JOINT STATE GOVERNMENT COMMISSION

General Assembly of the Commonwealth of Pennsylvania

ADVERSE CHILDHOOD EXPERIENCES: EFFECTS OF PENNSYLVANIA STATUTES AND REGULATIONS

Report of the Advisory Committee

March 2024

Serving the General Assembly of the Commonwealth of Pennsylvania Since 1937

REPORT

2022 House Resolution 228
Adverse Childhood Experiences:
Effects Of Pennsylvania Statutes and Regulations

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The report is also available at http://jsg.legis.state.pa.us

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The Joint State Government Commission was created in 1937 as the primary and central non-partisan, bicameral research and policy development agency for the General Assembly of Pennsylvania.[1]

A fourteen-member Executive Committee comprised of the leadership of both the House of Representatives and the Senate oversees the Commission. The seven Executive Committee members from the House of Representatives are the Speaker, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. The seven Executive Committee members from the Senate are the President Pro Tempore, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. By statute, the Executive Committee selects a chairman of the Commission from among the members of the General Assembly. Historically, the Executive Committee has also selected a Vice-Chair or Treasurer, or both, for the Commission.

The studies conducted by the Commission are authorized by statute or by a simple or joint resolution. In general, the Commission has the power to conduct investigations, study issues, and gather information as directed by the General Assembly. The Commission provides in-depth research on a variety of topics, crafts recommendations to improve public policy and statutory law, and works closely with legislators and their staff.

A Commission study may involve the appointment of a legislative task force, composed of a specified number of legislators from the House of Representatives or the Senate, or both, as set forth in the enabling statute or resolution. In addition to following the progress of a particular study, the principal role of a task force is to determine whether to authorize the publication of any report resulting from the study and the introduction of any proposed legislation contained in the report. However, task force authorization does not necessarily reflect endorsement of all the findings and recommendations contained in a report.

Some studies involve an appointed advisory committee of professionals or interested parties from across the Commonwealth with expertise in a particular topic; others are managed exclusively by Commission staff with the informal involvement of representatives of those entities that can provide insight and information regarding the particular topic. When a study involves an advisory committee, the Commission seeks consensus among the members.[2] Although an advisory committee member may represent a particular department, agency, association, or group, such representation does not necessarily reflect the endorsement of the department, agency, association, or group of all the findings and recommendations contained in a study report.

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[1] Act of July 1, 1937 (P.L.2460, No.459); 46 P.S. §§ 65–69.

[2] Consensus does not necessarily reflect unanimity among the advisory committee members on each individual policy or legislative recommendation. At a minimum, it reflects the views of a substantial majority of the advisory committee, gained after lengthy review and discussion.

Over the years, nearly one thousand individuals from across the Commonwealth have served as members of the Commission's numerous advisory committees or have assisted the Commission with its studies. Members of advisory committees bring a wide range of knowledge and experience to deliberations involving a particular study. Individuals from countless backgrounds have contributed to the work of the Commission, such as attorneys, judges, professors and other educators, state and local officials, physicians and other health care professionals, business and community leaders, service providers, administrators and other professionals, law enforcement personnel, and concerned citizens. In addition, members of advisory committees donate their time to serve the public good; they are not compensated for their service as members. Consequently, the Commonwealth receives the financial benefit of such volunteerism, along with their shared expertise in developing statutory language and public policy recommendations to improve the law in Pennsylvania.

The Commission periodically reports its findings and recommendations, along with any proposed legislation, to the General Assembly. Certain studies have specific timelines for the publication of a report, as in the case of a discrete or timely topic; other studies, given their complex or considerable nature, are ongoing and involve the publication of periodic reports. Completion of a study, or a particular aspect of an ongoing study, generally results in the publication of a report setting forth background material, policy recommendations, and proposed legislation. However, the release of a report by the Commission does not necessarily reflect the endorsement by the members of the Executive Committee, or the Chair or Vice-Chair of the Commission, of all the findings, recommendations, or conclusions contained in the report. A report containing proposed legislation may also contain official comments, which may be used to construe or apply its provisions.[3]

Since its inception, the Commission has published over 450 reports on a sweeping range of topics, including administrative law and procedure; agriculture; athletics and sports; banks and banking; commerce and trade; the commercial code; crimes and offenses; decedents, estates, and fiduciaries; detectives and private police; domestic relations; education; elections; eminent domain; environmental resources; escheats; fish; forests, waters, and state parks; game; health and safety; historical sites and museums; insolvency and assignments; insurance; the judiciary and judicial procedure; labor; law and justice; the legislature; liquor; mechanics' liens; mental health; military affairs; mines and mining; municipalities; prisons and parole; procurement; state-licensed professions and occupations; public utilities; public welfare; real and personal property; state government; taxation and fiscal affairs; transportation; vehicles; and workers' compensation.

Following the completion of a report, subsequent action on the part of the Commission may be required, and, as necessary, the Commission will draft legislation and statutory amendments, update research, track legislation through the legislative process, attend hearings, and answer questions from legislators, legislative staff, interest groups, and constituents.

[3] 1 Pa.C.S. § 1939.

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March 2024

To the Members of the General Assembly of Pennsylvania:

Pursuant to House Resolution 228 of 2022, the Joint State Government Commission is releasing the report, *Adverse Childhood Experiences: Effects of Pennsylvania Statutes and Regulations.* The Commission was directed to appoint an advisory committee to collaborate on this study to identify statutes and regulations in Titles 23, 67, and the Human Servies Code that were promulgated within the past five years "that have exacerbated trauma in children and families." Further, HR228 directed that the report make recommendations for methods to draft in a trauma-informed manner to mitigate trauma that might lead to or exacerbate adverse childhood experiences.

The Advisory Committee recognized that a trauma-informed approach to drafting involves policy development that invokes core issues, preferences, and beliefs and occurs through consultation between stakeholders. The advisory committee's recommendations cover the application of these principles for consideration by the General Assembly, the Governor's Office, and the Judiciary.

On behalf of the Joint State Government Commission, we thank the members of the Advisory Committee for their work on this project and their continued dedication to the prevention and mitigation of childhood trauma.

Respectfully submitted,

Glenn J. Pasewicz
Executive Director

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INTRODUCTION

As directed by House Resolution no. 228,[4] the Joint State Government Commission established an advisory committee to collaborate on this study. The study covers statutes and regulations promulgated within the past five years, currently in effect, under 23 Pa.C.S. (relating to domestic relations), 67 Pa.C.S. (relating to public welfare) and the Human Services Code.[5] The objective is to identify any of these "that have exacerbated trauma in children and families."[6]

From February 2023 through January 2024, the advisory committee convened seven times to study the statutes and regulations[7] specified in the resolution, as well as develop responsive recommendations. Some of the amendments were considered once; others were considered several times. Numerous amendments are protective in nature. Numerous other amendments deal with the administration and delivery of human services. The members of the advisory committee also had access to the material for individual preparation and study. While some issues were identified among several statutes and rules, the advisory committee did not identify any specific amendment and conclude that it exacerbated trauma in children and families.

The proposed methods to draft statutes and regulations in a trauma-informed manner really require a deliberate process rather than anything else. The recommendations cover application of the principles for a trauma-informed approach, consideration by the executive and General Assembly, and a possible statutory resource for the legislative, executive and judicial branches.[8]

[4] Sess. of 2022; appdx. A, *infra* p. 53.
[5] Act of June 13, 1967 (P.L.31, No.21); 62 P.S. §§ 101-1503.
[6] *Supra* note 4, at 5. The statutory review is summarized *infra* pp. 3-26.
[7] There were approximately 700 pages of statutory and rule amendments to review and consider. The regulatory review is summarized *infra* pp. 27-46.
[8] This material is summarized *infra* pp. 47-51.

Individualized Review

The advisory committee was initially surveyed to determine which of the statutes promulgated under 23 Pa.C.S. (relating to domestic relations), 67 Pa.C.S. (relating to public welfare) and the Human Services Code in the past five years, currently in effect, exacerbated trauma in children and families. **Based on survey responses from the advisors, the following statutory amendments were eliminated from further consideration** because they were recognized as not having exacerbated trauma in children and families.[9] Entries in later sections[10] cover statutory amendments that received collective consideration by the advisory committee following the advisors' individual review.

2022

Act no. 12:[11]

Amending the Child Protective Services Law so that a child-care institution may not provisionally employ an applicant for a limited period (while awaiting criminal history record information and certification from Department of Human Services) while allowing other employers to provisionally hire an applicant for up to 45 days (instead of making them get a departmental waiver).

Act no. 118:[12]

Amending 67 Pa.C.S. (relating to public welfare) by repealing and moving the chapter relating to adoption opportunities to a statutory part relating to children, youth and families (where the chapter relating to family finding and kinship care was also moved) from a statutory part that formerly related to human services generally.

[9] In other words, the advisors considered these enactments individually and concluded that they did not require further study or deliberation whether they exacerbated trauma in children and families.
[10] *Infra* pp. 6-25.
[11] Amending 23 Pa.C.S. (relating to domestic relations), in child protective services, further providing for employees having contact with children and adoptive and foster parents.
[12] Amending 42 Pa.C.S. (relating to judiciary and judicial procedure) and 67 Pa.C.S. (relating to public welfare), in juvenile matters, further providing for disposition of dependent child; in human services generally, reorganizing provisions relating to adoption opportunities and to family finding and kinship care; and making editorial changes.

2021

Act no. 38:[13]

Amending 23 Pa.C.S. § 5329(a) (relating to consideration of criminal convictions) by adding human trafficking to the offenses that require a court to determine that the convicted party does not pose a threat of harm to the child before ordering custody to that party.

Act no. 42:[14]

Amending the Child Protective Services Law to construe 23 Pa.C.S. § 6365(a) (relating to services for prevention, investigation and treatment of child abuse) to facilitate cooperation with law enforcement agencies so that a criminal justice agency can disseminate confidential information relating to child abuse to a county agency, which may not then redisseminate that confidential information to an unauthorized person.

Act no. 56:[15]

Amending the Human Services Code to add an annual payment of $130/eligible Medicaid ventilator or tracheostomy day to qualified medical assistance nonpublic and county nursing facilities on a quarterly basis (under both the fee-for-service program and the managed long-term services and supports program).

2020

Act no. 32:[16]

Amending the Domestic and Sexual Violence Victim Address Confidentiality Act to add a convicted strangler (of a program participant) to increase a first offense (from a second degree misdemeanor to a third degree felony) of fraudulently attempting to obtain a program participant's actual address.

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[13] Amending 23 Pa.C.S. (relating to domestic relations), in child custody, further providing for consideration of criminal conviction.

[14] Amending 18 Pa.C.S. (relating to crimes and offenses) and 23 Pa.C.S. (relating to domestic relations), dealing with child abuse: in criminal history record information, further providing for information in central repository or automated systems; and, in organization and responsibilities of Child Protective Services, further providing for services for prevention, investigation and treatment of child abuse.

[15] Amending the Human Services Code, in public assistance, further providing for medical assistance payments for institutional care.

[16] Amending 18 Pa.C.S. (relating to crimes and offenses), 23 Pa.C.S. (relating to domestic relations) and 42 Pa.C.S. (relating to judiciary and judicial procedure), in assault, further providing for the offense of stalking; in wiretapping and electronic surveillance, further providing for definitions; in child custody, further providing for consideration of criminal conviction; in domestic and sexual violence victim address confidentiality, further providing for penalties; and, in sentencing, further providing for sentences for second and subsequent offenses.

Act no. 62:[17]

Amending the Human Services Code to require child care centers and family child care homes to have properly maintained fire detection devices that are tested (and documented in fire drill logs) every 30 days (or annually by a fire safety professional when it can't be tested every 30 days), which are subject to visual inspection for certification by the Department of Human Services (as well as building code inspection reports).

2018

Act no. 29:[18]

This reenacted the same amendments in 23 Pa.C.S. that were already considered for act no. 10 of 2018.[19]

Act no. 40:[20]

Amending the Human Services Code to authorize the Department of Human Services to use rate methodology task force recommended components as part of provider documentation to ensure federal reimbursement.

Amending the Human Services Code by updating the definition for net inpatient revenue and adding the definition for net outpatient revenue, adding assessment percentages on covered hospitals to implement the Quality Care Assessment (for recent and current fiscal years), updating how the Department of Human Services will calculate the assessment percentages to administer it, limiting the amount used for medical assistance managed care organizations from Quality Care

[17] Amending the Human Services Code, in departmental powers and duties as to licensing, further providing for right to enter and inspect.

[18] Amending 18 Pa.C.S. (relating to crimes and offenses), 23 Pa.C.S. (relating to domestic relations) and 42 Pa.C.S. (relating to judiciary and judicial procedure), in sexual offenses, further providing for conduct relating to sex offenders and for general rule; in falsification and intimidation, further providing for the offense of failure to comply with registration requirements, defining the offense of failure to comply with 42 Pa.C.S. Ch. 97 Subch. I registration requirements and imposing penalties; in proceedings prior to petition to adopt, further providing for grounds for involuntary termination, for definitions and for expunction of information of perpetrator who was under 18 years of age when child abuse was committed; in domestic and sexual violence victim address confidentiality, further providing for agency use of designated address; in sentencing, extensively revising registration of sexual offenders provisions; and making editorial changes.

[19] *Infra* p. 11.

[20] Amending the Human Services Code, in general powers and duties, providing for coordinated service delivery pilot program; in public assistance, further providing for meeting special needs, work supports and incentives, for medical assistance payments for institutional care and providing for nonemergency medical transportation services; creating opportunities for hospitals and managed care organizations to improve health care outcomes and to further reduce unnecessary and inappropriate services in the Commonwealth's medical assistance program; in the aged, establishing the LIFE Program; in children and youth, further providing for provider submissions; in Statewide quality care assessment, further providing for definitions, for implementation, for administration, for the Quality Care Assessment Account and for expiration; in departmental powers and duties as to supervision, further providing for definitions; in departmental powers and duties as to licensing, further providing for definitions; and imposing a duty on the Department of Human Services.

