator asked for a reduction in the time period. Three commentators recommended the number of training hours be reduced from 30 to 24 hours consistent with the current Chapter 6400 regulations for community mental retardation facilities.

*Response*

The Department changed the requirement for annual training in subsection (d) to apply to both full-time and part-time staff. The Department supports the request for an extension of time to complete the training and made a change to require 30 hours of training for both full-time and part-time staff, within 120 days of the person's date of hire. The Department did not reduce the number of training hours because the majority of the regulations work group members and public commentators supported the 30 hour requirement and the training requirements are considered a major health and safety protection for the children.

*§ 3800.58(b). Staff training—training content*

Suggestions were received to add the following training content areas: CASSP principles, universal precautions,



behavior management, special education regulations, family dynamics and relationships, use of psychotropic drugs and cultural diversity. IRRC also asked if the Department will approve specific training courses used by providers.

*Response*

The Department has added two additional training content areas that relate directly to child health and safety: universal precautions and behavior management. Training on administration of medications is addressed in §§ 3800.187 and 3800.188. The Department will not be approving specific training courses for training areas identified in this subsection, since there are many acceptable training alternatives available and appropriate for a facility's particular needs and audiences.

*§ 3800.58(e). Staff training—first aid*

Several commentators and IRRC requested clarification that a formal certification that is valid for more than 1 year be acceptable for the length of the certification. IRRC asked if the Department will approve this training.

*Response*

The Department has made the clarification regarding formal certification. The Department will not approve this training, but the training must be completed by a certified individual as specified in subsection (f).

*§ 3800.81. Physical accommodations and equipment*

One commentator requested a change since this would appear to permit facilities to refuse service to children with a disability.

*Response*

This was not the Department's intent, and the language was rewritten with involvement of the interested commentator.

*§ 3800.89(b). Temperature*

Two commentators and a member of the House Aging and Youth Committee suggested that the indoor temperature during sleeping hours was too low.

*Response*

The Department increased the minimum temperature from 58° to 62° during sleeping hours. Sleeping temperatures will be applied in coordination with the requirements in § 3800.102(2) relating to appropriate bedding to assure comfort while the child is sleeping.

*§ 3800.101. Firearms and weapons*

One commentator suggested that even police should not be permitted to carry weapons into the facility. One commentator wrote in support of the proposed amendments.

*Response*

The Department did not change these amendments. Regulation of firearms and weapons carried and used by law enforcement officials is not within the facility's or the Department's responsibility or authority.

*§ 3800.102. Child bedrooms*

IRRC asked what was meant by an average ceiling height. One comment was received in support of the square footage requirements. One commentator requested room size of 74 rather than 70 square feet. One commentator asked that bunk beds allow enough space for the child to lie comfortably rather than to sit up in bed. One commentator requested the addition specifying circumstances during which children should be placed in private rooms.

*Response*

In response to IRRC's question, the Department refers to average ceiling height to allow for measurement of rooms with eaves, gables or slanted ceilings. Other changes to the child bedroom requirements were not made as these did not represent the mainstream of public comment on this section.

*§ 3800.103. Bathrooms*

One commentator suggested that bar soap should be permitted in family settings. One commentator asked about the requirement to provide and label individual toiletry items.

*Response*

Use of bar soap by multiple users is prohibited since bar soap is a receptacle for transmission of bacteria and germs. The Department clarified subsections (g) and (h) so that individual items required for each child include a towel, washcloth, comb, hairbrush and toothbrush. Other nonpersonal toiletry items such as toothpaste and shampoo may be shared by children.

*§ 3800.106. Swimming*

IRRC and seven commentators objected to the requirement to fence ponds and lakes on the premises due to the cost impact. Several comments also suggested that a lifeguard should be required only when children are swimming, and not while boating or fishing.

*Response*

In consideration of cost implications, the Department eliminated these two requirements. The Department cautions providers of service to institute the precautions necessary to protect child safety if water areas are located near areas accessible by the children and during water activities while children are not swimming.

*§ 3800.121. Unobstructed egress*

Four commentators requested allowance for delayed locking devices on doors.

*Response*

In accordance with regulations of the Department of Labor and Industry, this change could not be made. Title 34 Pa. Code Chapters 49—60 (relating to fire and panic regulations) do not permit use of delayed locking devices on doors used for egress, except for C-5 occupancies. The Department of Labor and Industry Industrial Board will entertain requests for variances of this requirement if appropriate fire safety safeguards and protections are in place. For further information on delayed locking devices on doors in non-C-5 occupancies, contact the Bureau of Occupational and Industrial Safety, Department of Labor and Industry.

The Department clarified that even if fire safety approval is not required in accordance with State law, means of egress shall not be locked. Means of egress may not be locked unless the facility has a C-5 Certificate of Occupancy from the Pennsylvania Department of Labor and Industry, or an approval in accordance with appropriate local codes in the cities of Scranton, Philadelphia and Pittsburgh.

*§ 3800.129. Fireplaces*

Five commentators and IRRC suggested that use of fireplaces should be permitted with specific precautions in place.

*Response*

The Department made this change.

*§ 3800.132(j). Fire drills*

The Department clarified that elevators will not be used during a fire drill or an actual fire, due to possible power failure and the possibility of elevator shafts acting as chimneys to funnel flames and smoke. Since fire drills are used to practice actual evacuation routes and actions in the event of a real fire, elevators cannot be used in drills.

*§ 3800.141. Child health and safety assessment*

Three commentators suggested requiring compliance with the requirements of Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT). One commentator suggested adding special diets to the assessment. Three commentators suggested adding hospitalizations, medical diagnoses, medical problems and mother's pregnancy issues to the assessment.

*Response*

EPSDT is a Medical Assistance (MA) benefit which is available only to children who are eligible for Medical Assistance. While many children receiving services in these facilities are eligible for MA, not all children are eligible. Therefore, it would not be appropriate for these amendments to specify a particular program or benefit to which all children are not entitled. Rather, the Department identified the components of the EPSDT screen as required elements of the child health assessment to assure equal access to appropriate health assessments to all children, regardless of MA eligibility status.

The Department added special dietary needs, hospitalizations, medical diagnoses, medical problems and mother's pregnancy issues to the assessment.

*§ 3800.143. Child health examination-general*

Three commentators supported the unclothed physical examination, while three commentators objected to an unclothed exam as being intrusive and intimidating. Several commentators requested clear requirements for written documentation of pre-admission examinations. Several commentators suggested adding a history of mental health development, blood lead level assessments and sickle cell screening. One commentator requested that health exams be completed annually at a minimum.

*Response*

The requirement for an unclothed physical examination was not changed. The other requested changes were made. In response to discussion with commentators following the comment period, the Department also added a requirement for recommendations for follow-up health services, examinations and treatment in § 3800.143(e) (15). The Department changed the term "physical" examination to "health" examination to more accurately reflect the comprehensive nature of the examination process including more than a physical examination. The Department added that health exams shall be completed annually, or more frequently as recommended by the American Academy of Pediatrics.

*§ 3800.143. Child health examination-behavioral health*

Two commentators requested addition of a behavioral health exam as part of each child's exam.

*Response*

The Department did not make this change since all children receiving services in these facilities do not

require a behavioral health examination. In accordance with § 3800.143(e)(15), the health examination shall include recommendations for any follow-up examinations, such as behavioral health, and in accordance with § 3800.148 (relating to health services) the services shall be provided. The Department did add a reference to behavioral health to §§ 3800.143(e)(15) and 3800.148 to emphasize the requirement to include behavioral health services when appropriate for the individual child. This will assure that children receive appropriate behavioral health services based upon their own needs, rather than force a blanket requirement for all children that is not always necessary or appropriate.

*§ 3800.144. Dental care*

Suggestions were received to require dental care at as early an age as necessary, require protective sealants where indicated by the examination, and require an initial exam within 30 days following admission if there is no record of a prior exam within the past 6 months.

*Response*

These changes were made.

*§ 3800.145 and 3800.146. Vision and hearing care*

IRRC requested clarification that American Academy of Pediatrics guidelines recommend vision and hearing screenings at appropriate intervals. Several commentators requested special sections on hearing and vision care.

*Response*

The Department added new comprehensive sections on both hearing and vision care.

*§ 3800.147. Use of tobacco*

Many comments were received on this proposed amendment. Most commentators were in favor of restricting child smoking but recommended that staff persons be permitted to smoke outside the facility and out of sight and secondary smoke access of the children.

*Response*

The Department agrees with the commentators and revised this amendment to prohibit possession and use of tobacco products by children, to prohibit possession and use of tobacco by staff persons inside the facility, and to allow staff use of tobacco outside the facility if fire safety precautions are taken and use of tobacco is out of sight of the children.

*§ 3800.148. Health services*

Commentators suggested adding diagnostic services, follow-up examinations and treatment, hearing, vision, blood lead level and psychiatric services as examples of medically necessary services.

*Response*

These items were added to the list of examples of health services that may be planned or prescribed for a child. The Department also clarified that acute and chronic conditions shall be identified for a child, in addition to providing or arranging appropriate medical treatment.

*§ 3800.149. Emergency medical plan*

One commentator requested that parents receive copies of emergency plans and notification of implementation of the plans.

*Response*

This change was made. The Department also clarified that conditions that warrant emergency medical care should be listed in the emergency medical plan.

*§ 3800.163. Food groups and alternative diets*

One commentator suggested adding a requirement to provide dietary alternatives for children with special health needs, religious beliefs regarding dietary restrictions or vegetarian preferences.

*Response*

This change was made.

*§ 3800.164. Withholding or forcing of food prohibited*

IRRC and six commentators requested that withholding of snacks and desserts as punishment be permitted as it can be an effective tool in managing a child's behavior.

*Response*

While the Department does not endorse use of snacks or desserts as a behavior management tool, the amendments have been changed so this is not a regulatory prohibition.

*§ 3800.171(4). Safe transportation*

Five commentators suggested that the age of drivers be lowered from 21 to 18 years of age.

*Response*

This change was not made. Staff persons at all levels, including drivers, must be of a maturity level and age to handle the important responsibilities of child care. Drivers in particular require maturity and driving experience that is generally achieved with age.

*§ 3800.181(d). Storage of medication*

A question was asked about what needs to be stored separately.

*Response*

The Department clarified this subsection to state that prescription and over-the-counter medications shall be stored separately, as was intended by the proposed rulemaking.

*§ 3800.184. Medication log*

One commentator suggested that subsection (a)(3)—(5) be removed from the medication log and placed in the child's record. One commentator suggested blood test monitoring for certain psychotropic medications. IRRC suggested that the log be updated at the same time a medication is administered.

*Response*

The Department made the clarification suggested by IRRC. Side effects, contraindicated medications and special administration instructions are critical items that shall be readily available at the time a medication is administered and therefore cannot be kept in the child's record. Blood test monitoring should be ordered by the prescribing physician and would be required to be provided in accordance with § 3800.148 (relating to health and behavioral health services).

*§ 3800.185. Medications errors*

IRRC requested an explanation of what constitutes a medication error and the procedures to be followed after a medication error. One question was received from a commentator asking what constitutes a medication error.

*Response*

The Department added the definition of a "medication error" and added that follow-up action taken after a medication error shall be documented. Since the specific procedures to be taken after an error will vary according to the type of medication, type of error and individual child's needs, it is not practical to specify standard follow-up procedures in the regulations. The Department will monitor, through licensing inspections, to assess whether the follow-up action taken was appropriate.

*§ 3800.186. Adverse reaction*

IRRC and one commentator requested that parents be notified in the event of an adverse medication reaction. IRRC also asked where and for how long this information shall be kept.

*Response*

Notification to parents was added. Clarification was added that the information shall be kept in the child's record. Section 3800.244 (relating to record retention) specifies how long record information shall be kept.

*§ 3800.188. Medications administration training*

Ten commentators raised concern and requested more information about the availability and cost of the medications administration course. One commentator requested that the Department should have many courses already approved by the time of regulations implementation. One commentator objected to Departmental approval of the course. One commentator suggested that the 2-year retraining requirement is not necessary. IRRC questioned the qualification of existing in-house provider training programs, requested public notice about the criteria used to determine approval of a training program and asked whether staff persons would be permitted a phase-in period to meet the training requirement.

