

CHAPTER 3490. PROTECTIVE SERVICES

Subch.

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Authority

The provisions of this Chapter 3490 issued under Articles VII and IX of the Public Welfare Code (62 P. S. § 701—774 and 901—922); 42 Pa.C.S. § § 6301—6365; section 2168 of the County Code (16 P. S. § 2168); section 405 of the County Institution District Law (62 P. S. § 2305); and the Child Protective Services Law, 23 Pa.C.S. § § 6301—6385, unless otherwise noted.

Source

The provisions of this Chapter 3490 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547, unless otherwise noted.

Notes of Decisions

Class Certification

Class certification should have been granted to a putative class of children in the legal care and custody of Philadelphia's Department of Human Services, who sought declaratory and injunctive relief against the officials responsible for operation of the child welfare system based on systemic failures and violations of these regulations. *Baby Neal ex rel. Kanter v. Casey*, 43 F.3d 48, 30 Fed. R. Serv. 3d (Callaghan) 1469 (3rd Cir. 1994).

Cross References

This chapter cited in 55 Pa. Code § 168.45 (relating to verification of suspected child abuse); 55 Pa. Code § 3041.86 (relating to child abuse reporting); 55 Pa. Code § 3130.31 (relating to responsibilities of the county agency); 55 Pa. Code § 3130.38 (relating to other required services); 55 Pa. Code § 3130.43 (relating to family case records); 55 Pa. Code § 3130.44 (relating to confidentiality of family case records); 55 Pa. Code § 3130.51 (relating to hiring practices); 55 Pa. Code § 3130.68 (relating to visiting and communications policies); 55 Pa. Code § 3140.22 (relating to reimbursable services and reimbursement rates); 55 Pa. Code § 3270.32 (relating to suitability of persons in the facility); 55 Pa. Code § 3280.32 (relating to suitability of persons in the facility); 55 Pa. Code § 3290.32 (relating to suitability of persons in the facility); 55 Pa. Code § 3680.22 (relating to hiring practices, public and private agencies); 55 Pa. Code § 3680.35 (relating to release of information in client records); 55 Pa. Code § 3680.62

(relating to service relationship with a county agency); 55 Pa. Code § 3700.62 (relating to foster parent requirements); 55 Pa. Code § 3700.73 (relating to foster parent appeal of child relocation); 55 Pa. Code § 3800.15 (relating to child abuse); 55 Pa. Code § 3800.51 (relating to child abuse and criminal history checks); 55 Pa. Code § 3800.52 (relating to staff hiring, retention and utilization); 55 Pa. Code § 3800.58 (relating to staff training); 55 Pa. Code § 4226.31 (relating to Child Protective Services Law); and 55 Pa. Code § 5310.151 (relating to client rights).

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Cross References

This subchapter cited in 55 Pa. Code § 3490.321 (relating to standards for risk assessment).

INTRODUCTION

§ 3490.1. Applicability.

This chapter applies to the Department; other departments, boards, bureaus and agencies of the Commonwealth or any of its political subdivisions; county children and youth social service agencies and other agencies providing services to children and youth; law enforcement officials; county executive officers; auditors of the Federal government; public and nonpublic schools; intermediate units; area vocational-technical schools; independent school contractors; and persons who, in the course of their employment or occupation or in the practice of their profession, come into contact with children.

Source

The provisions of this § 3490.1 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (211714) to (211715).

§ 3490.2. Purposes.

The purposes of this subchapter are to:

- (1) Protect abused children from further abuse.
- (2) Preserve and stabilize families.

- (3) Implement the CPSL.
- (4) Involve law enforcement agencies in responding to child abuse.
- (5) Prioritize the response and services to children most at risk.
- (6) Encourage more complete reporting of suspected child abuse.

Source

The provisions of this § 3490.2 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211715).

§ 3490.3. Legal base.

The legal base of this chapter is the following statutory provisions:

- (1) Articles VII and IX of the Public Welfare Code (62 P. S. § § 701—774 and 901—922).
- (2) Chapter 63 of 42 Pa.C.S. (relating to the Juvenile Act).
- (3) Section 2168 of the County Code (16 P. S. § 2168).
- (4) Section 405 of the County Institution District Law (62 P. S. § 2305).
- (5) The CPSL, 23 Pa.C.S. § § 6301—6385 (relating to the Child Protective Services Law).

Source

The provisions of this § 3490.3 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211715).

§ 3490.4. Definitions.

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

Accept for service—The county agency decides on the basis of the needs and problems of an individual to admit or receive the individual as a client of the agency or as required by a court order entered under the Juvenile Act.

Agent of the county agency—A person who provides a children and youth social service either directly or under contract or through agreement with a county agency.

(i) An agent of the county agency includes:

(A) Preadoptive parents.

(B) Foster parents.

(C) Staff and volunteers of public and private residential child care facilities.

(D) Staff and volunteers of public and private day care centers, group day care homes and family day care homes.

(E) Staff and volunteers of public and private social service agencies.

(F) Staff and volunteers of county detention centers.

(G) Persons residing in the home of foster or preadoptive parents.

(H) A school employe of a facility or agency that is an agent of a county agency.

(ii) The term does not include staff of Commonwealth-operated youth development centers and youth forestry camps.

Arrange—Make a service available to a client accepted for service through another agency or service provider which is not paid for by the county agency.

Certified medical practitioner—A licensed physician, a licensed physician's assistant or a certified registered nurse practitioner.

CPSL—The Child Protective Services Law, 23 Pa.C.S. § § 6301—6385.

Child—A person under 18 years of age.

Child abuse—

(i) The term child abuse means any of the following:

(A) Any recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child.

(B) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or exploitation of a child.

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

(D) 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.

(ii) A child will not be deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child's welfare, such as inadequate housing, furnishings, income, clothing and medical care.

(iii) If, upon investigation, the county agency determines that a child has not been provided needed medical or surgical care because of seriously held religious beliefs of the child's parents, guardian or person responsible for the child's welfare, which beliefs are consistent with those of a bona fide religion, the child will not be deemed to be physically or mentally abused. The county agency shall closely monitor the child and shall seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health. In cases involving religious circumstances, all correspondence with a subject of the report and the records of the Department and the county agency may not reference "child abuse" and shall acknowledge the religious basis for the child's condition, and the family shall be referred for general protective services, under Subchapter C of the CPSL (relating to general protective services), if appropriate.

ChildLine—An organizational unit of the Department which operates a Statewide toll-free system for receiving reports of suspected child abuse established under section 6332 of the CPSL (relating to establishment of Statewide toll-free telephone number), refers the reports for investigation and maintains the reports in the appropriate file. In addition, it also receives reports of student abuse under Subchapter C.1 of the CPSL (relating to students in public and private schools).

Child protective services—Those services and activities provided by the Department and each county agency for child abuse cases.

County agency—

(i) The county children and youth social service agency established under section 405 of the County Institution District Law (62 P. S. § 2205), or its successor, and supervised by the Department under Article VII of the Public Welfare Code (62 P. S. § § 701—774).

(ii) The term also includes the Department's Office of Children, Youth and Families' regional offices when the report of suspected child abuse or student abuse involves an agent of the county agency.

County plan—A needs-based plan and budget estimate which serves as the basis for administration of the county children and youth social services program required by Chapter 3140 (relating to planning and financial reimbursement requirements for county children and youth social service programs).

Court designated advocate—A trained citizen volunteer appointed by the court to advocate on behalf of dependent children and alleged dependent children involved in juvenile court proceedings.

Crimes Code—Title 18 of the *Pennsylvania Consolidated Statutes*.

Department—The Department of Public Welfare of the Commonwealth.

Director of a hospital or other medical facility—The director or a person specifically designated in writing by the director to perform the functions under section 6315 of the CPSL (relating to taking child into protective custody) and this chapter.

Expunge—To strike out or obliterate entirely so that the stricken information may not be stored, identified or later recovered by any means—mechanical, electronic or otherwise.

Family members—Spouses, parents and children or other persons related by consanguinity or affinity. The term does not include foster parents, foster children and paramours.

Founded report—A child abuse report made under the CPSL and this chapter if there has been any judicial adjudication based on a finding that a child who is a subject of the report has been abused, including the entry of a plea of guilty or nolo contendere or a finding of guilt to a criminal charge involving the same factual circumstances involved in the allegation of child abuse.

Indicated report—A child abuse report made under the CPSL and this chapter if an investigation by the county agency or the Department determines that substantial evidence of the alleged abuse exists based on any of the following:

- (i) Available medical evidence.
- (ii) The child protective service investigation.
- (iii) An admission of the acts of abuse by the perpetrator.

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.

Juvenile Act—42 Pa.C.S. Chapter 63.

Law enforcement official—The term includes the following:

- (i) The Attorney General.
- (ii) A county district attorney.
- (iii) A State Police officer.

- (iv) A county sheriff.
- (v) A county police officer.
- (vi) A county detective.
- (vii) A local or municipal police officer.

Medical evidence—Evidence provided by a licensed health care professional, including a physician, nurse practitioner, registered nurse, psychiatrist or licensed psychologist.

Paramour—A person who is engaged in an ongoing intimate relationship with a parent of the child but is not married to and does not necessarily reside with the child's parent.

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

Pending criminal court action—The status assigned to a report when the county agency cannot complete the investigation within 30-calendar days because criminal court action has been initiated.

Pending juvenile court action—The status assigned to a report when the county agency cannot complete the investigation within 30-calendar days because juvenile court action has been initiated.

Performance audit—A review of a county agency's practices and implementation of the CPSL and this chapter by persons designated by the Secretary.

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

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.

Physician—A person licensed under the statutes and regulations of the Commonwealth to practice medicine.

Protective services—Services and activities provided by the Department and each county agency for children who are abused or in need of general protective services under this chapter.

Provide—To perform an activity directly through county agency staff or ensure the performance of an activity through a purchase of service agreement with another agency or individual.

Recent act or failure to act—An act or failure to act committed within 2 years of the date of the report of suspected child abuse to the Department or county agency.

Regional staff—Department employees who license and monitor public and private children and youth social service agencies and facilities within a specific geographical area of this Commonwealth.

Required reporters—

(i) Persons who, in the course of their employment, occupation or practice of their profession come into contact with children and have reasonable cause to suspect, on the basis of their medical, professional or other training and experience, that a child coming before them in their professional or official capacity is a victim of child abuse.

(ii) Except with respect to confidential communications made to an ordained member of the clergy which are protected under 42 Pa.C.S. § 5943 (relating to confidential communications to clergymen), the privileged communication between any professional person required to report and the patient or client of that person does not apply to situations involving child abuse and does not constitute grounds for failure to report as required by this subchapter.

(iii) Persons required to report include:

(A) A licensed physician, medical examiner, coroner, funeral director, dentist, optometrist, osteopath, chiropractor, psychologist, podiatrist, intern, registered nurse or licensed practical nurse.

(B) Hospital personnel engaged in the admission, examination, care or treatment of persons.

(C) A Christian Science practitioner, member of the clergy, school administrator, school teacher, school nurse, social services worker, day care center worker or another child care or foster care worker, mental health professional, peace officer or law enforcement official.

Secretary—The Secretary of the Department or a person specifically designated in writing by the Secretary to perform the Secretary's functions under the CPSL and this chapter.

Serious bodily injury—Injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of a body member or organ.

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

(i) Renders the 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 the child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical injury—An injury that does either of the following:

(i) Causes the child severe pain.

(ii) Significantly impairs the child's physical functioning, either temporarily or permanently.

Serious physical neglect—A physical condition caused by the act or failure to act of a perpetrator which endangers the child's life or development or impairs the child's functioning and is the result of one of the following:

(i) Prolonged or repeated lack of supervision.

(ii) Failure to provide essentials of life, including adequate medical and dental care.

Sexual abuse or exploitation—

(i) Any of the following if committed on a child by a perpetrator:

(A) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct.

(B) 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.

(C) Any of the following offenses as defined by the crimes code:

(1) Rape as defined by section 3121 (relating to rape).

(2) Statutory sexual assault as defined by section 3122.1 (relating to statutory sexual assault).

(3) Involuntary deviate sexual intercourse as defined by section 3123 (relating to involuntary deviate sexual intercourse).

(4) Sexual assault as defined by section 3124.1 (relating to sexual assault).

(5) Aggravated indecent assault as defined by section 3125 (relating to aggravated indecent assault).

(6) Indecent assault as defined by section 3126 (relating to indecent assault).

- (7) Indecent exposure as defined by section 3127 (relating to indecent exposure).
- (8) Incest as defined by section 4302 (relating to incest).
- (9) Prostitution as defined by section 5902 (relating to prostitution and related offenses).

(D) Exploitation which includes any of the following:

- (1) Looking at the sexual or other intimate parts of a child for the purpose of arousing or gratifying sexual desire in either person.
- (2) Engaging or encouraging a child to look at the sexual or other intimate parts of another person for the purpose of arousing or gratifying sexual desire in any person involved.
- (3) Engaging or encouraging a child to participate in sexually explicit conversation either in person, by telephone, by computer or by a computer aided device.

Statewide Central Register—A register of child abuse and student abuse, established in the Department, which consists of founded and indicated reports of child abuse and student abuse.

Status determination—The decision made by the county agency that a child abuse or student abuse report is founded, indicated, unfounded, pending juvenile court action or pending criminal court action.

Subjects of the report—A child, parent, guardian or other person responsible for the welfare of a child or any alleged or actual perpetrator or school employe named in a report made to the Department or county agency under this subchapter.

Substantial evidence—Evidence which outweighs inconsistent evidence and which a reasonable person would accept as adequate to support a conclusion.

Unfounded report—A report made under the CPSL and this chapter unless the report is a founded report or an indicated report.

Source

The provisions of this § 3490.4 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended April 27, 1990, effective April 28, 1990 and apply retroactively to January 5, 1988, 20 Pa.B. 2286; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (211715) to (211718), and (236831) to (236832).

Notes of Decisions

Child Abuse

Failure to raise the issue of whether the actions of the abuser fell within the statutory definition of child abuse constituted a waiver of that issue. *B. E. v. Department of Public Welfare*, 654 A.2d 290 (Pa. Cmwlth. 1995).

The natural mother's boyfriend lacked standing to appeal an order adjudicating the child to be dependent and awarding custody to the natural father, even though a report filed by Children and Youth Services implicating the boyfriend had been given "indicated" status. *In re Interest of Garthwaite*, 619 A.2d 356 (Pa. Super. 1993).

A finding that a child suffered severe pain may be supported by circumstantial evidence and need not be supported by either testimony from the victim, or by unequivocal medical testimony to that effect. *D. N. v. Department of Public Welfare*, 562 A.2d 433 (Pa. Cmwlth. 1989).

The court will not overturn factual findings and a conclusion of law by the Office of Hearings and Appeals regarding whether particular conduct constituted sexual assault where the issue raised by petitioner involved OHA's specific findings as to the nature and extent of bodily contact considering height differences of the child and her father. *J. S. v. Department of Public Welfare*, 565 A.2d 862 (Pa. Cmwlth. 1989).

Record failed to reveal substantial evidence of child abuse, where only evidence of severe pain was hearsay testimony of social worker and there was not evidence of impairment. *N. B. v. Department of Public Welfare*, 527 A.2d 623 (Pa. Cmwlth. 1987).

Father is not entitled to expungement of indicated report of child abuse when substantial evidence indicates that he touched his daughter's bare buttocks and insisted on bathing her and rubbing her "bottom real hard." *G. S. v. Department of Public Welfare*, 521 A.2d 87 (Pa. Cmwlth. 1987).

If a child's injury is nonaccidental, then it is considered child abuse. To determine if an injury is nonaccidental, the Supreme Court has directed that a criminal negligence standard be applied. *P. R. v. Department of Public Welfare*, 801 A.2d 478 (Pa. 2002).

Child Abuse-Pain

Day care operator's argument that because neither the child's mother nor the child's doctor testified regarding any pain, the Department of Public Welfare failed to sustain its burden of proof under this regulation was rejected. The evidence demonstrated that the child winced when the bruised area was touched and that the child screamed when the mother attempted to apply a cold compress or ice to the bruised area; thus, demonstrating an injury that resulted in severe pain. *S. T. v. Department of Public Welfare*, 681 A.2d 853 (Pa. Cmwlth. 1996); appeal denied 690 A.2d 1165 (Pa. 1997).

Serious Physical Injury

Wincing when a bruised area is touched and screaming when an attempt is made to apply cold compresses or ice to a bruised area are sufficient to establish an injury resulting in severe pain. *S.*

T. v. Department of Public Welfare, Lackawanna County Office, Children Youth & Family Services, 681 A.2d 853 (Pa. Cmwlth. 1996), appeal denied, 690 A.2d 1165 (Pa. 1997).

Serious Physical Neglect

Mother's conduct on one occasion where she left a 10 1/2 month old child alone on an upper bunk bed for 15 minutes, during which time the child died from asphyxiation, determined by medical examiner as an accident, does not constitute "serious physical neglect" as defined in § 3490.4. Therefore, it was error not to expunge petitioner's record of indicated child abuse. *C. F. v. Department of Public Welfare*, 804 A.2d 755 (Pa. Cmwlth. 2002).

Cross References

This section cited in 28 Pa. Code §§ 611.5 (relating to definitions); 28 Pa. Code § 611.53 (relating to child abuse clearance); 55 Pa. Code § 3490.143 (relating to definitions); and 55 Pa. Code § 3490.223 (relating to definitions).

§ 3490.5. Waivers.

(a) A waiver of a requirement of this chapter may be requested as specified in procedures published by the Department.

(b) A waiver may be granted by the Department if the waiver:

(1) Does not alter the applicability, scope or purpose of this chapter.

(2) Is based on evidence, supplied by the requesting county agency, that the objective of the requirement will be achieved in another way.

(3) Is based on evidence, supplied by the requesting county agency, that a waiver will have no adverse effect on the health, safety and rights of children.

(4) Does not violate or condone noncompliance with Federal statutes or regulation or State statutes.

(5) Does not jeopardize receipt of Federal moneys.

(c) Except as provided in section 6361 of the CPSL (relating to organization for child protective services), the Department may not waive the requirement that the county agency is the sole civil agency responsible to receive and investigate reports of suspected child abuse and receive and assess reports of suspected neglect.

(d) A county agency requesting a waiver shall continue to comply with the requirements of this chapter until a waiver is granted.

Source

The provisions of this § 3490.5 adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

REPORTERS

§ 3490.11. Reporting suspected child abuse.

(a) A person may make a report of suspected child abuse to ChildLine or a county agency if the person has reasonable cause to suspect that a child has been abused. Reports shall be accepted by ChildLine or the county agency regardless of whether the person identifies himself.