Assessment Account (for recent and current fiscal years), and refunding positive balances (unused to obtain a federal match) in that account (or factoring them in to calculate the new rate) and expiring this assessment on June 30, 2023 (instead of 2018).

Amending the Human Services Code in statutory articles IX (relating to departmental powers and duties as to supervision) and X (relating to departmental powers and duties as to licensing) to change the terminology from, child day care, to child care, and instructing the Department of Human Services to make the same change in 55 Pa. Code pt. V (relating to children, youth and families manual).

Act no. 92:[21]

Amending the Protection from Abuse Act to require notification regarding a child abuse investigation in the plaintiff's petition to commence a proceeding and in the notice of hearing and order to the defendant that an order can affect the defendant under the Child Protective Services Law.

2017

Act no. 78:[22]

Amending the Domestic Relations Code to change terminology in continuing jurisdiction over support orders from fraudulent to voidable transfers to match the same change in the Pennsylvania Uniform Voidable Transactions Act.

Individualized Review Followed by Committee Consideration

The advisory committee was initially surveyed to determine which of the statutes promulgated under 23 Pa.C.S. (relating to domestic relations), 67 Pa.C.S. (relating to public welfare) and the Human Services Code in the past five years, currently in effect, exacerbated trauma in children and families. **Based on survey responses from the advisors followed by the committee's collective consideration, the following statutory amendments were eliminated from further consideration** because they were recognized as not having exacerbated trauma in

[21] Amending 23 Pa.C.S. (relating to domestic relations), in protection from abuse, further providing for commencement of proceedings.

[22] Amending 12 Pa.C.S. (relating to commerce and trade) and 23 Pa.C.S. (relating to domestic relations), in fraudulent transfers, further providing for short title of chapter and definitions, for insolvency, for value, for transfers fraudulent as to present and future creditors, for transfers fraudulent as to present creditors, for when transfer is made or obligation is incurred, for remedies of creditors, for defenses, liability and protection of transferee and for extinguishment of cause of action, providing for governing law and for application to series organization, further providing for supplementary provisions and providing for uniformity of application and construction and for relation to Electronic Signatures in Global and National Commerce Act; and, in support matters generally, further providing for continuing jurisdiction over support orders.

children and families.[23] Entries in later sections[24] cover statutory amendments that received repeated collective consideration by the advisory committee following the advisors' individual review.

2022

Act no. 50:[25]

Amending the Domestic and Sexual Violence Victim Address Confidentiality Act to expand eligibility to apply for program participation to victims of kidnapping, human trafficking and sexual extortion (with supportive affidavits and applications allowed to be filed electronically, postally or in person).

Act no. 98:[26]

Amending the Human Services Code by authorizing the Department of Auditor General to audit and review a pharmacy benefits manager that provides this management to a medical assistance managed care organization under contract with the Department of Human Services and abrogates the rules that would not cover outpatient psychiatric services, (drug and alcohol) clinical services conducted over the phone, psychiatric supervision requiring a face-to-face meeting, limited pharmaceutical refills to a 34-day or 100-unit supply, reimbursement for home health agency services and skilled nursing care only when ordered by the patient's attending physician, and the assignment of a home health aide only in accordance with the written plan of treatment by the attending physician (so that his assistant could prescribe home health services).

Act no. 106:[27]

Amending the Divorce Code to have judicial decrees inform the parties to reaffirm or change the beneficiary *status* on contractual arrangements payable to the spouse so that the statutory default does not change what the parties want.

[23] In other words, the advisors considered these enactments individually and then collectively before concluding that they did not require further study or deliberation whether they exacerbated trauma in children and families.
[24] *Infra* pp. 13-25.
[25] Amending 23 Pa.C.S. (relating to domestic relations), in domestic and sexual violence victim address confidentiality, further providing for definitions, for persons eligible to apply and for application and certification process.
[26] Amending the Human Services Code, in public assistance, providing for pharmacy benefits manager audit and obligations; and abrogating regulations.
[27] Amending 23 Pa.C.S. (relating to domestic relations), in dissolution of marital status, further providing for decree of court.

Act no. 131:[28]

Amending 67 Pa.C.S. pt. IV (relating to children, youth and families) by repealing the Resource Family and Adoption Process Act and the Resource Family Care Act to add them as a statutory chapter relating to resource families covering responsibilities of county and private agencies, retaliation prohibited, resource family adoption interview and regulations.

2020

Act no. 18:[29]

Amending the Marriage Law to forbid the issuance of a marriage license if either applicant is under age 18 (eliminating former exceptions) and adding an exception to the general rule requiring an oral examination of the applicants so that they can forward *affidavits* if the register of wills is closed for a disaster or judicial emergency.

Act no. 32:[30]

Amending 23 Pa.C.S. § 5329(a) (relating to consideration of criminal convictions) by adding strangulation to the offenses that require a court determine that the convicted party does not pose a threat of harm to the child before ordering custody to that party.

Act no. 95:[31]

Amending the Adoption Act by adding special provisions when a child is conceived as a result of rape or incest so that the parent seeking involuntary termination of the other parent (the father) does not have to aver that she will assume custody until adoption, adoption is presently contemplated or a person presently intending to adopt exists.

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[28] Amending 67 Pa.C.S. (relating to public welfare), providing for resource families; making editorial changes; and making related repeals. This was enacted after the resolution was adopted but before the advisory committee was established. It repeals but continues act nos. 68 and 73 of 2005.

[29] Amending 23 Pa.C.S. (relating to domestic relations), in marriage license, further providing for restrictions on issuance of license and for oral examination; and, in child protective services, providing for pandemic of 2020.

[30] Amending 18 Pa.C.S. (relating to crimes and offenses), 23 Pa.C.S. (relating to domestic relations) and 42 Pa.C.S. (relating to judiciary and judicial procedure), in assault, further providing for the offense of stalking; in wiretapping and electronic surveillance, further providing for definitions; in child custody, further providing for consideration of criminal conviction; in domestic and sexual violence victim address confidentiality, further providing for penalties; and, in sentencing, further providing for sentences for second and subsequent offenses.

[31] Amending 23 Pa.C.S. (relating to domestic relations), in proceedings prior to petition to adopt, further providing for petition for involuntary termination and providing for special provisions when child conceived as a result of rape or incest.

Act no. 120:[32]

Amending the Human Services Code to authorize the Department of Human Services to audit entities (for pharmacy services) contracting with managed care organizations (or those contracted to the department) for statutory compliance; forbids contractual secrecy provisions between entities and pharmacies; and, contains other limitations on entities. (This was intended to require transparency in Pharmacy Benefit Management pricing practices in Medicaid and address inadequate reimbursement rates for pharmacies.)

Act no. 121:[33]

Amending the Human Services Code to specify that Pharmaceutical and Therapeutics Committee members are appointed by the Secretary of Human Services to include two members representing community pharmacists, physicians, pharmacists and others necessary to maintain a preferred drug list (instead of having no statutory specification).

2019

Act no. 12:[34]

Amending the Human Services Code to cease the general assistance cash assistance program and change a reference from 2018 to 2023 so that the Department of Human Services uses the methodology in the Commonwealth's approved Tit. XIX State Plan for inpatient hospital services (instead of departmental regulations for assessments imposed). Article VIII-G (relating to statewide quality care assessment) years reference the Commonwealth's approved Tit. XIX State Plan relating to medical assistance payments for institutional care (reflecting budgetary items).

Amending the Human Services Code to amend the statutory article relating to hospital assessments by changing net operating revenue to net patient revenue, reducing the number of days of inpatient acute days of care (90,000 to 60,000) to be a high volume Medicaid hospital; expand the authorization so that all citizens have access to other health care services (instead of emergency department services); allow municipalities to assess hospitals by percentage; authorize municipalities to provide for calculations of the assessment for fiscal years when a hospital changes affecting its status as a general acute care or high volume Medicaid hospital; authorizes municipalities to retain their part of the assessment for public health programs (instead of just public health clinics) and the state portion of the assessment to increase medical assistance for

[32] Amending the Human Services Code, in public assistance, further providing for medical assistance pharmacy services and providing for prescription drug pricing study.

[33] Amending the Human Services Code, in public assistance, further providing for pharmaceutical and therapeutics committee.

[34] Amending the Human Services Code, in public assistance, further providing for definitions, for general assistance-related categorically needy and medically needy only medical assistance programs, for the medically needy and determination of eligibility and for medical assistance payments for institutional care; in hospital assessments, further providing for definitions, for authorization, for administration, for no hold harmless, for tax exemption and for time period; and, in Statewide quality care assessment, further providing for definitions.

hospital (instead of just emergency department) services and add payments to medical assistance managed care under organizations in the municipality, and, extends authorization for the assessment from 2019 to 2024.

Act no. 14:[35]

Amending 67 Pa.C.S. (relating to public welfare) by amending part II to add chapters relating to adoption opportunities as well as family finding and kinship care, while repealing the same, former articles in the Human Services Code.

Act no. 19:[36]

Amending the Human Services Code to cease the assessment authorized under article VIII-C (relating to intermediate care facilities for persons with an intellectual disability assessments) in June 2024 (instead of 2019). [This assessment generates additional revenues for medical assistance program recipients to have access to medically necessary intellectual disability services.]

Act no. 47:[37]

Amending the Adoption Act to allow the consent of an incarcerated parent be witnessed by a designated, correctional facility employee and to allow an acknowledgement before a public notary *in lieu* of two witnesses.

Amending the Domestic Relations Code to temporarily increase a federally mandated annual fee from $25 to $35 for whom the Commonwealth has collected at least $550 of support in a fiscal year (the Department of Human Services retains the $35 fee when paid by the custodial parent).

Amending the Child Protective Services Law for employees having contact with children so that minors who apply for a paid position in a child day-care center have to submit information under certain conditions; expands who must deny employment or participation from an administrator to those responsible or involved in those decisions; adds some offenses and database

[35] Amending 67 Pa.C.S. (relating to public welfare), in preliminary provisions, further providing for definitions; in medical assistance hearings and appeals, further providing for definitions; in public welfare generally, providing for adoption opportunities and for family finding and kinship care; establishing the Kinship Care Program and the Subsidized Permanent Legal Custodianship Program; making related repeals; and making editorial changes. This is largely a continuation of Human Services Code, former art. VII, subart. (e), and former art. XIII, which were repealed and replaced by this enactment.

[36] Amending the Human Services Code, in public assistance, further providing for medical assistance payments for institutional care and for nonemergency medical transportation services and providing for uniform Statewide preferred drug list; in nursing facility assessments, further providing for definitions, for calculation, for remedies, for repayment and for time periods; in intermediate care facilities for persons with an intellectual disability assessments, further providing for definitions and for time periods; and making a related repeal.

[37] Amending 23 Pa.C.S. (relating to domestic relations), in petition for adoption, further providing for consents necessary to adoption; in support matters generally, further providing for costs and fees and for State disbursement unit; and, in child protective services, further providing for employees having contact with children, adoptive and foster parents and for volunteers having contact with children.

registries as grounds to deny employment or participation in program; requires additional information for child-day care centers for those who lived in other states during the last five years; authorizes provisional employment for up to 45 days if specified conditions are met; and, withholds investigatory exceptions for adult volunteers with a child day-care center.[38]

2018

Act no. 10:[39]

Amending the Adoption Act by adding the requirement of a parent to register as a sex offender under 42 Pa.C.S. subch. I (relating to continued registration of sexual offenders) as a ground for involuntary termination under the general rule.

Amending the Child Protective Services Law by expanding the definition of child abuse to leaving a child unsupervised with a nonparent who is a sexually violent predator or required to register for life under 42 Pa.C.S. § 9799.55(b) (relating to registration). It also amended the statute applying conditional expunction of information from the statewide database for perpetrators who were under age 18 when the child abuse was committed so that it does not apply if that individual must continue to register under 42 Pa.C.S. subch. I.

Amending the Domestic and Sexual Violence Victim Address Confidentiality Act by adding exceptions to the mandate that governmental agencies must accept the substitute address of a program participant if that person must register under 42 Pa.C.S. ch. 97 subch. I or has not completed the required period of registration under either 42 Pa.C.S. ch. 97 subchs. H (relating to registration of sexual offenders) or I.

[38] Most of these were federally mandated changes that would have cost up to 4% of a Child Care and Development Block Grant discretionary funding for noncompliance, which would have amounted to a penalty up to $6,053,232 (in fiscal year 2019).

[39] Amending 18 Pa.C.S. (relating to crimes and offenses), 23 Pa.C.S. (relating to domestic relations) and 42 Pa.C.S. (relating to judiciary and judicial procedure), in sexual offenses, further providing for conduct relating to sex offenders and for general rule; in falsification and intimidation, further providing for the offense of failure to comply with registration requirements, defining the offense of failure to comply with 42 Pa.C.S. Ch. 97 Subch. I registration requirements and imposing penalties; in proceedings prior to petition to adopt, further providing for grounds for involuntary termination and for definitions; in domestic and sexual violence victim address confidentiality, further providing for agency use of designated address; in sentencing, providing for a mandatory period of probation for certain sexual offenders and extensively revising registration of sexual offenders provisions; and making editorial changes.

Act no. 40:[40]

Amending the Human Services Code to authorize the Departments of Human Services and Education to establish a pilot program at a school in a city of the first class to coordinate educational and human services delivered to students and families *via* innovative, research-based practices.

Amending the Human Services Code to require the Department of Human Services to provide nonemergency medical transportation to medical assistance recipients using a full risk brokerage model.

Amending the Human Services Code to require the Department of Human Services to establish health care outcomes for Medicaid covering hospitals and managed care organizations.

Amending the Human Services Code to detail what information materials must include to notify eligible individuals about long-term care services.

