

PROPOSED RULEMAKING

STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

[49 PA. CODE CHS. 47—49]

Child Abuse Reporting Requirements

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) proposes to amend §§ 47.12, 47.32, 47.51—47.57, 48.12, 48.32, 48.51—48.57, 49.12, 49.32 and 49.51—49.57 and add §§ 47.58, 47.59, 48.58, 48.59, 49.58 and 49.59 to read as set forth in Annex A.

Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

Section 6(2) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (63 P.S. § 1906(2)) sets forth the Board's general rulemaking authority. Under sections 6301—6386 of 23 Pa.C.S. (relating to Child Protective Services Law) (CPSL), specifically section 6383(b)(2) of the CPSL (relating to education and training), the Board is required to promulgate regulations to implement the mandatory reporting requirements for licensees of the Board.

Background and Purpose

Beginning in 2014, and continuing through 2019, the General Assembly made numerous amendments to the CPSL, including the requirement imposed under the act of April 15, 2014 (P.L. 411, No. 31) (Act 31) on all health-related boards to require training in child abuse recognition and reporting for licensees who are considered "mandated reporters" under the CPSL. Section 2 of Act 31 provided that these training requirements would apply to all persons applying for a license, or applying for renewal of a license, on or after January 1, 2015, and were implemented as of that date. This proposed rulemaking is required to update the Board's existing regulations on the subject of child abuse reporting to be consistent with the CPSL.

Description of the Proposed Amendments

The Board proposes to amend §§ 47.12, 48.12 and 49.12 (relating to qualifications for licensure; and general qualifications for licensure) to include the requirement that any applicant for licensure complete at least 3 hours of training in child abuse recognition and reporting as a condition of licensure as required by section 6383(b)(3)(i) of the CPSL. Similarly, the Board proposes to amend §§ 47.32, 48.32 and 49.32 (relating to requirement for biennial renewal) to set forth the requirement in section 6383(b)(3)(ii) of the CPSL that all licensees applying for biennial renewal complete at least 2 hours of continuing education in child abuse recognition and reporting as a condition of renewal.

The Board next proposes comprehensive amendments to the child abuse reporting requirements in Chapters 47, 48 and 49 (relating to State Board of Social Workers, Marriage and Family Therapists and Professional Coun-

selors; State Board of Social Workers, Marriage and Family Therapists and Professional Counselors—licensure of marriage and family therapists; and State Board of Social Workers, Marriage and Family Therapists and Professional Counselors—licensure of professional counselors) to be consistent with the CPSL. The Board proposes to amend §§ 47.51, 48.51 and 49.51 (relating to definitions relating to child abuse reporting requirements) to update the definitions of terms used in the CPSL. Specifically, the Board finds it necessary to add definitions of "bodily injury," "child," "parent," "program, activity or service" and "serious physical neglect" and to amend the definitions of "child abuse," "perpetrator," "person responsible for the child's welfare," "recent acts or omissions" and "sexual abuse or exploitation" to comport with amendments made to the CPSL. The Board also proposes to add definitions for the terms "Bureau" and "mandated reporter" for ease of reference. All licensees of the Board are considered "mandated reporters" under the CPSL. Although section 6311(a)(12) of the CPSL (relating to persons required to report suspected child abuse) provides that "[a]n individual supervised or managed by a person" licensed or certified to practice in any health-related field under the jurisdiction of the Department of State who has direct contact with children in the course of employment is also considered a mandated reporter, this proposed rulemaking does not include those individuals because the Board does not otherwise regulate them and cannot enforce the requirements of the CPSL as to unlicensed persons. However, the Board reminds its licensees that individuals they supervise or manage who have direct contact with children in the course of their employment are considered mandated reporters and should be aware of the reporting requirements under the CPSL.

The Board proposes to delete definitions for "individual residing in the same home as the child" and "serious physical injury" because these terms have been deleted from the CPSL. The Board proposes to amend, where necessary throughout this proposed rulemaking, "Department of Public Welfare" to "Department of Human Services," as the name of that agency has changed.

The Board is proposing to amend §§ 47.52, 48.52 and 49.52 (relating to suspected child abuse—mandated reporting requirements) to provide the general rule that all licensees of the Board are considered mandated reporters, and to set forth the mandated reporting requirements in section 6311 of the CPSL and the reporting procedures in section 6313 of the CPSL (relating to reporting procedure).

The Board proposes to amend §§ 47.53, 48.53 and 49.53 (relating to photographs, medical tests and X-rays of child subject to report) by renaming these sections and amending them to delete medical tests and X-rays because licensees of the Board are not authorized to determine that medical tests and X-rays are "clinically indicated" as required by the CPSL, or to order such tests or X-rays. Because doing so would be beyond the scope of practice of a licensed bachelor social worker, licensed social worker, licensed clinical social worker, licensed marriage and family therapist or licensed professional counselor, the Board finds that these amendments will provide clarity to licensees as to the extent of their authority. In addition, amendments are being made to set forth the requirement to submit summaries or reports relating to photographs taken to the county children and

youth social service agency within 48 hours of making an electronic report in accordance with section 6314 of the CPSL (relating to photographs, medical tests and X-rays of child subject to report).

The Board is proposing to amend §§ 47.54, 48.54 and 49.54 (relating to suspected death as a result of child abuse—mandated reporting requirement) to incorporate an amendment made to section 6317 of the CPSL (relating to mandatory reporting and postmortem investigation of deaths) to permit a report to be made to the appropriate coroner or medical examiner of the county where the death occurred, or of the county where the injuries were sustained. Further, the Board is proposing to amend §§ 47.55, 48.55 and 49.55 (relating to immunity from liability) to incorporate amendments made to section 6318 of the CPSL (relating to immunity from liability); and to amend §§ 47.56, 48.56 and 49.56 (relating to confidentiality—waived) to incorporate the provisions of sections 6311.1 of the CPSL (relating to privileged communications) and 6313(e) of the CPSL, pertaining to the applicability of the Mental Health Procedures Act (50 P.S. §§ 7101—7503). Next, the Board proposes to amend §§ 47.57, 48.57 and 49.57 (relating to noncompliance) to update the criminal penalties for willful failure to make a report to conform to the increased criminal penalties in the amendments to section 6319 of the CPSL (relating to penalties).

The Board proposes to add two new sections to Chapters 47, 48 and 49 pertaining to the mandatory training requirements in Act 31 of 2014. Proposed §§ 47.58, 48.58 and 49.58 (relating to child abuse recognition and reporting—mandatory training requirement) set forth the requirements in section 6383(b) of the CPSL that all individuals applying to the Board for an initial license are required to complete at least 3 hours of training in child abuse recognition and reporting which has been approved by the Department of Human Services and that all licensees seeking renewal of a license are required to complete at least 2 hours of continuing education in child abuse recognition and reporting as a requirement of renewal. The Board would also provide notice that these 2 or more hours of training would be accepted as a portion of the total continuing education required for biennial renewal, and not an additional requirement, as provided in section 6383(b)(3)(ii) of the CPSL. In addition, the Board would provide notice that it will not renew a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the licensee in an approved course or the licensee has obtained an exemption as permitted by the CPSL.