*Response*

The Department is very pleased that, throughout the regulatory process, so many providers and other stakeholders have supported the strengthened protections for children in the area of medication administration. The new and improved regulations regarding medications administration and the medications training programs will be a vast improvement over existing protections. The Department notes that there were no objections to the concept of medications administration training and that the concerns and questions centered around the approval and implementation of the training programs.

In August 1998, the Department developed and distributed a draft bulletin to outline the criteria and procedures for Departmental approval of the training programs. The draft bulletin was sent to a representative work group of external stakeholders, including Statewide provider organizations, for review, comment and discussion at a meeting in September 1998. The final bulletin will be published in the *Pennsylvania Bulletin* as a statement of policy. A list of approved training programs will be published and updated regularly and transmitted to all licensed facilities through a Departmental bulletin.

As specified in the statement of policy, the Department will review the following training information and materials to approve a training program: the training sequence to be used, the time schedule for the training, the method and resources used to evaluate effectiveness of the training, location of training, the number of students to be accommodated in each class, the outline of training curriculum, teaching methods and strategies, course test-

ing provisions, validation of successful completion, trainer qualifications and sample training materials.

The statement of policy will also identify core training content areas to include: reporting and observing skills, types of medication and side effects, staff responsibilities, handling emergencies, facility policies, communication, managing special instructions, administration rights of children and regulatory compliance.

Facilities that have existing in-house training programs are encouraged to submit proposals for approval of their programs to the Department. Training programs will be considered in accordance with the criteria specified in the bulletin.

Due to the serious nature and specific procedures and methods acceptable in the medical field relating to medications administration, the Department does not believe it is appropriate to permit medication administration without Departmental approval of each training program. The Department has met with the State Board of Nursing, which also believes that Departmental approval and monitoring of the training programs is essential to assure the children's safety.

The Department believes that a 2-year retraining requirement is critical to assure staff are trained in up-to-date practice issues and to keep staff skills and knowledge current.

The Department has considered IRRC's and commentators concerns about a phase-in period and assurance of a sufficient supply of training programs before implementing this section of the regulations. The Department has decided to adopt an effective date of 12 months after the publication of the amendments as final rulemaking, for §§ 3800.187 and 3800.188, to permit adequate time for the development and implementation of medication administration programs. By June 26, 2000, all staff persons who administer medications shall meet the criteria specified in §§ 3800.187 and 3800.188.

The Department revised the source for the Standards for Diabetes Education Programs from the National Diabetes Advisory Board to the Pennsylvania Department of Health, since the National Diabetes Advisory Board no longer exists. The Department of Health standards are based on the former standards of the National Diabetes Advisory Board. The Department of Health publishes a list of approved diabetes patient education programs for public use. This list is available through the Department's regional offices.

*§ 3800.189. Self-administration of medications*

Three commentators and IRRC suggested the elimination of the proposed requirement to limit self-administration to children who are 13 years of age or older.

*Response*

This change was made.

*§ 3800.201. Restrictive procedure*

IRRC and one commentator requested a change in terms from "behavior intervention" to "restrictive" to be consistent with current Chapter 6400 (relating to community homes for individuals mental retardation). Commentators contend that the terms "behavior intervention" include a much broader set of procedures and techniques than is meant by use of the term in this chapter.

*Response*

This change was made.

*§ 3800.202. Appropriate use of restrictive procedures*

One commentator and IRRC requested the addition of "or as a program substitution" in subsection (a), consistent with current Chapter 6400. Four commentators and IRRC requested that restrictive procedures also be permitted to prevent serious property damage in subsection (b). IRRC requested examples of less intrusive techniques.

*Response*

The addition of "or as a program substitution" was added to subsection (a). However, the Department did not add that restrictive procedures may be used to prevent property damage in subsection (b).

Use of restrictive procedures should always be the method of last resort in any behavior management program, even for children with difficult and aggressive behaviors. Other less intrusive methods and techniques to encourage positive behaviors are available and encouraged, such as close observation and supervision of a child to anticipate and de-escalate frustration and anger in advance of aggressive behavior, positive rewards for good behavior, clear expectations and rules for the child, teaching of all staff persons to apply the facility rules consistently, separation of the child from an activity or person before aggressive behavior escalates, removal of the child from the group accompanied by staff consultation and active and interesting programs for the children so they are not idle.

If a child's behavior escalates and damage to property is threatened or occurs, often the behavior that causes property damage may be a direct threat to the health and safety of others, such as throwing a large heavy item or breaking glass. In such a case, the behavior that causes property damage poses a threat to the child or others, and a restrictive procedure may be used to prevent injury, as long as other less intrusive methods have been tried but have failed. If, however, the child threatens or causes property damage that does not pose a health and safety threat, such as writing on a wall or tearing pages from a book, other methods of behavior management shall be used and restrictive procedures are not permitted. The Department believes that restrictive procedures are generally unnecessary and that they are ineffective in treating or changing maladaptive behavior. Positive behavior management methods have been used as a successful tool for the treatment of even the most difficult and challenging behaviors.

*§ 3800.203. Restrictive procedure plan*

Three commentators stated that this will significantly increase paperwork. One commentator requested an addition to the planning group to include any person invited by the child or parent.

*Response*

The Department believes that the benefit of protecting children from abuse or misuse of restrictive procedures justifies any additional time spent in developing the restrictive procedure plan. Paperwork will not be required if restrictive procedures are not used, which is strongly encouraged whenever possible.

Other persons invited by the child and parent were added to the restrictive procedure planning group.

The Department clarified in subsection (d) that the child and the child's parents should have the opportunity to sign the plan.

*§ 3800.204. Unanticipated use*

IRRC and several commentators asked for clarification of the meaning of "unanticipated" and "used more than four times." One commentator wrote in full support of the proposed amendment. One commentator suggested that eliminating options for behavior management may limit the ability to manage aggressive youth. Another commentator asked for the ability to apply restrictive procedures for up to 5 weeks after admission with no plan in place. One commentator suggested that the proposed amendment may be appropriate for children with disabilities, but it is not appropriate for children in children and youth programs.

*Response*

The Department does not agree that this limits options for managing difficult behaviors. Rather it allows restrictive procedures to be used as part of an array of options, with appropriate assessment and planning for each individual child. Allowing the use to restrictive procedures for up to 5 weeks without assessment or planning does not assure the child's safety. After restrictive procedures have been necessary for four incidents within a 3-month period, assessment and planning for the individual child is very reasonable and necessary.

The Department clarified that this requirement applies after any type of restrictive procedure is used four times for the same child in any 3-month period. "Unanticipated" as per Webster's dictionary means "unexpected or unforeseen." There is no special use of this word in these regulations; therefore, a definition in this chapter is not appropriate. If the facility does not have any reason to expect that a child may have behaviors that may require the use of restrictive procedures, but a situation arises when as a last resort restrictive procedures are necessary, that is an unanticipated situation. If, on the other hand, a child with a history of aggressive and assaultive behaviors is admitted, and the facility expects that restrictive procedures may be used for this child, a restrictive procedure plan shall be developed prior to use of a restrictive procedure.

*§ 3800.205. Staff training*

Three commentators suggested that the Department should not approve restrictive procedure training programs. Four commentators asked for clarification about the Department's approval process and criteria. One commentator thought the proposed amendment was a reduction in training requirements. One commentator suggested adding training in cultural competence. One commentator wrote in support of the proposed amendment. IRRC asked that "for as long as the person is employed" be added after the word "kept" in subsection (c).

*Response*

In response to public comment, the Department has eliminated the requirement to formally approve each training program. However, facilities must comply with the training components specified in subsection (b). The Department will monitor each facility and assess the training programs as part of the inspection process to determine if the components specified in subsection (b) are included.

In response to the commentator who perceived the training requirements to be a reduction from current regulation, the Department disagrees. This particular area of regulation has been improved and strengthened for all existing sets of regulations, particularly in the

children and youth and mental health areas where no specific restrictive procedure training content was previously specified.

Training in cultural competence was not added, since this is not a direct health and safety issue for the appropriate use of restrictive procedures.

A change was not made to require facilities to keep staff training records for as long as a person is employed. This is not necessary. The length of time staff records are kept should be determined by facility policy and not subject to State regulations, with the exception of keeping documentation long enough to verify compliance with the regulations.

*§ 3800.208. Pressure points*

Five commentators and IRRC suggested allowing the use of pressure point techniques at the jaw point for bite release.

*Response*

This change was made.

*§ 3800.209. Chemical restraints*

IRRC questioned why a physician must examine a child before administration of a chemical restraint, how long vital signs must be monitored, and how long and where documentation in subsection (g) shall be kept. Two commentators suggested that it is not reasonable to require a physician to examine a child before a chemical restraint is administered. One commentator requested parent consent be required prior to administration of a chemical restraint. One commentator objected to the prohibition of PRN orders for control of acute, episodic behavior. Two commentators and IRRC requested clarification on how long of a period vital signs shall be monitored.

*Response*

Subsection (d)(1) was changed to clarify that vital signs must be monitored for at least 1 hour and for the frequency and duration specified by the prescribing physician. Subsection (f) was changed to reflect that documentation shall be kept in the child's record. The period of time records shall be kept is specified in § 3800.244 (relating to record retention).

No other changes were made. Injecting or administering drugs into a child to control behavior on an emergency basis is perhaps the most serious and intrusive procedure that can be used. Only an onsite, direct physical examination of the child's medical condition, conducted by a licensed physician, prior to each administration of a chemical restraint, can reasonably assure the child's health and safety. This requirement is not intended to support the use of chemical restraints or in any way aid in the ease of administering chemical restraints to children. The Department does not encourage the use of chemical restraints.

Parental consent prior to administration of a chemical restraint is governed in accordance with § 3800.19 (relating to consent to treatment).

Facility administration of PRNs to control a child's behavior is a very dangerous use of medication and subjects a child to unnecessary and unreasonable health risks.

*§ 3800.210. Mechanical restraints*

One commentator asked to add papoose boards to the list of prohibited mechanical restraints. One commentator

suggested that the prohibition of mechanical restraints does not permit facilities to appropriately serve aggressive youth.

*Response*

A papoose board was added to the list of examples.

If positive behavior management methods, such as those listed in the response to § 3800.202, are used, coupled with limited and reasonable use of manual restraints and exclusion in extreme situations as permitted in §§ 3800.211 and 3800.212, use of mechanical restraints is not necessary to control behavior in nonsecure facilities. Use of mechanical restraints in secure care facilities is permitted.

*§ 3800.211. Manual restraints*

Seven commentators and IRRC recommended that the requirement in subsection (d) to change positions every 10 consecutive minutes of using a manual restraint be eliminated due to safety issues for staff and children when releasing a child from a manual restraint before a child has gained control. Ten commentators and IRRC recommended that the requirement in subsection (e) to observe and document the condition of the child every 10 minutes a manual restraint is used be eliminated due to staffing costs. One commentator suggested increasing the time for staff observation from 10 to 15 minutes.

*Response*

The Department did not lessen the requirements for use of manual restraint. Extended use of hands-on control of children beyond 10 minutes is potentially very dangerous and, if not properly administered, controlled and monitored, can result in serious injury or death of a child. There have been several incidents when a person died due to the misuse of a manual restraint.

The Department does not encourage the use of manual restraints. Manual restraints may be used as a last resort only when all other methods of behavior intervention have been tried but have failed. Manual restraints shall be immediately released when the child has regained self-control. The Department believes that changing positions and requiring another staff person to observe and document the physical and emotional conditions of the child every 10 minutes, will be best protect the child during use of manual restraints.

Throughout the regulatory development process, advocacy organizations have supported these safeguards for use of manual restraints.

*§ 3800.212. Exclusion*

One commentator requested further prohibitions on the use of exclusion. One commentator suggested that the time frame in subsection (b) be eliminated. One commentator suggested that use of exclusion be part of the child's individual service plan. Two commentators and IRRC requested that subsection (c), which restricts the frequent use of exclusion within the same day, be eliminated.