(b) A person other than a school employe having reasonable cause to suspect that a school employe has committed student abuse may report the suspected abuse to the school administrator as required by § § 3490.151(c) and 3490.152(a) and (c) (relating to required reporting; and responsibilities of administrators and school employes).

Source

The provisions of this § 3490.11 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (236832).

§ 3490.12. Required reporters.

In addition to other reports they make, required reporters shall report suspected child abuse to ChildLine.

Source

The provisions of this § 3490.12 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (236833).

§ 3490.13. Reports by employes who are required reporters.

(a) Required reporters who work in an institution, school, facility or agency shall immediately notify the person in charge of the institution, school, facility or agency or the person in charge's designee of suspected abuse. The person in charge, or the designee, shall be responsible and have the obligation to make a report of the suspected child abuse to ChildLine immediately. Nothing in this chapter requires more than one report from any institution, school, facility or agency.

(b) The person in charge or the designee may not make an independent determination of whether to report. The person in charge or the designee shall notify the employe when the report was made to ChildLine.

(c) Notwithstanding subsection (a), nothing in this chapter prohibits an employe who is a required reporter from making a report directly to ChildLine.

Source

The provisions of this § 3490.13 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (236833) and (211721).

§ 3490.14. Privileged communication.

Except with respect to confidential communications made to an ordained member of the clergy which are protected under 42 Pa.C.S. § 5943 (relating to confidential communications to clergymen), privileged communication between a required reporter and the person's patient or client does not apply to situations involving child abuse and may not constitute grounds for failure to report as required by this chapter.

Source

The provisions of this § 3490.14 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211721).

§ 3490.15. Taking a child into protective custody.

(a) The following persons may take a child into protective custody:

(1) Persons authorized to do so under section 6324 of the Juvenile Act (relating to taking into custody).

(2) The director or a person specifically designated in writing by the director of a hospital or other medical facility or a physician examining or treating a child under section 6315 of the CPSL (relating to taking child into protective custody) and subsection (b).

(b) The director or a person specifically designated in writing by the director or physician may take a child into protective custody if it is immediately necessary to protect the child from further serious physical injury, sexual abuse, or serious physical neglect—as indicated by the following examples:

(1) Medical indications of repeated abuse, the existence of previous indicated or founded reports of child abuse, the seriousness of the child's condition, evidence of recent acts of abuse as opposed to old injuries, or statements of the child, or statements or actions by the parents indicating they are likely to be abusive toward the child.

(2) There is medical evidence that the child is a victim of alleged child abuse and that the child's physical condition constitutes a medical emergency which requires immediate hospitalization to prevent death or serious physical impairment.

(3) The parents, guardians or other custodians, after being advised that the child's physical condition constitutes a medical emergency will make no immediate arrangements for medically adequate alternative treatment.

(c) A child may not be held in protective custody for more than 24 hours unless the appropriate county agency is immediately notified that the child has been taken into protective custody and the county agency obtains a court order permitting the child to be held in protective custody for a longer period of time.

Source

The provisions of this § 3490.15 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (211721) to (211722).

Cross References

This section cited in 55 Pa. Code § 3490.233 (relating to protective custody).

§ 3490.16. Notifying the county agency.

If a person takes a child suspected of being abused into protective custody, the person shall immediately notify the county agency in the county where the child is being held that the child is in protective custody.

Source

The provisions of this § 3490.16 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211722).

Cross References

This section cited in 55 Pa. Code § 3490.233 (relating to protective custody).

§ 3490.17. Notifying the child's parents, guardians or other custodians.

If a person takes a child into protective custody, the person shall verbally notify the child's parents, guardians or other custodians immediately and in writing within 24 hours, of the following:

(1) The child's whereabouts unless prohibited by a court order.

- (2) The reason for taking the child into protective custody.
- (3) The telephone number of the local county agency.

Source

The provisions of this § 3490.17 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211722).

Cross References

This section cited in 55 Pa. Code § 3490.57 (relating to protective custody); and 55 Pa. Code § 3490.233 (relating to protective custody).

§ 3490.18. Filing of a written report by a required reporter.

Within 48 hours of reporting to ChildLine, a required reporter shall make a written report on forms provided by the Department to the county agency in the county where the suspected child abuse occurred. The written report shall include the following information, if available:

- (1) The names and addresses of the child and the parents or other persons responsible for the care of the child.
- (2) The county in which the suspected abuse occurred.
- (3) The age and sex of the subjects of the report.
- (4) The nature and extent of the suspected child abuse, including evidence of prior abuse to the child or a sibling.
- (5) The reasons for suspecting child abuse.
- (6) The name of the alleged perpetrators of the suspected abuse and evidence of prior abuse by those persons.
- (7) The relationship of the alleged perpetrator to the child.
- (8) The family household composition.
- (9) The source of the report.
- (10) The person making the report and where the person can be reached.
- (11) A statement of the child's parents regarding the suspected abuse and a statement or admission of abuse by the alleged perpetrator.

(12) The actions taken by the reporting source, including:

- (i) The taking of photographs and X-rays.
- (ii) The taking of protective custody.
- (iii) Notification to the coroner.
- (iv) The hospitalization of the child.

Source

The provisions of this § 3490.18 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (211722) to (211723).

Cross References

This section cited in 49 Pa. Code § 47.52 (relating to suspected child abuse—mandated reporting requirement); 49 Pa. Code § 48.52 (relating to suspected child abuse—mandated reporting); and 49 Pa. Code § 49.52 (relating to suspected child abuse—mandated reporting requirements).

§ 3490.19. Reporting to the coroner.

A required reporter who suspects that a child died as a result of child abuse shall send a duplicate of the report sent to the county agency to the coroner of the county in which the death occurred.

Source

The provisions of this § 3490.19 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211723).

§ 3490.20. Other medical information.

A required reporter may photograph a child who is the subject of a report and, if clinically indicated, ensure that a radiological examination and other medical tests of the child are performed. A medical summary or report of photographs or X-rays taken shall be sent to the county agency at the time the written report is sent, or as soon thereafter as possible. The county agency shall be provided access to the actual photographs and X-rays and may obtain them or duplicates upon request.

Source

The provisions of this § 3490.20 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211723).

§ 3490.21. Release of information on prior abuse reports.

(a) A physician or director or a person specifically designated in writing by the director of a hospital or other medical facility may request information from the county agency on prior abuse involving the child being examined or treated by the physician or director or a person specifically designated in writing by the director of the hospital or other medical facility.

(b) The county agency shall provide the physician or director or the designee of the director treating or examining the child with the requested information on prior child abuse involving the child.

Source

The provisions of this § 3490.21 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211724).

DEPARTMENTAL RESPONSIBILITIES

§ 3490.31. Receipt of reports.

The Department established a single Statewide toll-free telephone number (800) 932-0313—referred to as ChildLine—available at all times to receive reports of suspected child abuse.

Source

The provisions of this § 3490.31 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211724).

Cross References

This section cited in 55 Pa. Code § 3490.193 (relating to other provisions).

§ 3490.32. ChildLine reporting to the county agency.

(a) ChildLine shall immediately transmit reports of suspected child abuse verbally to the county agency of the county where the suspected abuse occurred. If the child resides in a different county, ChildLine will notify that county also.

(b) If the child was allegedly abused in more than one county or on an ongoing basis, ChildLine will assign the report to the county where the most recent alleged abuse occurred.

(c) The county agency which receives the report initially is responsible to contact the other counties in subsections (a) and (b) in conducting the investigation. If it appears that a county other than the one to which the report was referred should conduct the investigation, the agencies should decide between themselves which one is responsible for the report. The county which received the report initially shall notify ChildLine of any change so that ChildLine's records are accurate and up-to-date.

(d) If the counties are unable to agree about which one is responsible to conduct the investigation and make the status determination, the county to which the report was assigned shall contact ChildLine and Childline will assign the investigation to a county agency to make a status determination.

(e) The report of the investigation shall be submitted to ChildLine within 30-calendar days of when the report was received at ChildLine.

(f) The ChildLine report to the county agency shall contain the information on the current report of suspected abuse and the information on file at ChildLine on previous reports except for information obtained by the Department as a result of a request to expunge an indicated or founded report of child abuse or an indicated report of student abuse.

(g) If the complaint received does not suggest suspected child abuse but does suggest a need for social services or other services or investigation, ChildLine shall transmit the information to the appropriate county agency or other public agency.

Source

The provisions of this § 3490.32 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211724).

Cross References

This section cited in 55 Pa. Code § 3490.36 (relating to providing information to the county agency).

§ 3490.33. Files.

ChildLine will establish and maintain the following files for reports of child abuse:

(1) A pending complaint file which contains reports of child abuse that are one of the following:

(i) Under investigation.

- (ii) Pending juvenile or criminal court action.
- (2) A Statewide Central Register which contains the following:
 - (i) Copies of founded and indicated reports of child abuse.
 - (ii) A subfile of the names of perpetrators of indicated and founded reports of child abuse if the individual's Social Security Number or date of birth is known to the Department. The subfile shall be retained indefinitely.
- (3) A statistical file which contains copies of reports of suspected, indicated and founded reports of child abuse after information which could directly or indirectly identify a subject of a report has been expunged.
- (4) A file of unfounded reports awaiting expunction.

Source

The provisions of this § 3490.33 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211725).

Cross References

This section cited in 55 Pa. Code § 3490.39 (relating to expunction from the Statewide Central Register).

§ 3490.34. Pending complaint file.

- (a) Upon receipt of a report of suspected child abuse ChildLine will enter the information specified in section 6336 of the CPSL (relating to information in Statewide Central Register) into the pending complaint file.
- (b) Notwithstanding subsection (c), reports which are determined pending juvenile or criminal court action shall be maintained in the pending complaint file until the county agency notifies ChildLine of the final status.
- (c) If within 60-calendar days from the date of the initial report of suspected child abuse a status determination has not been received at ChildLine, the report shall be considered unfounded. Prior to expunging the report, ChildLine shall verify with the county agency that the report was not completed within 60-calendar days.
- (d) Unfounded reports shall be expunged at ChildLine within 120-calendar days after the date of the initial report to ChildLine.

(e) Reports which are unfounded awaiting expunction may not be released from the pending complaint file except to a subject of a report upon written request, employees of the Department under this subchapter and employees of the Office of Attorney General under section 6345 of the CPSL (relating to audits by Attorney General).

Source

The provisions of this § 3490.34 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211725).

§ 3490.35. Statewide Central Register.

When a report of suspected child abuse is determined founded or indicated, ChildLine shall enter the report in the Statewide Central Register and expunge the report from the pending complaint file. If there is incomplete information in the report, ChildLine will contact the county agency and request additional clarifying information so that the information in the Statewide Central Register is complete.

Source

The provisions of this § 3490.35 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (211725) to (211726).

Cross References

This section cited in 55 Pa. Code § 3490.193 (relating to other provisions).

§ 3490.36. Providing information to the county agency.

(a) ChildLine shall release information to a county agency verbally only when both of the following exist:

- (1) The county agency is making a report of suspected child abuse.
- (2) ChildLine has identified that the person is a representative of the county agency.

(b) When ChildLine receives a verbal request from a county agency, only the information specified in § 3490.32(f) (relating to ChildLine reporting to the county agency) may be released from the pending complaint file and Statewide Central Register.

(c) Upon receipt of a written request from the county agency for information regarding a subject of a report, ChildLine will forward copies of all reports on file which are under investigation, founded or indicated involving that subject to the county agency, except

information obtained by the Department in response to a request to amend or expunge an indicated or founded report of child abuse.

Source

The provisions of this § 3490.36 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211726).

Cross References

This section cited in 55 Pa. Code § 3490.193 (relating to other provisions).

§ 3490.37. Release of information: Statewide Central Register, pending complaint file and file of unfounded reports.

(a) A request for information from the Statewide Central Register, pending complaint file or file of unfounded reports by persons permitted access to this information, other than the county agency, shall be in writing and signed by the person requesting the information.

(b) The name of the person who made the report or who cooperated in the investigation may be released only by the Secretary.

Source

The provisions of this § 3490.37 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211726).

Cross References

This section cited in 55 Pa. Code § 3490.193 (relating to other provisions).

§ 3490.38. Authorized studies of child abuse data.

The Department may conduct or authorize studies of the data contained in the pending complaint file, the Statewide Central Register, the statistical file, and the county agency files and distribute the results of the studies if no study contains the name of a subject or other information by which a subject of a report can be directly or indirectly identified. Requests to conduct studies shall be made to the Deputy Secretary, Office of Children, Youth and Families of the Department. The researcher shall secure the concurrence of the appropriate county agency administrator to use the county agency files.

Source

The provisions of this § 3490.38 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (211726) to (211727).

Cross References

This section cited in 55 Pa. Code § 3490.193 (relating to other provisions).

§ 3490.39. Expunction from the Statewide Central Register.

(a) Except as provided in subsection (b), ChildLine shall expunge founded and indicated reports when a subject child is 23 years of age or older.

(b) If the Social Security Number or date of birth of the perpetrator is known in founded or indicated reports of child abuse, the following information shall be maintained:

- (1) The name, Social Security Number, date of birth and sex of the perpetrator.
- (2) The date of birth and sex of the child.
- (3) The dates and the nature and extent of the child abuse.
- (4) The county in which the child abuse occurred.
- (5) The relationship of the perpetrator to the child.
- (6) Whether the report was a founded or indicated report.
- (7) The results of any criminal prosecution.

(c) The information referred to in subsection (b) shall remain in the subfile under § 3490.33 (relating to files).

Source

The provisions of this § 3490.39 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211727).

§ 3490.40. Notifications regarding indicated reports.

(a) When indicated reports of child abuse are entered into the Statewide Central Register, ChildLine will notify all subjects by first class mail, other than the subject child, of:

- (1) The status of the report.

- (2) The perpetrator's right to request the Secretary to amend or expunge the report.
 - (3) The circumstances under which the report will be expunged.
 - (4) Their right to services from the county agency.
 - (5) The effect of the report upon future employment opportunities in a child care service.
 - (6) The fact that the name of the perpetrator and nature of the abuse will be kept on file indefinitely if the Social Security Number or date of birth of the perpetrator is known.
- (b) ChildLine will notify the county agency and the perpetrator of any expunction of a report of child abuse, except when the expunction is the result of the Secretary's decision, in which case the county agency and all subjects shall be notified.
- (c) ChildLine will notify the county agency and all subjects of the Secretary's decision to amend a report of child abuse.

Source

The provisions of this § 3490.40 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211727).

Cross References

This section cited in 55 Pa. Code § 3490.193 (relating to other provisions).

§ 3490.40a. Notifications regarding founded reports.

When founded reports of child abuse are entered into the Statewide Central Register, ChildLine will notify all subjects by first class mail, other than the subject child, of:

- (1) The status of the report.
- (2) The effect of the report upon future employment opportunities in a child care service and a school.
- (3) The fact that the name of the perpetrator or school employe and nature of the abuse will be kept on file indefinitely if the Social Security Number or date of birth of the perpetrator or school employe is known.

Source

The provisions of this § 3490.40a adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

Cross References

This section cited in 55 Pa. Code § 3490.193 (relating to other provisions).

§ 3490.41. Determination of time.

ChildLine will use the United States Postal Service postmark or the date received by the Department when transmitted electronically to determine when the Department is informed by the county agency of the status determination of a report.

Source

The provisions of this § 3490.41 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (211727) to (211728).

Cross References

This section cited in 55 Pa. Code § 3490.193 (relating to other provisions).

§ 3490.42. Performance audit and reviews.

(a) The Secretary may direct that a performance audit be conducted of any activity related to the implementation of the CPSL and this chapter.

(b) The Department will determine in its annual licensing and inspection process whether the county agency has sufficiently documented reasons why, if applicable, all child abuse investigations have not been completed within the 30-calendar day period.

(c) The Department will provide the results of performance audits and reviews to the affected agencies consistent with the confidentiality provisions of this chapter. Information provided shall include an assessment of compliance with the provisions of this chapter and recommendations relating to practice issues, if appropriate.

Source

The provisions of this § 3490.42 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211728).

Cross References

This section cited in 55 Pa. Code § 3490.193 (relating to other provisions).

§ 3490.43. [Reserved].

Source

The provisions of this § 3490.43 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; reserved July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211728).

COUNTY RESPONSIBILITIES

§ 3490.51. [Reserved].

Source

The provisions of this § 3490.51 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; reserved July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211728).

§ 3490.52. Receipt of reports.

The county agency shall provide 24-hours-per-day/7-days-per-week telephone access for persons to report suspected child abuse.

Source

The provisions of this § 3490.52 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211728).

§ 3490.53. Functions of the county agency for child protective services.

(a) The county agency is the sole civil agency responsible for receiving and investigating reports of child abuse except reports of abuse allegedly perpetrated by an agent. The county agency shall investigate allegations of abuse of children residing in facilities operated directly by the Department.

(b) The county agency shall protect the safety of the subject child and other children in the home or facility and shall provide or arrange appropriate services when necessary during the investigation period.

(c) The county agency shall determine the status of reports of suspected child abuse.

(d) If the county agency concludes that the child is in danger of further child abuse, the county agency shall do the following:

- (1) Accept the case for service.
 - (2) Provide direct case management.
 - (3) Monitor the provision of services, whether provided directly by the county agency or through purchase or agreement.
- (e) The county agency shall provide direct case management of services provided to abused children and their families until the county agency is reasonably assured that the child is no longer in danger of child abuse. The reasons for termination of the county agency involvement shall be recorded in the case record.

Source

The provisions of this § 3490.53 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (211728) to (211729).

Notes of Decisions

Expunction Proceedings

Expunction proceedings before the Department of Public Welfare, Bureau of Hearings and Appeals are civil proceedings as opposed to criminal proceedings; therefore, the Sixth Amendment right for the accused to confront the witnesses against him does not apply. *Dauphin County Social Services for Children and Youth v. Department of Public Welfare*, 855 A.2d 159, 163 (Pa. Cmwlth. 2004)

§ 3490.54. Independent investigation of reports.

Except for reports investigated by the Department, the county agency shall investigate and make independent determinations on reports of suspected child abuse, regardless of another investigation conducted by another agency, the court or the police and regardless of whether or not the person making the report identified himself. A county agency may rely on an investigation of substantially the same allegations by a law enforcement agency to support the county agency's finding regarding a child abuse report. This reliance does not limit the duties required of the county agency by section 6368 of the CPSL (relating to investigation of reports).

Source

The provisions of this § 3490.54 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211729).

Cross References

This section cited in 55 Pa. Code § 3490.193 (relating to other provisions).

§ 3490.55. Investigation of reports of suspected child abuse.

(a) Except as provided in subsection (b), the county agency shall begin its investigation within 24 hours of receiving a report of suspected child abuse. Upon beginning its investigation, the county agency shall see the child within 24 hours of receipt of the report.