These proposed sections would also include the process for applying for an exemption from the mandatory training requirements as set forth in section 6383(b)(4) and (6) of the CPSL, for individuals who have already completed similar training or should otherwise not be subject to the initial training or continuing education requirement. The Board notes that section 6383(b)(4)(ii)(B) of the CPSL provides an exemption for individuals who have already completed child abuse recognition training required by the Human Services Code (62 P.S. §§ 101—1503) (formerly known as the Public Welfare Code), and the training was approved by the Department of Human Services. However, the Department of Human Services has confirmed that there is no provision in the Human Services Code that requires this training. Instead, section 6383(c) of the CPSL sets forth the requirement that certain individuals and entities regulated by the Department of Human Services complete mandated reporter

training. Therefore, the Board believes it is appropriate to include an exemption for a licensee who has already completed comparable training in child abuse recognition and reporting required by the Department of Human Services under section 6383(c). For example, if a licensee of the Board happened to be a foster parent and was, therefore, required to complete the training under section 6383(c), there would be no need to repeat the training as a condition of licensure or license renewal under section 6383(b). In addition, section 6383(b)(6) permits the Board to exempt a licensee from the training requirement “if the licensee submits documentation acceptable to the licensing board that the licensee should not be subject to the training or continuing education requirement.” The Board believes that this section also provides authority to the Board to determine that those licensees who are required to complete comparable training under section 6383(c) should be exempt from the training requirement under section 6383(b), provided they submit acceptable documentation to the Board evidencing completion of comparable training.

Finally, the Board proposes to add §§ 47.59, 48.59 and 49.59 (relating to child abuse recognition and reporting course approval process) to set forth the administrative process developed by the Bureau of Professional and Occupational Affairs (Bureau), in conjunction with the Department of Human Services, for individuals, entities and organizations to apply for approval to deliver the training required under the act of April 15, 2014 (P.L. 411 No. 31) (Act 31). The Bureau has incorporated a requirement that to be approved to provide the mandatory training in child abuse recognition and reporting, an applicant shall be able to report participation/attendance electronically to the Bureau. In this manner, the completion of the training is automatically imported into the applicant’s or licensee’s record with the Board at the time the course is completed. Then, prior to issuing or renewing a license, the system verifies that the training was completed as required. If no record exists, the applicant/licensee would be notified of the need to complete an approved course before the license can be issued or renewed.

Fiscal Impact and Paperwork Requirements

The Board does not anticipate any significant fiscal impact or paperwork requirements relating to these proposed amendments. Because licensees are already required to complete mandatory continuing education, and these 2 hours in child abuse recognition and reporting are incorporated in the existing requirement, there would not be an increased burden. Only applicants for licensure would incur an additional requirement and, as there are many low-cost and free options available to complete the training, the Board anticipates this impact to also be minimal. Because all approved Act 31 training providers are required to report attendance/participation electronically, there are no additional paperwork requirements imposed on the regulated community. In addition, the implementation of an electronic reporting system for mandated reporters of child abuse under the CPSL by the Department of Human Services has decreased the paperwork requirements related to the mandatory reporting requirements.

Sunset Date

The Board continuously monitors the effectiveness of its regulations on a fiscal year and biennial basis. Therefore, a sunset date has not been assigned.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on November 24, 2020, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Board, the General Assembly, and the Governor.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to the Regulatory Counsel, Department of State, P.O. Box 69523, Harrisburg, PA 17106-9523, RA-STRegulatoryCounsel@pa.gov, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments should be identified as pertaining to rulemaking 16A-6919 (Child Abuse Reporting Requirements).

JOY E. CORBY, PhD, LMFT,
Chairperson

Fiscal Note: 16A-6919. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 47. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

LICENSURE

§ 47.12. Qualifications for licensure.

General qualifications and requirements for applicants for licensure are as follows:

* * * * *

(5) The applicant has submitted two Certificates of Recommendation on forms furnished by the Board.

[(6) The applicant has submitted an affirmation signed by the applicant verifying the information on the application.]

(6) The applicant has completed at least 3 hours of training in child abuse recognition and reporting in accordance with § 47.58(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(7) The applicant has submitted an affirmation signed by the applicant verifying the information on the application.

CONTINUING EDUCATION

§ 47.32. Requirement for biennial renewal.

The Board requires, as a condition of biennial renewal of a bachelor social worker’s license, a social worker’s license or a clinical social worker’s license, the completion during the preceding biennium of 30 clock hours of continuing education in acceptable courses and programs in social work offered by approved providers. Excess clock hours may not be carried over to the next biennium. At least 3 of the required 30 clock hours must be related to ethical issues and at least 2 clock hours must be in child abuse recognition and reporting in accordance with § 47.58(b) (relating to child abuse recognition and reporting—mandatory training requirement).

CHILD ABUSE REPORTING REQUIREMENTS

§ 47.51. Definitions relating to child abuse reporting requirements.

The following words and terms, when used in this section and [§§ 47.52—47.57] §§ 47.52—47.59 (relating to child abuse reporting requirements), have the following meanings, unless the context clearly indicates otherwise:

Bodily injury—Impairment of physical condition or substantial pain.

Bureau—Bureau of Professional and Occupational Affairs within the Department of State of the Commonwealth.

Child—An individual under 18 years of age.

Child abuse—[A term meaning any of the following:

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child’s life or development or impairs the child’s functioning.] Intentionally, knowingly or recklessly doing any of the following:

(i) Causing bodily injury to a child through any recent act or failure to act.

(ii) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.

(iii) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.

(iv) Causing sexual abuse or exploitation of a child through any act or failure to act.

(v) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.

(vi) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.

(vii) Causing serious physical neglect of a child.

(viii) Engaging in any of the following recent acts:

(A) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.

(B) Unreasonably restraining or confining a child, based on consideration of the method, location or duration of the restraint or confinement.

(C) Forcefully shaking a child under 1 year of age.

(D) Forcefully slapping or otherwise striking a child under 1 year of age.

(E) Interfering with the breathing of a child.

(F) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.

(G) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:

(I) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), when the victim of the sexual offense was under 18 years of age when the crime was committed.

(II) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.

(III) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).

(IV) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.58 (relating to assessments) or has to register for life under 42 Pa.C.S. § 9799.55(b) (relating to registration).

(ix) Causing the death of the child through any act or failure to act.

(x) Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

ChildLine—An organizational unit of the Department of [**Public Welfare**] **Human Services**, which operates a 24-hour a day Statewide toll-free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

[*Individual residing in the same home as the child*—An individual who is 14 years of age or older and who resides in the same home as the child.]

Mandated reporter—A person who is required under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse) to make a report of suspected child abuse. For purposes of this chapter, the term includes all licensed bachelor social workers, licensed social workers and licensed clinical social workers.

Parent—A biological parent, adoptive parent or legal guardian.

Perpetrator—[A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent] A person who has committed child abuse as defined in this section.

(i) This term includes only the following:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) A person 14 years of age or older and responsible for the child's welfare or having direct contact with children as an employee of child-care services, a school or through a program, activity or service.