*Response*

No changes were made to this section. Comments indicate a continuum of opinion on the regulation of exclusion, from those who believe there should be more stringent requirements to those who believe that the requirements are overly restrictive. The Department believes the amendments strike the proper balance of interests and that, as proposed, will protect children from the potentially harmful effects of overuse of exclusion. The use of exclusion for a child for more than four times

in a day is confusing to the child, and, frequent use of exclusion decreases the effectiveness of this method of behavior intervention.

As suggested, the amendments do require the development of an extensive plan for use of exclusion (§ 3800.203) and that plan shall be part of the individual service plan (§ 3800.226(5)).

*§ 3800.221—3800.223. Description of services, admission and placement process*

IRRC and several commentators raised concern about reduction in program standards, particularly relating to placement and admission procedures and safeguards.

*Response*

In response to these concerns, the Department reevaluated the existing regulations to determine where, if any, reductions in program standards occurred. As suggested by commentators, the Department found the reductions largely in the areas of service description, admissions and placement. Based on public comment, the Department has made additions to the final-form regulations to address these areas (§§ 3800.221—3800.223). In response to the concerns about the prevention of inappropriate placement of children in facilities that cannot meet a child's needs, these three new sections will assure that a child is placed in an appropriate facility that can meet the child's needs.

*§ 3800.224. Development of ISP*

Two commentators and IRRC requested increased facilitated involvement of the child's parent. One commentator suggested that a short term ISP be developed within 72 hours of arrival at the facility. One commentator and IRRC requested addition of an emergency care plan for children who are in short-term emergency placements of 30 or fewer days.

*Response*

The Department strengthened the requirements for facilities to involve the child's parent by adding requirements to include any person invited by the child or the child's parent in subsection (b), mutually convenient meeting times and places in subsection (c), documentation of efforts to involve the parent in subsection (d) and an explanation that the child and the child's parents shall have the opportunity to sign the plan in subsection (e).

The Department did not add a requirement for a short-term plan within 72 hours of the child's arrival or for children in placement for 30 or fewer days. It would be very difficult for facilities to prepare an effective service plan within a few days of a child's arrival due to staffing issues, time to notify and involve appropriate persons, and the lack of time to observe the child's needs and behaviors in the new setting. Preparing a plan within a few days or a week of a child's arrival could result in staff time being misdirected to unnecessary paperwork without increased protections for the child.

Emergency care and placement can be received at any setting covered by these or other regulations such as child foster care. A contracting agency that purchases emergency placement services may require short-term planning services as part of its funding requirements.

*§ 3800.225. Review and revision of the ISP*

Three commentators suggested that quarterly reporting should be required. IRRC and one commentator suggested that these regulations should be consistent with the Mental Health Procedures Act relating to progress re-

views every 30 days. IRRC also questioned if parents would be involved in the review and revision of the plan.

*Response*

As suggested by IRRC, the Department added a cross reference to § 3800.224 to specify that parents must be involved in review and revision of the plan.

The time frame for formal review and revision of the plan remains at 6 months. This time frame is based upon section 471(a)(16) and 475(5)(B) of the Social Security Act (42 U.S.C.A. §§ 671(a)(16) and 675(5)(B)) and 42 Pa.C.S. § 6351(e) (relating to disposition of dependent child), both of which require 6 month program reviews. The Department did consider, and an original draft of the regulations shared with external stakeholders included, quarterly reviews of the ISP; however, many objections were received from external groups citing statutory requirements and current § 3810.35 requiring 6 month reviews.

The Mental Health Procedures Act and Chapter 5100 are not referenced in this section because only some of the children served in these facilities fall under the jurisdiction of the act. The Mental Health Procedures Act applies independently and separately from these regulations. These regulations are the minimum requirements for any facility serving children with a wide variety of needs. These regulations apply in tandem with the Mental Health Procedures Act, if applicable for an individual child. If there are different or conflicting requirements, the more stringent requirement shall be met.

While the formal review and revision period for the ISP remains at a minimum of 6 months, the Department did consider IRRC's suggestion to require monthly progress reports and has added this requirement in § 3800.226(3) (relating to content of ISP). Monthly progress reports will serve to assess a child's progress and provide regular updates for parents.

*§ 3800.226. Content of ISP*

One commentator suggested reduction in the ISP content in that it exceeds minimum health and safety requirements. IRRC and several commentators suggested adding measurable and individualized goals, how progress will be measured, who will measure progress and what criteria will be used to measure progress. Other suggested additions include adding components on educational needs, a schedule of family visits, competency development, strengthened family involvement, special education services, medication plan, community linkages and more detailed discharge planning and parental involvement.

*Response*

The Department added measurable and individualized goals, monthly documentation of the child's progress (see comments received on § 3800.225), the child's need for safety, competency development and permanency, an educational component, methods to measure progress, who is to measure progress and objective criteria to measure progress. The Department also added a new section in § 3800.230, to address parental involvement in discharge planning and notification.

*§ 3800.229. Education*

Two commentators and IRRC suggested adding several specific requirements of other laws and regulations regarding educational requirements. Three commentators suggested that facilities be prohibited from requiring a child to attend on-grounds schools as a condition of

participation at the residential facility. One commentator suggested adding the child's education records to the child's record.

*Response*

The Department revised this section to broaden the citations of appropriate education regulations in 22 Pa. Code Chapters 11, 14 and 15 (relating to pupil attendance; special education services and programs; and protected handicapped students). However, it is the Department of Education through statutory authority and regulations that will apply and enforce these rights to education protections, and not the Department through these residential licensure regulations. If in the course of Department licensure inspections, suspected violation of education laws and regulations is observed, the Department will notify the Department of Education.

The Department added education and service records to the child's record in § 3800.243.

*§ 3800.271. Criteria for secure care*

Two commentators suggested additional clarification that secure care is permitted only for children who are alleged delinquent or adjudicated delinquent.

*Response*

This change was made.

*§ 3800.272. Admission to secure care*

One commentator suggested the addition of admission requirements for secure care facilities.

*Response*

This change was made.

*§ 3800.274(14) and (15). Additional requirements for secure care—dangerous items*

In response to concerns raised at the August 1998 regulations work group meeting, the Department added two new paragraphs relating to furnishings and other items that could pose a danger to children whose health and safety assessment indicates known or suspected suicide or self-injury attempts or known incidents of aggressive or violent behavior. These additional requirements were supported by consensus of the work group members.

*§ 3800.274(16) and (17). Additional requirements for secure care—use of handcuffs, leg restraints and seclusion*

Several commentators and IRRC suggested that the use of handcuffs, leg restraints and seclusion be prohibited completely or further restricted by decreasing times permitted for their use. IRRC suggested that the current requirements in Chapter 3760 provide more guidance to facilities and more protection to children and that they be retained.

*Response*

The Department does not agree that the current regulations in Chapter 3760 provide more guidance and more protection than the proposed amendments. Many of the sections in Chapter 3760 are vague and subject to broad interpretation and the proposed amendments include better protections for children. Several examples follow: 1) while § 3760.42(1)(i) allows use of seclusion for up to 16 hours in a 48-hour period, the proposed amendments limit use of seclusion to no more than 12 hours in a 48-hour period; 2) while § 3760.42(2) states that an administrator may order handcuffs for a period not to exceed 1 hour there is no requirement about extended use of handcuffs or any limitation of how long they may be

used in a 48-hour period as addressed fully in the proposed amendments; 3) there is no requirement in Chapter 3760 for a restrictive procedure plan for each child, as in the proposed amendments; 4) there is no regulation of exclusion or manual restraints in Chapter 3760, as in the proposed amendments; 5) there are no staff training requirements for the use of restrictive procedures in Chapter 3760 as in the proposed amendments; and 6) there is no requirement for a medical examination regarding the physical health of the child prior to extended use of seclusion or restraint as in the proposed amendments.

The Department concurs with the commentators that use of seclusion, leg restraints and handcuffs should be used as a last resort and that the restraint or seclusion shall be removed as soon as the child has regained control of his behavior. It should be emphasized that the requirements in § 3800.202 apply to the use of seclusion, handcuffs and leg restraints including: may be used only to prevent a child from injuring himself or others, may not be used in a punitive manner, may be used only after other less restrictive methods must have been tried and failed, and shall be discontinued as soon as the child regains control of his behavior.

The Department did reduce the time frames for use of handcuffs and leg restraints from 6 hours to 2 hours. The time for a supervisory check of handcuffs and leg restraints was reduced from 2 hours to 1 hour. A new requirement was added to limit use of handcuffs and leg restraints to no more than 4 hours in any 48-hour period.

The use of seclusion was reduced from 6 hours to 4 hours and from 12 hours to 8 hours in any 48-hour period. Requirements for the seclusion room were added.

Lastly, new requirements were added to restrict use of mechanical restraints and seclusion simultaneously, and to limit use of seclusion and mechanical restraints to no more than 6 hours in a 48-hour period.

The final-form regulations regarding use of seclusion, leg restraints and handcuffs in secure facilities represent significantly increased protections to children from the current regulations and are supported by those commentators who were concerned about protecting children from overuse of seclusion, handcuffs and leg restraints.

*§ 3800.283. Additional requirements for secure detention—bedrooms*

Three commentators requested that the special requirement for detention for no more than one child per bedroom be eliminated, since many detention centers currently permit two children per room as required under § 3800.274(11).

*Response*

This change was made.

*§ 3800.283(1). Additional requirements for secure detention—staff qualifications*

One commentator suggested that the minimum qualifications for a child care worker in a secure detention facility be maintained as an associate's degree as in the current regulations in Chapter 3760.

*Response*

This change was made.

*§ 3800.283. Additional requirements for secure detention—other*

One commentator suggested that several additional requirements that exist in Chapter 3760 be added, includ-

ing compliance with specific portions of 42 Pa.C.S. §§ 6301—6365, minimum age of children in detention, continual contact with children, prohibition of children and adult offenders in the same areas, reporting to the Department of children detained for more than 35 days, placement reviews, limits on new buildings, specifications for living and study areas and requirements for recreation programs.

*Response*

The Department very seriously considered these additions. The Department carefully reviewed the current Chapter 3760 requirements and the proposed amendments for gaps and important requirements that were excluded. In response to public comment, the Department added the following requirements: compliance with all the sections of Juvenile Act relating to detention, the minimum age of children in detention, continual visual or audio contact with children, prohibition of children and adult offenders in same space, quarterly reporting to the Department for children detained for more than 35 days and placement reviews. The Department did not add the requirement for limitations on new buildings because this is not appropriate for licensure regulations. The Department did not add a requirement for living and study areas or recreation programs, since these are issues for all facilities and not just secure detention, no other comments were received on these issues, and these are not health and safety protections appropriate for minimum licensure regulations.

*§ 3800.291. Criteria for transitional living*

Three commentators suggested eliminating or clarifying the Departmental approval of training courses.

*Response*

Upon reconsideration, the Department eliminated the requirement for Department approval.

*§ 3800.293. Additional requirements for transitional living*

IRRC requested clarification of this section as it relates to onsite staff supervision and the number of children on the premises.

*Response*

The Department agrees this was confusing as proposed and made this clarification.

*§ 3800.303(a)(3). Additional requirements for outdoor and mobile programs—handwashing*

The Department of Agriculture and IRRC suggested that children have the opportunity to wash their hands before each meal and brush their teeth at least daily.

*Response*

This change was made.

*§ 3800.303(a)(6). Additional requirements for outdoor and mobile programs—litter*

One commentator requested deletion of a litter from the list of emergency items.

*Response*

This change was not made. A portable litter is necessary for transportation of a child in an emergency situation if the children are not in an area that can be reached by a rescue vehicle.



*§ 3800.303(a)(8) and (9). Additional requirements for outdoor and mobile programs—map and schedule*

One commentator suggested that the requirement for staff to have a map and the 7-day schedule apply only when the children are away from the stationary site.

*Response*

This change was made.