Act no. 88:[41]

Amending the Standby Guardianship Act by adding temporary guardians (who are family members) for when the minor's custodial parent is in rehabilitation for drugs or alcohol addiction; and, providing for the designation, approval, authority and period of temporary guardianships.

Act no. 102:[42]

Amending the Divorce Code by adding an exception to the general rule so that a party convicted of a personal injury crime against the other party does not get spousal support or *alimony pendente lite* (unless to prevent manifest injustice).

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[40] Amending the Human Services Code, in general powers and duties, providing for coordinated service delivery pilot program; in public assistance, further providing for meeting special needs, work supports and incentives, for medical assistance payments for institutional care and providing for nonemergency medical transportation services; creating opportunities for hospitals and managed care organizations to improve health care outcomes and to further reduce unnecessary and inappropriate services in the Commonwealth's medical assistance program; in the aged, establishing the LIFE Program; in children and youth, further providing for provider submissions; in Statewide quality care assessment, further providing for definitions, for implementation, for administration, for the Quality Care Assessment Account and for expiration; in departmental powers and duties as to supervision, further providing for definitions; in departmental powers and duties as to licensing, further providing for definitions; and imposing a duty on the Department of Human Services.

[41] Amending 23 Pa.C.S. (relating to domestic relations), in standby guardianship, further providing for definitions and for scope and providing for temporary guardianship; in child protective services, further providing for release of information in confidential reports; and making editorial changes.

[42] Amending 23 Pa.C.S. (relating to domestic relations), in *alimony* and support, further providing for *alimony pendente lite*, counsel fees and expenses.

Individualized Review Followed
by Committee Consideration – Twice

The advisory committee was initially surveyed to determine which of the statutes promulgated under 23 Pa.C.S. (relating to domestic relations), 67 Pa.C.S. (relating to public welfare) and the Human Services Code in the past five years, currently in effect, exacerbated trauma in children and families. **Based on survey responses from the advisors followed by the committee's collective consideration twice, the following statutory amendments were eliminated from further consideration** because they were recognized as not having exacerbated trauma in children and families.[43] Entries in later sections[44] cover statutory amendments that received additional, repeated collective consideration by the advisory committee following the advisors' individual review.

2018

Act no. 21:[45]

Amending the Domestic Relations Code to expand standing for physical or legal custody from parents and grandparents to somebody with a sustained interest in the child's welfare when neither parent controls the child if there is not a dependency proceeding or permanent legal custody was ordered for a dependent child. It also clarified the standing of grandparents and great-grandparents for partial or supervised physical custody when the parents disagree to this under certain circumstances. Accordingly, it also substituted the term, party, for parent in another section relating to the order of custody.

Initially, this amendment was recognized as having the potential to create conflict, potentially exacerbating trauma in children and families experiencing a lot of conflict between parents and grandparents. This was subsequently dropped from further consideration. The amendment to 23 Pa.C.S. § 5325(2) (relating to standing for partial physical custody and supervised physical custody) makes that statutory paragraph more similar to preexistent § 5324(3)(i) (relating to standing for any form of physical custody or legal custody), both of which affect grandparents.

[43] In other words, the advisors considered these enactments individually and then collectively before concluding that they did not require further study or deliberation whether they exacerbated trauma in children and families.
[44] *Infra* pp. 14-25.
[45] Amending 23 Pa.C.S. (relating to domestic relations), in child custody, further providing for standing for any form of physical custody or legal custody, for standing for partial physical custody and supervised physical custody and for consideration of criminal conviction.

Act no. 79:[46]

Amending the Protection from Abuse Act requiring an unsafe plaintiff commencing a proceeding to notify the court so that it can direct police to accompany the plaintiff to retrieve belongings during service; notify the defendant of rights of hearings under the general rule and continued hearings; adding any appropriate law enforcement agency (to the sheriff) to possess relinquished weapons; mandating final orders to direct the defendant to not threaten the plaintiff and children and relinquish firearms (neither of which are mandated under final agreements); extending protection orders when the defendant was recently incarcerated prohibition to the general rule of relief so that a defendant may not acquire or possess any firearm during the order's duration; allowing a dealer to charge the defendant to store relinquished firearms; allowing an attorney at law or commercial armory to substitute for the sheriff to safekeep relinquished firearms; forfeiting licensure of a commercial armory who violates this act; and, allowing one who obtained relief under the general rule's consent agreement to petition for a sealed record with notice to the plaintiff and district attorney who have an opportunity to be heard.

These amendments to the Protection from Abuse Act[47] raised some initial concerns, which were withdrawn upon further consideration. These amendments were intended to enhance safety for victims of domestic violence and their children.[48] Some of the amendments deal with due process afforded defendants[49] while others enhance the relief afforded plaintiffs. Some amendments addressed what a final order must direct and what a final agreement may direct.[50] There were additional statutory prescriptions for relinquishment of firearms and their return.[51]

Individualized Review Followed by Committee Consideration – Thrice

The advisory committee was initially surveyed to determine which of the statutes promulgated under 23 Pa.C.S. (relating to domestic relations), 67 Pa.C.S. (relating to public welfare) and the Human Services Code in the past five years, currently in effect, exacerbated trauma in children and families. **Based on survey responses from the advisors followed by the committee's collective consideration thrice, the following statutory amendments were eliminated from further consideration** because they were recognized as not having exacerbated

[46] Amending 18 Pa.C.S. (relating to crimes and offenses) and 23 Pa.C.S. (relating to domestic relations), in firearms and other dangerous articles, further providing for persons not to possess, use, manufacture, control, sell or transfer firearms and providing for relinquishment of firearms and firearm licenses by convicted persons and for abandonment of firearms, weapons or ammunition; and, in protection from abuse, further providing for definitions, for commencement of proceedings, for hearings, for relief, for return of relinquished firearms, other weapons and ammunition and additional relief, for relinquishment for consignment sale, lawful transfer or safekeeping and for relinquishment to third party for safekeeping, imposing a penalty and providing for order to seal record from public view.

[47] 23 Pa.C.S. ch. 61.

[48] *E.g.*, *id.* § 6106(a.3).

[49] *E.g.*, *id.* § 6107(a), (c).

[50] *E.g.*, *id.* § 6108.

[51] *E.g.*, *id.* § 6108.1.

trauma in children and families.[52] Entries in a later section[53] cover statutory amendments that received additional, repeated collective consideration by the advisory committee following the advisors' individual review.

2022

Act no. 118:[54]

Amending 67 Pa.C.S. (relating to public welfare) by repealing and replacing the chapter relating to family finding and kinship care adding a permanency plan, a transition plan and services, and data collection to improve permanency outcomes.

Amending 67 Pa.C.S. by repealing and moving the chapter relating to adoption opportunities to a statutory part relating to children, youth and families (where the chapter relating to family finding and kinship care was also moved) from a statutory part that formerly related to human services generally.

This amendment repealed 67 Pa.C.S. chs. 21 (relating to adoption opportunities) and 31 (relating to family finding and kinship care) to replace them with chapters 75 and 77 covering the same subject matter. Some provisions in these renumbered chapters were unchanged with other provisions being amended or added altogether. Possible concerns previously raised that the ongoing basis to ensure that family finding occurs could lead to delays in permanency, which could exacerbate or cause traumatic stress,[55] were dropped because this legislative intent and statutory process predated this amendment so that it these statutory provisions were not "promulgated . . . in the past five years" placing them outside of the temporal scope of the resolution. Note that curtailing consideration of these concerns left them unresolved so that no consensus formed. A continued consideration would have likely entailed trying to obtain data and situations specific to the Commonwealth.

[52] In other words, the advisors considered these enactments individually and then collectively before concluding that they did not require further study or deliberation whether they exacerbated trauma in children and families.
[53] *Infra* pp. 16-25.
[54] Amending 42 Pa.C.S. (relating to judiciary and judicial procedure) and 67 Pa.C.S. (relating to public welfare), in juvenile matters, further providing for disposition of dependent child; in human services generally, reorganizing provisions relating to adoption opportunities and to family finding and kinship care; and making editorial changes.
[55] In other states, there have been examples of children being removed from foster parents with whom the child had lived for multiple years and formed a significant bond (and where the foster parents were able or otherwise ready to adopt) to be placed with relatives who were previously contacted but were ruled out as inappropriate or declined to be involved. These states have enacted rules that eliminate relatives who are non-responsive or decline involvement at the initial outreach from further consideration or placement. Experiences and responses in other states were not fully considered because of the temporal scope of the resolution.

Individualized Review Followed
by Committee Consideration – Four Times

The advisory committee was initially surveyed to determine which of the statutes promulgated under 23 Pa.C.S. (relating to domestic relations), 67 Pa.C.S. (relating to public welfare) and the Human Services Code in the past five years, currently in effect, exacerbated trauma in children and families. **Based on survey responses from the advisors followed by the committee's collective consideration four times, the following statutory amendments were eliminated from further consideration** because they were recognized as not having exacerbated trauma in children and families.[56]

2019

Act no. 88:[57]

Amending the Child Protective Services Law to increase the penalties from a first degree misdemeanor to a third degree felony (or third degree felony to a second degree felony) if a mandated reporter continues to fail to report suspected child abuse and clarifies the penalty for multiple offenses.

The practical effect of these amendments is likely more reporting, but not necessarily more substantiated reports. The *mens rea* for the penalty of a continuing course of action of willful failure to report an individual of suspected of child abuse was amended from a reasonable belief to a reasonable suspicion of child abuse by the same individual continuing to have direct contact with children.[58] The increased penalties in the amendment could also stimulate more reporting.[59] Substantially more reports tax the child welfare system, but these amendments do not facially exacerbate trauma in children and families.[60] Moreover, these amendments reflect decisions on policy rather than from drafting issues.

As a follow up to the advisory committee's discussions, the following data (in Table 1)[61] was obtained for the advisory committee: Statewide Child Protective Services Sources of Child Abuse Reports (based on the Pennsylvania Department of Human Services Protective Services Annual Reports). For the last five-year period,[62] mandated reporter data shows that school employees were responsible for making the most reports averaging 10,244/year with 5.4% being

[56] In other words, the advisors considered these enactments individually and then collectively before concluding that they did not require further study or deliberation whether they exacerbated trauma in children and families.
[57] Amending 23 Pa.C.S. (relating to domestic relations), in child protective services, further providing for penalties.
[58] 23 Pa.C.S. § 6319(b).
[59] The penalties were increased from a misdemeanor of the first degree to a felony of the third degree and from a felony of the third to the second degree. *Id.*
[60] Overreporting could indirectly exacerbate trauma in children and families if county resources are too absorbed investigating numerous reports, thereby delaying attention to the substantiated ones.
[61] *Infra* p. 18.
[62] 2018-22.

substantiated, the lowest percentage among mandated reporters. The highest, average substantiation percentages were from: medical examiners,[63] 29.2%; and, peace officers, 27.8%.

During the same five-year period, the annual number of mandated reporters averaged 33,869/year, with 14.1% of those reports substantiated.[64] During the same five-year period, the annual number of permissive reporters averaged 7,016/year, with 7.6% of those reports substantiated. During the same five-year period, reports of repeat abuse averaged 2,022/year, with 14.6% of those reports substantiated. The reported data by reporter type is for a five-year period because before 2018, the reporting categories differed.[65]

Data for the timeliness of child abuse reports investigation (in Table 2)[66] was obtained for the advisory committee: within 0-30 days; within 31-60 days; and greater than 60 days. Whether from the last five years (or even seven years)[67]--from year-to-year, the investigatory timeliness of reported cases remained consistent.

[63] Categorized with coroners and funeral directors.
[64] The percentage is from a four-year (2019-22) period rather than five-year period because the source did not publish this percentage in 2018.
[65] Plus, House Resolution no. 228 directs the advisory committee to concentrate on a five-year lookback period.
[66] *Infra* p. 19.
[67] Data was not readily available going back longer than seven years, but House Resolution no. 228 directs the advisory committee to concentrate on a five-year lookback period.

Table 1
Statewide Child Protective Services
Sources of Child Abuse Reports
by Type of Reporter
Pennsylvania
2018 - 2022

Sources of Child Abuse Reports	2018		2019		2020		2021		2022		Average	
	Number of reporters	Percent substantiated	Number of reporters	Percent substantiated	Number of reporters	Percent substantiated	Number of reporters	Percent substantiated	Number of reporters	Percent substantiated	Number of reporters	Percent substantiated
School employee	**13,640**	5.0%	**12,990**	5.2%	5,780	5.7%	**8,313**	5.4%	**10,495**	5.8%	**10,244**	5.4%
Employee of social service agency	8,992	14.2	8,803	14.2	**7,509**	16.3	8,132	16.6	7,491	16.4	8,185	15.5
Peace officer[1]	4,131	27.4	4,052	**28.0**	4,230	29.6	4,618	27.3	4,587	**26.8**	4,324	27.8
Employee of health care facility	4,665	15.6	4,325	15.1	4,065	16.3	4,341	16.3	4,388	16.6	4,357	16.0
Licensed health care practitioner	3,919	13.0	3,699	12.9	2,972	14.3	3,538	15.1	3,416	14.7	3,509	14.0
Volunteer/employee of children's program	1,289	10.6	1,420	11.1	1,013	10.4	1,088	10.0	1,101	11.7	1,182	10.8
Childcare employee	1,418	8.5	1,316	8.1	868	9.9	1,008	8.9	1,058	8.9	1,134	8.7
Foster parent	233	12.4	255	9.4	279	22.6	266	13.5	228	11.4	252	13.9
Subordinate of person who directly works w/children	209	12.9	219	11.0	143	12.6	213	16.4	189	12.7	195	13.1
EMS provider	152	25.0	173	19.7	141	20.6	147	26.5	177	22.6	158	22.9
Attorney	97	12.4	105	19.0	65	13.8	92	21.7	95	15.8	91	16.5
Independent contractor	115	15.7	112	0.9	72	8.3	83	10.8	90	11.1	94	9.4
Religious leader	123	26.0	119	14.3	49	26.5	71	25.4	84	10.7	89	20.1
Medical examiner/coroner/funeral director	21	**33.3**	29	20.7	41	**43.9**	24	**37.5**	19	10.5	27	**29.2**
Adult family member serving as child's caregiver	25	24.0	22	13.6	16	0.0	20	20.0	19	10.5	20	13.6
Employee of public library	11	9.1	8	0.0	6	16.7	8	25.0	10	20.0	9	14.2
Unknown	--	--	--	--	--	--	1	**100.0**	--	--	na	na
Total mandated reporters	39,040	--	37,647	12.2	27,249	15.6	31,963	14.6	33,447	13.9	33,869	14.1
Permissive reporters[2]	7,577	8.6	6,640	7.0	6,686	7.7	7,235	7.4	6,944	7.3	7,016	7.6
Reports of repeat abuse	1,793	14.8	2,042	13.6	2,029	14.1	2,098	15.5	2,150	14.9	2,022	14.6

[1] Law enforcement agency.
[2] Permissive reporters are not mandated reporters; the categorical sources are mandated reporters.
Source: Pennsylvania Department of Human Services website, Publications, Child Abuse Reports, *Annual Child Protective Services Report,* 2018 through 2022, https://www.dhs.pa.gov/docs/Publications/Pages/Child-Abuse-Reports.aspx.