(b) The county agency shall begin the investigation immediately upon receipt of a report of suspected child abuse and see the child immediately if one of the following applies:

(1) Emergency protective custody has been taken or is needed.

(2) It cannot be determined from the report whether or not emergency protective custody is needed.

(c) After ensuring the immediate safety of the child and other children in the home, the county agency shall verbally notify ChildLine of the receipt of the report, if it was not received initially from ChildLine.

(d) When conducting its investigation, the county agency shall, if possible, conduct an interview with those persons who are known to have or may reasonably be expected to have, information relating to the incident of suspected child abuse including, but not limited to, all of the following:

(1) The child, if appropriate.

(2) The child's parents or other person responsible for the child's welfare.

(3) The alleged perpetrator of the suspected child abuse.

(4) The reporter of the suspected child abuse, if known.

(5) Eyewitnesses to the suspected child abuse.

(6) Neighbors and relatives who may have knowledge of the abuse.

(7) Day care provider or school personnel, or both, if appropriate.

(e) The county agency shall record in writing the facts obtained as a result of the interviews conducted under subsection (d) and any other interviews it conducts.

(1) When conducting its investigation, the county agency shall maintain a written record of the facts obtained from each interview it conducts.

(2) At the conclusion of its investigation, when the report is determined indicated, founded or unfounded and accepted for services, under § 3490.59 (relating to action by the county agency after determining the status of the report), the county agency shall enter a written summary of the facts obtained from each interview in the case record.

(f) When investigating a report of suspected child abuse in which a child has sustained visible injury, the county agency shall, whenever possible and appropriate, take, cause to be taken or obtain color photographs of the injury.

(1) Photographs shall include one snapshot in which the child is clearly identifiable with the injured part of the body visible to establish the identity of the child and the actual location and extent of the injury. More than one photograph of the injury shall be taken if it is necessary to obtain a clear close-up of the injury.

(2) The county agency shall maintain photographs it secures in the case record. Photographs shall be identified by all of the following:

- (i) The name of the child.
- (ii) The age of the child.
- (iii) The date and time of day the photograph was taken.
- (iv) The location at which the photograph was taken.
- (v) The names of witnesses present.
- (vi) The name of the photographer.

(g) When investigating a report of suspected serious mental injury, sexual abuse or exploitation or serious physical neglect, the county agency shall, whenever appropriate, obtain medical evidence or expert consultation, or both. The county agency shall maintain a record of medical evidence or expert consultation, or both, obtained during its investigation, including one of the following:

(1) The reasons why medical examination or expert consultation, or both, was secured and the results of the examination/consultation.

(2) The reasons why medical examination or expert consultation, or both, was determined not to be necessary.

(h) If the investigation indicates serious physical injury, a medical examination shall be performed on the subject child by a certified medical practitioner. If there is reasonable cause to suspect there is a history of prior or current abuse, the medical practitioner has the authority to arrange for further medical tests or the county agency has the authority to request further medical tests.

(i) When conducting its investigation, the county agency shall visit the child's home, at least once during the investigation period. The home visits shall occur as often as necessary to complete the investigation and to assure the safety of the child.

(j) When investigating cases of suspected child abuse and a subject is located in a county other than where the abuse occurred, the county agency shall either make contact in the county where the subject is located or request the county where the subject is located to conduct the interview. The county agency where the subject is located shall assist in the investigation as required by this section.

Source

The provisions of this § 3490.55 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended December 27, 1985, effective January 1, 1986, 15 Pa.B. 4629; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (211729) to (211731).

Notes of Decisions

Miranda Warnings

Statements made by defendant to a Children and Youth Services caseworker, as part of an interview under this section, while Defendant was in custody, could be suppressed in the absence of *Miranda* warnings, since caseworker was required to forward the report to police. *Commonwealth v. Ramos*, 532 A.2d 465 (Pa. Super. 1987).

§ 3490.56. County agency investigation of suspected child abuse perpetrated by persons employed or supervised by child care services and residential facilities.

(a) In addition to complying with other applicable sections of the CPSL and this chapter, when investigating a report of suspected child abuse perpetrated by a person who operates, is employed by or acting as a volunteer for a child care service, including a child day care center, a group or family day care home or a residential facility, the county agency, shall, within 24 hours of receipt of the report, verbally notify the following of the content of the report:

- (1) The person in charge of the facility or child care service where the alleged child abuse occurred.
- (2) The person in charge of the agency which placed the child.
- (3) The person in charge of the county agency with custody or supervision of the child.
- (4) The regional office of the Department that is responsible to license, register or approve the child care service or facility.

(b) The person in charge of the child care service or facility shall implement a plan of supervision or alternative arrangements to ensure the safety of the child and other children who are in the care of the child care service or facility during the investigation. The plan of supervision or alternative arrangements shall be in writing, approved by the county agency and kept on file by the county agency until the investigation is completed. When the plan is approved by the county agency, the county agency shall immediately send a copy of the approved plan to the appropriate regional licensing director or designee.

(c) The county agency shall inform the persons listed in subsection (a) in writing of the results of the investigation.

(d) The county agency shall develop or revise the family service plan as required by Chapter 3130 (relating to administration of county children and youth social service programs) for the child and perpetrator if the report is founded or indicated and the case has been accepted for service.

(e) If the report is founded or indicated, the county agency shall request a written statement from the person in charge of the child care service or facility regarding the steps planned and taken to ensure the future safety of the subject child and other children in the care of the child care service or facility. The request shall be made within 5-calendar days of when the status determination was made. The person in charge of the child care service or facility shall submit a written response to the county agency within 10-calendar days of the mailing date of the county agency's letter. If the plan is unacceptable to the county agency, the county agency shall take appropriate action to ensure the safety of the children in the child care service or facility.

(f) If the facility or child care service is operated, registered, licensed or approved by the Department, the county agency shall send a copy of the completed form required by § 3490.67 (relating to written reports to ChildLine)—filed with ChildLine—and a copy of the written statement required by subsection (e) to the regional director or the director's designee in the region where the founded or indicated child abuse occurred.

Source

The provisions of this § 3490.56 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211731).

Cross References

This section cited in 55 Pa. Code § 3800.15 (relating to child abuse).

§ 3490.57. Protective custody.

(a) The county agency shall comply with the Juvenile Act, the CPSL and this chapter when taking a child into custody. Protective custody under this chapter may not be maintained longer than 72 hours without an informal hearing under section 6332 of the Juvenile Act (relating to

informal hearing). If, at the informal hearing, it is determined that protective custody shall be continued and the child is alleged to be a dependent child under section 6302 of the Juvenile Act (relating to definitions), the county agency shall within 48 hours of the determination file a petition with the court under the Juvenile Act alleging that the child is a dependent child.

(b) The county agency shall request protective custody only if the immediate safety and well-being of the child requires removal from the setting in which the alleged child abuse occurred.

(c) A county agency worker may take a child into protective custody only under a specific court order naming the individual child. The county agency staff may not be deputized or use blanket court orders to take children into protective custody.

(d) A child taken into protective custody may be placed only in the following locations:

(1) A hospital, if hospitalization is medically necessary in the opinion of the attending physician.

(2) A home of a relative of the child or other individual who has a significant relationship with the child or the child's family. The home shall be approved by the county agency for this purpose.

(3) A foster family home approved by a licensed foster family care agency.

(4) A licensed residential child care facility.

(e) If the county agency initiates emergency protective custody, it shall notify the child's parents as required by § 3490.17 (relating to notifying the child's parents, guardians or other custodians).

(f) Within 48 hours of taking a child into protective custody, the county agency shall do the following:

(1) Meet with the child's parents to assess their ability to assure the child's safety if the child is to be returned home.

(2) Meet with other individuals who may have information relating to the safety of the child in the home if the child is to be returned home.

(3) Determine if services could be provided to the family which would alleviate the conditions necessitating protective custody.

(4) Provide or arrange for necessary services.

(5) Meet with the parents to advise them of the decision to do one of the following:

(i) Return the child to the child's home.

(ii) Explain to the parents the reasons why the child will continue to be held in protective custody and the nature of future legal proceedings including the rights provided under sections 6337 and 6338 of the Juvenile Act (relating to right to counsel; and other basic rights) which are:

(A) The right to counsel.

(B) The right to introduce evidence and cross examine witnesses at the Juvenile Court hearing.

Source

The provisions of this § 3490.57 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211732).

Cross References

This section cited in 55 Pa. Code § 3490.233 (relating to protective custody).

§ 3490.58. Notifications.

(a) Except for the subject child, the county agency shall notify the subject who is about to be interviewed of:

(1) The existence of the report and the type of suspected abuse.

(2) The subject's rights under sections 6337 and 6338 of the Juvenile Act (relating to right to counsel; and other basic rights) when a case goes to Juvenile Court. Those rights are:

(i) The right to counsel.

(ii) The right to introduce evidence and cross examine witnesses.

(3) The perpetrator's rights regarding amendment and expunction.

(b) Within 72 hours of interviewing the subject, the county agency shall notify the subject in writing of:

(1) The existence of the report and type of alleged abuse.

(2) The rights under sections 6337 and 6338 of the Juvenile Act, when a case goes to juvenile court. Those rights are:

(i) The right to counsel.

(ii) The right to introduce evidence and cross examine witnesses.

- (3) The perpetrator's rights regarding amendment and expunction.
 - (4) The right to obtain a copy of the report from the Statewide Central Register or the county agency.
 - (5) The fact that the report, if determined unfounded, will be expunged from the pending complaint file within 120-calendar days from the date the report was received at ChildLine.
 - (6) The purpose of the law, the implications of the status determination of the report and the services available through the county agency.
 - (7) The effect that a founded or indicated report of child abuse will have on a person seeking employment in a child care service or in a school.
 - (8) That the agency has, will or may make a report to law enforcement officials.
- (c) The written notice required by subsection (b) may be reasonably delayed if notification is likely to threaten the safety of the victim, the safety of a nonperpetrator subject or the safety of an investigating county agency worker, to cause the perpetrator to abscond or to significantly interfere with the conduct of a criminal investigation. The written notice shall be provided to all subjects prior to the county agency determining the status of the report and regardless of where the person lives.
- (d) Except for the subject child, the county agency shall notify all subjects in writing of one of the following when the county agency determines that the report is unfounded:
- (1) The information will be kept on file at the county agency and clearly identified as an unfounded report of suspected child abuse when the family has been accepted for services.
 - (2) The report is unfounded and because the family has not been accepted for services that all information will be expunged at the county agency upon notification from ChildLine and that the report will be expunged from the pending complaint file within 120-calendar days of receipt of the report at ChildLine.
- (e) The county agency shall provide the notification required under subsection (d) when it notifies ChildLine of the status of the report.

Source

The provisions of this § 3490.58 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211733).

Notes of Decisions

Retroactive Application

Department regulations requiring notification of person cited are not applied retroactively; failure to notify petitioner is not a violation of due process. *K. S. v. Department of Public Welfare*, 564 A.2d 561 (Pa. Cmwlth. 1989).

§ 3490.59. Action by the county agency after determining the status of the report.

(a) If the report is determined founded, indicated or unfounded and the family has been accepted for service, the county agency shall develop and implement a family service plan and conduct plan reviews under Chapter 3130 (relating to administration of county children and youth social service programs).

(b) If the report is unfounded and not accepted for services but the family is in need of services, other than those provided by the county agency, the county agency shall advise the subjects of the services available.

Source

The provisions of this § 3490.59 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211733).

Cross References

This section cited in 55 Pa. Code § 3490.55 (relating to investigation of reports of suspected child abuse).

§ 3490.60. Services available through the county agency.

In addition to those services required in Chapter 3130 (relating to administration of county children and youth social service programs) the county agency shall provide, arrange or otherwise make available the following services for the prevention and treatment of child abuse:

- (1) Emergency medical services which include appropriate emergency medical care for examination, evaluation and treatment of children suspected of being abused.
- (2) Self-help groups to encourage self-treatment of present and potential abusers.
- (3) Multidisciplinary teams composed of professionals from a variety of disciplines who are consultants to the county agency in its case management responsibilities as required by Chapter 3130 who perform one of the following functions:
 - (i) Pool their knowledge and skills to assist the county agency in diagnosing child abuse.
 - (ii) Provide or recommend comprehensive coordinated treatment.
 - (iii) Periodically assess the relevance of the treatment and the progress of the family.

(iv) Participate in the State or local child fatality review team authorized under section 6340(a)(4) and 6343(b) of the CPSL (relating to release of information in confidential reports; and performance audit), convened by a professional, organization and the county agency for the purpose of investigating a child fatality or the development and promotion of strategies to prevent child fatality.

Source

The provisions of this § 3490.60 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211734).

Cross References

This section cited in 55 Pa. Code § 3490.62 (relating to repeated child abuse); and 55 Pa. Code § 3490.235 (relating to services available through the county agency for children in need of general protective services).

§ 3490.61. Supervisory review and child contacts.

(a) The county agency supervisor shall review each report of suspected child abuse which is under investigation on a regular and ongoing basis to ensure that the level of services are consistent with the level of risk to the child, to determine the safety of the child and the progress made toward reaching a status determination. The supervisor shall maintain a log of these reviews which at a minimum shall include an entry at 10-calendar day intervals during the investigation period.

(b) When a case has been accepted for service and a family service plan has been developed under Chapter 3130 (relating to the administration of county children and youth social service programs), the county agency supervisor shall, within 10-calendar days of the completion of the family service plan, review the plan to assure that the level of activity, in person contacts with the child, oversight, supervision and services for the child and family contained in the plan, are consistent with the level of risk determined by the county agency for the case. Documentation of this review shall be in the case record.

(c) When a case has been accepted for service, the county agency shall monitor the safety of the child and assure that contacts are made with the child, parents and service providers. The contacts may occur either directly by a county agency worker or through purchase of service, by phone or in person but face-to-face contacts with the parent and the child must occur as often as necessary for the protection of the child but no less often than:

(1) Once a week until the case is no longer designated as high risk by the county agency, if the child remains in or returns to the home in which the abuse occurred and the county agency has determined a high level of risk exists for the case.

(2) Once a month for 6 months or case closure when the child is either:

- (i) Placed out of the home or setting in which the abuse occurred.
- (ii) Not at a high risk of abuse or neglect.

(d) A periodic assessment of the risk of harm to the child shall be conducted as required by the State-approved risk assessment process.

(e) The county agency shall monitor the provision of services and evaluate the effectiveness of the services provided under the family service plan under § 3130.63 (relating to review of family service plans). The county agency worker shall visit the family in performing the case management responsibilities as required by § 3130.63 as often as necessary for management of the services provided but at least every 180-calendar days.

(f) The family service plan shall contain a provision that requires the parents advise the county agency, within 24 hours, when the child or family move from one residence to another.

Source

The provisions of this § 3490.61 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (211734) to (211735).

§ 3490.62. Repeated child abuse.

If the child is a victim of one substantiated incident of child abuse and the county agency receives a subsequent report of suspected child abuse, the county agency administrator or supervisor shall arrange for a review by the multidisciplinary team as required by § 3490.60 (relating to services available through the county agency). Prior to the meeting with the multidisciplinary team, the agency administrator or designee, the supervisor and caseworker shall review the family service plan and make a recommendation to the multidisciplinary team on the appropriateness of the family service plan and whether additional or different services are necessary to protect the child. The county agency shall modify the family service plan, if necessary and appropriate, to reflect the recommendations of the multidisciplinary team and implement action necessary to fulfill the recommendations.

Source

The provisions of this § 3490.62 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211735).

§ 3490.63. [Reserved].

Source

The provisions of this § 3490.63 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; reserved July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211735).

§ 3490.64. [Reserved].

Source

The provisions of this § 3490.64 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; reserved July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (211735) to (211736).

§ 3490.65. [Reserved].

Source

The provisions of this § 3490.65 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; reserved July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211736).

§ 3490.66. [Reserved].

Source

The provisions of this § 3490.66 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; reserved July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211736).

§ 3490.67. Written reports to ChildLine.

(a) The county agency shall send the Child Protective Service Investigation Report form (CY-48) to ChildLine within 30-calendar days of the receipt of the report of suspected child abuse.

(b) To avoid expunction of a case as required by § 3490.69 (relating to reports not received within 60-calendar days) when a status determination cannot be made and the county agency has petitioned the juvenile court, an arrest has been made or there is criminal court action pending, the county agency shall send a copy of the CY-48 to ChildLine with one of the following status determinations:

- (1) Pending juvenile court action.
- (2) Pending criminal court action.

(3) Indicated, when there is substantial evidence that the child was abused.

(c) The county agency shall submit a new CY-48 to ChildLine as required in subsection (a) when a final status determination is made under subsection (b).

(d) A supplemental child abuse report form shall be submitted to ChildLine on founded and indicated reports when additional case information is obtained, including dates of birth, identity of the subjects, additional information about the nature of the abuse, or the case is presented before a court and there is a change in the status of the report.

Source

The provisions of this § 3490.67 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (211736) to (211737).

Notes of Decisions

Accrual Date

A judicial adjudication in a criminal case occurs when an appealable judgment of sentence is imposed; under this interpretation, a suspension of the 60-day investigation/final determination period does not end with the entry of a plea in a criminal case, rather, the suspension may continue until a final, appealable judgment of sentence is imposed. *J.C. v. Department of Public Welfare*, 980 A.2d 743, 748 (Pa. Cmwlth. 2009).

Denial of mother's request for expungement of child-abuse report from State-wide registry was appropriate even though County and Youth Services (CYS) filed final child-abuse report as "founded" more than 60 days after mother pleaded no contest to two counts of aggravated assault against child; while abuse case was pending in criminal court, the 60-day reporting requirement was suspended until mother was sentenced. *J.C. v. Department of Public Welfare*, 980 A.2d 743, 748 (Pa. Cmwlth. 2009).

Cross References

This section cited in 55 Pa. Code § 3490.56 (relating to county agency investigation of suspected child abuse perpetrated by persons employed or supervised by child care agencies and residential facilities).

§ 3490.68. Retention of information on unfounded reports.

(a) When a county agency determines that a report of suspected child abuse is unfounded but accepts the family for services, the agency shall maintain the records under Chapter 3130 (relating to administration of county children and youth social service programs).

(b) If the county agency has determined that a report is unfounded, the status of the report may not be changed subsequently to founded or indicated. If additional information surrounding the incident becomes available, the county agency shall file a new report with ChildLine.

Source

The provisions of this § 3490.68 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211737).

§ 3490.69. Reports not received within 60-calendar days.

When the CY-48 form is not filed with ChildLine within 60-calendar days of receipt of the report by ChildLine, the report shall be unfounded.

Source

The provisions of this § 3490.69 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211737).