(E) An individual 14 years of age or older who resides in the same home as the child.

(F) An individual 18 years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption of the child.

(G) An individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

(ii) Only the following may be considered a perpetrator for failing to act, as provided in this section:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) A person 18 years of age or older and responsible for the child's welfare.

(E) A person 18 years of age or older who resides in the same home as the child.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. [**The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school**].

Program, activity or service—Any of the following in which children participate and which is sponsored by a school or a public or private organization:

- (i) A youth camp or program.
- (ii) A recreational camp or program.
- (iii) A sports or athletic program.
- (iv) A community or social outreach program.
- (v) An enrichment or educational program.
- (vi) A troop, club or similar organization.

Recent [acts or omissions—Acts or omissions] act or failure to act—An act or failure to act committed within 2 years of the date of the report to the Department of [Public Welfare] Human Services or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

- (i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.
- (ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

[Serious physical injury—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.]

Serious physical neglect—Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:

- (i) A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.
- (ii) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.

Sexual abuse or exploitation—[The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct or a simulation of sexually explicit conduct for the purpose of producing a visual depiction, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault or other form of sexual exploitation of children.] Any of the following:

(i) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes the following:

(A) Looking at sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.

(B) Participating in sexually explicit conversation either in person, by telephone, by computer or

by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.

(C) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.

(D) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

(ii) Any of the following offenses committed against a child:

(A) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

(B) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

(C) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(D) Sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(E) Institutional sexual assault as defined in 18 Pa.C.S. 3124.2 (relating to institutional sexual assault).

(F) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(G) Indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).

(H) Indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).

(I) Incest as defined in 18 Pa.C.S. § 4302 (relating to incest).

(J) Prostitution as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).

(K) Sexual abuse as defined in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

(L) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

(M) Sexual exploitation as defined in 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

(iii) For the purposes of subparagraph (i), the term does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within 4 years of the child's age.

§ 47.52. Suspected child abuse—mandated reporting requirements.

(a) General rule. Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), licensed bachelor social workers [who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare and to the appropriate county agency when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse.], licensed social workers and

licensed clinical social workers are considered mandated reporters. A mandated reporter shall make a report of suspected child abuse in accordance with this section if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

(1) The mandated reporter comes into contact with the child in the course of employment, occupation and practice of the profession or through a regularly scheduled program, activity or service.

(2) The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.

(3) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.

(4) An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

(b) Staff members of public or private agencies, institutions and facilities. [Licensed social workers who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse. Upon notification by the licensed social worker, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d)] Whenever a licensed bachelor social worker, licensed social worker or licensed clinical social worker (licensee) is required to make a report under subsection (a) in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, that licensee shall report immediately in accordance with subsection (c) and shall immediately thereafter notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge.

(c) Reporting procedure. [Reports of suspected child abuse shall be made by telephone and by written report.

(1) Oral reports. Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) Written reports. Written reports shall be made to the appropriate county agency within 48 hours after the oral report is made by telephone and must contain, at a minimum, the information required by the Department of Public Welfare in 55 Pa. Code § 3490.18 (relating to filing of a written report by a required reporter).]

(1) A mandated reporter shall immediately make a report of suspected child abuse to the Department of Human Services by either:

(i) Making an oral report of suspected child abuse by telephone to ChildLine at (800) 932-0313, followed by a written report within 48 hours to the Department of Human Services or the county agency assigned to the case in a manner and format prescribed by the Department of Human Services. The written report submitted under this subparagraph may be submitted electronically.

(ii) Making an electronic report of suspected child abuse in accordance with 23 Pa.C.S. § 6305 (related to electronic reporting) through the Department of Human Service's Child Welfare Information Solution self-service portal at www.compass.state.pa.us/cwis. A confirmation by the Department of Human Services of the receipt of a report of suspected child abuse submitted electronically relieves the mandated reporter of the duty to make an additional oral or written report.

(2) A written or electronic report of suspected child abuse must include the following information, if known:

(i) The names and addresses of the child, the child's parents and any other person responsible for the child's welfare.

(ii) Where the suspected child abuse occurred.

(iii) The age and sex of each subject of the report.

(iv) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or any sibling of the child.

(v) The name and relationship of each individual responsible for causing the suspected abuse and any evidence of prior abuse by each individual.

(vi) Family composition.

(vii) The source of the report.

(viii) The name, telephone number and e-mail address of the person making the report.

(ix) The actions taken by the person making the report, including actions taken under 23 Pa.C.S. §§ 6314—6317.

(x) Other information required by Federal law or regulation.

(xi) Other information that the Department of Human Services may require by regulation.

§ 47.53. Photographs[, medical tests and X-rays] of child subject to report.

A licensed bachelor social worker, licensed social worker or licensed clinical social worker may take or cause to be taken photographs of the child who is subject to a report [and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries]. Summaries or reports of the photographs[, X-rays and relevant medical tests] taken shall be sent to the county children and youth social service agency at the time the written report is sent, or within 48 hours after an electronic report is made under § 47.52(c)(1)(ii) (relating to suspected child abuse—mandated reporting requirements), or as soon thereafter as possible. The county children and youth social

service agency shall have access to actual photographs or duplicates [**and X-rays**] and may obtain them or duplicates of them upon request.

§ 47.54. Suspected death as a result of child abuse—mandated reporting requirement.

A licensed **bachelor social worker, licensed social worker or licensed clinical social worker** who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner **or medical examiner** of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner **or medical examiner** of the county where the injuries were sustained.

§ 47.55. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability) a licensed **bachelor social worker, licensed social worker or licensed clinical social worker** who participates in good faith in the making of a report of **suspected child abuse, making a referral for general protective services, cooperating or consulting with an investigation including providing information to a child fatality or near fatality review team, testifying in a proceeding arising out of an instance of suspected child abuse or general protective services or [the taking of photographs] engaging in any action authorized under 23 Pa.C.S. §§ 6314—6317**, shall have immunity from civil and criminal liability that might **otherwise** result by reason of the [**licensed social worker's**] actions of the **licensed bachelor social worker, licensed social worker or licensed clinical social worker**. For the purpose of any civil or criminal proceeding, the good faith of the licensed **bachelor social worker, licensed social worker or licensed clinical social worker** shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a [**licensed social worker's actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs**] licensee's actions under §§ 47.52—47.54 (relating to suspected child abuse—mandated reporting requirements; photographs of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement).

§ 47.56. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 47.52—47.54 (relating to suspected child abuse—mandated reporting requirements; photographs[, **medical tests and X-rays**] of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over the provisions of any client confidentiality, ethical principle or professional standard that might otherwise apply. **In accordance with 23 Pa.C.S. § 6311.1 (relating to privileged communications), privileged communications between a mandated reporter and a patient/client does not apply to a situation involving child abuse and does not relieve the mandated reporter of the duty to make a report of suspected child abuse. Additionally, under 23 Pa.C.S. § 6313(e) (relating to reporting procedure), notwithstanding any other provision of law to the contrary, a mandated reporter who makes a report of suspected child**

abuse does not violate the Mental Health Procedures Act (50 P.S. §§ 7101—7503) by releasing information necessary to complete the report.