Table 2
Child Abuse Cases Investigated
by County Children & Youth Agencies
Pennsylvania
2016 - 2022

Year	Investigated within 30 days	Percent investigated	Investigated within 31-60 days	Percent investigated	Investigated beyond 60 days	Percent investigated
2016	19,366	43.7%	24,773	55.8%	220	0.5%
2017	21,044	44.3	26,389	55.6	52	0.1
2018	19,585	44.4	24,434	55.5	44	0.1
2019	19,352	45.8	22,830	54.0	70	0.2
2020	15,255	46.3	17,548	53.3	116	0.4
2021	15,944	41.9	21,815	57.4	254	0.7
2022	16,100	41.2	22,635	57.9	358	0.9
Average for 2018-2022 period specified by HR228	17,247	43.9	21,852	55.6	168	0.5
Average for 2016 - 2022	18,092	44.0	22,879	55.6	159	0.4

Source: Pennsylvania Department of Human Services website, Child Abuse Reports, *Annual Child Protective Services Reports*, 2016-2022, https://www.dhs.pa.gov/docs/Publications/Pages/Child-Abuse-Reports.aspx.

The cumulative data of child abuse reports investigated from 2001-2022 (in Table 3)[68] was obtained for the advisory committee. The highest percentage of reported cases that were substantiated occurred in 2001 and 2002, with each year at 20.7%. The lowest percentage of reported cases that were substantiated occurred in 2015 and 2016, at 10.2% and 9.8%.[69] In subsequent years, the percentage of cases substantiated gradually increased. From 2014 to 2015, the total number of cases reported increased markedly (29,516 to 42,023 cases).[70] In 2013 and 2014, the mandated reporter statute was amended to clarify and streamline mandated reporting and strengthen the mandates themselves.[71] The substantiated reports data in these two timeframes: 2015-2022 (11.5% substantiated reports) and 2001-2014 (16.2% substantiated reports) supports advisory committee members' prior remarks that increased reporting requirements has not increased percentages of substantiated reports (but decreased the percentages).

[68] *Infra* p. 20.

[69] These numbers were revised in subsequent, annual reports; in the year that they were originally published, the percentages were 10.4% for both of these years, which still would have made them the lowest. For the years, 2012-16, subsequent, annual reports changed the total numbers and the substantiated numbers upon review and rulings, which correspondingly changed the substantiated percentage. Table 3 uses the most recent figures.

[70] These numbers were revised in subsequent, annual reports; in the year that they were originally published, the numbers for both of these years were 29,273 to 40,590 cases, which still shows a marked increase.

[71] *E.g.*, act of Dec. 13, 2013 (P.L.1201, No. 119); act of Jan. 22, 2014 (P.L.6, No.4); act of Apr. 7, 2014 (P.L.388, No.29); acts of Apr. 15, 2014 (P.L.411, No.31), (P.L.414, No.32), (P.L.417, No.33) & (P.L.425, No.34); acts of May 14, 2014 (P.L.645, No.44) & (P.L.653, No.45); & acts of Oct. 22, 2014 (P.L.2529, No.153) & (P.L.2876, No. 176).

Table 3
Child Abuse Reports[1]
Department of Human Services
Pennsylvania
2001-2022

Year	Total	Unfounded	Substantiated	Percent substantiated	Determination pending at time of OCYF report
2022	39,093	33,643	4,992	12.8%	440
2021	38,013	32,310	5,036	13.2	667
2020	32,919	27,603	4,593	14.0	723
2019	42,252	36,715	4,865	11.5	672
2018	44,063	38,321	5,102	11.6	640
2017	47,485	41,909	4,836	10.9	740
2016	44,356	39,588	4,349	9.8	419
2015	42,023	37,529	4,267	10.2	227
2014	29,516	--	3,088	10.5	--
2013	27,182	--	3,147	11.6	--
2012	26,352	--	3,164	12.0	--
2011	24,378	--	3,408	14.0	--
2010	24,615	--	3,656	14.9	--
2009	25,342	--	3,943	15.6	--
2008	25,655	--	4,201	16.4	--
2007	24,021	--	4,162	17.3	--
2006	23,181	--	4,152	17.9	--
2005	22,854	--	4,390	19.2	--
2004	23,618	--	4,628	19.6	--
2003	23,602	--	4,523	19.2	--
2002	24,408	--	5,057	20.7	--
2001	23,099	--	4,784	20.7	--
Average	30,819	--	4,288	13.9	--

[1] Table includes most recent figures, which may have been updated from the original year of report.

Source: PA Department of Human Services, Child Abuse Reports, *Annual Child Protective Services Reports*, 2001-2022, https://www.dhs.pa.gov/docs/Publications/Pages/Child-Abuse-Reports.aspx.

2018

Act no. 54:[72]

Amending the Child Protective Services Law to require that the statewide toll-free phone number to report suspected child abuse or neglect be posted in schools and hospitals, changing the timeliness from five years to the earlier of 10 years or until the youngest child reaches age 23 for the expunction of valid general protective services reports; allowing county agencies to maintain information about protective services reports that were expunged from the statewide database to assist future assessments and research; applies the information to be submitted and documentation to be maintained and produced to an individual age 14 or older who applies for a paid position in a program with direct contact with children moving the one who applies for a paid position in an internship to apply the section relating to volunteers having contact with children; declares that notification to the Department of Human Services by a health care provider of a child born with substance use or withdrawal symptoms is not a child abuse report; and, requires interagency protocols and a plan of safe care be developed addressing prenatal exposures to drugs and alcohol.

The discussion primarily focused on the amendments relating to disposition and expunction of unfounded reports and general protective services reports[73] as well as notification to department and development of plan of safe care for children under one year of age.[74] County agency records regarding protective services reports may be maintained to assist the county agency "in future risk and safety assessments and research" even though that information was "expunged in the Statewide database."[75] The amendment doubled the time to maintain valid, general protective services reports from five to 10 years (or until the youngest child identified in the report attains age 23, whichever occurs first).[76] Because this amendment authorized a county agency to "maintain information regarding protective services reports that have been expunged in the Statewide database," repeated reports can be investigated repeatedly (*sans* the historical record of the prior report in the expunged Statewide database), and a new report of the previously investigated factual allegation could exacerbate trauma in children and families. *E.g.*, a victim could disclose previous sexual abuse in the context of seeking treatment, but the evidence does not exceed the threshold for intervention—yet new reporting and the resultant, subsequent investigation (with no new evidence) could exacerbate trauma in the child.

Pennsylvania uses the Child Welfare Information Solution (CWIS) system to process county referrals (intakes, assessments, and referrals). The case management system is currently not a unified statewide system. Still under development, the unified statewide case management system will not be available for several years. The statewide system under development is the

[72] Amending 23 Pa.C.S. (relating to domestic relations), in child protective services, further providing for establishment of Statewide toll-free telephone number, for disposition and expunction of unfounded reports and general protective services reports, for employees having contact with children and adoptive and foster parents, for volunteers having contact with children and for mandatory reporting of children under one year of age.
[73] 23 Pa.C.S. § 6337(d), (f).
[74] *Id.* § 6386.
[75] *Id.* § 6337(f)(2).
[76] *Id.* § 6337(d).

Enterprise Case Management platform under the Pennsylvania Department of Human Services.[77] The pending, unified statewide case management system's information will be accessible statewide (since everyone will be utilizing a centralized system). While the information will be accessible, a statutory amendment is needed to align the state's records retention policy with the counties' statutorily mandated retention policy. If the unfounded investigation reports would be retained indefinitely rather than expunged under the current statutory provision, the recommendation would be that an unfounded report will not remain/appear on an individual's Childline report. The historical record of reports would remain available to the state and counties for investigative purposes, internal quality review processes and research. Examples of historical information that may be beneficial for future investigations could be: family members present at time of investigation; actions of parents; who are parents; and residents of household at time of investigation.

Some members of this advisory committee are also members of the Children's Advocacy Center Advisory Committee.[78] This advisory committee agreed with a relevant recommendation that advisory committee made last year:[79]

> **3) The process by which we expunge protective services records should be reconsidered.** Current law requires that unfounded CPS reports and invalid GPS reports be expunged from the statewide database after one year and GPS reports, even when validated, are expunged after ten years. While we are cognizant of the rights of due process and understand individual concerns, the primary concern with this approach is that it hinders efforts to protect children from maltreatment, as well as efforts to identify children at risk of future abuse. Even the recently passed Clean Slate legislation, which established an extensive record sealing process, permitted access and use of criminal history information to appropriate entities. The CPSL process as it currently stands requires nearly total deletion, as opposed to just restriction from public view.
>
> Furthermore, caution is warranted in distinguishing between substantiated and unsubstantiated cases; both are associated with similar degrees of harm to child health and development and pose similar risks for re-report and future victimization. Risk of future maltreatment or CPS recidivism is similar regardless of whether reports are substantiated or not; therefore, there are many circumstances in which prior case files can assist in future investigations.
>
> Prior records can help caseworkers assess means for reducing familial risk, protect their own safety, identify potential adoptive families if risks cannot be mediated, and locate missing children. Vital information from prior investigations would not

[77] "ECM will replace the Child Welfare Information Solution (CWIS) and the six county-level case management systems currently used in Pennsylvania." Pa. Dep't of Human Servs., Child Welfare Case Mgmt. Sys., https://www.dhs.pa.gov/ECM/Subsystems/Pages/Child-Welfare-Case-Management-Subsystem.aspx (2024).
[78] Within Pa. Comm'n on Crime & Delinquency. Act of Apr. 9, 1929 (P.L.383, No.29), § 2306-B; 71 P.S. § 614.6.
[79] Children's Advocacy Cen. Advisory Comm. Legis. Recommendations (2023-24), Memorandum from David Heckler, Chair, to Chairs of Pa. Senate Comm. on Aging & Youth & Pa. H.R. Comm. on Children & Youth (Sept. 20, 2023) (on file w/J. State Gov't Comm'n).

be available if the records are completely expunged prior to recidivism. Thus, we recommend the following with respect to improving the expungement system:

> a. Similar to the Clean Slate legislation, we recommend an approach that balances the need to seal the information from the public, while allowing those entrusted with ensuring child safety access to the information.
>
> b. In 2018 the CPSL was amended to allow a county agency to maintain information regarding protective services reports that have been expunged in the Statewide database, for their own access to assist in future risk and safety assessments and research. We recommend that the same approach be taken with the Statewide database –i.e., "expunged" reports can and should be blocked from public view, but CYS, law enforcement and MDITs should be able to utilize them to fully understand a child or family's history when investigating child abuse reports. There are multiple ways to accomplish this goal:
>
> > i. Mirror and adapt the language of 6337(f)(2) and apply it to the statewide database: "the department may maintain information regarding protective services reports in the statewide database for access by any county agency, law enforcement department or member of an MDIT to assist in the investigation of a report of child abuse or assist in future risk and safety assessments and research."
> >
> > ii. Change the definition of "**Expunge**" in the definitions section of the CPSL to: "To strike out or obliterate from public view so that the expunged information may only be accessed by those with the authority to access information from the Statewide database in accordance with this chapter."

Another amendment requires a health care provider to immediately notify the Department of Human Services if a child under age one was affected by prenatal drug exposure or fetal alcohol spectrum disorder,[80] but that notification is not a child abuse report.[81] The Department of Human Services is required to collaborate with the Department of Health along with the Department of Drug and Alcohol Programs to develop written protocols relating to the identification of these children, collection of data[82] for federal and state reporting requirements, plans of safe care and engagement of the children's immediate caregivers.[83] Notification to the Department of Human Services that a child was born with this prenatal drug or alcohol exposure does not require ongoing involvement of the county agency and the child's immediate caregivers,[84] perhaps with the intended result that the parent would be more receptive to receive assistance for the child. The

[80] 23 Pa.C.S. § 6386(a).
[81] *Id.* § 6386(a.1).
[82] These were added (along with some other provisions) to comply with Child Abuse Prevention Act (42 U.S.C.A. §§ 5101-5116i), which was amended within Comprehensive Addiction and Recovery Act of 2016.
[83] 23 Pa.C.S. § 6386(b.1).
[84] *Id.* § 6386(b.1)(2).

statutorily required development of interagency protocols and plan of safe care[85] replaced the statutory safety or risk assessment, formerly requiring a county agency to "determine whether child protective services or general protective services" were required.[86]

It seems that this was intended to steer non-child welfare cases away from the child-welfare system with supportive services falling outside the child-welfare system so that families might be more willing to accept those services. This delivery of services does not generate accurate data to determine whether this amendment exacerbated trauma in children and families. Plus, the data that the Commonwealth collects to fulfill federal reporting requirements is nominal, including numbers of: plans of safe care developed; individuals with plans of safe care that were referred to external agencies; and, substance-affected infants. Any person-level data would be maintained by the county agencies with each county agency administering its own program. The Pennsylvania Department of Health's and Pennsylvania Department of Human Services' legal departments have been collaborating to determine if person-level data relating to substance-affected infants can be shared. Currently, the Commonwealth seeks information supporting trends.