*§ 3800.303(b)(4). Additional requirements for outdoor and mobile programs—training*

IRRC suggested that the Department clarify appropriate recognized training sources. One commentator suggested that there is no such thing as an appropriate recognized training source and that some outdoor programs have their own in-house training programs for staff and children.

*Response*

The Department eliminated “by an appropriate, recognized source” and will instead assess each training program as to the appropriateness and effectiveness of the training program, as part of the annual licensing inspection.

*§ 3800.311. Exceptions for day treatment*

Several commentators suggested additions to the list of exceptions for day treatment facilities including: child funds, certain reportable incidents, fire drills, vision care, hearing care and meals.

*Response*

These exemptions were added.

*§ 3800.312(3). Additional requirements for day treatment—staffing*

A commentator suggested that in day treatment, children are often not directly supervised at all times.

*Response*

The Department eliminated the requirement for direct supervision at all times. The Department also clarified and reduced the number of children present in the facility requiring a supervisor, from 36 to 32, to increase protection for children and in keeping with multiples of the staff to child ratios at 1:8.

*§ 3800.312(4). Additional requirements for day treatment—indoor square footage*

A commentator suggested reducing the amount of indoor square footage from 50 to 15 square feet in accordance with school requirements.

*Response*

This change was made.

Six commentators requested the acceptance of a school health examination.

*Response*

In an effort to avoid duplication, this change was made. The school examination may be accepted by the day treatment facility, if the examination meets public school requirements and has been done within the periodicity schedule required by the public school.

*§ 3800.312(8). Additional requirements for day treatment—meals*

IRRC and two commentators suggested adding “break after meal to assure that day treatment programs do not need to provide meals to the children but can instead require children to bring meals from home.

*Response*

This change was made.

*§ 5310.3. Applicability*

IRRC requested clarification about the applicability of host homes.

*Response*

This change was made.

*Fiscal Impact*

Some commentators suggested that the proposed amendments would have a significant impact on the cost of providing care, particularly related to staff training, incident reporting and a few physical site requirements. In drafting the final-form regulations, careful consideration was given to the effect the amendments will have on the cost of providing care. Following is discussion regarding the regulatory areas that will have the greatest impact on the cost of care.

1. *Staff training.* The amendments place a strong emphasis on initial and ongoing staff training as an important component to protect the health and safety of children. The amendments require that new staff persons receive at least 30 hours of specific health and safety related training prior to working alone with children and within 120 days after the date of hire. The amendments also require that veteran staff persons receive at least 40 hours of training each year in general child care topics including first aid, Heimlich techniques, cardiopulmonary resuscitation and fire safety.

The current regulations for child residential facilities (Chapter 3810), which apply to the majority of facilities governed by this new chapter, require an unspecified number of hours of training for new staff persons in most of the same areas required by the new regulations and 40 hours of training in the first year of employment. Also currently required is 40 hours of training each year for veteran staff. The current regulations for community mental retardation homes (Chapter 6400) require orientation for new staff persons and at least 24 hours of training each year for veteran staff persons. The current regulations for secure detention and community residential mental health facilities do not address staff training hours or content areas.

While community mental retardation homes may need to increase the number of training hours from 24 to 40 hours per year, and community mental health and secure detention facilities may need to enhance their training programs, the Department does not anticipate the staff training requirements to be cost prohibitive for providers. The Department will permit a variety of staff training models and options including effective on-the-job training programs and staff meetings that include training components. In addition, the Department offers many free and low-cost training programs for staff persons in children's residential and day treatment facilities. For children and youth programs, the cost of providing training is an allowable cost for Federal, State and county children and youth reimbursement.

The staff training requirements have been widely supported by the regulations work group, providers of service, parents and consumers and child advocates as being essential to protecting the health and safety of children. Any minimal increase in costs associated with the new staff training requirements is outweighed by the benefit of protecting children.

2. *Reportable incidents.* The new requirements for reporting reportable incidents will increase paperwork for certain facility types. The amendments require reporting of specific types of incidents to the Department and the contracting agency. This reporting system is imperative to protect children from harm by studying patterns of incidents and taking action where appropriate to improve health and safety protections to children.

In response to public comment regarding the anticipated cost of reporting incidents in the proposed amendments, the Department amended § 3800.16(a) to reduce the types of incidents that are reportable.

Current regulations for child residential and day treatment facilities (Chapter 3680) and community mental retardation homes (Chapter 6400) require reporting systems for many incidents. While the requirements for the types of incidents in children and youth facilities have been expanded, facilities do already have reporting systems and procedures established.

The amount of increased paperwork to comply with the amendments will be negligible.

3. *Physical site.* Public comments regarding the cost of the new physical site requirements were mainly concerned with the proposal to fence ponds and lakes and to limit bedrooms to one child per room in secure detention. The Department amended §§ 3800.106 and 3800.283 to eliminate these requirements.

4. *Administration.* Many administrative and fiscal requirements governing the operation and administration of child residential and day treatment facilities (Chapter 3680) and community mental health residential facilities (Chapter 5310) have been eliminated. Requirements governing areas such as independent audits, governing body, administrative records, hiring practices, personnel management, job descriptions and staff discipline procedures are no longer required.

The reduction in paperwork requirements in the area of administration will result in a cost savings, with no diminished protection of children.

#### *Effective Date*

With the exception of §§ 3800.187 and 3800.188, this chapter is effective October 26, 1999. Sections 3800.187 and 3800.188 are effective June 26, 2000.

#### *Implementation*

As requested by providers of service, the Department will develop a licensing measurement instrument that regional licensing inspectors will use to apply and measure compliance with the new regulations. The draft measurement instrument will be shared with Statewide external stakeholder organizations for review and comment prior to implementation of the amendments and the instrument.

The Department will provide a training and orientation course on the new regulations, in each of the Department's regions, for providers and other interested persons, prior to implementation of the amendments.

#### *Sunset Date*

The effectiveness of these amendments will be evaluated as part of the Department's annual licensing inspection process for child residential and day treatment facilities. While no sunset date has been established for these amendments, it is anticipated that the Department will pursue necessary revisions to the amendments, based on public comment and research, within 5 years from the date of this publication.

#### *Contact Person*

Questions about these amendments should be directed to the Department of Public Welfare, Office of Policy Development, Karen E. Kroh, Licensing Manager, P. O. Box 2675, Harrisburg, PA 17105-2675, (717) 783-2207; fax (717) 772-4957.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 8, 1999, the Department submitted a copy of these final-form regulations to IRRC and to the Chairpersons of the House Committee on Aging and Youth and the Senate Committee on Public Health and Welfare. The Department provided IRRC and the Committees with copies of all comments received during the public comment period. The Department has also 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, "Regulatory Review and Promulgation." A copy of this form is available to members of the public upon request.

In preparing the final-form regulations, the Department has considered all comments received from the public, IRRC and the Committees.

These final-form regulations were deemed approved by the House Aging and Youth Committee and the Senate Public Health and Welfare Committee on May 3, 1999. IRRC approved the final-form regulations on May 6, 1999, in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)).

#### *Findings*

The Department finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the CDL and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) These final-form regulations are necessary and appropriate for the administration and enforcement of Articles IX and X of the Public Welfare Code.

#### *Order*

The Department, acting under the Public Welfare Code, orders that the regulations of the Department, 55 Pa. Code Chapters 3130, 3680, 3710, 3800, 3810, 5310 and 6400 are amended by:

(a) Amending §§ 3130.81, 3680.1, 5310.3, 5310.6, 5310.92 and 6400.3; by

(b) Adding §§ 3800.1—3800.6, 3800.11—3800.22, 3800.31—3800.33, 3800.51—3800.58, 3800.81—3800.106, 3800.121—3800.132, 3800.141—3800.149, 3800.151, 3800.152, 3800.161—3800.164, 3800.171, 3800.181—3800.189, 3800.201—3800.213, 3800.221—3800.230, 3800.241—3800.245, 3800.251—3800.257, 3800.271—3800.274, 3800.281—3800.283, 3800.291—3800.293, 3800.301—3800.303, 3800.311 and 3800.312; and by

(c) Deleting §§ 3710.1—3710.4, 3710.11, 3710.21—3710.24, 3710.31—3710.33, 3710.41—3710.44, 3710.51—3710.53, 3710.61—3710.67, 3710.71, 3710.81—3710.83, 3710.91, 3710.92, 3710.101—3710.105, 3710.111—3710.121, 3710.131, 3710.141—3710.143, 3760.1—3760.11, 3760.21—3760.23, 3760.31—3760.42, 3760.51—3760.60, 3760.71—3760.81, 3760.91—3760.93, 3810.1—3810.5, 3810.11, 3810.12, 3810.21—3810.25, 3810.31—3810.41, 3810.51—3810.56, 3810.61—3810.68, 3810.81,

3810.82, 3810.91—3810.94, 3810.101—3810.103 and 5310.161 to read as set forth in Annex A.

(d) The following uncodified regulation is hereby rescinded in whole: Training School Requirements, formerly referred to as Title 6500.

(e) The following guideline is hereby superseded by this chapter: Secure Residential Facilities, formerly referred to as draft Chapter 3820 and applicable to the Department-operated youth development centers.

(f) The Secretary of Public Welfare has submitted this order and Annex A to the Office of General Counsel and the Office of the Attorney General for review and approval as to legality and form as required by law. The Office of General Counsel and the Office of the Attorney General have approved this order and Annex A as to legality and form.

(g) The Secretary of Public Welfare shall certify and deposit this order and Annex A with the Legislative Reference Bureau as required by law.

(h) This order takes effect on October 26, 1999, with the exception of §§ 3800.187 and 3800.188 which take effect on June 26, 2000.

FEATHER O. HOUSTOUN,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 2734 (May 22, 1999).)*

**Fiscal Note:** Fiscal Note 14-442 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 55. PUBLIC WELFARE**

**PART V. CHILDREN, YOUTH AND FAMILIES  
MANUAL**

**Subpart C. ADMINISTRATION AND FISCAL  
MANAGEMENT**

**CHAPTER 3130. ADMINISTRATION OF COUNTY  
CHILDREN AND YOUTH SOCIAL SERVICE  
PROGRAMS**

**REQUIREMENTS FOR FOSTER CARE PROGRAMS  
AND CHILD CARE FACILITIES OPERATED  
BY A COUNTY AGENCY**

**§ 3130.81. Licensure, approval and notification re-  
quirements.**

(a) The county agency shall ensure that foster homes which it approves and child care facilities which it operates comply with applicable fire, safety and building requirements of the Department of Labor and Industry and local authorities located in Philadelphia, Pittsburgh or Scranton.

(b) The county agency shall identify in writing, at the time of its application for licensure, approval or renewal, the name of the individual who is responsible for the daily operation of a child care facility which it operates.

(c) The county agency shall submit, in writing and within 30 calendar days of occurrence, notification of changes in the information provided under subsection (b).

(d) Sections 3130.81(a)—(c) and 3130.82—3800.92 do not apply to child residential and day treatment facilities which are governed by Chapter 3800 (relating to child residential and day treatment facilities).

**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 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).

(b) Social services provided for a child by an agency subject to this chapter include the following:

- (1) Foster family care.
- (2) Adoption services.

(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 this chapter.

**CHAPTER 3710. (Reserved)**

**§§ 3710.1—3710.4. (Reserved).**

**§ 3710.11. (Reserved).**

**§§ 3710.21—3710.24. (Reserved).**

**§§ 3710.31—3710.33. (Reserved).**

**§§ 3710.41—3710.44. (Reserved).**

**§§ 3710.51—3710.53. (Reserved).**

**§§ 3710.61—3710.67. (Reserved).**

**§ 3710.71. (Reserved).**

**§§ 3710.81—3710.83. (Reserved).**

**§ 3710.91. (Reserved).**

**§ 3710.92. (Reserved).**

**§§ 3710.101—3710.105. (Reserved).**

**§§ 3710.111—3710.121. (Reserved).**

**§ 3710.131. (Reserved).**

**§§ 3710.141—3710.143. (Reserved).**

**CHAPTER 3760. (Reserved)**

**§§ 3760.1—3760.11. (Reserved).**

**§§ 3760.21—3760.23. (Reserved).**

**§§ 3760.31—3760.42. (Reserved).**

**§§ 3760.51—3760.60. (Reserved).**

**§§ 3760.71—3760.81. (Reserved).**

**§§ 3760.91—3760.93. (Reserved).**

**CHAPTER 3800. CHILD RESIDENTIAL AND DAY TREATMENT FACILITIES****GENERAL PROVISIONS**

Sec.	Purpose.
3800.1.	Applicability.
3800.2.	Exemptions.
3800.3.	Inspections and certificates of compliance.
3800.4.	Definitions.
3800.5.	Applicability to specific facility types.