Notes of Decisions

Accrual Date

The date on which the known perpetrator of child abuse is reported to the Department's central register, not when the matter is referred to children and youth services, triggers the 60-day time limit within which the agency must complete its investigation. *Cumberland County Children and Youth Services v. Department of Public Welfare*, 611 A.2d 1339 (Pa. Cmwlth. 1992); appeal denied 619 A.2d 701 (Pa. 1993).

A judicial adjudication in a criminal case occurs when an appealable judgment of sentence is imposed; under this interpretation, a suspension of the 60-day investigation/final determination period does not end with the entry of a plea in a criminal case, rather, the suspension may continue until a final, appealable judgment of sentence is imposed. *J.C. v. Department of Public Welfare*, 980 A.2d 743, 748 (Pa. Cmwlth. 2009).

Denial of mother's request for expungement of child-abuse report from State-wide registry was appropriate even though County and Youth Services (CYS) filed final child-abuse report as "founded" more than 60 days after mother pleaded no contest to two counts of aggravated assault against child; while abuse case was pending in criminal court, the 60-day reporting requirement was suspended until mother was sentenced. *J.C. v. Department of Public Welfare*, 980 A.2d 743, 748 (Pa. Cmwlth. 2009).

Cross References

This section cited in 55 Pa. Code § 3490.67 (relating to written reports to ChildLine).

§ 3490.70. Expunction and amendment of report by the county agency.

The county agency shall amend or expunge a record of child abuse upon notification from ChildLine. The county agency shall expunge all information in its possession in unfounded, founded and indicated reports of child abuse upon notification from ChildLine. The county agency shall notify those to whom it gave information to take similar action.

Source

The provisions of this § 3490.70 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (211737) to (211738).

§ 3490.71. Guardian ad litem and court designated advocate.

The county agency shall cooperate with and provide information to a guardian ad litem appointed under section 6382 of the CPSL (relating to guardian ad litem for child in court proceedings) and the court designated advocate. When appropriate, because of the age or mental and emotional condition of the child, the guardian ad litem in addition to representing the best interests of the child shall also determine the wishes of the child concerning the proceedings and shall communicate this information to the court.

Source

The provisions of this § 3490.71 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211738).

§ 3490.72. [Reserved].

Source

The provisions of this § 3490.72 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; reserved July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211738).

§ 3490.73. Petitioning the court.

The county agency shall petition the court if one of the following applies:

- (1) Placement or continued placement of a child is necessary.

(2) A subject of the report of suspected child abuse refuses to cooperate with the county agency in an investigation, and the county agency is unable to determine whether the child is at risk.

(3) The parents refuse services, and the county agency determines that services are in the best interests of the child.

Source

The provisions of this § 3490.73 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211738).

Notes of Decisions

Probable Cause

Department of Public Welfare regulations required Children and Youth (C & Y) to make at least one home visit during a child abuse investigation and if home visit was refused, C & Y was required to petition court to order the home visit; however, for court to grant petition, request must be based on probable cause that an act of child abuse or neglect had occurred. *In Re Petition to Compel Cooperation*, 875 A.2d 365, 374 (Pa. Super. 2005).

CHILD ABUSE BY AGENTS OF THE COUNTY AGENCY

§ 3490.81. Responsibilities of the Department and the county agency.

(a) When the suspected abuse has been committed by an agent of the county agency, the regional staff shall investigate the report under section 6362 of the CPSL (relating to responsibilities of county agency for child protective services) and this chapter. The regional staff may not do any of the following:

- (1) Take protective custody.
- (2) Petition the court.
- (3) Provide services.

(b) If a report is determined indicated or founded and the regional staff determines that services are necessary, the regional staff, the county agency in the county where the abuse occurred and the county agency with custody or supervision of the child, if different, shall plan for social and rehabilitative services for the child and perpetrator. The plan shall identify which county is responsible for case management.

(c) Regional staff shall conduct the investigation regardless of the relationship of the agent to the subject child.

Source

The provisions of this § 3490.81 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (211738) to (211739).

CONFIDENTIALITY

§ 3490.91. Persons to whom child abuse information shall be made available.

(a) Reports, report summaries and other accompanying information obtained under the CPSL and this chapter in the possession of the Department and a county agency are confidential. Except for the subject of a report, persons who receive information under this section shall be advised that they are subject to the confidentiality provisions of the CPSL and this chapter, that they are required to insure the confidentiality and security of the information and that they are liable for civil and criminal penalties for releasing information to persons who are not permitted access to this information. This material shall only be released under the CPSL and this chapter and be made available only to the following:

(1) An authorized official of a county agency or of an agency of another state that performs protective services analogous to those services performed by county agencies or the Department in the course of the official's duties, multidisciplinary team members assigned to the case and authorized persons providing services by referral or under section 6364 of the CPSL (relating to purchasing services of other agencies). The name of the person who made the report or cooperated in the investigation may be released to county agencies in this Commonwealth and out-of-State agencies providing protective services provided they have a legitimate need to know this information to protect the child and the person requesting the information can assure the confidentiality of the identity of the persons who made the report or cooperated in the investigation.

(2) A physician examining or treating a child or the director of a hospital or medical facility treating a child, if the physician or the director of a hospital or medical facility suspects the child of being an abused child.

(3) A guardian ad litem and court designated advocate for the child.

(4) An authorized official or agent of the Department including the following:

(i) The Secretary.

(ii) Deputy Secretaries of the Department and designated staff, in cases involving alleged or actual abuse of children in facilities or programs under their jurisdiction.

(iii) ChildLine staff.

(iv) Authorized officials or agents of the Department who are conducting a performance audit as authorized under section 6343 of the CPSL (relating to investigating performance of county agency) and this chapter.

(5) A court of competent jurisdiction under a court order or a court of common pleas upon written request from a judge in connection with any matter involving custody of a child.

(i) When the Department receives a written request under this paragraph, ChildLine will send to the court copies of the Report of Suspected Child Abuse (CY-47); the ChildLine Report of Suspected Child Abuse and Neglect For ChildLine Use Only (CY-47C); the Child Protective Service Investigation Report (CY-48); and the Child Protective Service Supplemental Report (CY-49) on file at ChildLine involving the subject child, the child's siblings and their parents.

(ii) If the court requests specific files or information that is not on file at ChildLine, ChildLine will notify the county agency administrator to provide the information directly to the court.

(6) A standing committee of the General Assembly, under section 6384 of the CPSL (relating to legislative oversight).

(7) The Attorney General.

(8) Federal auditors, if required for Federal financial participation in funding of agencies, but Federal auditors may not remove identifiable reports or copies of them from the Department or county agencies.

(9) Law enforcement officials of any jurisdiction inside or outside of this Commonwealth if the information is relevant in the course of investigating cases of:

(i) Homicide, sexual abuse or exploitation, or serious bodily injury perpetrated by persons whether or not related to the victim.

(ii) Suspected child abuse perpetrated by persons who are not family members.

(iii) Repeated physical injury to a child under circumstances which indicate that the child's health or welfare is harmed or threatened.

(iv) A missing child report.

(10) Law enforcement officials who shall immediately receive reports of suspected child abuse from the county agency, when the initial report or initial review by the county agency gives evidence that the alleged child abuse is one of the following:

(i) Homicide, sexual abuse or exploitation, or serious bodily injury perpetrated by persons whether or not related to the child.

(ii) Child abuse perpetrated by persons who are not family members.

(11) Designated county officials in reviewing the competence of the county agency or its employees under the CPSL and this chapter. Officials under this paragraph are limited to the following:

(i) The board of commissioners in counties other than counties of the first class.

(ii) The mayor of a city of the first class under the act of April 21, 1949 (P. L. 665, No. 155), known as the First Class City Home Rule Act.

(iii) An individual serving as a county chief executive as designated by a county home rule charter or optional plan form of government under the act of April 13, 1972 (P. L. 184, No. 62), known as the Home Rule Charter and Optional Plans Law.

(12) A subject of the report upon written request.

(13) A person, agency or institution, upon written consent of all subjects of the report may receive a copy of the reports on file with the county agency and ChildLine.

(14) Individuals authorized by the Department to conduct studies of data, if the study does not contain the name or other information by which the subjects of reports may be identified.

(15) Required reporters of suspected child abuse whose access to information is limited to the following:

(i) The final status of the report following the investigation, whether it be indicated, founded or unfounded.

(ii) Services provided or arranged by the county agency to protect the child from further child abuse. This information may be released to the required reporter at any time after the report of suspected child abuse has been made.

(16) A prospective adoptive parent, approved by an adoption agency, when considering adopting an abused child in the custody of a county agency. The adoption agency and the county agency having custody of the child shall determine the scope and detail of information which shall be provided so that the prospective parent may make an informed decision to adopt.

(17) Members of a local or State child fatality review team authorized under sections 6340(a)(4) and 6343(b) of the CPSL (relating to release of information in confidential reports; and investigating performance of county agency), formally organized for the purpose of assisting in the investigation of child death or the development and promotion of strategies to prevent child death. The information shall be provided only through staff of the county agency or Department who are members of the team.

(b) Prospective child care service employe applicants, prospective adoptive and foster parents, prospective administrators and prospective operators of child care services, and any person seeking voluntary certification may request and receive information concerning whether there exists on file in the Statewide Central Register indicated or founded reports of child abuse naming the person as perpetrator of child abuse under section 6344 of the CPSL (relating to information relating to prospective child-care personnel).

(c) Information on file at the Statewide Central Register as a result of a request to amend or expunge a founded or indicated report of child abuse under § § 3490.105 and 3490.105a (relating to request by the subject of a founded or indicated report for expunction or amendment of an abuse report when the report was received by ChildLine prior to July 1, 1995; and request by a perpetrator to amend or expunge an indicated report of child abuse received by ChildLine after June 30, 1995) may only be released to the Secretary or Secretary's designees in the course of their official duties and the Attorney General when conducting an audit under section 6345 of the CPSL (relating to audits by Attorney General).

(d) A person, including a law enforcement official, who willfully breaches the confidentiality or security of information that the person received under this subsection, in addition to other civil or criminal penalties provided by law, shall be denied access to any confidential child abuse information in the future.

Source

The provisions of this § 3490.91 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended April 27, 1990, effective April 28, 1990 and apply retroactively to January 5, 1988, 20 Pa.B. 2286; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (211739) to (211740) and (229421).

Notes of Decisions

Children in File—Disclosure of File

A child placed in foster care, who alleges abuse while in care, has the right to access documents that pertain to the foster care stay; however, the child does not have an unlimited right to access the entire file. *S. M. ex rel. R.M. v. Children & Youth Services of Delaware County*, 686 A.2d 872 (Pa. Cmwlth. 1996).

Statute Has Priority Over Conflicting Regulation

Where there is a conflict between the statute and a regulation purporting to implement the provisions of that statute, the regulation must give way. *Dauphin v. Department of Public Welfare*, 855 A.2d 159, 165 note 6 (Pa. Cmwlth. 2004)

Cross References

This section cited in 55 Pa. Code § 3490.92 (relating to requests by and referrals to law enforcement officials); 55 Pa. Code § 3490.93 (relating to requests by designated county officials); 55 Pa. Code § 3490.94 (relating to release of the identity of a person who made a report of child abuse or cooperated in a subsequent investigation); 55 Pa. Code § 3490.95 (relating to release of information to required reporters); 55 Pa. Code § 3490.193 (relating to other provisions); and 55 Pa. Code § 3800.20 (relating to confidentiality of records).

§ 3490.92. Requests by and referrals to law enforcement officials.

(a) Requests for child abuse information by law enforcement officials under § 3490.91(a)(9) (relating to persons to whom child abuse information shall be made available) shall be made with the following requirements:

(1) Requests shall be in writing and signed by the law enforcement official.

(2) Requests shall indicate that the child abuse information is needed by the law enforcement official in the course of investigating a case of the following:

(i) Homicide, sexual abuse or exploitation, or serious bodily injury, perpetrated by persons whether or not related to the victim.

(ii) Child abuse perpetrated by persons who are not family members.

(iii) Repeated physical injury to a child under circumstances that indicate that a child's health or welfare is harmed or threatened.

(iv) A missing child report.

(3) The information shall include the names of the persons who made the report and who cooperated in the investigation when requested by the law enforcement official.

(b) Referrals to law enforcement officials required by § 3490.91(a)(10) shall be made with the following requirements:

(1) Referrals shall be made by the county agency to the district attorney or other appropriate law enforcement official.

(2) Referrals shall be made if the initial report to or initial review by the county agency gives evidence that the alleged abuse perpetrated by persons whether or not related to the child is one of the following:

- (i) Homicide.
- (ii) Sexual abuse or exploitation.
- (iii) Serious bodily injury.

(3) Referrals shall be made if the initial report to or initial review by the county agency gives evidence that the alleged child abuse is child abuse perpetrated by persons who are not family members.

(4) If during the course of investigating a report of suspected child abuse, the county agency obtains evidence which indicates that referral to law enforcement officials is appropriate, the county agency shall immediately refer the report to the law enforcement official.

(5) The county agency may not refer to law enforcement officials reports of suspected child abuse which do not meet the requirements of paragraphs (2) and (3).

(6) Reports shall be made verbally under policies and procedures developed in conjunction with the district attorney and other law enforcement officials.

(7) Reports shall be made in writing on the next work day when the report is made verbally or within 24 hours of when the county agency determines that the report meets the criteria for making a report to law enforcement officials. Written reports shall be made on forms developed by the Department.

(8) The county agency shall release the names of the person who made the report or cooperated in the investigation to law enforcement officials upon request.

(c) If the complaint of suspected abuse is determined to be one which cannot be investigated by the county agency because the person accused of the abuse is not a perpetrator, but does suggest the need for investigation, the county agency shall immediately transmit the information to the appropriate authorities.

(d) The county agency may not provide information to a law enforcement official under this section, unless the law enforcement official is known to or has exhibited proper identification to the county agency.

(e) Law enforcement officials shall treat all reporting sources and persons who cooperated in the investigation as confidential informants.

Source

The provisions of this § 3490.92 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (229421) to (229422).

Cross References

This section cited in 55 Pa. Code § 3490.94 (relating to release of the identity of a person who made a report of child abuse or cooperated in a subsequent investigation); and 55 Pa. Code § 3800.20 (relating to confidentiality of records).

§ 3490.93. Requests by designated county officials.

Requests for child abuse information by designated county officials under § 3490.91(a)(11) (relating to persons to whom child abuse information shall be made available) shall be made under the following requirements:

- (1) Requests shall be made in writing and addressed to the county administrator.
- (2) Requests shall be signed by:
 - (i) A majority of the county commissioners.
 - (ii) The mayor of a city of the first class.
 - (iii) The county chief executive.
- (3) Requests shall indicate that the information is needed by the designated county officials as part of an investigation of the competence of a county agency or county agency employe.
- (4) Requests shall identify the specific files needed.
- (5) The county agency shall provide the requested information and inform the designated county officials that the information may not be released to anyone except those permitted access to this information under § 3490.91 and that they are subject to § 3490.102 (relating to criminal liability for breach of confidentiality).

Source

The provisions of this § 3490.93 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (229422).

Cross References

This section cited in 55 Pa. Code § 3490.193 (relating to other provisions); and 55 Pa. Code § 3800.20 (relating to confidentiality of records).

§ 3490.94. Release of the identity of a person who made a report of child abuse or cooperated in a subsequent investigation.

(a) Except for the release of the identity of the persons who made a report of suspected child abuse or cooperated in the investigation under § 3490.91(a)(9) and (10) and 3490.92(a)(3) (relating to persons to whom child abuse information shall be made available; and requests by and referrals to law enforcement officials), the release of data that would identify the person who made a report of suspected child abuse or person who cooperated in a subsequent investigation is prohibited, unless the Secretary finds that the release will not be detrimental to the safety of the person.

(b) Prior to releasing information under subsection (a) to anyone other than a law enforcement official under subsection (a), the Secretary will notify the person whose identity would be released that the person has 30-calendar days to advise the Secretary why this anticipated release would be detrimental to the person's safety.

Source

The provisions of this § 3490.94 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (229422) to (229423).

Cross References

This section cited in 55 Pa. Code § 3490.104 (relating to release of information to a subject of a report); 55 Pa. Code § 3490.193 (relating to other provisions); and 55 Pa. Code § 3800.20 (relating to confidentiality of records).

§ 3490.95. Release of information to required reporters.

The release of information by the county agency to required reporters under § 3490.91(a)(15) (relating to persons to whom child abuse information shall be made available) is subject to the following:

- (1) The information released by the county agency shall concern the same child who was the subject of the report made by the required reporter.
- (2) The required reporter shall request the information, either verbally or in writing.
- (3) Before releasing the allowable information, the county agency shall verify the identity of the required reporter in one of the following ways:
 - (i) The county agency shall be able to recognize the voice of the required reporter when the request is made verbally by telephone.
 - (ii) If the county agency is not familiar with the required reporter and does not recognize the reporter's voice the county agency may verify the request of the required reporter by returning the telephone call to the reporter's place of employment.

(iii) If the county agency is unable to verify a telephone request for information from a required reporter under subparagraphs (i) and (ii), the county agency shall obtain a written request for information from the required reporter.

(4) The county agency shall release the information under § 3490.91(a)(15) when requested by a required reporter.

(5) The county agency may release the information under § 3490.91(a)(15), either verbally or in writing, to the required reporter whether or not a request for information was received.

(6) The county agency shall inform the required reporter of the reporter's obligation to protect the confidentiality of information released as required under sections 6339 and 6340 of the CPSL (relating to confidentiality of reports; and release of information in confidential reports).

(7) The county agency shall make an entry of the request made by the required reporter and the response given in the case record.

Source

The provisions of this § 3490.95 adopted April 27, 1990, effective April 28, 1990 and apply retroactively to January 5, 1988, 20 Pa.B. 2286; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (229423).

Cross References

This section cited in 55 Pa. Code § 3800.20 (relating to confidentiality of records).

GENERAL REQUIREMENTS FOR CHILD PROTECTIVE SERVICES

§ 3490.101. Sanctions.

A staff member of the Department or county agency who willfully violates the CPSL and this chapter is subject to disciplinary action, including dismissal.

Source

The provisions of this § 3490.101 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (229424).

§ 3490.102. Criminal liability for breach of confidentiality.

A person who willfully releases or permits the release of data or information contained in the pending complaint file, the Statewide Central Register or the county agency records, to persons or agencies not permitted by this chapter to receive this information shall be guilty of a misdemeanor of the third degree. In addition, the person shall be denied access in the future to information that the person would otherwise be entitled to receive under the CPSL and this chapter.

Source

The provisions of this § 3490.102 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (229424).