The vulnerability of newborn infants remains worrisome, especially since plans of safe care are voluntary support plans for families raising infants affected by prenatal substance use. There are also no statutory requirements surrounding timeframes for monitoring plans of safe care. Counties have been recommended to develop policies and protocols to follow when a family refuses to engage with a plan of safe care. If there are safety concerns remaining for a child, those concerns should still be reported to ChildLine, which accepts child abuse referrals and general child well-being concerns.

Act no. 125:[87]

Amending the Human Services Code amending resources for public assistance to exclude equitable ownership of a motor vehicle worth less than $40,000 as available but include lottery winnings equal to or more than $600 prorated/12-month period as available; making convicts under The Controlled Substance, Drug, Device & Cosmetic Act involving drug trafficking amounts ineligible for Temporary Assistance to Needy Families unless the individual complies with criminal court obligations, is in court-ordered drug treatment program and tests for drugs (with minor children of ineligible individuals still afforded benefits) subject to departmental discretion to implement when cost effective to do so; and, requiring sexual offender registration compliance for eligibility for public assistance with the household's minor children's eligibility being unaffected by a noncompliant registrant (and Department of Human Services regulating how to deal with homeless registrants).

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[85] *Id.* § 6386(b.1).
[86] *Id.,* former § 6386(b).
[87] Amending the Human Services Code, in public assistance, further providing for definitions, for resources and for verification system, prohibiting eligibility for individuals convicted of drug distribution, prohibiting eligibility for violators of sexual offender registration, further providing for false statements, investigations and penalty and for prohibited use of public assistance funds, providing for lost access devices and further providing for violation and penalty. This act shall be referred to as the Public Assistance Integrity Act.

Amending the Human Services Code to repeal misdemeanor of the second degree for the grade of falsely stating something to obtain assistance (or food stamps); leaving felony of the third degree and misdemeanor of the first degree (as grades) but adjusting the amounts into two (instead of three) for the streamlined grading; prohibiting the purchase of alcohol with an access device and the withdrawal of funds with access device in adult-oriented entertainment facility (making guilty retailers misdemeanants); and, charging a $5 fee for the first replacement of an access device (electronic benefits transfer card), the second and subsequent replacement cost $100 (unless ≥ age 65), with two or more requests for replacements of an access device in a calendar year getting reported to the Office of Inspector General, with damaged access devices being freely replaced (with no notification to that office).

The earliest concern raised was that limiting financial resources[88] could lead to increased stress within a household, exacerbating trauma in children and families because there is a strong correlation between limiting financial resources and increased stress in the home. A subsequent concern was raised relating to the amendment suspending public assistance for 10 years after one fails a drug test or retest a second time[89] because the restriction of public assistance benefits also affects children in the household even though the benefits afforded to the minor children of those denied (or suspended) individuals would continue.[90] A third observation related to the $100 replacement fee a second and subsequent access device requested by those age 64 and younger.[91] It is not entirely clear how the eligibility for drug distribution convicts will be experienced because the Department of Human Services has the sole discretion to determine when it is cost effective to implement the suspension and the suspension of eligibility is further limited "to the extent permitted by Federal law."[92] The replacement fee for lost access devices is also applicable "to the extent permitted by Federal law,"[93] but federal law limits that cost to the cost to replace it (rather than $100).[94]

[88] This amendment would accomplish this for individuals convicted of drug distribution under certain circumstances and for violators of sexual offender registration. Act of June 13, 1967 (P.L.31, No.21), §§ 432.25, 432.26; 62 P.S. §§ 432.25, 432.26.

[89] *Id.* § 432.25(b)(2); 62 P.S. § 432.25(b)(2).

[90] *Id.* § 432.25(e); 62 P.S. § 432.25(e).

[91] *Id.* § 485(b); 62 P.S. § 485(b).

[92] *Id.* § 432.25(a), (b), (d); 62 P.S. § 432.25(a), (b), (d).

[93] *Id.* § 485(f); 62 P.S. § 485(f).

[94] "The State agency may impose a replacement fee by reducing the monthly allotment of the household receiving the replacement card; however, the fee may not exceed the cost to replace the card." 7 C.F.R. § 274.6(b)(3). "The State agency may require an individual member of a household to contact the State agency to provide an explanation in cases where the number of requests for card replacements is determined excessive. If they so require, the State agency must establish a threshold for the number of card replacements during a specified period of time to be considered excessive. That threshold shall not be less than four cards requested within 12 months prior to the request, unless the State agency has additional evidence indicating a suspected trafficking violation . . . ." *Id.* § 274.6(b)(5).

During its conference in January 2024, the advisory committee considered these two enactments, neither of which were recognized as having exacerbated trauma in children and families.

Act no. 15:[95]

Amending Human Services Code article IV (relating to public assistance) by adding a section relating to emergency transportation services to reimburse ground mileage for loaded ambulances to the higher of Medicare rates or Medicaid ambulance fees (contingent on federal financial participation) and a section relating to case-mix rates for nursing facilities to calculate rates based on cost database and peer group prices for each operating cost center and then adjust the rates quarterly for medical assistance long-term living and medical assistance Community HealthChoices.

Amending Human Services Code article VIII-G (relating to statewide quality care assessment) by amending a section relating to implementation to authorize the Secretary of Human Services to calculate annual assessments owed by using net inpatient and outpatient revenue even for a rebase; amending a section relating to restricted account to specify the limitations of the collected assessment funds to use for medical assistance payments to hospitals and medical assistance managed care organizations; and amending a section relating to expiration to postpone expiration of the Quality Care assessment (paid by every covered hospital) from 2023 to 2028.

Amending the Human Services Code by adding an article relating to the Pennsylvania Rural Health Redesign Center Authority to protect and promote access to high-quality health care by encouraging innovation in health care delivery.

Act no. 32:[96]

Amending Human Services Code article IV (relating to public assistance) by adding a section relating to medical assistance coverage for pasteurized donor human milk (when medically necessary).

[95] Amending the Human Services Code, in public assistance, further providing for medical assistance payments for institutional care and providing for emergency transportation services and for case-mix rates for nursing facilities; in Statewide quality care assessment, further providing for definitions, for implementation, for administration, for restricted account and for expiration; continuing the Pennsylvania Rural Health Redesign Center Authority and the Pennsylvania Rural Health Redesign Center Fund; and making a repeal.

[96] Amending the Human Services Code, in public assistance, providing for medical assistance coverage for pasteurized donor human milk.

The advisory committee considered rules promulgated under the statutes studied, with those rules being promulgated within the past five years and currently in effect, to assess if they exacerbated trauma in children and families. The amendments to the rules were provided for individual consideration, whereafter a collective committee consideration occurred. The advisory committee concluded that the amended rules do not exacerbate trauma in children and families. A summary of the amendments follows.

55 Pa. Code Pt. V, Subpt. D, Art. I
(relating to licensing/approval)[97]

Part V is the Children, Youth and Families Manual with subpart D relating to nonresidential agencies, facilities and services.

Chs. 3270 (relating to child care centers), 3280 (relating to group child care homes) & 3290 (relating to family child care homes)

This rulemaking was needed to strengthen the minimum standards for child care facilities and to implement the requirements under the Federal Child Care and Development Block Grant Act of 2014[98] (CCDBG), and to implement the requirements under section 1016(c)[99] of the Human Services Code. One could succinctly characterize these amendments as having largely been done to conform to federal requirements supporting block grants received by the Commonwealth with the remainder done mostly to conform to state law.

Certified child care facilities were impacted because they are required to participate in additional professional development and be subject to annual, unannounced inspections as required by the CCDBG. The CCDBG requires that states inspect for compliance with health and safety standards at all certified child care facilities.

Before 2020, the Department of Human Services (department) last amended these child care facility regulations in September 2008. Since 2008, there had been many changes in the field of early care and education that impact on the health and safety of children receiving care. Also,

[97] 50 Pa. Bull. 7133 (Dec. 19, 2020), *available at* https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol50/50-51/1772.html.
[98] Enacted on Nov. 19, 2014; 42 U.S.C.A. §§ 9857—9858r, as reauthorized by Pub.L. No. 113-186.
[99] This requires child care centers and family child care homes to have a fire detection device maintained in compliance w/Fire and Panic Act & Pa. Construction Code Act w/the operability of the device being verified. 62 P.S. § 1016(c) was added to the act of June 13, 1967 (P.L.31, no.21), § 1016, by the act of July 14, 2020 (P.L. 639, No. 62).

the CCDBG imposed requirements that states provide specific professional development and conduct annual, unannounced inspections for all certified child care facilities[100] to ensure that the prescribed health and safety standards are being met.

The impact of this rulemaking was expected to result in added costs for child care operators and staff to meet the professional development requirements for all child care facilities. CCDBG requirements now prescribe ten specific professional development topics that operators must complete before being granted a certificate of compliance to open and operate a certified child care facility. In addition to the topics prescribed by the CCDBG, the department doubled the annual clock-hours requirement from six to 12 hours annually for all child care staff working at certified child care facilities across this Commonwealth. This increase aligned the Commonwealth's annual clock-hours requirement with five of the six contiguous states and better safeguards the health and safety of all the children in care. There is an ongoing cost for all child care staff to obtain the additional six clock hours of professional development annually as prescribed in this rulemaking.[101]

The department determined that the costs to operators to satisfy the increased professional development clock hours requirement strikes an appropriate balance between the added costs and the importance of staff professional development to safeguard the health and safety of all children in care. Furthermore, the increase in the annual requirement for the number of professional development clock hours ensures that the Commonwealth is creating and sustaining a common floor for minimum professional educator qualifications to support the physical and behavioral health and safety of all children enrolled in child care throughout this Commonwealth.

The scope of this rulemaking relates to fire safety, emergency plans, frequency of inspections, professional development requirements and the certification of family child care homes. The department noted that the three, different chapters are largely similar, although there is still a need for the three, separate chapters of regulations because each chapter relates to a different type of regulated child care facility: child care center; group child care homes; and family child care homes. There are important differences that impact the health and safety of children such that there is regulatory justification for different requirements among the three chapters. The differences in the types of buildings, the numbers of children who can be cared for in each different type of facility and the qualifications of staff working at the different types of facilities all demonstrate justification for different regulatory requirements.

This rulemaking was primarily aimed to align the department's requirements with the CCDBG, a funding source which benefits child care providers and children in this Commonwealth. This rulemaking focused on the implementation of CCDBG compliance, conformity with State statutory amendments, expanding the duration of training requirements and the certification of family child care homes. This rulemaking updated the current regulations to parallel the requirements of the CCDBG and to implement these improved health and safety standards. The regulatory requirements were to comply with the requirements under the CCDBG. In addition, the department included quality initiatives for child care providers to help them improve the quality

[100] 42 U.S.C.A. § 9858c(c)(2)(G), (K)(i)(II)(bb).
[101] 55 Pa. Code §§ 3270.31(e), 3280.31(e) & 3290.31(f).

of service delivery to children. The department was under time constraints by the Federal Administration of Children and Families to implement the changes as prescribed by the CCDBG.

55 Pa. Code Pt. III, Chs. 1153 & 1155
& Pt. VII, Chs. 5200 & 5240

Part III is the Medical Assistance Manual and Part VII is the Mental Health Manual.[102]

Chs. 1153 (relating to outpatient psychiatric servs.), 1155 (relating to intensive behavioral health services) 5200 (relating to psychiatric outpatient clinics)
& 5240 (relating to intensive behavioral health services)[103]

The purpose of this rulemaking was to update Chs. 1153 and 5200 to be consistent with the Mental Health Parity and Addiction Equity Act of 2008[104] (MHPAEA), to reflect changes in benefit packages resultant from the implementation of Medicaid expansion under the Patient Protection and Affordable Care Act[105] and the consolidation of adult benefit packages,[106] as well as codify the requirements for the delivery of Mobile Mental Health Treatment (MMHT) outlined in Medical Assistance Bulletin 08-06-18, Mobile Mental Health Treatment.[107] This rulemaking allows licensed professionals to work within their scope of practice in psychiatric outpatient clinics, increases access to medically necessary treatment services for eligible individuals, including the provision of mobile treatment, and reduces the paperwork requirements for licensed providers. This rulemaking supports the principles of recovery, resiliency, and self-determination by updating language to reflect a person-first philosophy throughout the regulations, allowing consistent access to community-based services and focusing on appropriate evidence-based individual clinical interventions.

The Department of Human Services (department) adopted this rulemaking under the authority of sections 201(2)[108] and 1021[109] of the Human Services Code,[110] sections 105[111] and

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[102] 49 Pa. Bull. 5943 (Oct. 12, 2019), *available at* https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol49/49-41/1510.html.
[103] 49 Pa. Bull. 5943 (Oct. 12, 2019), *available at* https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol49/49-41/1510a.html&continued=&d=..
[104] Pub.L. No. 110-343. The MHPAEA requires that health insurance coverage for mental health and substance use services have benefit limitations that are no more restrictive than the medical benefits offered by the plan. This rulemaking was intended to provide the same level of benefits to all eligible individuals by removing limits on the services or scope of covered services consistent with the approved State plan and the MHPAEA.
[105] Pub.L. No. 111-148.
[106] To be consistent with the P. Wellstone and P. Domenici Mental Health Parity and Addiction Equity Act of 2008; (Pub.L. No. 110-343).
[107] Issued Nov. 30, 2006.
[108] The department is authorized to regulate "to render the Commonwealth eligible for available Federal funds or other assistance." 62 P.S. § 201(2).
[109] The department must "adopt regulations establishing minimum standards for building, equipment, operation, care, program and services, training and staffing and for the issuance of licenses." *Id.* § 1021.
[110] Act of June 13, 1967 (P.L.31, No.21).
[111] 50 P.S. § 7105.