§ 47.57. Noncompliance.

(a) *Disciplinary action.* A licensed **bachelor social worker, licensed social worker or licensed clinical social worker** who willfully fails to comply with the reporting requirements in §§ 47.52—47.54 (relating to suspected child abuse—mandated reporting requirements; photographs[, **medical tests and X-rays**] of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 11 of the act (63 P.S. § 1911).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties [**for failure to report**]), a licensed **bachelor social worker, licensed social worker or licensed clinical social worker** who is required to report a case of suspected child abuse **or to make a referral to the appropriate authorities and** who willfully fails to do so commits [**a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation**] **a criminal offense, as follows:**

(1) **An offense not otherwise specified in paragraphs (2), (3) or (4) is a misdemeanor of the second degree.**

(2) **An offense is a felony of the third degree if all of the following apply:**

(i) **The mandated reporter willfully fails to report.**

(ii) **The child abuse constitutes a felony of the first degree or higher.**

(iii) **The mandated reporter has direct knowledge of the nature of the abuse.**

(3) **If the willful failure to report continues while the mandated reporter knows or has reasonable cause to suspect a child is being subjected to child abuse by the same individual, or while the mandated reporter knows or has reasonable cause to suspect that the same individual continues to have direct contact with children through the individual's employment, program, activity or service, the mandated reporter commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the mandated reporter commits a felony of the second degree.**

(4) **A mandated reporter who, at the time of sentencing for an offense under 23 Pa.C.S. § 6319, has been convicted of a prior offense under 23 Pa.C.S. § 6319, commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the penalty for the second or subsequent offense is a felony of the second degree.**

(Editor's Note: The following sections are proposed to be added and printed in regular type to enhance readability.)

§ 47.58. Child abuse recognition and reporting—mandatory training requirement.

(a) Except as provided in subsection (c), individuals applying to the Board for a license shall complete, as a condition of licensure, at least 3 hours of training in child abuse recognition and reporting requirements which has been approved by the Department of Human Services.

(b) Except as provided in subsection (c), licensees seeking renewal of a license issued by the Board shall complete, as a condition of biennial renewal of the license, at least 2 hours of approved continuing education in child abuse recognition and reporting, as a portion of the total continuing education required for biennial renewal. For credit to be granted, the continuing education course or program must be approved by the Bureau, in consultation with the Department of Human Services, as set forth in § 47.59 (relating to child abuse recognition and reporting course approval process). The Board will not renew a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the licensee in an approved course or the licensee has obtained an exemption under subsection (c).

(c) An applicant or licensee may apply in writing for an exemption from the training/continuing education requirements set forth in subsections (a) and (b) provided the applicant or licensee meets one of the following:

(1) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training as required by section 1205.6 of the Public School Code of 1949 (24 P.S. § 12-1205.6).

(ii) The training was approved by the Department of Education in consultation with the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(2) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training required by 23 Pa.C.S. § 6383(c) (relating to education and training).

(ii) The training was approved by the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(3) The applicant or licensee submits documentation demonstrating that the applicant or licensee should not be subject to the training or continuing education requirement. Each request for an exemption under this paragraph will be considered on a case-by-case basis.

§ 47.59. Child abuse recognition and reporting course approval process.

(a) An individual, entity or organization may apply for approval to provide mandated reporter training as required under 23 Pa.C.S. § 6383(b) (relating to education and training) by submitting the course materials set forth in subsection (b) simultaneously to the Department of Human Services, Office of Children, Youth and Families, and to the Bureau at the following addresses:

(1) Department of Human Services, Office of Children, Youth and Families, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120 or electronically at RA-PWOCYFCPSL@pa.gov.

(2) Bureau of Professional and Occupational Affairs, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649 or electronically at RA-stcpsl_course_app@pa.gov.

(b) Submissions must include the following:

(1) Contact information (mailing address, e-mail address and telephone number) for the agency/course administrator.

(2) General description of the training and course delivery method.

(3) Title of the course.

(4) Timed agenda and estimated hours of training.

(5) Learning objectives.

(6) Intended audience.

(7) All course related materials, including as applicable:

(i) Handouts.

(ii) Narrated script or talking points.

(iii) Interactive activities or exercises.

(iv) Videos and audio/visual content.

(v) Knowledge checks, quizzes or other means of assessing participant's understanding of the material.

(vi) For online courses, a transcript of audio training.

(8) Citation of sources, including written permission to use copyrighted material, if applicable.

(9) Anticipated credentials or experience of the presenter, or biography of presenter, if known.

(10) Printed materials used to market the training.

(11) Evaluation used to assess participants' satisfaction with the training.

(12) Sample certificate of attendance/participation, which must include:

(i) Name of participant.

(ii) Title of training.

(iii) Date of training.

(iv) Length of training (2 or 3 hours).

(v) Name and signature of the authorized representative of the provider. The signature may be an electronic signature.

(vi) Statement affirming the participant attended the entire course.

(13) Verification of ability to report participation/attendance electronically to the Bureau in a format prescribed by the Bureau.

(c) The Bureau will notify the applicant in writing upon approval of the course and will post a list of approved courses on the Bureau's web site and the Board's web site.

CHAPTER 48. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF MARRIAGE AND FAMILY THERAPISTS

LICENSURE

§ 48.12. General qualifications for licensure.

General qualifications and requirements for applicants for licensure are as follows:

* * * * *

(5) The applicant has submitted two certificates of recommendation on forms furnished by the Board.

[(6) The applicant has submitted an affirmation signed by the applicant verifying the information on the application.]

(6) The applicant has completed at least 3 hours of training in child abuse recognition and reporting in accordance with § 48.58(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(7) The applicant has submitted an affirmation signed by the applicant verifying the information on the application.

CONTINUING EDUCATION

§ 48.32. Requirement for biennial renewal.

[For 2009 renewals and thereafter, the Board will require] **The Board requires**, as a condition of biennial renewal of a marriage and family therapist's license, the completion during the preceding biennium of 30 clock hours of continuing education in acceptable courses and programs offered by approved providers [**which shall include at least 3 clock hours in ethical issues**]. Up to 20 clock hours may be obtained by home study. Excess clock hours may not be carried over to the next biennium. **At least 3 of the required 30 clock hours must be related to ethical issues and at least 2 of the required 30 clock hours must be completed in child abuse recognition and reporting in accordance with § 48.58(b) (relating to child abuse recognition and reporting—mandatory training requirement).**

CHILD ABUSE REPORTING REQUIREMENTS

§ 48.51. Definitions relating to child abuse reporting requirements.

The following words and terms, when used in this section and [§§ 48.52—48.57] §§ 48.52—48.59 (relating to child abuse reporting requirements), have the following meanings, unless the context clearly indicates otherwise:

Bodily injury—Impairment of physical condition or substantial pain.

Bureau—Bureau of Professional and Occupational Affairs within the Department of State of the Commonwealth.

Child—An individual under 18 years of age.

Child abuse—[The term includes any of the following:

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's

functioning.] **Intentionally, knowingly or recklessly doing any of the following:**

(i) Causing bodily injury to a child through any recent act or failure to act.