**GENERAL REQUIREMENTS**

3800.11.	Licensure or approval of facilities.
3800.12.	Appeals.
3800.13.	Maximum capacity.
3800.14.	Fire safety approval.
3800.15.	Child abuse.
3800.16.	Reportable incidents.
3800.17.	Recordable incidents.
3800.18.	Child funds.
3800.19.	Consent to treatment.
3800.20.	Confidentiality of records.
3800.21.	Applicable health and safety laws.
3800.22.	Waivers.

**CHILD RIGHTS**

3800.31.	Notification of rights and grievance procedures.
3800.32.	Specific rights.
3800.33.	Prohibition against deprivation of rights.

**STAFFING**

3800.51.	Child abuse and criminal history checks.
3800.52.	Staff hiring, retention and utilization.
3800.53.	Director.
3800.54.	Child care supervisor.
3800.55.	Child care worker.
3800.56.	Exceptions for staff qualifications.
3800.57.	Supervision.
3800.58.	Staff training.

**PHYSICAL SITE**

3800.81.	Physical accommodations and equipment.
3800.82.	Poisons.
3800.83.	Heat sources.
3800.84.	Sanitation.
3800.85.	Ventilation.
3800.86.	Lighting.
3800.87.	Surfaces.
3800.88.	Water.
3800.89.	Temperature.
3800.90.	Communication system.
3800.91.	Emergency telephone numbers.
3800.92.	Screens.
3800.93.	Handrails and railings.
3800.94.	Landings and stairs.
3800.95.	Furniture and equipment.
3800.96.	First aid supplies.
3800.97.	Elevators.
3800.98.	Indoor activity space.
3800.99.	Recreation space.
3800.100.	Exterior conditions.
3800.101.	Firearms and weapons.
3800.102.	Child bedrooms.
3800.103.	Bathrooms.
3800.104.	Kitchen areas.
3800.105.	Laundry.
3800.106.	Swimming.

**FIRE SAFETY**

3800.121.	Unobstructed egress.
3800.122.	Exits.
3800.123.	Evacuation procedures.
3800.124.	Notification of local fire officials.
3800.125.	Flammable and combustible materials.
3800.126.	Furnaces.
3800.127.	Portable space heaters.
3800.128.	Wood and coal burning stoves.
3800.129.	Fireplaces.
3800.130.	Smoke detectors and fire alarms.
3800.131.	Fire extinguishers.
3800.132.	Fire drills.

**CHILD HEALTH**

3800.141.	Child health and safety assessment.
3800.142.	Health and safety plan.

3800.143.	Child health examination.
3800.144.	Dental care.
3800.145.	Vision care.
3800.146.	Hearing care.
3800.147.	Use of tobacco.
3800.148.	Health and behavioral health services.
3800.149.	Emergency medical plan.

**STAFF HEALTH**

3800.151.	Staff health statement.
3800.152.	Serious communicable diseases.

**NUTRITION**

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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 § 3800.3 (relating to exemptions).

(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) 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 § 3800.3.

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

(3) Child residential facilities that are located in a fixed structure, 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.

**§ 3800.3. Exemptions.**

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 under Chapter 3700 (relating to foster family care agency).

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

(7) Community homes for individuals with mental retardation that 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 that 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 that provide care exclusively to residents whose sole need is the treatment of drug and alcohol dependence and 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 under 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 homes in which children live with their own children but no other relative, unless the home is a transitional living residence that is exempt from this chapter under paragraph (2).

**§ 3800.4. Inspections and certificates of compliance.**

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

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

**§ 3800.5. 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 meets one of the following conditions:

(i) Is under 18 years of age.

(ii) Is under 21 years of age and committed an act of delinquency before reaching 18 years of age and remains under the jurisdiction of the juvenile court.

(iii) Was adjudicated dependent before reaching 18 years of age and while engaged in instruction or treatment, requests the court to retain jurisdiction until the instruction or treatment is completed, but a child may not remain in a course of instruction or treatment past 21 years of age.

(iv) Has mental retardation, a 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 to prevent a child's

placement in a more restrictive setting or to facilitate a 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 (relating to exemptions).

*Department*—The Department of Public Welfare of the Commonwealth.

*Fire safety expert*—A local fire department, fire protection engineer, Commonwealth certified fire protection instructor, college instructor in fire science, 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*—A written document for each child describing the child's care and treatment needs.

*Mobile program*—A residential program that provides services in a variety of 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, child's guardian, individual with legal custody, stepparent, stepchild, grandparent, grandchild, sibling, half-sibling, aunt, uncle, niece, nephew or spouse.

*Secure care*—Care provided in a 24-hour living setting to one or more children who are delinquent or alleged delinquent, from which voluntary egress is prohibited through one of the following mechanisms:

- (i) Egress from the building, or a portion of 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 24-hour living setting, in which one or more delinquent or alleged delinquent children are detained, generally in a preadjudication status.

*Transitional living residence*—A home or living unit for fewer 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.

#### **§ 3800.6. Applicability to specific facility types.**

Except as otherwise provided in §§ 3800.251—3800.257, 3800.271—3800.274, 3800.281—3800.283, 3800.291—3800.293, 3800.301—3800.303, 3800.311 and 3800.312, all sections of this chapter apply to the facilities within the scope of this chapter.

### **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. Fire safety approval.**

(a) If a fire safety approval is required in accordance with State law or regulations, a valid fire safety approval from the appropriate authority, listing the type of occupancy, is required prior to receiving a certificate of compliance under this chapter.

(b) If the fire safety approval is withdrawn or restricted, the facility shall notify the Department orally within 24 hours and in writing within 48 hours of the withdrawal or restriction.

(c) If a building is structurally renovated or altered after the initial fire safety approval is issued, the facility shall submit the new fire safety approval, or written certification that a new fire safety approval is not required, from the appropriate fire safety authority.

#### **§ 3800.15. Child abuse.**

(a) The facility shall immediately report suspected abuse of a child in accordance with 23 Pa.C.S. §§ 6301—6385 (relating to the Child Protective Services Law) and Chapter 3490 (relating to child protective services).

(b) If there is an allegation of child abuse involving facility staff persons, the facility shall submit and implement a plan of supervision in accordance with 23 Pa.C.S. § 6368 (relating to investigation of reports) and § 3490.56 (relating to CRS investigation of suspected child abuse perpetrated by persons employed or supervised by child caring agencies and residential facilities).

#### **§ 3800.16. Reportable incidents.**

(a) A reportable incident is the following:

- (1) A death of a child.
- (2) A physical act by a child to commit suicide.
- (3) An injury, trauma or illness of a child requiring inpatient treatment at a hospital.
- (4) A serious injury or trauma of a child requiring outpatient treatment at a hospital, not to include minor injuries such as sprains or cuts.
- (5) A violation of a child's rights.
- (6) Intimate sexual contact between children, consensual or otherwise.
- (7) A child absence from the premises for 4 hours or more without the approval of staff persons, or for 30 minutes or more without the approval of staff persons if the child may be in immediate jeopardy.
- (8) Abuse or misuse of a child's funds.

(9) An outbreak of a serious communicable disease as defined in 28 Pa. Code § 27.2 (relating to reportable diseases).

(10) An incident requiring the services of the fire or police departments.

(11) 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 reportable incidents.

(c) The facility shall complete a written reportable incident report, on a form prescribed by the Department, and send it to the appropriate Departmental regional office and the contracting agency, within 24 hours.

(d) The facility shall orally report to the appropriate Departmental regional office and the contracting agency within 12 hours, a fire requiring the relocation of children, an unexpected death of a child and a child who is missing from the facility if police have been notified.

(e) The facility shall initiate an investigation of a reportable incident immediately following the report of the incident and shall complete the investigation within a reasonable time.

(f) The facility shall submit a final reportable incident report to the agencies specified in subsection (c) immediately following the conclusion of the investigation.

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

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

**§ 3800.17. Recordable incidents.**

The facility shall maintain a record of the following:

- (1) All seizures.
- (2) Suicidal gestures.
- (3) Any incidence of intentionally striking or physically injuring a child.
- (4) Property damage of more than \$500.
- (5) A child absence from the premises without the approval of staff persons, that does not meet the definition of reportable incident in § 3800.16(a) (relating to reportable incidents).
- (6) Injuries, traumas and illnesses of children that do not meet the definition of reportable incident in § 3800.16(a), which occur at the facility.

**§ 3800.18. Child funds.**

(a) Money earned or received by a child is the child's personal property.

(b) The facility may place reasonable limits on the amount of money to which a child has access.

(c) The facility shall maintain a separate accounting system for child funds, including the dates and amounts of deposits and withdrawals. Commingling of child and facility funds is not permitted.

(d) Except for children expected to be in the facility for fewer than 30 days, the facility shall maintain an interest-bearing account for child funds, with interest earned tracked and applied for each child.

(e) Money in the child's account shall be returned to the child upon discharge or transfer.

(f) There shall be no borrowing of child funds by the facility or staff persons.

**§ 3800.19. Consent to treatment.**

(a) The facility shall comply with the following statutes and regulations relating to consent to treatment, to the extent applicable:

- (1) 42 Pa.C.S. §§ 6301—6365 (relating to the Juvenile Act).
- (2) The Mental Health Procedures Act (50 P. S. §§ 7101—7503).
- (3) The act of February 13, 1970 (P. L. 19, No. 10) (35 P. S. §§ 10101—10105).
- (4) Chapter 5100 (relating to mental health procedures).
- (5) The Pennsylvania Drug and Alcohol Abuse Control Act (71 P. S. §§ 1690.101—1690.115).
- (6) Other applicable statutes and regulations.

(b) The following consent requirements apply unless in conflict with the requirements of applicable statutes and regulations specified in subsection (a):

(1) Whenever possible, general written consent shall be obtained upon admission, from the child's parent or legal guardian, for the provision of routine health care such as child health examinations, dental care, vision care, hearing care and treatment for injuries and illnesses.

(2) A separate written consent shall be obtained prior to treatment, from the child's parent or legal guardian, or, if the parent or guardian cannot be located, by court order, for each incidence of nonroutine treatment such as elective surgery and experimental procedures.

(3) Consent for emergency care or treatment is not required.

**§ 3800.20. Confidentiality of records.**

(a) The facility shall comply with the following statutes and regulations relating to confidentiality of records, to the extent applicable:

- (1) 23 Pa.C.S. §§ 6301—6385 (relating to the Child Protective Service Law).
- (2) 23 Pa.C.S. §§ 2101—2910 (relating to Adoption Act).
- (3) The Mental Health Procedures Act (50 P. S. §§ 7101—7503).
- (4) Section 602(d) of the Mental Health and Mental Retardation Act (50 P. S. § 4602(d)).
- (5) The Confidentiality of HIV-Related Information Act (35 P. S. §§ 7601—7612).
- (6) Sections 5100.31—5100.39 (relating to confidentiality of mental health records).
- (7) Sections 3490.91—3490.95 (relating to confidentiality).
- (8) Other applicable statutes and regulations.

(b) The following confidentiality requirements apply unless in conflict with the requirements of applicable statutes and regulations specified in subsection (a):

(1) A child's record, information concerning a child or family, and information that may identify a child or family by name or address, is confidential and may not be disclosed or used other than in the course of official facility duties.