112[112] of the Mental Health Procedures Act,[113] section 201(2)[114] of the Mental Health and Intellectual Disability (MH/ID) Act of 1966,[115] and section 4[116] of the Outpatient Psychiatric Oversight Act[117] (OPOA).

This rulemaking was needed to amend the requirements for psychiatric time, staffing patterns and the time frames for the development, review and sign-off of initial treatment plans and updates at a psychiatric outpatient clinic. Previously, a psychiatric outpatient clinic was required to have a psychiatrist at the clinic for at least 16 hours/week and employ four full-time equivalent (FTE) mental health professionals regardless of the number of individuals being served. This rulemaking amended the requirements for staffing patterns and psychiatric time by allowing 50% of the treatment staff who provide psychotherapy to be mental health professionals and requiring two hours of psychiatric time for each FTE mental health professional and mental health worker *per* week. Additionally, although 50% of the psychiatric time must be provided by the psychiatrist at the psychiatric outpatient clinic, this rulemaking allows the other 50% to be provided by an advanced practice professional or by a psychiatrist off-site through the use of tele-behavioral health, or by a combination of advanced practice professionals and tele-behavioral health, consistent with the OPOA.

This rulemaking allows 30 days for the development, review and sign-off of the initial treatment plan and extends the time frame for treatment plan updates to 180 days. In addition to the changes to the time frame for the treatment planning process, this rulemaking allows a psychiatrist or an advanced practice professional to review and sign the initial treatment plan. Previously, only a psychiatrist could review and sign an initial treatment plan or update. This rulemaking also allows the treatment plan updates to be reviewed and signed by the primary professional providing services to the individual at the psychiatric outpatient clinic. The primary professional may be the mental health worker under the supervision of a mental health professional or a mental health professional. For individuals receiving medication management services, the primary professional may be a physician, an advanced practice professional, a certified registered nurse practitioner (CRNP) or a physician assistant (PA) prescribing medication within the practitioner's scope of practice. This rulemaking improves access to medically necessary behavioral health services including medication management services and allows licensed professionals such as advanced practice professionals, CRNPs, PAs or mental health professionals to provide services within their scope of practice when employed by a psychiatric outpatient clinic.

This rulemaking eliminated the requirement that for-profit psychiatric outpatient clinics receive accreditation from the Joint Commission on Accreditation of Hospitals in addition to meeting licensure requirements. This maintains consistent licensure requirements for both nonprofit and for-profit psychiatric outpatient clinics.

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[112] *Id.* § 7112.
[113] Act of July 9, 1976 (P.L.817, No.143).
[114] 50 P.S. § 4201(2).
[115] Act of Oct. 20, 1966 ((3d Spec. Sess.) P.L.96, No.6).
[116] 35 P.S. § 10254.
[117] Act of May 31, 2018 (P.L.123, No.25).

This rulemaking benefits individuals seeking psychiatric outpatient clinic services by increasing the role of advanced practice professionals, expanding MMHT services to include individuals under 21 years of age, engaging individuals in the treatment planning process, and supporting recovery.

This rulemaking benefits psychiatric outpatient clinics by decreasing paperwork requirements related to the development of initial treatment plans and updates, which was expected to increase psychiatric and clinical time available to provide direct services to individuals. Initial treatment plans may be reviewed, approved, and signed by a psychiatrist or an advanced practice professional to reduce the paperwork requirements for the psychiatrist and to maximize the psychiatrist's ability to provide the direction for the delivery of clinical services at the psychiatric outpatient clinic.

Implementation of this rulemaking was expected to be cost neutral to the Commonwealth, local governments, and the regulated community.

Under section 403.1(a)(6)[118] of the Human Services Code,[119] this rulemaking deleted § 1101.51(c)(3), which prohibited providers from leasing or renting space, shelves or equipment within a provider's office to another provider or from allowing the paid or unpaid staff of a provider to be placed in another provider's office. Developments in the health care industry have emphasized the need for integrated health care. The department recognized the benefits of integrated care and deleted this subsection to support the enrollment in the Medical Assistance (MA) Program of providers that share space (co-locating providers).

Section 1407(a)(2)[120] of the Human Services Code provides that it is unlawful to solicit or receive or to offer or pay any remuneration, including any kickback, bribe or rebate, directly or indirectly, in cash or in kind from or to any person in connection with the furnishing of services or merchandise for which payment may be in whole or in part under the MA Program or in connection with referring an individual to a person for the furnishing or arranging for the furnishing of any services or merchandise for which payment may be made in whole or in part under the MA Program. The department had promulgated the regulation in § 1101.51(c)(3) to provide specific examples of the types of arrangements that section 1407(a)(2) of the code prohibits. Among the examples was that providers may not "lease or rent space, shelves, or equipment within a provider's office to another provider or allowing the placement of paid or unpaid staff of another provider in a provider's office."

This regulation prevented co-locating providers from enrolling in the MA Program. Since promulgation of this regulation, the health care industry has moved to a more integrated approach to diagnosis and treatment of conditions or injuries. To support that trend, retail clinics, some of which are placed within the same building as a pharmacy, have emerged, and multidisciplinary providers, including physical and behavioral health providers, have entered into co-location arrangements between distinct providers.

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[118] The department is authorized to regulate the administration of programs including the establishment of provider qualifications. 62 P.S. § 403.1(a)(6).
[119] Act of June 13, 1967 (P.L.31, No.21).
[120] 62 P.S. § 1407(a)(2).

According to an informational bulletin issued by the Centers for Medicare and Medicaid Services, increasing access to primary care services, including through urgent care and retail clinics, has been estimated to result in a potential savings of $4.4 billion nationwide.[121] These arrangements increase consumer access to services, including behavioral health and substance use disorder services. Co-location can decrease out-of-pocket costs to beneficiaries related to transportation and childcare and encourage follow-up with referred providers. Co-location can encourage contact between providers and foster communication about shared patients.[122] By establishing provider qualifications that incorporate co-locating providers, the department supports these advancements in the health care industry when services are provided in a manner that allows the beneficiary to retain freedom to choose the service provider and is not automatically directed to or referred to a co-located provider.

After reviewing the trend in the health care delivery system toward integrated care, the department determined that a narrow interpretation of § 1101.51(c)(3) was more restrictive than required to comply with the code and prevents co-locating providers who are otherwise eligible from enrolling in the MA Program. On May 28, 2016, the department issued Statement of Policy (SOP) 1101-16-03,[123] to clarify the meaning of "within a provider's office" and the guidelines for providers that enter into co-location arrangements with other participating providers.[124] The department also developed an attestation form for providers seeking to co-locate, in which each provider attests to its compliance with Federal and State antikickback laws, the Health Insurance Portability & Accountability Act of 1996[125] (HIPAA), and MA beneficiary freedom of choice. The department rescinded the SOP upon the effective date of this rulemaking.

In an effort to establish provider qualifications that allow co-locating providers to enroll in the MA Program, the department deleted the regulation in § 1101.51(c)(3), which prohibited providers from leasing space within a provider's office to another provider. Allowing different types of providers to be located in the same space was expected to benefit MA beneficiaries by providing the opportunity for a more integrated approach to healthcare. Providers must continue to comply with any other applicable law, including HIPAA, Federal and State antikickback and self-referral laws, and the requirement to provide MA beneficiaries with freedom of choice.

The deletion of the regulation in § 1101.51(c)(3) does not invalidate other laws or requirements affecting co-locating providers if they are prohibited by law, including licensing laws, or certification requirements, from leasing or renting space, shelves or equipment or otherwise sharing space. The deletion of § 1101.51(c)(3) provides the regulatory framework to promote integrated health care services by establishing provider qualifications that allow providers that co-locate to enroll in the MA Program. Providers that want to co-locate will be able to do so without obtaining a waiver or submitting an attestation.

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[121] Mann, C. (Jan. 16, 2014). Reducing Nonurgent Use of Emergency Departments & Improving Appropriate Care in Appropriate Settings. *Retrieved from* https://www.hhs.gov/guidance/document/reducing-nonurgent-use-emergency-departments-and-improving-appropriate-care-appropriate.

[122] Medicaid & CHIP Payment & Access Comm'n (Mar. 2016). Rep. to Congress on Medicaid & CHIP. *Retrieved from* https://www.macpac.gov/publication/march-2016-report-to-congress-on-medicaid-and-chip.

[123] Codified in former § 1101.51a (relating to clarification of the term "within a provider's office"—statement of policy).

[124] 46 Pa.B. 2683 (May 28, 2016); 55 Pa. Code former § 1101.51a.

[125] Pub.L. No. 104-191.

Terminology was revised to include Office of Mental Health and Substance Abuse Services and Licensed Practitioner of the Healing Arts.[126] The department revised the definition of 'mental health professional' to require a graduate degree in a generally recognized clinical discipline in which the degree program includes a clinical practicum to ensure that individuals providing clinical services at the psychiatric outpatient clinic are qualified and to provide clarification to the regulated community.

A provision was added to require criminal history and child abuse certifications for all volunteers having direct contact with patients, including developing and implementing written policies and procedures regarding personnel decisions based on the criminal history and child abuse certification, including volunteers.

Chs. 1155 (relating to intensive behavioral health services)[127]
& 5240 (relating to intensive behavioral health services)[128]

This rulemaking codifies the minimum licensing standards and program requirements for participation in the Medical Assistance (MA) Program and MA payment conditions for agencies that deliver intensive behavioral health services (IBHS) to children, youth, and young adults under 21 years of age with mental, emotional, and behavioral health needs. IBHS includes individual services, applied behavior analysis (ABA) services, group services, and evidence-based therapy (EBT) delivered through individual services, ABA services or group services.

This rulemaking supports children, youth, and young adults with mental, emotional, and behavioral health needs because they can continue to receive a wide array of services that meet their needs in their homes, schools, and communities, including EBT delivered through individual services, ABA services, and group services.

This rulemaking replaced the requirements for behavioral health rehabilitation services (BHRS) previously set forth in bulletins issued by the Department of Human Services. It also added a requirement for a separate and distinct license for agencies that deliver these services and additional oversight of services. This rulemaking eliminated redundancies in bulletins, streamlined the admission process for IBHS, established training requirements and qualifications for staff delivering IBHS, and includes provisions to protect the health and safety of a child, youth, or young adult receiving services.

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[126] A person who is licensed by the Commw. to practice health arts. This term is limited to a physician, physician's assistant, certified registered nurse practitioner, licensed clinical social worker, licensed marriage and family therapist, licensed professional counselor, or psychologist.

[127] BHRS were developed in response to the Omnibus Budget Reconciliation Act of 1989 (Pub.L. No. 101-239), which amended section 1905(r)(5) of the Social Security Act (42 U.S.C.A. § 1396d(r)(5)) to require states to provide "necessary health care, diagnostic services, and other measures described in [the Social Security Act] . . . whether or not such services are covered under the State plan." BHRS are individualized services provided in the home, school, or community to meet the needs of children, youth, and young adults with mental, emotional, and behavioral health needs.

[128] 49 Pa. Bull. 6088 (Oct. 19, 2019), *available at* https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol49/49-42/1554.html.

This rulemaking affects children, youth, and young adults with mental, emotional, or behavioral health needs receiving BHRS, their families and caregivers and the agencies that provide these services. This rulemaking benefits children, youth, and young adults with mental, emotional, and behavioral health needs by establishing a minimum standard for licensure of IBHS agencies, minimum requirements for IBHS agencies to enroll in the MA Program and conditions for the MA Program to pay for IBHS. In addition, the supervision and training requirements included in this rulemaking was expected to contribute to the development of a qualified IBHS workforce to deliver treatment services, which would likely help to improve clinical outcomes for children, youth, and young adults receiving IBHS.

This rulemaking was expected to facilitate the accessibility of behavioral health care for children, youth, and young adults by eliminating requirements that have been identified as barriers to accessing services by workgroup members, such as convening an ISPT meeting prior to the delivery of services and requiring a comprehensive evaluation prior to a referral for services. In addition, a child's, youth's, or young adult's treatment needs will be assessed in the home and community setting as part of the initiation of treatment and staff who assess a child, youth, or young adult will be able to provide services to the child, youth, or young adult, which allows for continuity of care, a smoother transition to service provision, reduction in inconsistencies in treatment approach, and less delay in beginning treatment. Furthermore, this rulemaking promotes the use of EBTs by supporting their delivery through individual services, ABA services or group services, which may reduce the need for higher levels of care or out-of-home placements for children, youth, and young adults.

55 Pa. Code Pt. IV, Subpt. D
(relating to nonresidential agencies/facilities/services)

Part IV is the Adult Services Manual.

Chs. 2380 (relating to adult training facilities) & 2390 (relating to vocational facilities)[129]

The purpose of this rulemaking is to support individuals with an intellectual disability or autism to live and participate in the life of their community, to achieve greater independence and to have opportunities enjoyed by all citizens of this Commonwealth. This rulemaking was intended to strengthen community services and supports to promote person-centered approaches, community integration, personal choice, quality in service delivery, health and safety protections, competitive integrated employment, accountability in the use of resources and innovation in service design.

[129] 49 Pa. Bull. 5777 (Oct. 5, 2019), *available at* https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol49/49-40/1509a.html&continued=&d=reduce.