Cross References

This section cited in 55 Pa. Code § 3490.93 (relating to requests by designated county officials); and 55 Pa. Code § 3490.126 (relating to sanctions).

§ 3490.103. Nonabuse reports received by the county agency or other public agency from ChildLine.

Public agencies, including county agencies, shall evaluate those referrals from ChildLine made under section 6334 of the CPSL (relating to disposition of complaints received) which have not been identified as reports of suspected child abuse. If, after the evaluation, the agency has reason to suspect that child abuse occurred, the agency shall make a report of suspected abuse to ChildLine.

Source

The provisions of this § 3490.103 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (229424).

§ 3490.104. Release of information to a subject of a report.

(a) Upon written request to a county agency or ChildLine, a subject of a report may receive at any time a copy of the reports filed with the county agency and ChildLine. The identity of the person who made the report or a person who cooperated in a subsequent investigation may be released only under § 3490.94 (relating to release of the identity of a person who made a report of child abuse or cooperated in a subsequent investigation).

(b) Upon written request, a defendant in a criminal proceeding is entitled to the child abuse information in the possession of a county agency in accordance with applicable law. The information is limited to the county agency record from the date the report was made to the date the county agency determined the status of the report. The county agency shall send the requested information to the defendant and the district attorney. The information that is released

to the defendant and the district attorney may not contain the identity of the persons who made the report or cooperated in the investigation.

Source

The provisions of this § 3490.104 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (229424) to (229425).

Notes of Decisions

Children in Foster Care

A child placed in foster care, who alleges abuse while in care, has the right to access documents that pertain to the foster care stay; however, the child does not have an unlimited right to access the entire file. *S. M. ex rel. R. M. v. Children & Youth Servs.*, 686 A.2d 872 (Pa. Cmwlth. 1996).

Cross References

This section cited in 55 Pa. Code § 3490.193 (relating to other provisions).

§ 3490.105. Request by the subject of a founded or indicated report for expunction or amendment of an abuse report, when the report was received by ChildLine prior to July 1, 1995.

(a) A subject of an indicated or founded report may request in writing that the Secretary amend or expunge the report on the grounds that it is inaccurate or being maintained in a manner inconsistent with the CPSL and this chapter.

(b) The Secretary will decide whether to grant or deny a request made under subsection (a) within 30 days from the date the request is received. The Secretary will notify subjects of the report and the appropriate county agency of the decision by first-class mail.

Source

The provisions of this § 3490.105 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (229425).

Cross References

This section cited in 55 Pa. Code § 3490.91 (relating to persons to whom child abuse information shall be made available); and 55 Pa. Code § 3490.106 (relating to hearings and appeals proceedings for reports received by ChildLine prior to July 1, 1995).

§ 3490.105a. Request by a perpetrator to amend or expunge an indicated report of child abuse received by ChildLine after June 30, 1995.

(a) A perpetrator of an indicated report of child abuse may request the Secretary to amend or expunge the report on the grounds that it is inaccurate or is being maintained in a manner inconsistent with the CPSL and this chapter. The request shall be in writing and postmarked within 45-calendar days of the mailing date of the letter from ChildLine under §§ 3490.40 and 3490.40a (relating to notifications regarding indicated reports; and notifications regarding founded reports).

(b) The Secretary will decide within 30-calendar days whether or not to grant the request. The Secretary will notify the perpetrator, the county agency and other subjects in writing as follows:

(1) Except the subject child, all other subjects of the report when the decision is to grant the request.

(2) Only the perpetrator when the decision is to deny the request.

(c) The notification from the Secretary will be sent by first-class mail.

Cross References

This section cited in 55 Pa. Code § 3490.91 (relating to persons to whom child abuse information shall be made available).

§ 3490.106. Hearings and appeals proceedings for reports received by ChildLine prior to July 1, 1995.

(a) A subject of the report and the appropriate county agency have the right to appeal the Secretary's decision to grant or deny a subject's request to amend or expunge an indicated or founded report by filing an appeal with the Secretary.

(b) Appeals shall be in writing to the Secretary and be postmarked within 45-calendar days from the date of the Secretary's notification letter to either grant or deny the request.

(c) If a subject or county agency files an appeal under § 3490.105 (relating to request by the subject of a founded or indicated report for expunction or amendment of an abuse report when the report was received by ChildLine prior to July 1, 1995), the subject or county agency has the right to a hearing before the Department's Bureau of Hearings and Appeals.

(d) Except as provided in subsection (e), hearings will be conducted under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedures).

(e) Hearings will be scheduled and final administrative action taken in accordance with the time limits specified in § 275.4(b) and (e)(1), (3) and (5) (relating to procedures).

(f) The burden of proof in hearings held under this section is on the appropriate county agency.

(g) A court finding of fact of child abuse is presumptive evidence that the report was substantiated.

(h) Parties to a hearing held under this section have 30-calendar days from the date of the final order of the Bureau of Hearings and Appeals to request the Secretary to reconsider the decision or appeal the final order to the Commonwealth Court.

Source

The provisions of this § 3490.106 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (229425) to (229426).

Notes of Decisions

Expungement

The social worker produced enough evidence, through the child's medical history, psychological evaluations of the family members and interviews with relevant parties to establish that the report was accurate and the Department properly refused to expunge the indicated report of child abuse. *M.R.F. v. Department of Public Welfare*, 595 A.2d 644 (Pa. Cmwlth. 1991).

The Department's 45-day period during which a subject must request a hearing is not applicable when the Department refuses rather than grants a subject's request for expungement under 23 Pa.C.S. § § 6301—6384 (relating to the Child Protective Services Law). *Keely v. Department of Public Welfare*, 552 A.2d 739 (Pa. Cmwlth. 1989); appeal denied 568 A.2d 1250 (Pa. 1989).

Hearsay

Uncorroborated hearsay cannot satisfy the agency's burden unless the following requirements are met: the statement was accurately recorded by audio or video equipment; the audio-visual record discloses the identity and at all times included the images and/or voices of all individuals present during the interview of the minor; and the statement was not made in response to questioning calculated to lead the minor to make a particular statement and was not the product of improper suggestion. *A. Y. v. Department of Public Welfare*, 641 A.2d 1148 (Pa. 1994).

Substantial Evidence

In proceeding to expunge name of suspected abuser from child abuse registry, hearsay testimony in conjunction with admissible corroborative evidence of the act in question can *in toto* constitute substantial evidence which will satisfy the agency's burden to justify a conclusion of abuse. *A.Y. v. Department of Public Welfare*, 641 A.2d 1148 (Pa. 1994).

§ 3490.106a. Hearings and appeals proceedings for indicated reports received by ChildLine after June 30, 1995.

- (a) A perpetrator may appeal the Secretary's decision to deny the request to expunge an indicated report by filing an appeal with the Secretary.
- (b) The other subjects of the report and the county agency may appeal the Secretary's decision to grant the request to expunge the report.
- (c) The request shall be made to the Secretary and postmarked within 45-calendar days of the date of the notification letter from the Secretary to either grant or deny the request to expunge the report.
- (d) If an appeal is taken, there is a hearing before the Department's Bureau of Hearings and Appeals.
- (e) Except as provided in subsection (f), hearings will be conducted under 2 Pa.C.S. § § 501—508 and 701—704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).
- (f) Hearings will be scheduled and final administrative action taken in accordance with the time limits specified in § 275.4(b) and (e)(1), (3) and (5) (relating to procedures).
- (g) The burden of proof in hearings held under this section is on the appropriate county agency.
- (h) Parties to a hearing held under this section have 15-calendar days from the mailing date of the final order of the Bureau of Hearings and Appeals to request the Secretary to reconsider the decision or 30-calendar days to appeal the final order to the Commonwealth Court.
- (i) An administrative appeal proceeding will be automatically stayed upon notice to the Department by any subject or the county agency that there is a pending criminal proceeding or a dependency or delinquency proceeding under the Juvenile Act including an appeal thereof, involving the same factual circumstances.

Source

The provisions of this § 3490.106a adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

§ 3490.107. Notification of Secretary's decision to amend or expunge a report of child abuse.

The Secretary, after ordering a record to be amended or expunged, shall advise ChildLine of the decision.

Source

The provisions of this § 3490.107 adopted December 20, 1985, effective January 1, 1986, 15 Pa.B. 4547; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (229426) to (229427).

§ 3490.108. Cooperation of county agencies and law enforcement agencies.

Consistent with this chapter, the county agencies and law enforcement agencies shall cooperate and coordinate, to the fullest extent possible, their efforts to respond to reports of suspected child abuse.

Source

The provisions of this § 3490.108 adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

§ 3490.109. Report from law enforcement agencies.

The law enforcement agency shall, as soon as possible and without jeopardizing the criminal investigation or prosecution, advise the county agency as to whether a criminal investigation has been undertaken and the results of the investigation and of any criminal prosecution in cases of suspected child abuse. The county agency shall ensure that the information is referred to ChildLine in a timely manner.

Source

The provisions of this § 3490.109 adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

VERIFICATION OF THE EXISTENCE OF CHILD ABUSE AND STUDENT ABUSE RECORDS FOR CHILD CARE SERVICES

§ 3490.121. Definitions.

The following words and terms, when used in this section and §§ 3490.122—3490.127 (relating to verification of the existence of child abuse and student abuse records for child care services) have the following meanings, unless the context clearly indicates otherwise:

Administrator—A person hired by or under contract with a legal entity to be responsible for the management and operation of a child care service.

Applicant—A person who will have direct contact with children in a child care service, who does one of the following:

- (i) Applies for gainful employment in a child care service, including an administrator, or other support personnel.

(ii) Applies for employment with a contractor who is under contract with a child care facility or program.

(iii) Is employed by a contractor seeking a contract with a child care facility or program.

Child care service—

(i) Child day care centers, group and family day care homes, foster homes, adoptive parents, boarding homes for children, juvenile detention center services or programs for delinquent or dependent children; mental health, mental retardation, early intervention and drug and alcohol services for children; and other child care services which are provided by or subject to approval, licensure, registration or certification by the Department or a county social services agency or which are provided under a contract with the Department or a county social services agency.

(ii) The term does not include services or programs which may be offered by public and private schools, intermediate units or area vocational-technical schools.

Child caretaker—

(i) A person whether compensated or not who provides care for a child and who voluntarily solicits certification from the Department under section 6344 of the CPSL (relating to information relating to prospective child-care personnel).

(ii) The term includes a babysitter, scout leader or den parent.

*Direct contact with children—*Access to children by a paid employe of or person under contract with a child care service who has routine and unsupervised access to children in the course of carrying out the employe's responsibilities in a child care service.

*Legal entity—*Includes a society partnership, corporation or another governing authority legally responsible for the administration and operation of a child care service.

*Operator—*A person who provides a child care service but is not hired by or under contract with a legal entity.

*Permanent employe—*A child care worker who meets one of the following conditions:

(i) Has met the requirement of § 3490.122 (relating to responsibilities of an applicant, prospective operator or legal entity of a child care service).

(ii) Was employed prior to January 1, 1986, and was not required to submit the requests for clearances.

*Request for verification—*A request to the Statewide Central Register from an applicant, operator of a child care service, foster parent or adoptive parent or a child caretaker seeking

voluntary certification to determine whether the applicant is named as a perpetrator in an indicated or founded report of child abuse.

Source

The provisions of this § 3490.121 adopted December 27, 1985, effective January 1, 1986, 15 Pa.B. 4629; amended April 27, 1990, effective April 28, 1990 and apply retroactively to January 5, 1988, 20 Pa.B. 2286; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (229427) and (211747) to (211748).

§ 3490.122. Responsibilities of an applicant, prospective operator or legal entity of a child care service.

(a) An applicant or prospective operator of a child care service shall submit a request for verification on forms provided by the Department. The request for verification shall include a check or money order for the fee charged by the Department, payable to the Department of Public Welfare, which will not exceed \$10. Prospective workfare program participants are exempt from payment of the fee. To obtain a form for the clearance statement, an applicant may call the ChildLine verification unit at (717) 783-6211 and request a Pennsylvania Child Abuse History Clearance Form.

(b) A person who applies to the Department or the Department of Health to operate a child care service shall comply with procedures established by these Departments for documentation of compliance with the requirements for reports of child abuse and criminal record history information.

(c) An administrator, or other person responsible for hiring decisions, may not hire or contract with an applicant, nor may a prospective operator be issued a certificate of compliance or registration if the Department has verified that the applicant or prospective operator is named in the Statewide Central Register as the perpetrator of a founded report of child abuse committed within 5 years or less prior to the request for verification.

(d) An administrator, or other person responsible for hiring decisions, may not hire or contract with an applicant, nor may a prospective operator be issued a certificate of compliance or registration if the applicant's criminal history record information dictates that the applicant or prospective operator has been convicted of a crime as specified in section 6344 of the CPSL (relating to information relating to prospective child-care personnel) or an equivalent out-of-State crime as determined by the Department.

(e) An administrator, or other person responsible for hiring decisions, may not hire or contract with an applicant, nor may a prospective operator be issued a certificate of compliance or registration if the applicant's report of criminal history record verification or the report of child abuse record information was obtained more than 1 year prior to the date of application.

(f) An applicant or prospective operator of a child care service located in this Commonwealth who is not a resident of this Commonwealth is required to obtain a report of criminal history

record from the Federal Bureau of Investigation according to procedures established by the Department and on forms provided by ChildLine.

Source

The provisions of this § 3490.122 adopted December 27, 1985, effective January 1, 1986, 15 Pa.B. 4629; amended April 27, 1990, effective April 28, 1990, 20 Pa.B. 2286; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (211748) to (211749).

Cross References

This section cited in 55 Pa. Code § 3490.121 (relating to definitions).

§ 3490.123. Responsibilities of prospective adoptive parents, prospective foster parents, foster family care agencies and adoption investigators.

(a) A prospective adoptive parent or a prospective foster parent shall submit a request for verification on forms provided by the Department. The request for verification shall include a check or money order for the fee charged by the Department, payable to the Department of Public Welfare, which will not exceed \$10.

(b) In the course of causing an investigation to be made under 23 Pa.C.S. § 2535(a) (relating to investigation), an agency or person designated by the court to conduct the investigation shall require prospective adoptive parents to submit the information in section 6344 of the CPSL (relating to information relating to prospective child-care personnel) for review under subsection (d).

(c) In the course of approving a prospective foster parent, a foster family care agency shall require a prospective foster parent to submit the information in section 6344 of the CPSL for review by the foster family care agency under subsection (d).

(d) A prospective adoptive parent or prospective foster parent may not be approved by a foster family care agency, an adoption agency, or a person designated by the court under 23 Pa.C.S. § 2535(a) when any of the following circumstances exist:

(1) The parent has been named as a perpetrator of a founded report of child abuse committed within 5 years or less prior to the request for verification.

(2) The parent has been convicted of a crime under section 6344 of the CPSL or an equivalent out-of-State crime as determined by the Department.

(3) The report of criminal history record information or the report of child abuse record information was obtained more than 1 year prior to the date of application to the agency for approval or 1 year prior to the date of commencement of the investigation under 23 Pa.C.S. § 2535(a).

(e) A prospective adoptive parent or prospective foster parent who is not a resident of this Commonwealth is required to obtain a report of criminal history from the Federal Bureau of Investigation according to procedures established by the Department and on forms provided by ChildLine.

Source

The provisions of this § 3490.123 adopted December 27, 1985, effective January 1, 1986, 15 Pa.B. 4629; amended April 27, 1990, effective April 28, 1990 and apply retroactively to January 5, 1988, 20 Pa.B. 2286; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (211749) to (211750).

Cross References

This section cited in 55 Pa. Code § 3490.121 (relating to definitions).

§ 3490.124. Departmental procedures for replying to a request for verification.

(a) Requests for verification received on forms provided by the Department with a check or money order payable to the Department of Public Welfare in the amount charged by the Department will be processed. Prospective workfare participants are exempt from payment of the fee. Others will be returned with instruction for resubmitting the request.

(b) The Department will advise the person seeking verification in writing whether or not he is named as a perpetrator of an indicated or founded report of child abuse or a school employe responsible for student abuse named in the Statewide Central Register. If the person is named as a perpetrator of an indicated or founded report of child abuse or a school employe responsible for student abuse, the response will include the following information:

(1) The number of indicated or founded reports of child abuse and student abuse in which the person is named.

(2) The date of the incidents of indicated or founded reports of child abuse and student abuse in which the person is named.

Source

The provisions of this § 3490.124 adopted December 27, 1985, effective January 1, 1986, 15 Pa.B. 4629; amended April 27, 1990, effective April 28, 1990 and apply retroactively to January 5, 1988, 20 Pa.B. 2286; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211750).

Cross References

This section cited in 55 Pa. Code § 3490.121 (relating to definitions); 55 Pa. Code § 3490.125 (relating to voluntary certification of child caretakers); and 55 Pa. Code § 3490.126 (relating to sanctions).

§ 3490.125. Voluntary certification of child caretakers.

(a) A child caretaker may request certification from the Department that the requirements of section 6344 of the CPSL (relating to information relating to prospective child-care personnel) have been met.

(b) A child caretaker requesting voluntary certification who is a resident of this Commonwealth shall obtain a report of criminal history from the Pennsylvania State Police and submit it to the Department with the request for verification on forms provided by the Department.

(c) A child caretaker requesting voluntary certification who is not a resident of this Commonwealth shall secure a report of criminal history from the Federal Bureau of Investigation under procedures established by the Department on properly prepared forms provided by ChildLine.

(d) The Department will reply to requests for voluntary certification by providing the following:

(1) A copy of the report of criminal history record information from the Pennsylvania State Police.

(2) A report of child abuse and student abuse history record information under § 3490.124 (relating to Departmental procedures for replying to a request for verification).

(e) A request for voluntary certification from the Department may be made no more frequently than every 2 years.

(f) The Department will process requests for voluntary certification it receives on the forms developed by the Department. The request shall include a check or money order payable to the Department of Public Welfare in the amount charged by the Department. Others will be returned with instructions for resubmitting the request.

Source

The provisions of this § 3490.125 adopted December 27, 1985, effective January 1, 1986, 15 Pa.B. 4629; amended April 27, 1990, effective April 28, 1990 and apply retroactively to January 5, 1988, 20 Pa.B. 2286; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (211750) to (211751).

Cross References

This section cited in 55 Pa. Code § 3490.121 (relating to definitions).

§ 3490.126. Sanctions.

(a) An administrator, or other person responsible for employment decisions in a child care facility or program who willfully fails to comply with section 6344 of the CPSL (relating to information relating to prospective child-care personnel) is subject to civil penalty not to exceed \$2,500.

(b) Information received by a legal entity, an administrator, the Department or the Department of Health under § 3490.124 (relating to Departmental procedures for replying to a request for verification) is confidential and the legal entity, administrator, the Department and the Department of Health are subject to § 3490.102 (relating to criminal liability for breach of confidentiality).