(2) Information specified in paragraph (1) shall be released upon request only to the child's parent, the child's guardian or custodian, if applicable, the child's and parent's attorney, the court and court services, including probation staff, county government agencies, authorized agents of the Department and to the child if the child is 14 years of age or older. Information may be withheld from a child if the information may be harmful to the child. Documentation of the harm to be prevented by withholding of information shall be kept in the child's record.

(3) Information specified in paragraph (1) may be released to other providers of service to the child if the information is necessary for the provider to carry out its responsibilities. Documentation of the need for release of the information shall be kept in the child's record.

(4) Information specified in paragraph (1) may not be used for teaching or research purposes unless the information released does not contain information which would identify the child or family.

(5) Information specified in paragraph (1) may not be released to anyone not specified in paragraphs (2)–(4), without written authorization from the court, if applicable, and the child's parent and, if applicable, the child's guardian or custodian.

(6) Release of information specified in paragraph (1) may not violate the confidentiality of another child.

#### § 3800.21. 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.

#### § 3800.22. 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 the 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 and grievance procedures.

(a) Upon admission, each child and available parent and, if applicable, an available guardian or custodian, unless court-ordered otherwise, shall be informed of the child's rights, the right to lodge grievances without fear of retaliation and applicable consent to treatment protections specified in § 3800.19 (relating to consent to treatment).

(b) Each child and parent and, if applicable, the child's guardian or custodian, shall be informed of the child's rights, the right to lodge grievances as specified in subsection (a), and applicable consent to treatment protections specified in § 3800.19 (relating to consent to treatment), in an easily understood manner, and in the

primary language or mode of communication of the child, the child's parent and, if applicable, the child's guardian or custodian.

(c) A copy of the child's rights, the grievance procedures, and applicable consent to treatment protections shall be posted and given to the child, the child's parent and, if applicable, the child's guardian or custodian, upon admission.

(d) A statement signed by the child, the child's parent and, if applicable, the child's guardian or custodian, acknowledging receipt of a copy of the information specified in subsection (a), or documentation of efforts made to obtain the signature, shall be kept.

(e) A child and the child's family have the right to lodge a grievance with the facility for an alleged violation of specific or civil rights without fear of retaliation.

(f) 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 an alleged violation of a child's rights.

#### § 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 telephone subject to reasonable facility policy and written instructions from the contracting agency or court, if applicable, regarding circumstances, frequency, time, payment and privacy.

(f) A child shall have the right to visit with family at least once every 2 weeks, at a time and location convenient for the family, the child and the facility, unless visits are restricted by court order. This right does not restrict more frequent family visits.

(g) A child has the right to receive and send mail.

(1) Outgoing mail may not be opened or read by staff persons.

(2) Incoming mail from Federal, State or county officials, or from the child's attorney, may not be opened or read by staff persons.

(3) Incoming mail from persons other than those specified in paragraph (2), may not be opened or read by staff persons unless there is reasonable suspicion that contraband, or other information or material that may jeopardize the child's health, safety or well-being, may be enclosed. If there is reasonable suspicion that contraband, or other information that may jeopardize the child's health or safety may be enclosed, mail may be opened by the child in the presence of a staff person.

(h) A child has the right to communicate and visit privately with his attorney and clergy.

(i) 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.



(j) A child has the right to practice the religion or faith of choice, or not to practice any religion or faith.

(k) A child has the right to appropriate medical, behavioral health and dental treatment.

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

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

(n) A child may not be subjected to unusual or extreme methods of discipline which may cause psychological or physical harm to the child.

(o) A child has the right to clean, seasonal clothing that is age and gender appropriate.

**§ 3800.33. Prohibition against deprivation of rights.**

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

(b) A child's rights may not be used as a reward or sanction.

(c) A child's visits with family may not be used as a reward or sanction.

**STAFFING**

**§ 3800.51. Child abuse and criminal history checks.**

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

**§ 3800.52. Staff hiring, retention and utilization.**

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

**§ 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 16 or more children, whenever 16 or more children are present at the facility, 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 for 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 the 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 the 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 for 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 18 years of age or older if all the children served in the facility are under 18 years of age. A child care worker who is counted in the worker to child ratio shall be 21 years of age or older if one or more children served in the facility are 18 years of age or older.

**§ 3800.56. Exceptions for staff qualifications.**

(a) The staff qualification requirements specified in §§ 3800.53(c), 3800.54(d), 3800.55(g) and 3800.283(1) do not apply to staff persons hired or promoted to the specified positions prior to October 26, 1999.

(b) For facilities previously certified under Chapter 5310 or 6400 (relating to community residential rehabilitation services for the mentally ill; and community homes for individuals with mental retardation), the age requirements specified in § 3800.55(h) (relating to child care worker) do not apply to staff persons hired, or counted in the worker to child ratio, prior to October 26, 1999.

**§ 3800.57. 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 to 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 and one of the following conditions is met:

(1) Each of the children has 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.

**§ 3800.58. Staff training.**

(a) Prior to working with children, each staff person who will have regular and significant direct contact with children, including part-time and temporary staff persons and volunteers, shall have an orientation to the person's specific duties and responsibilities and the policies and procedures of the facility, including reportable incident reporting, discipline, care and management of children, medication administration and use of restrictive procedures.

(b) Prior to working alone with children and within 120 calendar days after the date of hire, the director and each full-time, part-time and temporary staff person who will have regular and significant direct contact with children, shall have at least 30 hours of training to include at least the following areas:

- (1) The requirements of this chapter.
- (2) 23 Pa.C.S. §§ 6301—6385 (relating to child protective services law) and Chapter 3490 (relating to child protective services).
- (3) Fire safety.
- (4) First aid, Heimlich techniques, cardiopulmonary resuscitation and universal precautions.
- (5) Crisis intervention, behavior management and suicide prevention.
- (6) Health and other special issues affecting the population.
- (c) If a staff person has completed the training required in subsection (b) within 12 months prior to the staff person's date of hire, the requirement for training in subsection (b) does not apply.
- (d) After initial training, the director and each full-time, part-time and temporary staff person, who will have regular and significant direct contact with children, 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.
- (e) Each staff person who will have regular and significant direct contact with children, shall complete training in first aid, Heimlich techniques and cardiopulmonary resuscitation at least every year. If a staff person has a formal certification from a recognized health care organization which is valid for more than 1 year, retraining is not required until expiration of the certification.
- (f) Training in first aid, Heimlich techniques and cardiopulmonary resuscitation shall be completed by an individual certified as a trainer by a hospital or other recognized health care organization.
- (g) Training in fire safety shall be completed by a fire safety expert or, in facilities serving 20 or fewer children, by a staff person trained by a fire safety expert. Video tapes prepared by a fire safety expert are acceptable for the training if accompanied by an onsite staff person trained by a fire safety expert.

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

**PHYSICAL SITE**

**§ 3800.81. Physical accommodations and equipment.**

The facility shall provide or arrange for physical site accommodations and equipment necessary to meet the health and safety needs of a child with a disability.

**§ 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 62°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 telephone 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 at 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 from 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) An individual towel, washcloth, comb, hairbrush and toothbrush shall be provided for each child.

(h) Toiletry items including toothpaste, shampoo, deodorant and soap shall be provided.

(i) Bar soap is not permitted unless there is a separate bar clearly labeled 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. Swimming.**

(a) Above-ground and in-ground outdoor pools shall be fenced with a gate that is locked when the pool 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 while children are swimming.

(d) The certified lifeguard specified in subsection (c) may not be counted in the staff 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 fire safety approval specified in § 3800.14 (relating to fire safety approval) permits locking of certain means of egress. If a fire safety approval is not required in accordance with § 3800.14, means of egress may not be locked.

(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.**

(a) Fireplaces shall be securely screened or equipped with protective guards while in use.

(b) A staff person shall be present with the children while a fireplace is in use.

(c) A fireplace chimney and flue shall be cleaned when there is an accumulation of creosote. Written documentation of the cleaning shall be kept.

**§ 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 becomes 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 fire safety monitoring if the smoke detector or fire alarm becomes 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 to 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 fire safety 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 into a public thoroughfare, or to a fire-safe area designated in writing within the past year by a fire safety expert, within 2 1/2 minutes or within the period of time specified in writing within the past year by a fire safety expert. The fire safety expert may not be an employee 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.

(j) Elevators may not be used during a fire drill or a fire.

**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; hospitalizations; medical diagnoses; medical problems that run in the family; issues experienced by the child's mother during pregnancy; special dietary needs; 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 health examination.**

(a) A child shall have a health examination within 15 days after admission and annually thereafter, or more frequently as specified at specific ages in 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 health examination prior to admission that meets the requirements of subsection (a) within the periodicity schedule specified in subsection (a), and there is written documentation of the examination, 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 health examination shall be completed before the child participates in the physical exertion portion of the program.

(d) The health examination shall be completed, signed and dated by a licensed physician, certified registered nurse practitioner or licensed physician's assistant. Written verification of completion of each health examination, date and results of the examination, the name and address of the examining practitioner and follow-up recommendations made, including each component, shall be kept in the child's record.

(e) The health examination shall include:

(1) A comprehensive health and developmental history, including both physical and behavioral health development.

(2) A comprehensive, unclothed physical examination.

(3) Immunizations, screening tests and laboratory tests as recommended by the American Academy of Pediatrics, "Guidelines for Health Supervision."

(4) Blood lead level assessments for children 5 years of age or younger, unless the examining practitioner determines that the testing is unnecessary, after reviewing the results of previously conducted blood lead testing, which review and conclusion is documented in the child's medical record.

(5) Sickle cell screening for children who are African-American unless the examining practitioner determines that the testing is unnecessary, after reviewing the results of previously conducted sickle cell testing, which review and conclusion is documented in the child's medical record.

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

(7) 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.

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

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

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

(11) Allergies or contraindicated medications.

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

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

(14) Health education, including anticipatory guidance.

(15) Recommendations for follow-up physical and behavioral health services, examinations and treatment.

(f) Immunization records, 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) Each child shall receive dental care, at as early an age as necessary, needed for relief of pain and infections, restoration of teeth and maintenance of dental health.

(b) 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 dentist or dental technician at least semiannually. If a child has not had a dental examination and teeth cleaning within 6 months prior to admission, a dental examination and teeth cleaning shall be performed within 30 days after admission.

(c) A written record of completion of each dental examination, including the preadmission examination permitted in subsection (b), specifying the date of the examination, the dentist's name and address, procedures completed and follow-up treatment recommended and dates provided, shall be kept in the child's record.

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

**§ 3800.145. Vision care.**

(a) Each child shall receive vision screening and services to include diagnosis and treatment including eyeglasses, for defects in vision.

(b) Each child who is 3 years of age or older shall receive vision screening within 30 days after admission in accordance with the periodicity schedule recommended by the American Academy of Pediatrics, "Guidelines for Health Supervision," and "Eye Examination and Vision Screening in Infants, Children and Young Adults (RE9625)."

(c) If the child had a vision screening prior to admission that meets the requirements of subsection (a) within the periodicity schedule specified in subsection (b), an initial examination within 30 days after admission is not required. The next screening shall be required within the periodicity schedule specified in subsection (b).

(d) Follow-up treatment and services, such as provision of eyeglasses, shall be provided as recommended by the treating practitioner.

(e) A written record of completion of each vision screening, including the preadmission screening permitted in subsection (c), specifying the date of the screening, the treating practitioner's name and address, results of the screening, follow-up recommendations made, and the dates and provision of follow-up services and treatment, shall be kept in the child's record.

**§ 3800.146. Hearing care.**

(a) Each child shall receive a hearing screening and services to include diagnosis and treatment including hearing aids, for defects in hearing.

(b) Each child who is 3 years of age or older shall receive a hearing screening within 30 days after admission in accordance with the periodicity schedule recommended by the American Academy of Pediatrics, "Guidelines for Health Supervision."

(c) If the child had a hearing screening prior to admission that meets the requirements of subsection (a) within the periodicity schedule specified in subsection (b), an initial examination within 30 days after admission is not required. The next screening shall be required within the periodicity schedule specified in subsection (b).

(d) Follow-up treatment and services, such as provision of hearing aids, shall be provided as recommended by the treating practitioner.