The Department of Human Services (department) adopted the regulations under the authority of sections 201(2),[130] 403(b),[131] 403.1(a) and (b),[132] 911[133] and 1021[134] of the Human Services Code[135] and section 201(2) [136] of the Mental Health and Intellectual Disability Act of 1966.[137]

This rulemaking governs the program, operational and fiscal aspects of the following: (a) home and community-based services (HCBS) provided through the 1915(c) waiver programs; (b) Medicaid State plan HCBS for individuals with an intellectual disability or autism, including targeted support management; and (c) services funded exclusively by grants to counties under the Mental Health and Intellectual Disability Act of 1966[138] or Article XIV-B[139] of the Human Services Code, commonly referred to as "base-funding." This rulemaking amended the licensing regulations in Chs. 2380, 2390, 6400 and 6500 to make them compatible with Ch. 6100 (relating to services for individuals with an intellectual disability or autism) in the areas of training, rights, individual planning, incident management, restrictive procedures and medication administration. The licensing regulations encompass health, safety and well-being protections for individuals with a disability or autism who receive services in a licensed adult training facility, vocational facility, community home or life sharing home. This rulemaking rescinded and replaced Chs. 51 and 6200 with Ch. 6100.

This rulemaking was needed to continue the Commonwealth's eligibility for Federal financial participation in the HCBS waiver programs.[140] This rulemaking was intended to protect the health, safety and well-being of the individuals receiving services in individual-directed, family-based, community residential and day programs funded through the Federal waivers, the Commonwealth's Tit. XIX State plan and base-funding, as well as individuals who receive services in community residential and day programs funded through private pay or another funding source.

Chapter 2380 contains licensing regulations intended to protect the health, safety and well-being of adults served in this Commonwealth's licensed adult day training facilities. Chapter 2380 contains the minimum requirements that apply regardless of the payment agency. *E.g.*, it applies to a facility that provides services exclusively to individuals with blindness, deafness or a mental illness, including those facilities that are not funded by the department through the Office of Developmental Programs (ODP) service system. Services for some individuals, and services provided by some facilities, are funded exclusively through private insurance, private-pay or out-of-State sources. Providers funded by the department through the ODP waiver programs must

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[130] The department is authorized to regulate "to render the Commonwealth eligible for available Federal funds or other assistance." 62 P.S. § 201(2).
[131] The department must regulate eligibility for assistance. *Id.* § 403(b).
[132] The department is authorized to regulate the admin. of programs providing assistance, submit state plans to the Fed. gov't and take measures to render the Commw. eligible for Federal funds or other assistance. *Id.* § 403.1(a), (b).
[133] The department is authorized to regulate supervised facilities. *Id.* § 911.
[134] The department is authorized to regulate licensure. *Id.* § 1021.
[135] Act of June 13, 1967 (P.L.31, No.21).
[136] 50 P.S. § 4201(2).
[137] Act of Oct. 20, 1966 ((Spec. Sess. No. 3) P.L.96, No.6).
[138] *Id.* §§ 4101—4704.
[139] 62 P.S. §§ 1401-B—1410-B.
[140] 42 C.F.R. Pt. 441, Subpt. G.

enroll in the Medical Assistance Program, sign a Medical Assistance provider agreement and sign an ODP waiver provider agreement.

Chapter 2390 contains licensing regulations to protect the health, safety and well-being of adults served in this Commonwealth's licensed vocational facilities. Chapter 2390 contains the minimum requirements that apply regardless of the payment agency. *E.g.*, Chapter 2390 applies to a facility that provides services exclusively to individuals with blindness, deafness or a mental illness, including those facilities that are not funded by the department through the ODP service system. Services for some individuals, and services provided by some facilities, are funded exclusively through private insurance, private-pay or out-of-State sources.

Intended benefits for individuals, families and advocates include strengthened individual rights and service involvement; strict involuntary discharge conditions and procedures; the prohibition of restraints except for the emergency use of a protective physical hold; a team, including a behavior specialist, to approve the use of a restrictive procedure prior to use; strengthened health and safety protections; equitable program and operational standards for programs serving individuals with an intellectual disability or autism; and the administration of medication by trained staff persons.

Intended benefits for providers include the reduced administrative burden by coordinating multiple chapters of departmental regulations; the inclusion of autism programs in the core standards to alleviate the administrative burden of managing dual processes; the significant reduction in the conflict of interest protocol requirements; the change in the reserved capacity provision to provide increased reimbursement through modified fee schedule rates to support the return of an individual after extended medical, hospital or therapeutic leave; clarity of the documentation required to support a claim for payment; implementation of a 3-year update of the data used to establish the fee schedule rates; the delineation of specific factors to be examined and used to develop the fee schedule rates; elimination of the requirement to report and deduct donations; and significant reduction and simplification of the cost-based payment requirements.

Intended benefits for county intellectual disability and autism programs include clarity and compatibility of roles for the support coordinators, base-funding support coordinators and targeted support managers; deletion of conflicting individual plan time frames between the Federal waivers and the multiple chapters of regulations; acknowledgement of the county human rights committees; and the strengthened regulation of exclusively base-funding services. This rulemaking was intended to provide consistent program and operational requirements across the ODP service system on a Statewide basis to support the ease of individual transitions from county to county, as well as individual transitions across the various funding sources. This rulemaking was intended to ease individual transitions from services funded through base-funding only to HCBS Federal funding.

Additional benefits of the regulation include compliance with the Federal requirements to support continued Federal HCBS funding; the reduced volume of regulations with improved coordination efforts across multiple chapters of regulations providing an opportunity for streamlined compliance monitoring; consistent program requirements and health and safety protections for the individuals across multiple funding sources; the alignment of intellectual

disability and autism standards to the benefit of both programs; and the establishment of a baseline of core values across multiple programs.

The provider's regulatory compliance management and associated self-monitoring costs was expected to be reduced. By coordinating the program and operational requirements across multiple chapters of licensing regulations as well as across multiple funding streams, the complexity of regulatory compliance management was significantly simplified. The reduced cost impact for a provider was expected to vary based on the pay scale and number of management positions devoted to regulatory compliance management.

Some new costs were expected to be associated with the regulation regarding background checks since a wider net was cast as to who shall submit a background check. This provision is required under relatively recent amendments to the Child Protective Services Law.[141] In this rulemaking, all persons who provide services that are funded by the department through the ODP service system must submit a background check to identify any history of abuse, assault, theft or other crimes that may impact the well-being of an individual receiving services.[142]

For a person who will provide services to adults, the Older Adults Protective Services Act[143] requires an FBI check only if the person lived outside of this Commonwealth within the past two years.[144] Under the Child Protective Services Law, an FBI check for all paid staff who provide services to children is required.[145] The Child Protective Services Law also requires an FBI check for volunteers who have lived outside of this Commonwealth within the previous 10 years.[146] The impact of this requirement is limited, however, since only approximately 13% of the individuals covered by this rulemaking are children. The cost of the background check may be borne by the job applicant or by the provider agency. The overall cost impact relating to background checks was expected to vary, as some providers already required background checks on all persons, thus negating or minimizing the cost impact. The increased background check costs were factored into the new HCBS rates.

Some new costs were expected to be associated with this rulemaking regarding staff training since more staff persons must receive training in areas such as rights, abuse prevention and incident reporting. It is critical that all persons who provide services, including ancillary services, have the minimum training necessary to identify and know what to do if they observe abuse, an incident or a violation of rights. The department has developed and offers online training courses free of charge related to the required core training topics, such as individual rights protections, abuse prevention and incident reporting. While use of the departmental online training courses is optional, these courses meet the requirements of this rulemaking, while saving training development costs for providers. Many providers were expected to experience no increase in training costs as they already provided incident management, abuse reporting and other value-based training to all staff, including ancillary staff; however, for those providers who did not train

[141] 23 Pa.C.S. §§ 6301-6388.
[142] The Pa. child abuse check is rarely required since approximately 87% of the individuals who receive services under Ch. 6100 are adults.
[143] Act of Nov. 6, 1987 (P.L.381, No.79); 35 P.S. §§ 10225.101—10225.5102.
[144] *Id.* § 502(a)(2); 35 P.S. § 10225.502(a)(2).
[145] 23 Pa.C.S. § 6344(b)(3).
[146] *Id.* § 6344.2.

ancillary staff, the fee schedule rates were expected to provide sufficient HCBS reimbursement for the training of all staff positions.

A requirement that the human rights team include a professional who has a recognized degree, certification or license relating to behavior support who did not develop the behavior support component of the plan was added to this rulemaking.[147] The qualifications of the behavior specialist are intentionally broad to permit an array of professionals to serve in this capacity. Many providers already employed or contracted with a behavior specialist to provide consultation to develop and review individual plans for individuals for whom a restrictive procedure is appropriate. If the provider does not have a behavior specialist on staff or under contract, the provider may use a county mental health, intellectual disability and autism program human rights team (county team) or coordinate with other providers to share this position. If the provider has a behavior specialist or if a county team is used, there would be no new costs to implement this section.

A requirement was added for a behavior specialist to develop the behavior support component of an individual plan if a physical restraint will be used or if a restrictive procedure will be used to modify an individual's rights.[148] The increased behavior specialist consultation costs were factored into the new HCBS rates.

55 Pa. Code Pt. VII, Subpt. D
(relating to nonresidental agencies/facilities/services)

Part VII is the Mental Health Manual.

Chs. 5200 (relating to psychiatric outpatient clinics) [149]
& 5240 (relating to intensive behavioral health services) [150]

The purpose of this rulemaking was to codify the minimum licensing standards and program requirements for participation in the Medical Assistance (MA) Program and MA payment conditions for agencies that deliver intensive behavioral health services (IBHS) to children, youth and young adults under 21 years of age with mental, emotional and behavioral health needs. IBHS includes individual services, applied behavior analysis (ABA) services, group services and evidence-based therapy (EBT) delivered through individual services, ABA services or group services.

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[147] 55 Pa. Code §§ 2380.154, 2390.174, 6100.344, 6400.194 & 6500.164.
[148] *Id.* §§ 2380.155(d), 2390.175(d), 6100.345(d), 6400.195(d) & 6500.165(d).
[149] 49 Pa. Bull. 5943 (Oct. 12, 2019), *available at* https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol49/49-41/1510a.html&continued=&d=.
[150] 49 Pa. Bull. 6088 (Oct. 19, 2019), *available at* https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol49/49-42/1554b.html&continued=/secure/pabulletin/data/vol49/49-42/1554a.html&d=reduce.

The Department of Human Services (department) adopted Chs. 1155 and 5240 under the authority of sections 201(2)[151] and 1021[152] of the Human Services Code[153] and section 201(2)[154] of the Mental Health and Intellectual Disability Act of 1966.[155]

This rulemaking was intended to support children, youth and young adults with mental, emotional and behavioral health needs because they can continue to receive a wide array of services that meet their needs in their homes, schools and communities, including EBT delivered through individual services, ABA services and group services.

This rulemaking replaced the requirements for behavioral health rehabilitation services (BHRS) previously set forth in departmental bulletins. It also added a requirement for a separate license for agencies that deliver these services and additional oversight of services. This rulemaking eliminated redundancies in bulletins, streamlined the admission process for IBHS, established training requirements and qualifications for staff delivering IBHS and includes provisions to protect the health and safety of a child, youth or young adult receiving services.

BHRS were developed in response to the Omnibus Budget Reconciliation Act of 1989,[156] which amended section 1905(r)(5) of the Social Security Act[157] to require states to provide "necessary health care, diagnostic services, and other measures described in [the Social Security Act]. . .whether or not such services are covered under the State plan." BHRS are individualized services provided in the home, school or community to meet the needs of children, youth and young adults with mental, emotional and behavioral health needs. The department had issued bulletins to inform providers of the policies and procedures governing BHRS, many of which were issued when these services were new in the continuum of care. Since the publication of the bulletins, the service delivery system became more complex and sophisticated. Individuals who receive BHRS and family members of individuals who receive BHRS, advocates, providers and county administrators expressed the need for revised standards for the delivery of BHRS.

This rulemaking affects children, youth and young adults with mental, emotional or behavioral health needs receiving BHRS, their families and caregivers and the agencies that provide these services. This rulemaking also affects providers that serve children, youth, and young adults with a behavioral health diagnosis, including autism spectrum disorder, that were not enrolled in the MA Program.

This rulemaking was expected to benefit children, youth and young adults with mental, emotional and behavioral health needs by establishing a minimum standard for licensure of IBHS agencies, minimum requirements for IBHS agencies to enroll in the MA Program and conditions

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[151] The department is empowered "to develop and submit State plans or other proposals to the Federal government, to promulgate regulations, establish and enforce standards and to take such other measures as may be necessary to render the Commonwealth eligible for available Federal funds or other assistance." 62 P.S. § 201(2).
[152] The department "shall adopt regulations establishing minimum standards for building, equipment, operation, care, program and services, training and staffing and for the issuance of licenses." *Id.* § 1021.
[153] Act of June 13, 1967 (P.L.31, No.21).
[154] 50 P.S. § 4201(2).
[155] Act of Oct. 20, 1966 ((3d Spec. Sess.) P.L.96, No.6).
[156] Pub.L. No. 101-239.
[157] 42 U.S.C.A. § 1396d(r)(5).

for the MA Program to pay for IBHS. In addition, the supervision and training requirements included in this rulemaking were expected to contribute to the development of a qualified IBHS workforce to deliver treatment services, which would likely help to improve clinical outcomes for children, youth and young adults receiving IBHS.

This rulemaking was expected to also facilitate the accessibility of behavioral health care for children, youth and young adults by eliminating requirements that were identified as barriers to accessing services by workgroup members, such as convening an ISPT meeting prior to the delivery of services and requiring a comprehensive evaluation prior to a referral for services. In addition, a child's, youth's or young adult's treatment needs will be assessed in the home and community setting as part of the initiation of treatment and staff who assess a child, youth or young adult will be able to provide services to the child, youth or young adult, which allows for continuity of care, a smoother transition to service provision, reduction in inconsistencies in treatment approach and less delay in beginning treatment.