Source

The provisions of this § 3490.126 adopted December 27, 1985, effective January 1, 1986, 15 Pa.B. 4629; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (211751) to (211752).

Cross References

This section cited in 55 Pa. Code § 3490.121 (relating to definitions).

§ 3490.127. Information relating to prospective child care personnel.

(a) The administrator of a child care service may employ applicants on a provisional basis for a single period of employment pending the receipt of the required clearances in accordance with section 6344 of the CPSL (relating to information relating to prospective child-care personnel).

(b) The maximum period of employment allowed for a provisional employe is as follows:

(1) Thirty calendar days for an applicant residing in this Commonwealth.

(2) Ninety calendar days for an out-of-State applicant.

(c) The administrator may employ an applicant on a provisional basis if the administrator has no knowledge or information that would disqualify the applicant from employment in accordance with section 6344 of the CPSL and if the applicant has complied with each of the following:

(1) Mailed the requests for the required clearances to ChildLine, the State Police and the FBI, if applicable.

(2) Provided copies of these completed request forms for clearances to the administrator to retain as a condition of provisional employment.

(3) Sworn or affirmed in writing that the applicant was not disqualified from employment under section 6344 of the CPSL or an equivalent out-of-State crime.

(d) During the 30- or 90-day provisional period, the provisional employe may not be permitted to work alone with children and shall work within the vicinity of a permanent employe.

(e) If the provisional employe does not submit the required clearances within 30- or 90-calendar days of employment, whichever is applicable, the administrator shall do one of the following:

(1) Dismiss the provisional employe until the required clearances are received.

(2) Lay off or place the provisional employe on leave with or without pay until the clearances are received.

(3) Retain and reassign the provisional employe to a position that does not involve direct contact with children.

(f) A provisional employe shall be immediately dismissed from employment if he is disqualified from employment under section 6344 of the CPSL.

Source

The provisions of this § 3490.127 adopted April 27, 1990, effective April 28, 1990 and apply retroactively to January 5, 1988, 20 Pa.B. 2286; amended July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211752).

Cross References

This section cited in 55 Pa. Code § 3490.121 (relating to definitions).

VERIFICATION OF THE EXISTENCE OF CHILD ABUSE AND STUDENT ABUSE RECORDS FOR SCHOOL EMPLOYES

§ 3490.131. Definitions.

The following words and terms, when used in this section and § § 3490.132—3490.136, have the following meanings, unless the context clearly indicates otherwise:

Administrator—

(i) The person responsible for the administration of a public or private school, intermediate unit or area vocational-technical school.

(ii) The term includes a person responsible for employment decisions in a school and an independent contractor.

Applicant—

(i) An individual who applies for a position as a school employe including a person applying to be a volunteer in charter or regional charter schools.

(ii) The term includes an individual who transfers from one position as a school employe to another position as a school employe.

Clearance statement—An official clearance statement from the Department on whether an applicant's name is on file in the Statewide Central Register as a perpetrator in an indicated or founded report of child abuse or an indicated or founded report of student abuse, or both.

Direct contact with students—Access to children by a school employe who has routine and unsupervised access to children in the course of carrying out the employe's responsibilities in a school.

Independent contractor and the contractor's employes—A person employed in a position on a contractual basis with a school who has direct contact with students.

Position—The job classification of a school employe as defined and determined by existing law, State regulation or the school board or governing authority including administrative and supervisory staff, teachers, paraprofessionals, support staff or others.

School—All schools including public and nonpublic schools as defined in the Public School Code of 1949 (24 P. S. § § 1-101—27-2702) and private academic schools as defined in 22 Pa. Code Part II (relating to State Board of Private Academic Schools), as follows:

(i) *Public*—School districts, intermediate units, area vocational-technical schools, charter and regional charter schools.

(ii) *Registered*—Nonpublic (religiously affiliated schools).

(iii) *Licensed*—Private academic schools that are licensed by the Department of Education (includes residential facilities that hire their own staff to teach residents of the facility).

(iv) *Accredited*—Accredited by an accreditation association or organization.

(v) *State-owned*—Scotland School and Scranton School for the Deaf.

School employe—

(i) An individual employed in a position by a school.

(ii) The term includes independent contractors and their employes.

(iii) The term excludes individuals who have no direct contact with students.

Substitute list—A list, approved by the hiring authority of a school, containing the names of persons eligible to serve the school as substitute teachers or temporary replacements for other employes.

Transfer—A change from one position to another.

Source

The provisions of this § 3490.131 adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

§ 3490.132. Responsibilities of an administrator.

(a) An administrator shall require each applicant to submit a clearance statement obtained from the Department within the immediately preceding year as to whether the applicant is named as the perpetrator of an indicated or founded report of child abuse or the individual responsible for an indicated or founded report of student abuse.

(b) The clearance statement under subsection (a) is not required for an applicant who meets the following conditions:

(1) Transfers from one position as a school employe to another position as a school employe of the same school district or of the same organization.

(2) Has, prior to the transfer, already obtained the official clearance statement under subsection (a).

(c) Except as provided in § 3490.134 (relating to information relating to prospective school employes), an administrator may not hire an applicant if the applicant is the perpetrator of a founded report of child abuse or the individual responsible for a founded report of student abuse.

(d) An administrator may not hire an applicant if the clearance statement is more than 1 year old as determined by the date on the clearance statement.

(e) School administrators shall, in their contracts with independent contractors and their employes who have direct contact with students, require contractors to include provisions for a clearance statement as required by this chapter.

(f) A clearance statement is required only prior to the initial hiring of a substitute and remains in effect as long as the substitute continues to be employed by the same school. When a substitute seeks to have his name added to another school's substitute list, the substitute shall provide a current clearance statement to the additional school. The fact that a substitute appears

on one school's substitute list is not sufficient evidence to allow another school to add the substitute's name to its substitute list.

(g) The administrator shall make a copy of the clearance statement and place it in the employee's personnel record.

Source

The provisions of this § 3490.132 adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

Cross References

This section cited in 55 Pa. Code § 3490.131 (relating to definitions); and 55 Pa. Code § 3490.134 (relating to information relating to prospective school employes).

§ 3490.133. Responsibilities of an applicant.

(a) An applicant shall submit a request for a clearance statement to the Department on the form provided by the Department. The request shall include a check or money order payable to the Department of Public Welfare in the amount specified on the application. The fee may not exceed \$10.

(b) To obtain a form for the clearance statement, an applicant may call the ChildLine verification unit at (717) 783-6211 and request a Pennsylvania Child Abuse History Clearance Form.

(c) An applicant shall show the original clearance statement to the administrator and permit a copy to be made.

Source

The provisions of this § 3490.133 adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

Cross References

This section cited in 55 Pa. Code § 3490.131 (relating to definitions).

§ 3490.134. Information relating to prospective school employes.

(a) Section 3490.132 (relating to responsibilities of an administrator) does not apply to a person working in a school who meets the following conditions:

- (1) Is under 21 years of age.
- (2) Is participating in a job development or job training program.

(3) Is employed for not more than 90-calendar days.

(b) An administrator may employ an applicant on a provisional basis if the following apply:

(1) The applicant attests in writing by oath or affirmation that he has submitted a request for a clearance statement and is not disqualified under § 3490.132.

(2) The administrator has no knowledge of information which would disqualify the applicant under § 3490.132.

(c) The provisional period may not exceed:

(1) Thirty-calendar days for residents of this Commonwealth.

(2) Ninety-calendar days for residents of another state.

(d) An administrator may not hire an applicant on a provisional basis during a strike under the Public Employee Relations Act (43 P. S. § § 1101.201—1101.2201).

(e) If the applicant does not submit the clearance statement within 30- or 90-calendar days, whichever is applicable, the administrator shall do one of the following:

(1) Dismiss the provisional employe until the required clearance statement is received.

(2) Lay off or place the provisional employe on leave with or without pay until the clearance statement is received.

(3) Retain and reassign the provisional employe to a position that does not involve direct contact with children.

(f) An administrator shall immediately dismiss a provisional employe if the employe is the perpetrator of a founded report of child abuse or the individual responsible for causing serious bodily injury to or sexually abusing or exploiting a student in a founded report of student abuse.

Source

The provisions of this § 3490.134 adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

Cross References

This section cited in 55 Pa. Code § 3490.131 (relating to definitions); and 55 Pa. Code § 3490.132 (relating to responsibilities of an administrator).

§ 3490.135. Responsibilities of the Department.

(a) Requests for clearance statements received on forms provided by the Department with a check or money order payable to the Department of Public Welfare in the amount charged by the Department will be processed. The Department will return the forms that are not completed properly with instructions for resubmitting the request.

(b) The Department will advise the person seeking a clearance statement in writing whether or not he is named as a perpetrator of an indicated or founded report of child abuse or a school employe responsible for student abuse named in the Statewide Central Register. If the person is named as a perpetrator of an indicated or founded report of child abuse or a school employe responsible for student abuse, the response will include the following information:

(1) The number of indicated or founded reports of child abuse and student abuse in which the person is named.

(2) The date of the incidents of indicated or founded reports of child abuse and student abuse in which the person is named.

(c) The Department will comply with the request for an official clearance statement within 14 days of receipt of the request by the Department.

Source

The provisions of this § 3490.135 adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

Cross References

This section cited in 55 Pa. Code § 3490.131 (relating to definitions).

§ 3490.136. Sanctions.

An administrator who willfully violates section 6355 of the CPSL (relating to requirement) shall be subject to an administrative penalty of \$2,500. An action under section 6355 of the CPSL is governed by 2 Pa.C.S. § § 501—508 and 701—704 (relating to Administrative Agency law).

Source

The provisions of this § 3490.136 adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

Cross References

This section cited in 55 Pa. Code § 3490.131 (relating to definitions).

Subchapter B. ABUSE OF STUDENTS IN SCHOOL

INTRODUCTION

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Source

The provisions of this Subchapter B adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513, unless otherwise noted.

INTRODUCTION

§ 3490.141. Applicability.

This subchapter applies to the Department, county agencies, law enforcement officials and schools.

Cross References

This section cited in 55 Pa. Code § 3490.143 (relating to definitions).

§ 3490.142. Purpose.

The purpose of this subchapter is to implement the provisions of the CPSL relating to student abuse.

Cross References

This section cited in 55 Pa. Code § 3490.143 (relating to definitions).

§ 3490.143. Definitions.

In addition to the definitions in § 3490.4 (relating to definitions), the following words and terms, when used this section and § § 3490.141, 3490.142, 3490.151—3490.154, 3490.161, 3490.171—3490.175, 3490.181, 3490.182 and 3490.191—3490.193, have the following meanings, unless the context clearly indicates otherwise:

Administrator—The person responsible for the administration of a public or private school, intermediate unit or area vocational-technical school. The term includes an independent contractor.

Founded report for a school employe—A report of student abuse if there is any judicial adjudication based on a finding that the student suffered serious bodily injury or sexual abuse or exploitation, including the entry of a plea of guilty or nolo contendere or a finding of guilt to a criminal charge involving the same factual circumstances involved in the allegations of student abuse.

Indicated report for a school employe—A report of student abuse if an investigation by the county agency determines that substantial evidence of serious bodily injury or sexual abuse or exploitation exists based on one or more of the following:

- (i) Available medical evidence.
- (ii) The county agency's investigation.
- (iii) An admission of causing serious bodily injury to a student or sexually abusing or exploiting a student by the school employe.

School—All schools including public and nonpublic schools as defined in the Public School Code of 1949 (24 P. S. § § 1-101—27-2702) and private academic schools as defined in 22 Pa. Code Part II (relating to State Board of Private Academic Schools) as follows:

- (i) *Public*—School districts, intermediate units, area vocational-technical schools, charter and regional charter school.
- (ii) *Registered*—Nonpublic (religiously affiliated schools).
- (iii) *Licensed*—Private academic schools that are licensed by the Department of Education (including residential facilities that hire their own staff to teach residents of the facility).
- (iv) *Accredited*—Accredited by an accreditation association or organization.
- (v) *State-owned*—Scotland School and Scranton School for the Deaf.

School employe—A person employed by or under contract with a school.

Student—An individual enrolled in a school who is under 18 years of age.

Student abuse—One or more of the following:

- (i) Serious bodily injury.
- (ii) Sexual abuse or exploitation when committed by a school employe against a student.

Subjects of a report—The child, parent, guardian or other person responsible for the welfare of the child and the school employe named in a report of suspected student abuse.

Unfounded report for a school employe—A report of student abuse unless the report is a founded report for a school employe or an indicated report for a school employe.

SCHOOL RESPONSIBILITIES

§ 3490.151. Required reporting.

(a) A school employe who has reasonable cause to suspect, on the basis of professional or other training and experience, that a student coming before the school employe in the employe's professional or official capacity is a victim of serious bodily injury or sexual abuse or exploitation by another school employe, shall immediately notify the administrator of the alleged abuse or injury.

(b) When a school employe learns of suspected student abuse from another person, the school employe shall notify the administrator of the alleged student abuse if the school employe has reasonable cause to suspect, on the basis of professional or other training and experience, that the student is a victim of serious bodily injury or sexual abuse or exploitation by a school employe.

(c) If an administrator learns of suspected student abuse from another person, the administrator shall make a report of suspected student abuse as required by this subchapter.

Cross References

This section cited in 55 Pa. Code § 3490.11 (relating to reporting suspected child abuse); and 55 Pa. Code § 3490.143 (relating to definitions).

§ 3490.152. Responsibilities of administrators and school employes.

(a) An administrator, and in certain cases a school employe, as stated in subsection (b), shall report immediately to law enforcement officials and the appropriate district attorney a report of abuse or injury alleged to have been committed by a school employe against a student. If an administrator is the school employe who suspects injury or abuse, the administrator shall make a report to law enforcement officials and the appropriate district attorney.

(b) If the administrator is the employe suspected of abusing the student, the school employe who suspects the abuse shall immediately report that information to law enforcement officials and the appropriate district attorney.

(c) The verbal report shall be followed up with a written report on a form provided by the Department. Call (717) 783-1964 to obtain a copy of the form—Report of Suspected Student Abuse (CY 47-D).

Cross References

This section cited in 55 Pa. Code § 3490.11 (relating to reporting suspected child abuse); and 55 Pa. Code § 3490.143 (relating to definitions).

§ 3490.153. Information provided to the district attorney and law enforcement officials.

The school official shall provide the following information to the district attorney and law enforcement officials on a form provided by the Department:

- (1) The name, age and home address of the student.
- (2) The name and address of the school.
- (3) The name and address of the student's parents or guardians.
- (4) The name and address of the administrator or school employe who made the report.
- (5) The name, work and home address of the school employe suspected of abusing the student.
- (6) The nature of the alleged offense.
- (7) Specific comments or observations that are directly related to the alleged incident and the individuals involved.

Cross References

This section cited in 55 Pa. Code § 3490.143 (relating to definitions).

§ 3490.154. Release of information by a school employe including an administrator.

(a) Information in a student abuse report is confidential and may only be released by a school employe who made a report of suspected student abuse to:

- (1) The administrator.
 - (2) A law enforcement official in the course of investigating the allegation of suspected student abuse.
- (b) This section applies to an administrator when the administrator made the report of suspected student abuse.

Cross References

This section cited in 55 Pa. Code § 3490.143 (relating to definitions).

LAW ENFORCEMENT RESPONSIBILITIES

§ 3490.161. Responsibilities of law enforcement officials.

(a) Law enforcement officials, in cooperation with the district attorney, shall accept the report of suspected student abuse for investigation and determine what criminal charges, if any, will be filed against the school employe.

(b) Law enforcement officials shall notify the county agency in the county where the alleged student abuse occurred when law enforcement officials have reasonable cause to suspect, on the basis of their initial review, that there is evidence of suspected student abuse.

Cross References

This section cited in 55 Pa. Code § 3490.143 (relating to definitions).

COUNTY RESPONSIBILITIES

§ 3490.171. Receipt and investigation of reports of suspected student abuse.

(a) The county agency is the sole civil agency responsible for investigating reports of suspected student abuse. The investigation shall be conducted by a protective service worker.

(b) When a county agency receives a report of suspected student abuse, it shall immediately notify ChildLine of the receipt of the report and begin an investigation as soon as possible. The oral report shall include the following information:

- (1) The name and address of the student and the student's parent or guardian.
 - (2) Where the suspected abuse or injury occurred.
 - (3) The age and sex of the student.
 - (4) The nature and extent of the suspected abuse or injury.
 - (5) The name and home address of the school employe alleged to have committed the abuse or injury.
 - (6) The relationship of the student to the school employe alleged to have committed the abuse or injury.
 - (7) The source of the report to the county agency.
 - (8) The actions taken by the county agency, law enforcement officials, parents, guardians, school officials or other persons, including the taking of photographs, medical tests and X-rays.
- (c) At a minimum, the county agency shall have a face-to-face interview with the child, any witnesses to the abuse and the school employe suspected of causing the abuse, unless the employe refuses to be interviewed.
- (d) The county agency's investigation shall be completed within 60-calendar days of when the report was received by ChildLine. The county agency shall submit a Child Protective Service

Investigation Report form to ChildLine with a status determination of founded, indicated, unfounded or pending criminal court action. If the Child Protective Service Investigation Report form is not received within 60-calendar days from the date the report was received by the county agency, the report shall be considered unfounded. Prior to expunging the report, ChildLine shall verify with the county agency that the report was not completed within 60-calendar days.

(e) If the investigation cannot be completed within 60- calendar days because an arrest has been made or there is criminal court action pending, the county agency shall send the Child Protective Services Investigation Report with a status determination of one of the following:

(1) Pending criminal court action.

(2) Indicated, when there is substantial evidence that the child was abused.

(f) The county agency shall submit a new Child Protective Service Investigation Report form to ChildLine as required in subsection (e) when a final status determination is made.

Cross References

This section cited in 55 Pa. Code § 3490.143 (relating to definitions).

§ 3490.172. Coordination of an investigation.

(a) The county agency and law enforcement officials shall coordinate their investigations to the fullest extent possible. Interviews with the student shall be conducted jointly. However, law enforcement officials may interview the school employe prior to the county agency contacting the employe.

(b) The joint interview with the student may be waived on an individual case-by-case basis if both the county agency and law enforcement official agree that it is in the best interest of the student.

(c) The county agency and law enforcement officials shall keep each other informed of their respective investigations.

(d) The county agency and law enforcement officials shall avoid taking or arranging to have taken duplicate photographs, medical tests or X-rays of a student, whenever possible.

(e) The county agency may rely on a factual investigation of substantially the same allegation by a law enforcement official to support the agency's finding. This reliance does not relieve the county agency from conducting its own investigation.