(e) A written record of completion of each hearing screening, including the preadmission screening permitted in subsection (c), specifying the date of the screening, the treating practitioner's name and address, the results of the screening, follow-up recommendations made, and the dates and provision of follow-up services and treatment, shall be kept in the child's record.

**§ 3800.147. Use of tobacco.**

(a) Use or possession of tobacco products by children is prohibited.

(b) Use or possession of tobacco products by staff persons is prohibited in the facility and during transportation provided by the facility.

(c) If staff persons use tobacco products outside but on the premises of the facility, the following apply:

(1) The facility shall have written fire safety procedures. Procedures shall include extinguishing procedures

and requirements that smoking shall occur only a safe distance from the facility and from flammable or combustible materials or structures.

- (2) Written safety procedures shall be followed.
- (3) Use of tobacco products shall be out of the sight of the children.

**§ 3800.148. Health and behavioral health services.**

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

(b) Medically necessary physical and behavioral health services, diagnostic services, follow-up examinations and treatment, such as medical, nursing, pharmaceutical, dental, dietary, hearing, vision, blood lead level, psychiatric and psychological services that are planned or prescribed for the child, shall be arranged for or provided.

**§ 3800.149. Emergency medical plan.**

(a) 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.
- (4) Medical and behavior health conditions or situations under which emergency medical care and treatment are warranted.

(b) The child's parent and, if applicable, the child's guardian or custodian, shall be given a copy of the emergency medical plan upon admission.

(c) The child's parent and, if applicable, the child's guardian or custodian, shall be notified immediately if the emergency plan is implemented for the child.

**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 that 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, certified nurse practitioner or licensed physician's assistant for a specific child.

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

**§ 3800.163. Food groups and alternative diets.**

(a) 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, certified nurse practitioner or licensed physician's assistant for a specific child.

(b) Dietary alternatives shall be available for a child who has special health needs, religious beliefs regarding dietary restrictions or vegetarian preferences.

**§ 3800.164. Withholding or forcing of food prohibited.**

- (a) A facility may not withhold meals or drink 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 to child 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 restrictive procedures specified in §§ 3800.201—3800.213 (relating to restrictive 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) 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 pharmacy 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 be used only 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 the name of the person who administered or self-administered the medication.

(c) The information in subsection (b) shall be logged at the same time each dosage of medication is administered or self-administered.

**§ 3800.185. Medication errors.**

(a) Documentation of medication errors shall be kept in the medication log. Medication errors include the failure to administer medication, administering the incorrect medication, administering the correct medication in an incorrect dosage or administering the correct medication at the incorrect time.

(b) After each medication error, follow-up action to prevent future medication errors shall be taken and documented.

**§ 3800.186. Adverse reaction.**

If a child has a suspected adverse reaction to a medication, the facility shall notify the prescribing physician, the child's parent and, if applicable, the child's guardian or custodian, immediately. Documentation of adverse reactions and the physician's response shall be kept in the child's record.

**§ 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 criterion 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 meets 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 Standards for Diabetes Patient Education Programs of the Pennsylvania Department of Health is permitted to administer insulin injections.

(c) A record of the training shall be kept including the person trained, the 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) 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).

(2) 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.

**RESTRICTIVE PROCEDURES**

**§ 3800.201. Restrictive procedure.**

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

**§ 3800.202. Appropriate use of restrictive procedures.**

(a) A restrictive procedure may not be used in a punitive manner, for the convenience of staff persons or as a program substitution.

(b) With the exception of exclusion as specified in § 3800.212 (relating to exclusion), a restrictive procedure may be used only to prevent a child from injuring himself or others.

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

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



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

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

**§ 3800.203. Restrictive procedure plan.**

(a) For each child for whom restrictive procedures will be used beyond unanticipated use specified in § 3800.204 (relating to unanticipated use), a restrictive procedure plan shall be written and included in the ISP specified in § 3800.226 (relating to content of the ISP), prior to use of restrictive procedures.

(b) The plan shall be developed and revised with the participation of the child, the child's parent and, if applicable, the child's guardian or custodian, if available, any person invited by the child and the child's parent, guardian or custodian, child care staff persons, contracting 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 restrictive procedure, whenever the plan is revised and at least every 6 months. The child, the child's parent and, if applicable, the child's guardian or custodian shall be given the opportunity to sign the plan.

(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 behavioral outcomes 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 restrictive procedures that may be used and the circumstances under which the restrictive procedures may be used.

(5) The length of time the restrictive 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 restrictive 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 restrictive procedures are used on an unanticipated basis, § 3800.203 (relating to restrictive procedure plan) does not apply until after any type of restrictive procedure is used four times for the same child in any 3-month period.

**§ 3800.205. Staff training.**

(a) If restrictive procedures are used, each staff person who administers a restrictive procedure shall have completed training within the past year in the use of restrictive procedures.

(b) Training shall include:

(1) Using de-escalation techniques and alternative non-restrictive strategies and addressing the child's feelings after use of a restrictive 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 each staff person and demonstration of use of the procedure by each staff person.

(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 the person trained, the 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.**

(a) Pressure point techniques, defined as the application of pain for the purpose of achieving compliance, are prohibited, except as provided in subsection (b).

(b) The use of a pressure point technique that applies pressure at the child's jaw point for the purpose of bite release, is permitted.

**§ 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, or as pretreatment prior to a medical or dental examination or 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 to be 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 and in accordance with the frequency and duration recommended and documented by the prescribing physician.

(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) Documentation of compliance with subsections (b)—(e) shall be kept in the child's record.

**§ 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 handcuffs, anklets, wristlets, camisoles, helmets with fasteners, muffs and mitts with fasteners, poseys, waist straps, head straps, papoose boards, restraining sheets and similar devices.

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

(c) Devices 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 used 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 observe and document 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. Restrictive procedure records.**

A record of each use of a restrictive procedure, including the emergency use of a restrictive 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. Description of services.**

The facility shall have a written description of services that the facility provides to include the following:

(1) The scope and general description of the services provided by the facility.

(2) The ages, needs and any special characteristics of the children the facility serves.

(3) Specific activities and programs provided by the facility.

**§ 3800.222. Admission.**

Prior to admission, a determination shall be made and documented in writing, that the age, needs and any special characteristics of the child can be appropriately met by the services, activities and programs provided by the facility.

**§ 3800.223. Placement process.**

The facility shall have a placement process that assesses, and documents the following for each child, prior to or upon admission:

(1) The service needs of the child.

(2) The child's legal status.

(3) Circumstances that make placement of the child necessary.

(4) How the activities and services provided by the facility will meet the needs of the child.

**§ 3800.224. Development of the 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, the child's parent and, if applicable, the child's guardian or custodian, if available, any person invited by the child and the child's parent, guardian or custodian, child care staff persons, a contracting agency representative and other appropriate professionals.

(c) Reasonable effort shall be made to involve the child and the child's parent and, if applicable, a guardian or custodian, in the development of the ISP at a time and

location convenient for the child, the child's parent, the child's guardian or custodian, if applicable, and the facility.

(d) Documentation of reasonable efforts made to involve the child's parent and, if applicable, guardian or custodian, shall be kept.

(e) Persons who participated in the development of the ISP shall sign and date the ISP, with the exception of the child, the child's parent and, if applicable, the child's guardian or custodian, who shall be given the opportunity to sign the ISP.

**§ 3800.225. Review and revision 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) A review and revision of the ISP shall be completed in accordance with § 3800.224 (b)—(e) (relating to development of the ISP).

**§ 3800.226. Content of the ISP.**

An ISP shall include:

- (1) Measurable and individualized goals and time-limited objectives for the child.
- (2) Evaluation of the child's skill level for each goal.
- (3) Monthly documentation of the child's progress on each goal.
- (4) Services and training that meet the child's needs, including the child's needs for safety, competency development and permanency.
- (5) A restrictive procedure plan, if appropriate.
- (6) A component addressing family involvement.
- (7) A plan to teach the child health and safety, if the child has a child living with him at the facility.
- (8) A component addressing how the child's educational needs will be met in accordance with applicable Federal and State laws and regulations.
- (9) The anticipated duration of stay at the facility.
- (10) A discharge or transfer plan.
- (11) Methods to be used to measure progress on the ISP, including who is to measure progress and the objective criteria.
- (12) The name of the person responsible for coordinating the implementation of the ISP.

**§ 3800.227. Implementation of the ISP.**

An ISP shall be implemented as written.

**§ 3800.228. Copies of the ISP.**

(a) Copies of the ISPs, revisions to the ISP and monthly documentation of progress shall be provided to the child if the child is over 14 years of age, the parent, the child's guardian or custodian, if applicable, the contracting agency and persons who participated in the development and revisions to the ISP.

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

**§ 3800.229. Education.**

Under 22 Pa. Code Chapters 11, 14 and 15 (relating to pupil attendance; special education services and programs; and protected handicapped students), 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.

**§ 3800.230. Transfer or discharge.**

Prior to the transfer or discharge of a child, the facility shall inform, and when possible discuss with, the child's parent and, if applicable, the child's guardian or custodian, the recommended transfer or discharge. Documentation of the discussion or transmission of the information shall be kept.

**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 and health insurance information.
- (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 health 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) The name, sex, admission date, birth date and Social Security Number.
  - (ii) The race, height, weight, color of hair, color of eyes and identifying marks.
  - (iii) The 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) The name, address and telephone number of the person to be contacted in the event of an emergency.
- (2) Health records.
- (3) Dental, vision and hearing records.
- (4) Health and safety assessments.
- (5) ISPs.
- (6) Restrictive procedure plans.
- (7) Restrictive procedure records relating to the child.

- (8) Reports of reportable incidents.
- (9) Consent to treatment, as specified in § 3800.19 (relating to consent to treatment).
- (10) Court order, if applicable.
- (11) Admission and placement information specified in §§ 3800.222 and 3800.223 (relating to description of services; and admission).
- (12) Signed notification of rights, grievance procedures and applicable consent to treatment protections specified in § 3800.31 (relating to notification of rights).
- (13) Service records of the contracting agency.
- (14) Education records.

**§ 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 in a locked location when unattended.

**FACILITIES SERVING NINE OR MORE CHILDREN**

**§ 3800.251. Additional requirements.**

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) 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 alleged delinquent, or adjudicated delinquent and court ordered to a secure facility.

**§ 3800.272. Admission to secure care.**

Prior to accepting a child in secure care, the facility shall request the following documents from the committing court:

- (1) A description of the offenses and circumstances that make secure care necessary.
- (2) The child's needs to be addressed during placement.
- (3) The court order committing the child to a secure care facility.

**§ 3800.273. Exceptions for secure care.**

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 3800.57(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(b) (relating to mechanical restraints).

**§ 3800.274. Additional requirements.**

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

- (1) The facility shall have a valid fire safety occupancy approval appropriate for locked facilities from the appropriate authority, listing the type of occupancy, prior to receiving a certificate of compliance under this chapter.
- (2) A reportable incident as specified in § 3800.16(a) (relating to reportable incidents) includes a child's absence from the premises for any period of time, an assault on a staff person by a child that requires medical treatment for the staff person, the use of handcuffs or leg restraints beyond 2 hours, and the use of seclusion beyond 4 hours.
- (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) 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.

(13) Glass mirrors are not permitted.

(14) Furnishings or other items such as drapery cords, electrical outlets, shower curtains, shoe strings, razors and noncollapsing clothing hooks, that may create a risk for self-injury or suicide may not be accessible to a child whose health and safety assessment specified in § 3800.141 (relating to child health and safety assessment) indicates known or suspected suicide or self-injury attempts or gestures or an emotional history which may indicate a predisposition to self-injury or suicide, except during specific activities while these items are in use and the child is under direct supervision by staff persons.

(15) Items such as knives, razors, matches and tools, that may create an opportunity for use as a weapon or tool in an assault or other violent behavior may not be accessible to a child whose health and safety assessment specified in § 3800.141 indicates known incidents of aggressive or violent behavior, except during specific activities while these items are in use and the child is under direct supervision by staff persons.