(ii) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.

(iii) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.

(iv) Causing sexual abuse or exploitation of a child through any act or failure to act.

(v) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.

(vi) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.

(vii) Causing serious physical neglect of a child.

(viii) Engaging in any of the following recent acts:

(A) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.

(B) Unreasonably restraining or confining a child, based on consideration of the method, location or duration of the restraint or confinement.

(C) Forcefully shaking a child under 1 year of age.

(D) Forcefully slapping or otherwise striking a child under 1 year of age.

(E) Interfering with the breathing of a child.

(F) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.

(G) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:

(I) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), when the victim of the sexual offense was under 18 years of age when the crime was committed.

(II) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.

(III) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).

(IV) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.58 (relating to assessments) or has to register for life under 42 Pa.C.S. § 9799.55(b) (relating to registration).

(ix) Causing the death of the child through any act or failure to act.

(x) Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

ChildLine—An organizational unit of the Department of [**Public Welfare**] **Human Services**, which operates a 24-hour a day Statewide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

[Individual residing in the same home as the child—An individual who is 14 years of age or older and who resides in the same home as the child.]

Mandated reporter—A person who is required under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse) to make a report of suspected child abuse. For purposes of this chapter, the term includes all licensed marriage and family therapists.

Parent—A biological parent, adoptive parent or legal guardian.

Perpetrator—[A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent] **A person who has committed child abuse as defined in this section.**

(i) This term includes only the following:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) A person 14 years of age or older and responsible for the child's welfare or having direct contact with children as an employee of child-care services, a school or through a program, activity or service.

(E) An individual 14 years of age or older who resides in the same home as the child.

(F) An individual 18 years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption to the child.

(G) An individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

(ii) Only the following may be considered a perpetrator for failing to act, as provided in this section:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) A person 18 years of age or older and responsible for the child's welfare.

(E) A person 18 years of age or older who resides in the same home as the child.

Person responsible for the child's welfare—

[(i)] A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control.

[(ii)] **The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.]**

Program, activity or service—Any of the following in which children participate and which is sponsored by a school or public or private organization:

(i) A youth camp or program.

(ii) A recreational camp or program.

(iii) A sports or athletic program.

(iv) A community or social outreach program.

(v) An enrichment or educational program.

(vi) A troop, club or similar organization.

Recent [acts or omissions—Acts or omissions] act or failure to act—An act or failure to act committed within 2 years of the date of the report to the Department of [**Public Welfare**] **Human Services** or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

[*Serious physical injury*—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.]

Serious physical neglect—Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:

(i) A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.

(ii) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.

Sexual abuse or exploitation—[The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct or a simulation of sexually explicit conduct for the purpose of producing a visual depiction, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, ag-

gravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault or other form of sexual exploitation of children.] Any of the following:

(i) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes the following:

(A) Looking at sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.

(B) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.

(C) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.

(D) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

(ii) Any of the following offenses committed against a child:

(A) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

(B) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

(C) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(D) Sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(E) Institutional sexual assault as defined in 18 Pa.C.S. 3124.2 (relating to institutional sexual assault).

(F) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(G) Indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).

(H) Indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).

(I) Incest as defined in 18 Pa.C.S. § 4302 (relating to incest).

(J) Prostitution as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).

(K) Sexual abuse as defined in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

(L) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

(M) Sexual exploitation as defined in 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

(iii) For the purposes of subparagraph (i), the term does not include consensual activities between a child who is 14 years of age or older and

another person who is 14 years of age or older and whose age is within 4 years of the child's age.

§ 48.52. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), licensed marriage and family therapists [who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare and to the appropriate county agency when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse.] are considered mandated reporters. A mandated reporter shall make a report of suspected child abuse in accordance with this section if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

(1) The mandated reporter comes into contact with the child in the course of employment, occupation and practice of the profession or through a regularly scheduled program, activity or service.

(2) The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.

(3) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.

(4) An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* [Licensed marriage and family therapists who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse. Upon notification by the licensed social worker, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d)] Whenever a licensed marriage and family therapist is required to make a report under subsection (a) in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, that licensed marriage and family therapist shall report immediately in accordance with subsection (c) and shall immediately thereafter notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge.

(c) *Reporting procedure.* [Reports of suspected child abuse shall be made by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) *Written reports.* Written reports shall be made to the appropriate county agency within 48 hours after the oral report is made by telephone and must contain, at a minimum, the information required by the Department of Public Welfare in 55 Pa. Code § 3490.18 (relating to filing of a written report by a required reporter).]

(1) A mandated reporter shall immediately make a report of suspected child abuse to the Department of Human Services by either:

(i) Making an oral report of suspected child abuse by telephone to ChildLine at (800) 932-0313, followed by a written report within 48 hours to the Department of Human Services or the county agency assigned to the case in a manner and format prescribed by the Department of Human Services. The written report submitted under this subparagraph may be submitted electronically.

(ii) Making an electronic report of suspected child abuse in accordance with 23 Pa.C.S. § 6305 (related to electronic reporting) through the Department of Human Services's Child Welfare Information Solution self-service portal at www.compass.state.pa.us/cwis. A confirmation by the Department of Human Services of the receipt of a report of suspected child abuse submitted electronically relieves the mandated reporter of the duty to make an additional oral or written report.

(2) A written or electronic report of suspected child abuse must include the following information, if known:

(i) The names and addresses of the child, the child's parents and any other person responsible for the child's welfare.

(ii) Where the suspected child abuse occurred.

(iii) The age and sex of each subject of the report.

(iv) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or any sibling of the child.

(v) The name and relationship of each individual responsible for causing the suspected abuse and any evidence of prior abuse by each individual.

(vi) Family composition.

(vii) The source of the report.

(viii) The name, telephone number and e-mail address of the person making the report.

(ix) The actions taken by the person making the report, including actions taken under 23 Pa.C.S. §§ 6314—6317.

(x) Other information required by Federal law or regulation.

(xi) Other information that the Department of Human Services may require by regulation.

§ 48.53. Photographs [, medical tests and X-rays] of child subject to report.

A licensed marriage and family therapist may take or cause to be taken photographs of the child who is subject

to a report [and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries], Summaries or reports of the photographs [, X-rays and relevant medical tests] taken shall be sent to the county children and youth social service agency at the time the written report is sent, or within 48 hours after an electronic report is made under § 48.52(c)(1)(ii) (relating to suspected child abuse—mandated reporting requirements), or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates [and X-rays] and may obtain them or duplicates of them upon request.

§ 48.54. Suspected death as a result of child abuse—mandated reporting requirement.

A licensed marriage and family therapist who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner or medical examiner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner or medical examiner of the county where the injuries were sustained.

§ 48.55. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability) a licensed marriage and family therapist who participates in good faith in the making of a report of suspected child abuse, making a referral for general protective services, cooperating or consulting with an investigation including providing information to a child fatality or near fatality review team, testifying in a proceeding arising out of an instance of suspected child abuse or general protective services or [the taking of photographs] engaging in any action authorized under 23 Pa.C.S. §§ 6314—6317, shall have immunity from civil and criminal liability that might otherwise result by reason of the licensed marriage and family therapist's actions. For the purpose of any civil or criminal proceeding, the good faith of the licensed marriage and family therapist shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a licensed marriage and family therapist's actions [in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs] under §§ 48.52—48.54 (relating to suspected child abuse—mandated reporting requirements; photographs of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement).