Cross References

This section cited in 55 Pa. Code § 3490.143 (relating to definitions).

§ 3490.173. Notifications by the county agency.

(a) Prior to the initial interview with a subject of a report of student abuse, the county agency shall verbally notify the subject of the existence of the report, the allegations of student abuse and the school employe's rights regarding amendment and expunction.

(b) Within 72 hours of the initial interview, the county agency shall notify the subject in writing of the following:

(1) The existence of the report.

(2) The allegations of student abuse.

(3) The school employe's rights regarding amendment and expunction.

(4) The right to obtain a copy of the report from ChildLine or the county agency.

(5) The fact that unfounded reports are expunged within 120-calendar days of receipt of the report by ChildLine.

(6) The effect that a founded or indicated report of child abuse or student abuse has on a school employe responsible for student abuse seeking employment in a child care service or as a school employe.

(c) The written notice required by subsection (b) may be reasonably delayed if notification is likely to:

(1) Threaten the safety of the victim, the safety of another subject or the safety of an investigating county agency worker.

(2) Cause the school employe to abscond or to significantly interfere with the conduct of a criminal investigation.

(d) The written notice shall be given to all subjects before the status determination is submitted to ChildLine.

(e) The county agency shall notify, in writing, the district attorney and the law enforcement officials who conducted the investigation and the school administrator or employe, or both, who made the report to the district attorney and law enforcement officials of the status of the report when the county agency notifies ChildLine of the status of the report.

Cross References

This section cited in 55 Pa. Code § 3490.143 (relating to definitions).

§ 3490.174. Services for students.

The county agency shall assist the student who was abused and the student's parents in locating services for the student, if necessary.

Cross References

This section cited in 55 Pa. Code § 3490.143 (relating to definitions).

§ 3490.175. Expunction and amendment of reports of student abuse by the county agency.

The county agency shall amend a record of student abuse upon notification from ChildLine. The county agency shall expunge all information in its possession in unfounded, indicated and founded reports of student abuse upon notification from ChildLine.

Cross References

This section cited in 55 Pa. Code § 3490.143 (relating to definitions).

DEPARTMENTAL RESPONSIBILITIES

§ 3490.181. Agents of the county agency.

The regional staff of the Department shall investigate reports of suspected student abuse when the person alleged to have abused the student is an agent of the county agency.

Cross References

This section cited in 55 Pa. Code § 3490.143 (relating to definitions).

§ 3490.182. ChildLine files.

ChildLine will establish three files for reports of student abuse as follows:

(1) The pending complaint file for reports under investigation which shall contain the following information:

- (i) The name and address of the student and the student's parents or guardians.
- (ii) Where the suspected abuse or injury occurred.
- (iii) The age and sex of the student.
- (iv) The nature and extent of the suspected student abuse or injury.

(v) The name and home address of the school employe alleged to have committed the abuse or injury.

(vi) The relationship of the school employe alleged to have committed the abuse to the student who was allegedly abused by the school employe.

(vii) The source of the report (the name of the law enforcement official) to the county agency.

(viii) The actions taken by the county agency, law enforcement officials, parents, guardians, school officials or other persons, including the taking of photographs, medical tests and X-rays.

(2) The Statewide Central Register of indicated and founded reports for school employes which shall contain the following information:

(i) The name, Social Security Number, date of birth and sex of the subjects of the report.

(ii) The home address of the subjects of the report.

(iii) The date and the nature and extent of the abuse.

(iv) The county in which the student abuse occurred.

(v) The factors contributing to the abuse.

(vi) The relationship of the school employe who abused the student to the student.

(vii) The source of the report the name of the school administrator/school employe who made the report to a law enforcement official and the district attorney.

(viii) Whether the report is a founded or indicated report.

(ix) Information obtained by the Department in relation to a school employe's request to release, amend or expunge information retained by the Department or the county agency.

(x) The progress of any administrative or civil legal proceedings brought on the basis of the report.

(xi) Whether a criminal investigation was done and the result of the investigation and of any criminal prosecution.

(3) The file of unfounded reports awaiting expunction which contains the same information that is in the Statewide Central Register.

Cross References

This section cited in 55 Pa. Code § 3490.143 (relating to definitions).

GENERAL REQUIREMENTS FOR STUDENT ABUSE

§ 3490.191. Request from a school employe to amend or expunge an indicated report of student abuse.

(a) The school employe responsible for the student abuse may request the Secretary to amend or expunge an indicated report for a school employe on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this chapter. The written request shall be postmarked within 45-calendar days of the mailing date of the letter from the Statewide Central Register notifying the employe of the indicated status.

(b) The Secretary will decide whether to grant or deny a request made under subsection (a) within 30-calendar days from the date the request is received. The Secretary will notify all subjects of the report and the appropriate county agency of the decision by first-class mail.

Cross References

This section cited in 55 Pa. Code § 3490.143 (relating to definitions).

§ 3490.192. Request for a hearing from a school employe for indicated reports of student abuse.

(a) The school employe responsible for the student abuse has the right to appeal the Secretary's decision to deny the request to amend or expunge an indicated report by filing an appeal with the Secretary.

(b) Any other subject of a report and the county agency have the right to appeal the Secretary's decision to grant the request.

(c) Appeals shall be in writing to the Secretary's designee, the Bureau of Hearings and Appeals, and be postmarked within 45-calendar days from the mailing date of the Secretary's notification letter.

(d) If an appeal is filed, a hearing shall be held before the Department's Bureau of Hearings and Appeals.

(e) Except as provided in subsection (f), hearings will be conducted under 2 Pa.C.S. § § 501—508 and 701—704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(f) Hearings will be scheduled and final administrative action taken in accordance with the time limits specified in § 275.4(b) and (e)(1), (3) and (5) (relating to procedures).

(g) The burden of proof in hearings held under this section is on the appropriate county agency.

(h) Parties to a hearing held under this section have 15-calendar days from the date of the final order of the Bureau of Hearings and Appeals to request the Secretary to reconsider the decision or 30-calendar days to appeal the final order to the Commonwealth Court.

(i) Any administrative appeal proceeding will be automatically stayed upon notice to the Department by any subject or the county agency that there is a pending criminal proceeding or a dependency or delinquency proceeding under the Juvenile Act, including an appeal thereof, involving the same factual circumstances.

Cross References

This section cited in 55 Pa. Code § 3490.143 (relating to definitions).

§ 3490.193. Other provisions.

The following sections apply to reports of student abuse to the extent that they are applicable:

- (1) Section 3490.31 (relating to receipt of reports).
- (2) Section 3490.35 (relating to Statewide Central Register).
- (3) Section 3490.36 (relating to providing information to the county agency).
- (4) Section 3490.37 (relating to release of information: Statewide Central Register, pending complaint file and file of unfounded reports).
- (5) Section 3490.38 (relating to authorized studies of child abuse data).
- (6) Section 3490.40 (relating to notifications regarding indicated reports).
- (7) Section 3490.40a (relating to notifications regarding founded reports).
- (8) Section 3490.41 (relating to determination of time).
- (9) Section 3490.42 (relating to performance audit and reviews).
- (10) Section 3490.54 (relating to independent investigation of reports).
- (11) Section 3490.91 (relating to persons to whom child abuse information shall be made available).
- (12) Section 3490.93 (relating to requests by designated county officials).

(13) Section 3490.94 (relating to the release of the identity of a person who made a report of child abuse or cooperated in a subsequent investigation).

(14) Section 3490.104 (relating to release of information to a subject of a report).

Cross References

This section cited in 55 Pa. Code § 3490.143 (relating to definitions).

Subchapter C. GENERAL PROTECTIVE SERVICES

INTRODUCTION

Sec.

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3490.241.	Appeals with respect to general protective services.
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Cross References

This subchapter cited in 55 Pa. Code § 3490.321 (relating to standards for risk assessment).

INTRODUCTION

§ 3490.201. [Reserved].

Source

The provisions of this § 3490.201 adopted July 28, 1989, effective immediately, 19 Pa.B. 3177; reserved July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211753).

§ 3490.202. [Reserved].

Source

The provisions of this § 3490.202 adopted July 28, 1989, effective immediately and applies retroactively to July 1, 1989, 19 Pa.B. 3177; reserved July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial page (211753).

§ 3490.203—3490.210. [Reserved].

Source

The provisions of these §§ 3490.203—3490.210 adopted July 28, 1989, effective immediately, 19 Pa.B. 3177; reserved July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513. Immediately preceding text appears at serial pages (211753) to (211754).

INTRODUCTION

§ 3490.221. Applicability.

This subchapter applies to the Department and county children and youth social service agencies.

Source

The provisions of this § 3490.221 adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

§ 3490.222. Purposes.

The purposes of this subchapter are to:

- (1) Protect the safety, rights and welfare of children so that they have an opportunity for healthy growth and development.
- (2) Assist parents in recognizing and remedying conditions harmful to their children and in fulfilling their parental duties in a manner that does not put their children at risk.

Source

The provisions of this § 3490.222 adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

§ 3490.223. Definitions.

In addition to the definitions in § 3490.4 (relating to definitions), the following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Assessment—An evaluation by the county agency to determine whether or not a child is in need of general protective services.

Custodial parent—The parent responsible for the day-to-day care and supervision of the child.

General protective services—Services to prevent the potential for harm to a child who meets one of the following conditions:

- (i) Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals.
- (ii) Has been placed for care or adoption in violation of law.
- (iii) Has been abandoned by his parents, guardian or other custodian.
- (iv) Is without a parent, guardian or legal custodian.
- (v) Is habitually and without justification truant from school while subject to compulsory school attendance.
- (vi) Has committed a specific act of habitual disobedience of the reasonable and lawful commands of his parent, guardian or other custodian and who is ungovernable and found to be in need of care, treatment or supervision.
- (vii) Is under 10 years of age and has committed a delinquent act.

(viii) Has been formerly adjudicated dependent under section 6341 of the Juvenile Act (relating to adjudication), and is under the jurisdiction of the court, subject to its conditions or placements and who commits an act which is defined as ungovernable in subparagraph (vi).

(ix) Has been referred under section 6323 of the Juvenile Act (relating to informal adjustment), and who commits an act which is defined as ungovernable in subparagraph (vi).

Parent—A biological parent, adoptive parent, legal guardian or primary person responsible for a child.

Potential for harm—

(i) Likely, if permitted to continue, to have a detrimental effect on the child's health, development or functioning.

(ii) The term does not include imminent risk as defined in the definition of "child abuse" in § 3490.4.

Primary person who is responsible for the care of a child—A person who provides or arranges ongoing care and supervision to a child in lieu of parental care and supervision.

Report—A verbal or written statement to the county agency from someone alleging that a child is in need of general protective services.

Source

The provisions of this § 3490.223 adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

COUNTY RESPONSIBILITIES

§ 3490.231. Functions of the county agency for general protective services.

Each county agency is responsible for administering a program of general protective services to children that is consistent with the agency's objectives to:

- (1) Keep children safely in their own homes, whenever possible.
- (2) Prevent abuse, neglect and exploitation of children.
- (3) Overcome problems that could result in dependency.
- (4) Provide temporary, substitute placement in the home of a relative, other individual who has a significant relationship with the child or the child's family, a foster family home or residential child-care facility for children in need of this care.

(5) Reunite children safely with their families, whenever possible, when children are in temporary, substitute placement.

(6) Provide a permanent, legally assured family for children in temporary, substitute care who cannot be returned to their own home.

(7) Provide services and care ordered by the court for children who have been adjudicated dependent.

Source

The provisions of this § 3490.231 adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

§ 3490.232. Receiving reports and assessing the need for services.

(a) The county agency shall be the sole civil agency responsible for receiving and assessing all reports alleging a need for general protective services. Nothing in this subchapter limits section 6304 or 6334 of the Juvenile Act (relating to powers and duties of probation officers; and petition).

(b) The county agency shall provide 24-hours-per-day/7-day-per-week telephone access to receive reports alleging a need for general protective services.

(c) The county agency shall see the child immediately if emergency protective custody has been taken, is needed, or if it cannot be determined from the report whether or not emergency protective custody is needed. Otherwise, the county agency shall prioritize the response time for an assessment to assure that children who are most at risk receive an assessment first.

(d) The county agency shall use a State-approved risk assessment process for general protective services as required by § 3490.321 (relating to standards for risk assessment) to:

(1) Aid in its assessment of whether to accept the family for services.

(2) Insure that its assessment is comprehensive.

(3) Help determine the need for general protective services.

(4) Assist in the development of the family service plan.

(e) The county agency shall complete an assessment within 60-calendar days to determine whether or not the child and family should be accepted for general protective services, be referred to another agency for services or close the case.

(f) The county agency shall see the child and visit the child's home during the assessment period. The home visits shall occur as often as necessary to complete the assessment and insure the safety of the child. There shall be a least one home visit.

(g) The county agency shall interview the child, if age appropriate, and the parents or the primary person who is responsible for the care of the child. The county agency shall also conduct interviews with those persons who are known to have or may reasonably be expected to have information that would be helpful to the county agency in determining whether or not the child is in need of general protective services.

(h) The county agency may make unannounced home visits.

(i) The county agency shall provide or arrange appropriate services to assure the safety of the child during the assessment period.

(j) The county agency shall initiate the appropriate court proceedings and assist the court during all stages of the court proceedings if the county agency determines that general protective services are in the best interest of a child and if an offer of an assessment, a home visit or services is refused by the parent.

Source

The provisions of this § 3490.232 adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

§ 3490.233. Protective custody.

(a) A child alleged to be in need of general protective services may be taken into protective custody under § § 3490.15—3490.17 and 3490.57.

(b) The director of a hospital or other medical facility or a person specifically designated in writing by the director, or a physician examining or treating a child may take a child into protective custody if it is immediately necessary to protect the child.

Source

The provisions of this § 3490.233 adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

§ 3490.234. Notifications.

(a) The county agency shall notify the parent of the receipt of the report alleging the need for general protective services and that the county agency will do an assessment to determine the need for general protective services. The notification shall be made verbally at the time of the initial interview.

(b) The county agency shall provide written notice to the parents and the primary person who is responsible for the care of the child of the county agency's decision to accept or not accept the family for general protective services within 7-calendar days of making the decision. If the county agency accepts the family for services, it shall include the following information in the notice:

- (1) The reasons why the county agency accepted the family for services.
- (2) The right of the custodial parent or the primary person responsible for the care of the child to appeal the county agency's decision that the child is in need of general protective services.
- (3) The request for an appeal shall be received by the county agency within 45-calendar days of the mailing date of the written notice in subsection (b).
- (4) How to appeal the county agency's decision that the child is in need of general protective services.
- (5) The written appeal request shall specify the reasons why the child is not in need of general protective services.

Source

The provisions of this § 3490.234 adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

§ 3490.235. Services available through the county agency for children in need of general protective services.

- (a) The county agency shall provide, arrange or otherwise make available the same services for children in need of general protective services as for abused children under § 3490.60 (relating to services available through the county agency).
- (b) The county agency shall develop a family service plan as required by § 3130.61 (relating to family service plans) for each family accepted for general protective services.
- (c) The county agency shall monitor the provision of services and evaluate the effectiveness of the services provided under the family service plan under § 3130.63 (relating to review of family service plans). The county agency worker shall visit the family in performing the case management responsibilities as required by § 3130.63 as often as necessary for management of the service provision at least every 180-calendar days.
- (d) The county agency may purchase and use the services of any appropriate public or private agency under Chapter 3130 (relating to the administration of county children and youth social service programs).
- (e) The county agency supervisor shall review each report alleging a need for general protective services which is being assessed on a regular and ongoing basis to assure that the level of services are consistent with the level of risk to the child, to determine the safety of the child and the progress made toward reaching a determination on the need for protective services. The supervisor shall maintain a log of these reviews which at a minimum shall include an entry at 10-calendar day intervals during the assessment period.

(f) When a case has been accepted for service and a family service plan has been developed under Chapter 3130, the county agency supervisor shall, within 10-calendar days of the completion of the family service plan, review the plan to assure that the level of activity, in person contacts with the child, oversight, supervision and services for the child and family which are contained in the plan, are consistent with the level of risk determined by the county agency for the case. Documentation of this review shall be in the case record.

(g) When a case has been accepted for services, the county agency shall monitor the safety of the child and assure that contacts are made with the child, parents and service providers. The contacts may occur either directly by a county agency worker or through purchase of service, by phone or in person but face-to-face contacts with the parent and the child shall occur as often as necessary for the protection of the child but at least as often as:

(1) Once a week until the case is no longer designated as high risk by the county agency, if the child remains in or returns to the home in which the need for general protective services was established and the county agency has determined a high level of risk exists for the case.

(2) Once a month for 6 months or case closure when the child is either:

(i) Placed out of the home or setting in which the need for general protective services was established.

(ii) No longer determined to be at a high risk by the county agency.

(h) A periodic assessment of the risk of harm to the child shall be conducted as required by the State-approved risk assessment process.

(i) Except when ordered by the court in a proceeding brought under the Juvenile Act, a county agency is not required to duplicate services which are the statutory responsibility of any other agency.

(j) The county agency shall aid the child and the family in obtaining benefits and services for which they may qualify under Federal, State and local programs.

(k) The family service plan shall contain a provision that requires the parents advise the county agency, within 24 hours, when the child or family move from one residence to another.

Source

The provisions of this § 3490.235 adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

§ 3490.236. General protective services records.

(a) Records for reports that are accepted for general protective services shall be maintained under § 3130.43 (relating to family case records). In addition to the information required by § 3130.43, the records shall contain the following information:

- (1) The nature of each report for general protective services.
 - (2) The date and source of the report.
 - (3) The names and addresses of the persons interviewed in conducting the assessment of each report.
 - (4) The services provided by the county agency during the assessment of the report.
 - (5) How the level of services provided are consistent with the level of risk to the child.
- (b) Records for reports that are not accepted for service shall be maintained for 5 years following the receipt of the latest report alleging the need for general protective services. The following information shall be maintained:
- (1) The name and address of the children.
 - (2) The names and addresses of the parents.
 - (3) The names and addresses of the primary persons who are responsible for the care of the child.
 - (4) The allegations of the need for general protective services.
 - (5) The date and source of the report.
 - (6) The names and addresses of the persons interviewed in conducting the assessment.
 - (7) The services provided by the county agency during the assessment.
 - (8) Referral to other community agencies.
 - (9) A summary of the assessment and reasons for not accepting the family for general protective services.

Source

The provisions of this § 3490.236 adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

GENERAL REQUIREMENTS FOR GENERAL PROTECTIVE SERVICES

§ 3490.241. Appeals with respect to general protective services.