(16) 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 or leg restraints, except for those used during transportation, may not exceed 2 hours, unless a licensed physician, a 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 2-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, except for those used during transportation.

(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 1 hour the restraint is used.

(ix) The use of handcuffs and leg restraints for any child, except those used during transportation, may not exceed 4 hours in any 48-hour period without a written court order.

(17) 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 4 hours, unless a licensed physician, a 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 4-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 for any child may not exceed 8 hours in any 48-hour period without a written court order.

(vii) A room used for seclusion shall meet the conditions as specified in § 3800.212(e) (relating to exclusion).

(18) Mechanical restraints and seclusion may not be used simultaneously for any child.

(19) The use of any combination of mechanical restraints and seclusion for any child may not exceed 6 hours in any 48-hour period without a written court order.

**SECURE DETENTION**

**§ 3800.281. Requirements for secure detention.**

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

**§ 3800.282. Exceptions for secure detention.**

The following requirements do not apply for secure detention:

- (1) Section 3800.55(g) (relating to child care worker).
- (2) Section 3800.143(b) (relating to child health examination).
- (3) Sections 3800.221—3800.228.

**§ 3800.283. Additional requirements.**

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

(1) The child care worker shall have an associate's degree or 60 credit hours from an accredited college or university.

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

(6) The facility shall comply with 42 Pa.C.S. §§ 6301—6365 (relating to the Juvenile Act) related to detention.

(7) A child may not be admitted to a secure detention facility who is 9 years of age or younger, or who is 18 years of age or older, unless the child is a juvenile as defined in the Juvenile Act.

(8) A child may not remain in the facility longer than is absolutely necessary.

(9) Staff persons shall have visual or auditory contact with children at all times.

(10) Children may not share space or have contact with adult offenders.

(11) The facility shall submit a written quarterly report to the appropriate regional office of the Department with the following information, for every child detained in a secure detention facility for more than 35 days:

- (i) The child's name and birth date.
- (ii) The committing court and probation officer.
- (iii) The date the petition was filed.
- (iv) The reason the child is still in the facility.

(12) The placement of each child shall be reviewed by a staff person designated by the director or the court at least weekly to assess whether the child could be served in a less restrictive setting. If a recommendation is made for a less restrictive setting, written documentation shall be included in the child's record and sent to the court.

#### TRANSITIONAL LIVING

##### § 3800.291. Criteria.

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

- (1) Health, general safety and fire safety 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.

##### § 3800.292. Exceptions for transitional living.

The following requirements do not apply for transitional living:

- (1) Section 3800.4 (relating to inspections and certificates of compliance).
- (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 are unknown for more than 24 hours.

(3) Sections 3800.55 and 3800.57 (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 system).

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

##### § 3800.293. Additional requirements.

(a) 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.

(b) If there are 11 or fewer children present on the premises at any one time, one child care worker shall be available onsite or by telephone. A child's own children present at the residence shall be counted in the staffing ratio.

(c) If there are 12 or more children present on the premises at any one time, there shall be one child care worker present on the premises for every 12 children. A child's own children present at the residence shall be counted in the staffing ratio.

#### 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 fire safety approval).
- (3) Section 3800.57 (relating to supervision), for outdoor programs.
- (4) Section 3800.83 (relating to heat sources).
- (5) Sections 3800.84(b)—(e) (relating to sanitation).
- (6) Sections 3800.85—3800.88.
- (7) Section 3800.90(a) (relating to communication system).
- (8) Sections 3800.91—3800.93 (relating to emergency telephone numbers; screens; and handrails and railings).
- (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) (relating to maximum capacity).
- (2) Section 3800.57, for outdoor programs.
- (3) Sections 3800.85 and 3800.86 (relating to ventilation; and lighting).
- (4) Sections 3800.88(a) and 3800.89 (relating to water; and temperature).
- (5) Section 3800.90(a).
- (6) Sections 3800.91—3800.94.
- (7) Sections 3800.97—3800.100.
- (8) Sections 3800.101—3800.106.
- (9) Section 3800.124.
- (10) Sections 3800.251—3800.257.

**§ 3800.303. Additional requirements.**

(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 food and water.
- (2) Potable drinking water shall be available to children at all times.
- (3) There shall be an opportunity for children to bathe once a week, brush their teeth once a day and wash their hands before each meal.
- (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) For mobile programs and outdoor programs whenever children are away from the stationary outdoor site, each staff person shall have a map of the area.
- (9) For mobile programs and outdoor programs whenever children are away from the stationary outdoor site, 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 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) Sections 3800.16(a) (relating to reportable incidents), as it applies to a child absence from the premises without the approval of staff persons.
- (3) Section 3800.18 (relating to child funds).
- (4) Section 3800.32(f), (g) and (k) (relating to specific rights).
- (5) Section 3800.54(a) and (b) (relating to child care supervisor).
- (6) Section 3800.57(d) (relating to supervision).
- (7) Section 3800.98 (relating to indoor activity space).
- (8) Section 3800.102 (relating to child bedrooms).
- (9) Sections 3800.103(a)—(d) and (f)—(h) (relating to bathrooms).
- (10) Section 3800.104(a) (relating to kitchen areas).
- (11) Section 3800.105 (relating to laundry).
- (12) Section 3800.124 (relating to notification of local fire officials).
- (13) Section 3800.130(b) and (e) (relating to smoke detectors and fire alarms).
- (14) Section 3800.132(e) (relating to fire drills).
- (15) Sections 3800.144—3800.146 (relating to dental care; vision care; and hearing care).
- (16) Section 3800.161 (relating to three meals a day).
- (17) Sections 3800.162 and 3800.163 (relating to quantity of food; and food groups and alternative diets) if the facility does not provide meals.
- (18) Section 3800.171(1) (relating to safe transportation).
- (19) Section 3800.255 (relating to laundry).
- (20) 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 a child is absent from the premises without approval of staff persons, the facility shall orally notify the child's parent and, if applicable, the child's guardian or custodian, immediately.

(3) For facilities serving 32 or more children, whenever 32 or more children are present at the facility, there shall be at least one child care supervisor present at the facility.

(4) The facility shall have at least 15 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.

(5) There shall be at least one flush toilet for every 18 children.

(6) There shall be at least one sink for every 24 children.

(7) If the child had a health examination that was completed in accordance with Article XIV of the Public School Code of 1949 (24 P. S. §§ 14-1401—14-1422) and 28 Pa. Code § 23.2 (relating to medical examinations), for content and periodicity of the examination, an initial health examination within 15 days after admission is not required. The next examination shall be required within the periodicity schedule by the public school. The health examination completed in accordance with the public school requirements shall be accepted for day treatment service. A copy of the health examination shall be on file at the facility within 30 days after admission.

(8) A meal break 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)****§§ 3810.1—3810.5. (Reserved).****§ 3810.10. (Reserved).****§ 3810.11. (Reserved).****§§ 3810.21—3810.25. (Reserved).****§§ 3810.31—3810.41. (Reserved).****§§ 3810.51—3810.56. (Reserved).****§§ 3810.61—3810.68. (Reserved).****§ 3810.81. (Reserved).****§ 3810.82. (Reserved).****§§ 3810.91—3810.94. (Reserved).****§§ 3810.101—3810.103. (Reserved).****PART VII. MENTAL HEALTH MANUAL****Subpart E. RESIDENTIAL AGENCIES FACILITIES/SERVICES****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, which are governed by Chapter 3800 (relating to child residential and day treatment facilities).

(c) This chapter applies to host homes serving one or more children.

**§ 5310.6. Definitions.**

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

*CRRS—Community residential rehabilitation services—* Transitional residential programs in community settings for persons with chronic psychiatric disability. CRRS's provide housing, personal assistance and psychosocial rehabilitation to clients in nonmedical settings. There are two levels of care, full or partial, which are distinguished by the level of functioning of the clients served and the intensity of rehabilitation and training services provided by CRRS staff to the clients. In both levels of care, the provider acts as landlord to the client. Except host homes for children, every site used by a CRRS to house clients is owned, held, leased or controlled by the provider or a provider-affiliate.

*Child—*A person who is under 18 years of age and who is not an emancipated minor.

*Full-care CRRS for adults—*A program that provides living accommodations for the client with staff onsite whenever a client is there and a full range of personal assistance and psychosocial rehabilitation for psychiatrically disabled adults who display severe community adjustment problems and who require an intensive, structured living situation.

*Full-care CRRS for children—*A program providing living accommodations with maximum supervision, personal assistance and a full range of psycho-social rehabilitation services for psychiatrically disabled children who display severe interpersonal adjustment problems and who require an intensive, structured living situation.

*Host home for children—*A private residence of a family, other than the home of the child's parents, with whom the CRRS contracts to provide a structured living arrangement for one to three children.

*Mental disorder—*Conditions classified as mental disorders by the International Classification of Diseases (ICD-9-CM) excluding mental retardation and drug/alcohol conditions.

*Mental health professional—*A person trained in a generally recognized clinical discipline, including, but not limited to, psychiatry, social work, psychology, nursing, rehabilitation, special education or activity therapies who has a graduate degree and clinical experience.

*Mobile ambulatory—*Able to walk without assistance.



*Mobile nonambulatory*—The ability to move from place to place with the use of devices such as walkers, crutches, wheelchairs, wheeled platforms, and the like, by a person who is otherwise unable to walk independently.

*Parent*—The mother or father by birth or adoption or the legal guardian of the child.

*Partial-care CRRS*—A program that provides living accommodations for the client. Staff is at the site on a regularly scheduled basis including evenings and weekends. A limited range of personal assistance and psychosocial services are provided for psychiatrically disabled adults who display community adjustment problems and require a living situation which includes rehabilitation and training services.

**Subchapter C. CHILDREN SERVICES  
GENERAL PROVISIONS**

**§ 5310.92. Applicability.**

(a) This subchapter applies to all 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 a partial-care CRRS nor in a CRRS site in which adults are served.

(b) When a CRRS accepts a child who is in the legal custody of the county children and youth agency or a public or private social service agency for placement in CRRS group home or host home, the requirements of Chapter 3800 (relating to child residential and day treatment facilities) apply. These requirements are additional to the requirements in this chapter.

**PHYSICAL FACILITY STANDARDS**

**§ 5310.161. (Reserved).**

**Subpart E. RESIDENTIAL  
AGENCIES/FACILITIES/SERVICES  
ARTICLE I. LICENSING/APPROVAL**

**CHAPTER 6400. COMMUNITY HOMES FOR  
INDIVIDUALS WITH MENTAL RETARDATION**

**§ 6400.3. Applicability.**

(a) This chapter applies to community homes for people with mental retardation, except as provided in subsection (f).

(b) This chapter contains the minimum requirements that shall be met to obtain a certificate of compliance. A certificate of compliance shall be obtained prior to opera-

tion of a community home for people with mental retardation.

(c) This chapter applies to profit, nonprofit, publicly funded and privately funded homes.

(d) Each home serving nine or more individuals shall be inspected by the Department each year and shall have an individual certificate of compliance specific for each building.

(e) Each agency operating one or more homes serving eight or fewer individuals shall have at least a sample of its homes inspected by the Department each year. The certificate of compliance issued to an agency shall specify the location and maximum capacity of each home the agency is permitted to operate.

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

(1) Private homes of persons providing care to a relative with mental retardation.

(2) Residential facilities operated by the Department.

(3) Intermediate care facilities for the mentally retarded licensed by the Department in accordance with Chapter 6600 (relating to intermediate care facilities for the mentally retarded).

(4) Foster family care homes licensed by the Office of Children, Youth and Families of the Department that serve only foster care children.

(5) Summer camps.

(6) Facilities serving exclusively personal care home, drug and alcohol, mental health or domiciliary care residents.

(7) Residential homes for three or fewer people with mental retardation who are 18 years of age or older and who need a yearly average of 30 hours or less direct staff contact per week per home.

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

(g) This chapter does not measure or assure compliance with other applicable Federal, State and local statutes, regulations, codes and ordinances. It is the responsibility of the home to comply with other applicable laws, regulations, codes and ordinances.

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