§ 48.56. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 48.52—48.54 (relating to suspected child abuse—mandated reporting requirements; photographs [, medical tests and X-rays] of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over the provisions of any client confidentiality, ethical principle or professional standard that might otherwise apply. In accordance with 23 Pa.C.S. § 6311.1 (relating to privileged communications), privileged communications between a mandated reporter and a patient/

client does not apply to a situation involving child abuse and does not relieve the mandated reporter of the duty to make a report of suspected child abuse. Additionally, under 23 Pa.C.S. § 6313(e) (relating to reporting procedure), notwithstanding any other provision of law to the contrary, a mandated reporter who makes a report of suspected child abuse does not violate the Mental Health Procedures Act (50 P.S. §§ 7101—7503) by releasing information necessary to complete the report.

§ 48.57. Noncompliance.

(a) *Disciplinary action.* A licensed marriage and family therapist who willfully fails to comply with the reporting requirements in §§ 48.52—48.54 (relating to suspected child abuse—mandated reporting requirements; photographs[, **medical tests and X-rays**] of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 11 of the act (63 P.S. § 1911).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties [**for failure to report**]), a licensed marriage and family therapist who is required to report a case of suspected child abuse **or to make a referral to the appropriate authorities and** who willfully fails to do so commits [**a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.**] **a criminal offense, as follows:**

(1) An offense not otherwise specified in paragraphs (2), (3) or (4) is a misdemeanor of the second degree.

(2) An offense is a felony of the third degree if all of the following apply:

(i) The mandated reporter willfully fails to report.

(ii) The child abuse constitutes a felony of the first degree or higher.

(iii) The mandated reporter has direct knowledge of the nature of the abuse.

(3) If the willful failure to report continues while the mandated reporter knows or has reasonable cause to suspect a child is being subjected to child abuse by the same individual, or while the mandated reporter knows or has reasonable cause to suspect that the same individual continues to have direct contact with children through the individual's employment, program, activity or service, the mandated reporter commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the mandated reporter commits a felony of the second degree.

(4) A mandated reporter who, at the time of sentencing for an offense under 23 Pa.C.S. § 6319, has been convicted of a prior offense under 23 Pa.C.S. § 6319, commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the penalty for the second or subsequent offense is a felony of the second degree.

(Editor's Note: The following sections are proposed to be added and printed in regular type to enhance readability.)

§ 48.58. Child abuse recognition and reporting—mandatory training requirement.

(a) Except as provided in subsection (c), individuals applying to the Board for a license as a marriage and

family therapist shall complete, as a condition of licensure, at least 3 hours of training in child abuse recognition and reporting requirements which has been approved by the Department of Human Services.

(b) Except as provided in subsection (c), licensed marriage and family therapists seeking renewal of a license issued by the Board shall complete, as a condition of biennial renewal of the license, at least 2 hours of approved continuing education in child abuse recognition and reporting. For credit to be granted, the continuing education course or program must be approved by the Bureau, in consultation with the Department of Human Services, as set forth in § 48.59 (relating to child abuse recognition and reporting course approval process). The Board will not renew a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the licensee in an approved course, or the licensee obtains an exemption under subsection (c).

(c) An applicant or licensee may apply in writing for an exemption from the training/continuing education requirements set forth in subsections (a) and (b) provided the applicant or licensee meets one of the following:

(1) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training as required by section 1205.6 of the Public School Code of 1949 (24 P.S. § 12-1205.6).

(ii) The training was approved by the Department of Education in consultation with the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(2) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training required by 23 Pa.C.S. § 6383(c) (relating to education and training).

(ii) The training was approved by the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(3) The applicant or licensee submits documentation demonstrating that the applicant or licensee should not be subject to the training or continuing education requirement. Each request for an exemption under this paragraph will be considered on a case-by-case basis.

§ 48.59. Child abuse recognition and reporting course approval process.

(a) An individual, entity or organization may apply for approval to provide mandated reporter training as required under 23 Pa.C.S. § 6383(b) (relating to education and training) by submitting the course materials set forth in subsection (b) simultaneously to the Department of Human Services, Office of Children, Youth and Families, and to the Bureau at the following addresses:

(1) Department of Human Services, Office of Children, Youth and Families, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120 or electronically at RA-PWOCYFCPSL@pa.gov.

(2) Bureau of Professional and Occupational Affairs, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649 or electronically at RA-stcpsl_course_app@pa.gov.

(b) Submissions must include the following:

(1) Contact information (mailing address, e-mail address and telephone number) for the agency/course administrator.

(2) General description of the training and course delivery method.

(3) Title of the course.

(4) Timed agenda and estimated hours of training.

(5) Learning objectives.

(6) Intended audience.

(7) All course related materials, including as applicable:

(i) Handouts.

(ii) Narrated script or talking points.

(iii) Interactive activities or exercises.

(iv) Videos and audio/visual content.

(v) Knowledge checks, quizzes or other means of assessing participant's understanding of the material.

(vi) For online courses, a transcript of audio training.

(8) Citation of sources, including written permission to use copyrighted material, if applicable.

(9) Anticipated credentials or experience of the presenter, or biography of presenter, if known.

(10) Printed materials used to market the training.

(11) Evaluation used to assess participants' satisfaction with the training.

(12) Sample certificate of attendance/participation, which must include:

(i) Name of participant.

(ii) Title of training.

(iii) Date of training.

(iv) Length of training (2 or 3 hours).

(v) Name and signature of authorized representative of the providers. The signature may be an electronic signature.

(vi) Statement affirming the participant attended the entire course.

(13) Verification of ability to report participation/attendance electronically to the Bureau in a format prescribed by the Bureau.

(c) The Bureau will notify the applicant in writing upon approval of the course and will post a list of approved courses on the Bureau's web site and the Board's web site.

CHAPTER 49. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF PROFESSIONAL COUNSELORS

LICENSE

§ 49.12. General qualifications for licensure.

General qualifications and requirements for applicants for licensure are as follows:

* * * * *

(5) The applicant has submitted two certificates of recommendation on forms furnished by the Board.

[(6) The applicant has submitted an affirmation signed by the applicant verifying the information on the application.]

(6) The applicant has completed at least 3 hours of training in child abuse recognition and reporting in accordance with § 49.58(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(7) The applicant has submitted an affirmation signed by the applicant verifying the information on the application.

CONTINUING EDUCATION

§ 49.32. Requirement for biennial renewal.