- (a) When a county agency accepts a case for services, the custodial parents or the primary persons who are responsible for the care of the child may appeal that decision.
- (b) The county agency shall establish policies and procedures for handling these appeals. The policies and procedures shall be in the agency's manual as required by § 3130.21 (relating to responsibilities of county executive officers).
- (c) An appeal from the custodial parent or the primary persons who are responsible for the care of the child shall be received by the county agency within 45-calendar days of the date of the letter from the county agency notifying the person of the agency's decision to accept the child and family for services. The written appeal request shall be made to the county agency administrator and specify the reasons why the child is not in need of general protective services.
- (d) The county agency shall review the request and issue a written decision to the person who made the request within 45-calendar days of the receipt of the appeal. If the agency denies the request, the person who made the request shall be advised in writing of his right to a hearing before the Department's Bureau of Hearings and Appeals and that the request shall be made within 45-calendar days of the date of the letter from the county agency notifying the person of the agency's decision denying the request.
- (e) If a hearing is requested, the Bureau of Hearings and Appeals will schedule a hearing under Article IV of the Public Welfare Code (62 P. S. § § 401—493), and applicable Department regulations. The burden of proof in the hearing shall be on the county agency. The Department will assist the county agency as necessary.
- (f) The Department is authorized and empowered to make any appropriate order regarding records to make them accurate or consistent with this chapter.
- (g) Neither the county administrator nor the director of the Bureau of Hearings and Appeals may issue a ruling modifying the term of a service plan which has been specifically approved or ordered by a court of competent jurisdiction.
- (h) Action by the custodial parent or the primary person who is responsible for the care of the child under this section does not preclude the custodial parent or the primary person who is responsible for the care of the child the right to exercise other appeals available through Department regulations or the courts.

Source

The provisions of this § 3490.241 adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

§ 3490.242. Confidentiality.

Information obtained by the county agency or Department in connection with general protective services may only be released as follows:

- (1) Under § 3130.44 (relating to confidentiality of family case records).
- (2) To another county agency.
- (3) To an official of an agency of another state that performs general protective services analogous to those services performed by county agencies or the Department in the course of the official's duties.

Source

The provisions of this § 3490.242 adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513.

Subchapter D. GENERAL REQUIREMENTS FOR CHILD PROTECTIVE SERVICES AND GENERAL PROTECTIVE SERVICES

INTRODUCTION

Sec.

- [3490.301.](#) Applicability.
- [3490.302.](#) Purpose.
- [3490.303.](#) Definitions.

STAFF ORIENTATION, TRAINING AND CERTIFICATION REQUIREMENTS

- [3490.311.](#) Establishment of a staff development process.
- [3490.312.](#) Training program requirements for direct service workers.
- [3490.313.](#) Direct service worker certification requirements for supervisors who supervise direct service workers.
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RISK ASSESSMENT

- [3490.321.](#) Standards for risk assessment.
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- [3490.341.](#) Staff-to-family ratios.

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- [3490.361.](#) Requirements for agencies providing protective services.
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- [3490.371.](#) Availability of an attorney for the county agency.

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- [3490.381.](#) Law enforcement assistance.

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- [3490.391.](#) County agency plan.

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- [3490.401.](#) Intercounty transfer of cases.

Source

The provisions of this Subchapter D adopted July 2, 1999, effective July 3, 1999, 29 Pa.B. 3513, unless otherwise noted.

INTRODUCTION

§ 3490.301. Applicability.

This subchapter applies to county agencies and other agencies and persons who provide services to abused and neglected children.

§ 3490.302. Purpose.

The purpose of this subchapter is to consolidate regulations that apply to both child protective services and general protective services.

§ 3490.303. Definitions.

In addition to the definitions in § 3490.4 (relating to definitions), the following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

CORE—Training in foundation level skills which are needed by all direct service workers in county agencies to provide services to abused and neglected children and their families.

Risk assessment—A Department-approved systematic process that assesses a child's need for protection or services based on the risk of harm to the child.

Training program—The Pennsylvania Child Welfare Competency-Based Training and Certification Program.

STAFF ORIENTATION, TRAINING AND CERTIFICATION REQUIREMENTS

§ 3490.311. Establishment of a staff development process.

(a) In fulfillment of the requirements of section 6383 of the CPSL (relating to education and training), the Department will implement an initial and ongoing training program for direct service workers and supervisors in county agencies.

(b) To implement the training program, the Department will establish a steering committee cochaired by a representative from the Department and a representative from the Pennsylvania Children and Youth Administrators, Inc.

(c) The steering committee shall provide recommendations to the Department for the establishment and implementation of policies and procedures relating to staff orientation, training and certification as required by the CPSL and this chapter and provide recommendations for overall staff development designed to improve the competency of the direct service workers and supervisors in county agencies.

(d) The steering committee shall include among its functions the evaluation of program effectiveness tested against measurable outcomes.

§ 3490.312. Training program requirements for direct service workers.

(a) The county agency shall establish and implement policies for orientation of direct service workers.

(b) The county agency shall establish and implement written policies on the assignment of cases to new staff and staff reassigned as direct service workers, including the criteria used to determine when a worker is prepared to assume responsibility for a full caseload.

(c) The county agency shall implement the supervisors' orientation, training and resource manual. A county agency may implement its own process or manual provided it addresses the objectives of the manual provided through the training program and is approved by the Department.

(d) The Department, with consultation from its steering committee, will establish standards, a process and a program for county agencies relating to the initial and ongoing certification of direct service workers including the following requirements:

(1) Direct service workers include the persons providing direct services to children and families and case management functions on a full-time or part-time basis.

(2) Direct service workers hired on or after July 1, 1996, shall be certified under the established standards within 18 months of their date of employment.

(3) Direct service workers who are not in a permanent employment status as of July 1, 1996, shall be certified by December 31, 1997.

(4) Permanent direct service workers hired prior to July 1, 1996, are certified.

(5) Direct service workers hired after June 30, 1996, who are in the process of achieving initial certification may be assigned a caseload, up to the caseworker-to-family ratio of the county agency, based on the worker's ability to handle job duties as determined by the written policy of the county agency.

(6) Initial certification of direct service workers shall include the following components:

(i) A minimum of 120 hours of CORE training.

(A) The content of CORE training shall be determined by the Department in consultation with the steering committee.

(B) The content of CORE training shall be subject to periodic review by the Department and the steering committee for continued relevancy.

(C) An overview of CORE training shall be communicated by the Department to the county agencies and direct service workers through a Departmental bulletin.

(D) Upon request by a county agency and approval by the Department, a county agency may provide the CORE training developed by the training program to its direct service workers.

(E) The county agency shall maintain a record of CORE training completed for certification in the employe's personnel file.

(ii) A decision by the employing county agency that the worker is certified.

(A) The decision shall be based on an assessment of the worker's ability to apply the principles, concepts and content of CORE training, the supervisors' orientation, training and resource manual or its equivalent and other learning opportunities to on-the-job situations. The assessment shall conclude with a decision of whether or not the worker is certified.

(B) The assessment shall be in writing and reviewed with the employe. The employe shall be given a copy of the assessment. A copy of the assessment shall be maintained in the employe's personnel file.

(7) The county agency shall determine the county agency's training year.

(8) Ongoing certification of direct service workers, shall include the following:

(i) Documentation of completion of a minimum of 20 hours of training annually. For direct service workers who complete the CORE training during the county agency's training year, the county agency shall prorate the number of required training hours that a direct service worker shall take in the county agency's training year schedule.

(A) Training content shall be based on the annual administration of an assessment of individual training needs and the development of an individual training plan.

(B) Ongoing training, as identified in the individual training plan, may be obtained through the training program, provided by a county agency or obtained through another provider.

(ii) Courses from an accredited school of social work which are successfully completed by a direct service worker shall be acceptable in meeting the ongoing certification requirements.

(iii) The county agency shall maintain a record of training required for ongoing certification, including the needs assessment, training plan and courses attended in the employe's personnel file.

(iv) The date of initial certification for grandfathered workers is June 30, 1996.

(9) The county agency shall provide its direct service workers the opportunity to obtain initial and ongoing certification status.

(10) The county agency may not allow an employe who fails to achieve or maintain certified status to perform direct service duties.

§ 3490.313. Direct service worker certification requirements for supervisors who supervise direct service workers.

(a) Supervisors who supervise direct service workers shall be certified as a direct service worker.

(1) Supervisors with permanent status on June 30, 1996, and who supervise direct service workers are grandfathered as certified direct service workers.

(2) Supervisors hired, transferred or promoted after June 30, 1996, who are not certified, shall meet the certification requirements in the training program requirements for direct service workers within 12 months of employment or transfer.

(b) Supervisors who supervise direct service workers who fail to meet the requirement of subsection (a) may not be permitted by the county agency to supervise direct service workers.

§ 3490.314. Training and certification requirements for supervisors who supervise direct service workers.

Persons employed, hired, transferred or promoted to supervise direct service workers on or after October 1, 1998, shall complete a supervisor's training program approved by the Department in consultation with the steering committee.

RISK ASSESSMENT

§ 3490.321. Standards for risk assessment.

(a) The standards established for risk assessment shall include the following:

- (1) A statement of purpose for the process.
- (2) The core set of factors against which risk shall be assessed.
- (3) The application of the process, including the points at which the process shall be applied and the periodicity of application.
- (4) The recordkeeping requirements.
- (5) The process for State approval.

(b) The Department and counties will review the implementation of the risk assessment process on an ongoing basis to ensure that the standards established are consistent with good practice and the results of research.

(c) The county agency shall implement the State-approved risk assessment model developed by the Department in consultation with the Risk Assessment Task Force.

(d) The county agency shall apply the State-approved risk assessment process established under this section in performing the duties under Subchapters A and C (relating to child protective services; and general protective services).

(e) The factors which shall be assessed by the county agency include the following:

- (1) The characteristics of the environment in which the child abuse occurred including the history of prior abuse and neglect.
- (2) The characteristics of the parent, caregiver, household member, primary person responsible for the welfare of a child and perpetrator including history of drug and alcohol abuse.
- (3) The characteristics of the family including the history of family violence.

(f) The county agency shall rate each factor in subsection (e) and shall provide documentation in the record to support the identified level of risk and to assure the child's safety.

(1) Each factor shall be rated using one of the following designations:

- (i) No risk.
- (ii) Low risk.
- (iii) Moderate risk.
- (iv) High risk.

(2) If a county agency is unable to assess the risk of a specific factor listed in subsection (e), the county agency shall indicate the reasons in the record.

(g) At the time of the report of suspected child abuse or allegations of children in need of general protective services, the county agency shall make an initial determination of the risk to the child.

(1) The county agency need not complete the risk assessment process if after one contact with the family the report is determined to be without any merit.

(2) The county agency shall document evidence which supports this finding in the record.

(h) Periodic assessments of risk shall be completed by the county agency as follows:

(1) At the conclusion of the intake investigation which may not exceed 60-calendar days.

(2) Every 6 months in conjunction with the family service plan or judicial review unless one of the following applies:

(i) The risk to the child remains low or no risk.

(ii) The child has been placed out of the home for more than 6 months and there are no other children in the home.

(3) Thirty-calendar days before and after the child is returned to the family home unless one of the following applies:

(i) The risk to the child remains low or no risk.

(ii) The child's return home was not anticipated by the county agency. A risk assessment for these cases shall be completed within 2 weeks of the child's return to the home.

(4) Thirty-calendar days prior to case closure.

(i) The county agency shall conduct a risk assessment as often as necessary to assure the child's safety.

(j) The county agency shall assess the safety and risk of the child when the circumstances change within the child's environment at times other than required under this section.

Cross References

This section cited in 55 Pa. Code § 3490.232 (relating to receiving reports and assessing the need for services).

§ 3490.322. County agency compliance with risk assessment standards.

(a) Each county agency shall implement a State-approved risk assessment process in performance of its duties under sections 6362 and 6375 of the CPSL (relating to responsibilities of county agency for child protective services; and county agency requirements for general protective services) and this chapter.

(b) Each county agency shall implement the State-approved risk assessment process approved by the Department on July 1, 1997.

(c) The county agency shall implement its risk assessment process in a way which supports its overall decision making process for, and approach to, protective services.

(d) The county agency in developing and implementing the family service plan and placement amendment as required by Chapter 3130 (relating to administration of county children and youth social service programs) shall assure that the level of activity, in person contacts with the child, oversight, supervision and services for the child and family are consistent with the level of risk as determined by the county agency.

ANNUAL REPORT

§ 3490.331. Annual report on required activities.

(a) The Department will report annually to the Governor and General Assembly on the activities of this chapter, including the operations of the Statewide Central Register and the protective services provided by the county agencies. The report shall contain a statistical analysis of the following:

- (1) The reports of suspected child abuse received by the Department.
- (2) The reports of suspected student abuse received by the Department.
- (3) The results of requests for child care clearances received by the Department.
- (4) The costs to implement the law.
- (5) An evaluation of services offered in response to the CPSL.
- (6) The protective service referrals received and accepted by county agencies.
- (7) The children over whom the county agencies maintain continuing supervision.
- (8) The protective service cases closed by county agencies.
- (9) The services provided to children and their families.

(10) Recommendations for legislative changes and the estimated increase or decrease in cost.

(b) The data required in subsection (a)(6)—(9) shall be submitted by the county agencies through the Children and Youth Quarterly Aggregate Reporting System on form CY-28 until the Department has implemented the child specific Adoption and Foster Care Analysis and Reporting System which will include information on protective services.

STAFF RATIOS

§ 3490.341. Staff-to-family ratios.

A county agency shall have sufficient, qualified staff and be organized to perform the functions required by the CPSL and this chapter. Staff-to-family ratios for protective service workers shall be in accordance with § § 3130.32 and 3140.17 (relating to staffing requirements; and review of county plans and budgets).

FAILURE TO COOPERATE

§ 3490.351. Willful failure to cooperate.

An agency, school district or facility, or a person acting on behalf of an agency, school district or facility, that violates this chapter by willfully failing to cooperate with the Department or a county agency when investigating a report of suspected child abuse, suspected student abuse or suspected neglect commits a summary offense for a first violation and a misdemeanor of the third degree for subsequent violations under section 6346 of the CPSL (relating to cooperation of other agencies).

STANDARDS FOR STAFF

§ 3490.361. Requirements for agencies providing protective services.

The county agency shall arrange for or provide protective services for children and their families only through agencies that comply with § § 3130.21, 3130.39 and 3130.40 (relating to responsibilities of county executive officers; services and facilities which may be used; and delivery of services through other service providers).

Cross References

This section cited in 55 Pa. Code § 3490.362 (relating to licensure requirements for persons providing services arranged or provided by the county agency).

§ 3490.362. Licensure requirements for persons providing services arranged or provided by the county agency.

The county agency shall arrange for or provide services from persons who are not affiliated with an agency under § 3490.361 (relating to requirements for agencies providing protective services) only if the person possesses a valid license issued by the Department of State, if the profession is subject to mandatory licensure.

ATTORNEY FOR THE COUNTY AGENCY

§ 3490.371. Availability of an attorney for the county agency.

The county agency shall retain or ensure the availability of an attorney for consultation with and representation of the county agency in fulfilling its responsibilities under the CPSL and this chapter.

LAW ENFORCEMENT OFFICIALS

§ 3490.381. Law enforcement assistance.

A county agency staff member may request a law enforcement officer to be present at any time during the course of fulfilling the county agency staff person's responsibilities under the CPSL and this chapter without violating the confidentiality provisions of the CPSL or this chapter when the worker fears for his own safety or the safety of anyone else involved.

ANNUAL PLAN

§ 3490.391. County agency plan.

The county agency shall comply with Chapter 3140 (relating to planning and financial reimbursement requirements for county children and youth social service programs) regarding the development and submission of a plan for the provision of protective services required by the CPSL and this chapter.

TRANSFER OF CASES

§ 3490.401. Intercounty transfer of cases.

(a) County agencies shall share that information which will assist them in protecting children.

(b) When a report of suspected child abuse is under investigation, a report is being assessed to determine the need for general protective services or when a case has been accepted for protective services and the family moves to another county, and the address is known, the county agency shall:

(1) Immediately telephone the receiving county agency and tell them:

(i) The name and address of the child and parents.

(ii) The reason for agency involvement.

(iii) The status of the case.

(iv) The services that were being provided.

(v) The level of risk assigned to the case.

(vi) Other information that would assist the receiving agency.

(2) Within 24 hours of the phone call, send a fax to the receiving agency to confirm the referral. The faxed information shall contain:

(i) The name and address of the child and parents.

(ii) The level of risk assigned to the case.

(iii) The status of the case.

(c) The receiving agency shall accept the referral and determine what services are necessary to protect the child from abuse or neglect.

(d) When the case is a high risk case, the receiving county agency shall reassess the risk of abuse or neglect to the child and see the child within 24 hours of receiving the telephone referral. The county agency worker shall see the child at the child's new address.

(e) The receiving agency shall notify the referring agency of the status of the referral upon completing the investigation or assessment.

(f) Regardless of whether or not the address of the child and family is known, within 72 hours of the telephone referral, the referring agency shall fax or send by overnight mail to the receiving agency the following:

- (1) The family demographics.
- (2) The current family service plan and placement amendment.
- (3) The current risk assessment matrix and summary.
- (4) Court petitions and court orders.
- (5) A social summary, when available.
- (6) A copy of the CY-48 and other relevant ChildLine forms.

(7) Other information that would assist the receiving agency in providing services to the child and parents.

(g) When a report of suspected child abuse or neglect is under investigation or assessment or when a case has been accepted for protective services and the family moves to another county, and the county where the child has moved to is known but not the street address, the referring county agency shall telephone the receiving county and give it the names and dates of birth of the child and parents.

(h) The referring and receiving agency shall make reasonable efforts to locate the family, including as appropriate, based on the age of the child and other circumstances, by contacting the following:

- (1) Post office of the last known address.
- (2) School.
- (3) Health professionals and health agencies.
- (4) Domestic relations office.
- (5) Parent locator services.
- (6) Law enforcement official.
- (7) County assistance office.
- (8) Known relatives.
- (9) Known neighbors.

(i) The referring and receiving county shall document their efforts to locate the child and family.

(j) The receiving county shall notify the referring county:

(1) Within 10 days of locating the child and family, when found.

(2) When the county has exhausted all reasonable efforts to locate the family.

Notes of Decisions

Record of Proceedings

Where a mother claimed that it was an abuse of discretion not to transfer her child's case to the children and youth services of the county to which the mother moved, the appellate court was unable to properly review the appeal in the absence of a transcript of the proceedings. Therefore, the matter was remanded for an evidentiary hearing to construct a record for appellate review. *In the Interest of J.H.*, 788 A.2d 1006 (Pa. Super. 2001).

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