[For 2009 renewals and thereafter, the Board will require] The Board requires, as a condition of biennial renewal of a professional counselor's license, the completion during the preceding biennium of 30 clock hours of continuing education in acceptable courses and programs offered by approved providers **[which shall include at least 3 clock hours in ethical issues]**. Up to 20 clock hours may be obtained by home study. Excess clock hours may not be carried over to the next biennium. **At least 3 of the required 30 clock hours must be related to ethical issues and at least 2 of the required 30 clock hours must be completed in child abuse recognition and reporting in accordance with § 49.58(b) (relating to child abuse recognition and reporting—mandatory training requirement).**

CHILD ABUSE REPORTING REQUIREMENTS

§ 49.51. Definitions relating to child abuse reporting requirements.

The following words and terms, when used in this section and [§§ 49.52—49.57] §§ 49.52—49.59 (relating to child abuse reporting requirements), have the following meanings, unless the context clearly indicates otherwise:

Bodily injury—Impairment of physical condition or substantial pain.

Bureau—Bureau of Professional and Occupational Affairs within the Department of State of the Commonwealth.

Child—An individual under 18 years of age.

Child abuse—[A term meaning any of the following:

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers

a child's life or development or impairs the child's functioning.] Intentionally, knowingly or recklessly doing any of the following:

(i) Causing bodily injury to a child through any recent act or failure to act.

(ii) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.

(iii) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.

(iv) Causing sexual abuse or exploitation of a child through any act or failure to act.

(v) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.

(vi) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.

(vii) Causing serious physical neglect of a child.

(viii) Engaging in any of the following recent acts:

(A) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.

(B) Unreasonably restraining or confining a child, based on consideration of the method, location or duration of the restraint or confinement.

(C) Forcefully shaking a child under 1 year of age.

(D) Forcefully slapping or otherwise striking a child under 1 year of age.

(E) Interfering with the breathing of a child.

(F) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.

(G) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:

(I) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), when the victim of the sexual offense was under 18 years of age when the crime was committed.

(II) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.

(III) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).

(IV) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.58 (relating to assessments) or has to register for life under 42 Pa.C.S. § 9799.55(b) (relating to registration).

(ix) Causing the death of the child through any act or failure to act.

(x) Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

ChildLine—An organizational unit of the Department of [Public Welfare] **Human Services**, which operates a 24-hour a day Statewide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Individual residing in the same home as the child—An individual who is 14 years of age or older and who resides in the same home as the child.]

Mandated reporter—A person who is required under § 49.52 (relating to suspected child abuse—mandated reporting requirements) to make a report of suspected child abuse. For purposes of this chapter, the term includes all licensed professional counselors.

Parent—A biological parent, adoptive parent or legal guardian.

Perpetrator—[A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent] A person who has committed child abuse as defined in this section.

(i) This term includes only the following:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) A person 14 years of age or older and responsible for the child's welfare or having direct contact with children as an employee of child-care services, a school or through a program, activity or service.

(E) An individual 14 years of age or older who resides in the same home as the child.

(F) An individual 18 years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption of the child.

(G) An individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

(ii) Only the following may be considered a perpetrator for failing to act, as provided in this section:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) A person 18 years of age or older and responsible for the child's welfare.

(E) A person 18 years of age or older who resides in the same home as the child.

Person responsible for the child's welfare—

[(i)] A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control.

[(ii)] The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.]

Program, activity or service—Any of the following in which children participate and which is sponsored by a school or by a public or private organization:

- (i) A youth camp or program.
- (ii) A recreational camp or program.
- (iii) A sports or athletic program.
- (iv) A community or social outreach program.
- (v) An enrichment or educational program.
- (vi) A troop, club or similar organization.

Recent [acts or omissions—Acts or omissions] act or failure to act—An act or failure to act committed within 2 years of the date of the report to the Department of [Public Welfare] Human Services or county agency.

*Serious mental injury—*A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

- (i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.
- (ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

[*Serious physical injury—*An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.]

*Serious physical neglect—*Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:

- (i) A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.
- (ii) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.

Sexual abuse or exploitation—[The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct or a simulation of sexually explicit conduct for the purpose of producing a visual depiction, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual

assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault or other form of sexual exploitation of children.]
Any of the following:

(i) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes the following:

(A) Looking at sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.

(B) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.

(C) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.

(D) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

(ii) Any of the following offenses committed against a child:

(A) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

(B) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

(C) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(D) Sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(E) Institutional sexual assault as defined in 18 Pa.C.S. 3124.2 (relating to institutional sexual assault).

(F) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(G) Indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).

(H) Indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).

(I) Incest as defined in 18 Pa.C.S. § 4302 (relating to incest).

(J) Prostitution as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).

(K) Sexual abuse as defined in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

(L) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

(M) Sexual exploitation as defined in 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

(iii) For the purposes of subparagraph (i), the term does not include consensual activities between a child who is 14 years of age or older and

another person who is 14 years of age or older and whose age is within 4 years of the child's age.

§ 49.52. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), licensed professional counselors [who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare and to the appropriate county agency when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse.] are considered mandated reporters. A mandated reporter shall make a report of suspected child abuse in accordance with this section if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

(1) The mandated reporter comes into contact with the child in the course of employment, occupation and practice of the profession or through a regularly scheduled program, activity or service.

(2) The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.

(3) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.

(4) An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* [Licensed professional counselors who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse. Upon notification by the licensed professional counselor, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d)] Whenever a licensed professional counselor is required to make a report under subsection (a) in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, that licensed professional counselor shall report immediately in accordance with subsection (c) and shall immediately thereafter notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge.

(c) *Reporting procedure.* [Reports of suspected child abuse shall be made by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) *Written reports.* Written reports shall be made to the appropriate county agency within 48 hours after the oral report is made by telephone and must contain, at a minimum, the information required by the Department of Public Welfare in 55 Pa. Code § 3490.18 (relating to filing of a written report by a required reporter).]

(1) A mandated reporter shall immediately make a report of suspected child abuse to the Department of Human Services by either:

(i) Making an oral report of suspected child abuse by telephone to ChildLine at (800) 932-0313, followed by a written report within 48 hours to the Department of Human Services or the county agency assigned to the case in a manner and format prescribed by the Department of Human Services. The written report submitted under this subparagraph may be submitted electronically.

(ii) Making an electronic report of suspected child abuse in accordance with 23 Pa.C.S. § 6305 (related to electronic reporting) through the Department of Human Service's Child Welfare Information Solution self-service portal at www.compass.state.pa.us/cwis. A confirmation by the Department of Human Services of the receipt of a report of suspected child abuse submitted electronically relieves the mandated reporter of the duty to make an additional oral or written report.

(2) A written or electronic report of suspected child abuse must include the following information, if known:

(i) The names and addresses of the child, the child's parents and any other person responsible for the child's welfare.

(ii) Where the suspected child abuse occurred.

(iii) The age and sex of each subject of the report.

(iv) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or any sibling of the child.

(v) The name and relationship of each individual responsible for causing the suspected abuse and any evidence of prior abuse by each individual.

(vi) Family composition.

(vii) The source of the report.

(viii) The name, telephone number and e-mail address of the person making the report.

(ix) The actions taken by the person making the report, including actions taken under 23 Pa.C.S. §§ 6314—6317.

(x) Other information required by Federal law or regulation.

(xi) Other information that the Department of Human Services may require by regulation.

§ 49.53. Photographs[, medical tests and X-rays] of child subject to report.

A licensed professional counselor may take or cause to be taken photographs of the child who is subject to a

report [and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries], Summaries or reports of the photographs [, X-rays and relevant medical tests] taken shall be sent to the county children and youth social service agency at the time the written report is sent, or within 48 hours after an electronic report is made under § 49.52(c)(1)(ii) (relating to suspected child abuse—mandated reporting requirements), or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates [and X-rays] and may obtain them or duplicates of them upon request.

§ 49.54. Suspected death as a result of child abuse—mandated reporting requirement.

A licensed professional counselor who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner or medical examiner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner or medical examiner of the county where the injuries were sustained.

§ 49.55. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability) a licensed professional counselor who participates in good faith in the making of a report of suspected child abuse, making a referral for general protective services, cooperating or consulting with an investigation including providing information to a child fatality or near fatality review team, testifying in a proceeding arising out of an instance of suspected child abuse or general protective services or [the taking of photographs] engaging in any action authorized under 23 Pa.C.S. §§ 6314—6317, shall have immunity from civil and criminal liability that might otherwise result by reason of the licensed professional counselor's actions. For the purpose of any civil or criminal proceeding, the good faith of the licensed professional counselor shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a licensed professional counselor's actions [in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs] under §§ 49.52—49.54 (relating to suspected child abuse—mandated reporting requirements; photographs of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement).

§ 49.56. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 49.52—49.54 (relating to suspected child abuse—mandated reporting requirements; photographs [, medical tests and X-rays] of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over the provisions of any client confidentiality, ethical principle or professional standard that might otherwise apply. In accordance with 23 Pa.C.S. § 6311.1 (relating to privileged communications), privileged communications between a mandated reporter and a patient/client does not apply to a situation involving child

abuse and does not relieve the mandated reporter of the duty to make a report of suspected child abuse. Additionally, under 23 Pa.C.S. § 6313(e) (relating to reporting procedure), notwithstanding any other provision of law to the contrary, a mandated reporter who makes a report of suspected child abuse does not violate the Mental Health Procedures Act (50 P.S. §§ 7101—7503) by releasing information necessary to complete the report.

§ 49.57. Noncompliance.

(a) *Disciplinary action.* A licensed professional counselor who willfully fails to comply with the reporting requirements in §§ 49.52—49.54 (relating to suspected child abuse—mandated reporting requirements; photographs [, medical tests and X-rays] of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 11 of the act (63 P.S. § 1911).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties [for failure to report]), a licensed professional counselor who is required to report a case of suspected child abuse or to make a referral to the appropriate authorities and who willfully fails to do so commits [a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.] a criminal offense, as follows:

(1) An offense not otherwise specified in paragraphs (2), (3) or (4) is a misdemeanor of the second degree.

(2) An offense is a felony of the third degree if all of the following apply:

(i) The mandated reporter willfully fails to report.

(ii) The child abuse constitutes a felony of the first degree or higher.

(iii) The mandated reporter has direct knowledge of the nature of the abuse.

(3) If the willful failure to report continues while the mandated reporter knows or has reasonable cause to suspect a child is being subjected to child abuse by the same individual, or while the mandated reporter knows or has reasonable cause to suspect that the same individual continues to have direct contact with children through the individual's employment, program, activity or service, the mandated reporter commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the mandated reporter commits a felony of the second degree.

(4) A mandated reporter who, at the time of sentencing for an offense under 23 Pa.C.S. § 6319, has been convicted of a prior offense under 23 Pa.C.S. § 6319, commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the penalty for the second or subsequent offense is a felony of the second degree.

(Editor's Note: The following sections are proposed to be added and printed in regular type to enhance readability.)

§ 49.58. Child abuse recognition and reporting—mandatory training requirement.

(a) Except as provided in subsection (c), individuals applying to the Board for a license as a professional

counselor shall complete, as a condition of licensure, at least 3 hours of training in child abuse recognition and reporting requirements which has been approved by the Department of Human Services.

(b) Except as provided in subsection (c), licensed professional counselors seeking renewal of a license issued by the Board shall complete, as a condition of biennial renewal of the license, at least 2 hours of approved continuing education in child abuse recognition and reporting as a portion of the total continuing education required for biennial renewal. For credit to be granted, the continuing education course or program must be approved by the Bureau, in consultation with the Department of Human Services, as set forth in § 49.59 (relating to child abuse recognition and reporting course approval process). The Board will not renew a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the licensee in an approved course or the licensee has obtained an exemption under subsection (c).

(c) An applicant or licensee may apply in writing for an exemption from the training/continuing education requirements set forth in subsections (a) and (b) provided the applicant or licensee meets one of the following:

(1) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training as required by section 1205.6 of the Public School Code of 1949 (24 P.S. § 12-1205.6).

(ii) The training was approved by the Department of Education in consultation with the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(2) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training required by 23 Pa.C.S. § 6383(c) (relating to education and training).

(ii) The training was approved by the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(3) The applicant or licensee submits documentation demonstrating that the applicant or licensee should not be subject to the training or continuing education requirement. Each request for an exemption under this paragraph will be considered on a case-by-case basis.

§ 49.59. Child abuse recognition and reporting course approval process.

(a) An individual, entity or organization may apply for approval to provide mandated reporter training as required under 23 Pa.C.S. § 6383(b) (relating to education and training) by submitting the course materials set forth in subsection (b) simultaneously to the Department of Human Services, Office of Children, Youth and Families, and to the Bureau at the following addresses:

(1) Department of Human Services, Office of Children, Youth and Families, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120 or electronically at RA-PWOCYFCPSL@pa.gov.

(2) Bureau of Professional and Occupational Affairs, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649 or electronically at RA-stcpsl_course_app@pa.gov.

(b) Submissions must include the following:

(1) Contact information (mailing address, e-mail address and telephone number) for the agency/course administrator.

(2) General description of the training and course delivery method.

(3) Title of the course.

(4) Timed agenda and estimated hours of training.

(5) Learning objectives.

(6) Intended audience.

(7) All course related materials, including as applicable:

(i) Handouts.

(ii) Narrated script or talking points.

(iii) Interactive activities or exercises.

(iv) Videos and audio/visual content.

(v) Knowledge checks, quizzes or other means of assessing participant's understanding of the material.

(vi) For online courses, a transcript of audio training.

(8) Citation of sources, including written permission to use copyrighted material, if applicable.

(9) Anticipated credentials or experience of the presenter, or biography of presenter, if known.

(10) Printed materials used to market the training.

(11) Evaluation used to assess participants' satisfaction with the training.

(12) Sample certificate of attendance/participation, which must include:

(i) Name of participant.

(ii) Title of training.

(iii) Date of training.

(iv) Length of training (2 or 3 hours).

(v) Name and signature of the authorized representative of the provider. The signature may be an electronic signature.

(vi) Statement affirming the participant attended the entire course.

(13) Verification of ability to report participation/attendance electronically to the Bureau in a format prescribed by the Bureau.

(c) The Bureau will notify the applicant in writing upon approval of the course and will post a list of approved courses on the Bureau's web site and the Board's web site.

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