This rulemaking was expected to promote the use of EBTs by supporting their delivery through individual services, ABA services or group services, which may reduce the need for higher levels of care or out-of-home placements for children, youth and young adults. The overall fiscal impact for each IBHS agency was expected to vary and depend upon the services provided by the agency, the organizational structure of the agency, and the IBHS agency's qualification, supervision and training requirements.

While this rulemaking imposed new training requirements on IBHS agencies, the department included provisions that are intended to reduce the fiscal impact on IBHS agencies for training. This rulemaking clarifies that staff do not need to repeat initial or annual training when employed by a new IBHS agency. It also promotes the employment of licensed or certified individuals, which would reduce training costs because training acquired through college coursework or as part of obtaining a license or certification is permitted to be counted towards the required staff training.

This rulemaking includes qualifications for staff who provide ABA services that are consistent with those required by private insurers, which was expected to result in increased third party payment for services for children, youth or young adults who also have private insurance. Similarly, the admission process for ABA services were expected to be more in line with the admission process used by private insurers, which may result in private insurers paying for the services that result in a written order for ABA services, completing an assessment or completing an individual treatment plan.

This rulemaking also establishes minimum standards for agencies that provide IBHS that include minimum staffing, training and supervision standards. This may increase the knowledge and skills of staff providing IBHS and may result in improved outcomes for children, youth and young adults who receive IBHS.

The department drafted a payment regulation so that providers understand what is required to receive payment from the MA Program. A regulation that governs the licensing of IBHS agencies was needed to establish consistent standards and ensure that these standards are met. In

addition, the department addressed staff qualifications, training, supervision and service planning and delivery in the rulemaking because it was seeking to align the services that are on the MA Program fee schedule with the services that are not on the MA Program fee schedule.

This rulemaking was also needed to address issues that were not addressed in the bulletins, such as the organizational structure of an IBHS agency, staff training plans, agency records, quality improvement plans and additional supervision and training requirements. New requirements, such as staff training plans, were added because staff training plans ensure that staff are properly trained, which is expected to have a positive effect on the outcomes of services. Requirements relating to agency records were included to establish the specific items that must be kept by an IBHS agency, which are used to license providers, and to clearly identify the information that must be kept in IBHS records for an individual, which will be used to provide services. The requirement that records must be reviewed was included in this rulemaking to ensure that information is accurately maintained in a child's, youth's or young adult's record. The department also included a quality improvement section because it believes that IBHS agencies should review the quality, timeliness and appropriateness of services they provide to children, youth and young adults and make improvements where needed. Finally, the department included training and supervision requirements for graduate-level professionals to ensure that individuals providing these services receive annual training and ongoing supervision. The BHRS bulletins became obsolete once this rulemaking was promulgated.

55 Pa. Code Pt. VIII
(relating to intellectual disability and autism manual)

Chs. 6100 (relating to services for individuals with an intellectual disability or autism),[158] *6400 (relating to community homes for individuals with an intellectual disability or autism) & 6500 (relating to life sharing homes)* [159]

Home and Community-Based Services and Licensing

The purpose of this rulemaking was to support individuals with an intellectual disability or autism to live and participate in the life of their community, to achieve greater independence and to have opportunities enjoyed by all citizens of this Commonwealth. This rulemaking was intended to strengthen community services and supports to promote person-centered approaches, community integration, personal choice, quality in service delivery, health and safety protections, competitive integrated employment, accountability in the use of resources and innovation in service design.

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[158] 49 Pa. Bull. 5777 (Oct. 5, 2019), *available at* https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol49/49-40/1509b.html&continued=/secure/pabulletin/data/vol49/49-40/1509a.html&d=reduce.

[159] 49 Pa. Bull. 5777 (Oct. 5, 2019), *available at* https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol49/49-40/1509c.html&continued=/secure/pabulletin/data/vol49/49-40/1509b.html&d=reduce.

The Department of Human Services (department), adopted the regulations set forth under the authority of sections 201(2),[160] 403(b),[161] 403.1(a)[162] and (b),[163] 911[164] and 1021[165] of the Human Services Code[166] and section 201(2)[167] of the Mental Health and Intellectual Disability Act of 1966.[168]

This rulemaking governs the program, operational and fiscal aspects of the following: (a) home and community-based services (HCBS) provided through the 1915(c) waiver programs; (b) Medicaid State plan HCBS for individuals with an intellectual disability or autism, including targeted support management; and (c) services funded exclusively by grants to counties under the Mental Health and Intellectual Disability Act of 1966[169] or Article XIV-B of the Human Services Code,[170] commonly referred to as "base-funding." This rulemaking amended the licensing regulations in Chs. 2380, 2390, 6400 and 6500 to make them compatible with Chapter 6100 in the areas of training, rights, individual planning, incident management, restrictive procedures and medication administration. The licensing regulations encompass health, safety and well-being protections for individuals with a disability or autism who receive services in a licensed adult training facility, vocational facility, community home or life sharing home. This rulemaking rescinded and replaced Chs. 51 and 6200 with Chapter 6100.

This rulemaking was needed to continue the Commonwealth's eligibility for Federal financial participation in the HCBS waiver programs.[171] This rulemaking was intended to protect the health, safety and well-being of the individuals receiving services in individual-directed, family-based, community residential and day programs funded through the Federal waivers, the Commonwealth's Tit. XIX State plan and base-funding, as well as individuals who receive services in community residential and day programs funded through private pay or another funding source.

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[160] The department is empowered "to develop and submit State plans or other proposals to the Federal government, to promulgate regulations, establish and enforce standards and to take such other measures as may be necessary to render the Commonwealth eligible for available Federal funds or other assistance." 62 P.S. § 201(2).

[161] The department "shall establish rules, regulations and standards, consistent with the law, as to eligibility for assistance and as to its nature and extent." *Id.* § 403(b).

[162] The department "is authorized to establish rules, regulations, procedures and standards consistent with law as to the administration of programs providing assistance" to establish standards for eligibility, modify benefits, revise provider fee schedules, and establish provider qualifications. *Id.* § 403.1(a).

[163] The department "is authorized to develop and submit State plans, waivers or other proposals to the Federal Government and to take such other measures as may be necessary to render the Commonwealth eligible for available Federal funds or other assistance." *Id.* § 403.1(b).

[164] The department is empowered to enforce rules and inspect supervised institutions. *Id.* § 911.

[165] The department "shall adopt regulations establishing minimum standards for building, equipment, operation, care, program and services, training and staffing and for the issuance of licenses." The dep't "shall develop regulations under this article in consultation with industry stakeholders, consumers and other interested parties." *Id.* § 1021(a).

[166] Act of June 13, 1967 (P.L.31, No.21).

[167] 50 P.S. § 4201(2).

[168] Act of Oct. 20, 1966 ((3d Spec. Sess.) P.L.96, No.6).

[169] 50 P.S. §§ 4101—4704.

[170] 62 P.S. §§ 1401-B—1410-B.

[171] 42 C.F.R. Pt. 441, Subpt. G.

The Office of Developmental Programs (ODP) administers four 1915(c) "waivers." The term "waiver" in this context refers to administering a program under the authority of section 1915(c) of the Social Security Act[172] that permits a state to waive Medicaid requirements on comparability, statewideness and income and resource rules to furnish an array of HCBS that promote community living and avoid institutionalization. Waiver services complement and supplement services available through the Medicaid State plan and other Federal, state and local public programs, as well as the supports that families and communities provide to individuals. States have flexibility in designing waivers, including the options to determine the target groups of Medicaid beneficiaries who receive services through each waiver; specify the services to support waiver participants in the community; allow participants to self-direct services; determine qualifications of waiver providers; design strategies to assure the health and well-being of waiver participants; manage a waiver to promote the cost-effective delivery of HCBS; and, develop and implement a quality improvement strategy.

States submit a waiver application to the Federal Centers for Medicare and Medicaid Services (CMS) to operate a 1915(c) waiver program. After initial approval of a waiver application by CMS, each waiver must be renewed every 5 years. Changes to provisions in the waivers may be submitted with a waiver renewal application or at any time through a waiver amendment process.[173]

Services in the waivers must be provided by Medicaid providers that meet the qualification standards outlined in the waiver application. Each provider of waiver services must also sign a Medicaid provider agreement prior to furnishing services under the waiver.[174]

Chapter 6100 applies to a broad scope of programs receiving Commonwealth and Federal funds. Chapter 6100 applies to the ODP service system, including those facility-based services that are licensed and funded by the department under Chs. 2380, 2390, 6400 and 6500, as well as many services that are funded, but that do not require licensure under Arts. IX (relating to departmental powers and duties as to supervision) and X (relating to departmental powers and duties as to licensing) of the Human Services Code.[175]

Chapter 6400 contains licensing regulations to protect the health, safety and well-being of children and adults served in this Commonwealth's licensed community homes for individuals with an intellectual disability or autism. Chapter 6400 contains the minimum requirements that apply regardless of the payment agency. *E.g.*, Ch. 6400 applies to a facility that provides services exclusively to individuals who are not funded by the department through the ODP service system. Services for some individuals, and services provided by some facilities, are funded exclusively through private insurance, private-pay or out-of-State sources.

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[172] 42 U.S.C.A. § 1396n(c).

[173] Initial waiver applications, waiver renewal applications and amendments that contain substantive changes must follow the public comment process as outlined in the CMS guidance, found at Application for a § 1915(c) Home & Community-Based Waiver, Instructions, Technical Guide & Rev. Criteria, § 6-I: Public Input.

[174] 42 C.F.R. 431.107.

[175] 62 P.S. §§ 901—922 & 1001—1088. *See* §§ 201(2), 403(b), 403.1(a) & (b), 911 & 1021 of the Human Servs. Code; 62 P.S. §§ 201(2), 403(b), 403.1(a) & (b), 911 & 1021).

Chapter 6500 contains licensing regulations to protect the health, safety and well-being of children and adults served in this Commonwealth's licensed life sharing homes for individuals with an intellectual disability or autism. Chapter 6500 contains the minimum requirements that apply regardless of the payment agency.

These five chapters govern providers of the services covered under Ch. 6100 and providers licensed under Chs. 2380, 2390, 6400 and 6500; however, other interested and affected parties include the individuals who receive services; the families and friends of the individuals who receive services; advocates who provide support and representation for the individuals to assure that their rights are protected; county governments that provide authorization for the use of base-funding under Ch. 6100; and the designated managing entities, which are often county governments that are delegated certain functions by the department to oversee the provision of the HCBS.

This rulemaking was intended to strengthen community services by promoting person-centered approaches, community integration, personal choice, quality in service delivery, health and safety protections, competitive integrated employment, accountability in the use of resources and innovation in service design.

Benefits for individuals, families and advocates include strengthened individual rights and service involvement; strict involuntary discharge conditions and procedures; the prohibition of restraints except for the emergency use of a protective physical hold; a team, including a behavior specialist, to approve the use of a restrictive procedure prior to use; strengthened health and safety protections; equitable program and operational standards for programs serving individuals with an intellectual disability or autism; and the administration of medication by trained staff persons.

Benefits for providers include the reduced administrative burden by coordinating multiple chapters of departmental regulations; the inclusion of autism programs in the core standards to alleviate the administrative burden of managing dual processes; the significant reduction in the conflict of interest protocol requirements; the change in the reserved capacity provision to provide increased reimbursement through modified fee schedule rates to support the return of an individual after extended medical, hospital or therapeutic leave; clarity of the documentation required to support a claim for payment; implementation of a 3-year update of the data used to establish the fee schedule rates; the delineation of specific factors to be examined and used to develop the fee schedule rates; elimination of the requirement to report and deduct donations; and significant reduction and simplification of the cost-based payment requirements.

Benefits for county intellectual disability and autism programs include clarity and compatibility of roles for the support coordinators, base-funding support coordinators and targeted support managers; deletion of conflicting individual plan time frames between the Federal waivers and the multiple chapters of regulations; acknowledgement of the county human rights committees; and the strengthened regulation of exclusively base-funding services. This rulemaking provides consistent program and operational requirements across the ODP service system on a Statewide basis to support the ease of individual transitions from county to county, as well as individual transitions across the various funding sources. This rulemaking eases individual transitions from services funded through base-funding only to HCBS Federal funding.

Additional benefits of the regulation include compliance with the Federal requirements to support continued Federal HCBS funding; the reduced volume of regulations with improved coordination efforts across multiple chapters of regulations providing an opportunity for streamlined compliance monitoring; consistent program requirements and health and safety protections for the individuals across multiple funding sources; the alignment of intellectual disability and autism standards to the benefit of both programs; and the establishment of a baseline of core values across multiple programs.

The provider's regulatory compliance management and associated self-monitoring costs were expected to be reduced. By simplifying and shortening the length of this rulemaking, and by coordinating the program and operational requirements across multiple chapters of licensing regulations as well as across multiple funding streams, the complexity of regulatory compliance management is simplified. The reduced cost impact for a provider varies based on the pay scale and number of management positions devoted to regulatory compliance management.

Some new costs were expected to be associated with the regulation regarding background checks since a wider net was cast as to who shall submit a background check. This provision is required under relatively recent amendments to the Child Protective Services Law.[176] In this rulemaking, all persons who provide services that are funded by the department through the ODP service system must submit a background check to identify any history of abuse, assault, theft or other crimes that may impact the well-being of an individual receiving services.[177]

Under the Child Protective Services Law, an FBI check for all paid staff who provide services to children is required.[178] The Child Protective Services Law also requires an FBI check for volunteers who have lived outside of this Commonwealth within the previous 10 years.[179] The overall cost impact relating to background checks was expected to vary, as some providers already required background checks on all persons, thus negating or minimizing the cost impact. The increased background check costs were factored into the new HCBS rates.

Significant, additional revenue to the providers resulted immediately from the revised § 6100.55 (relating to reserved capacity) that changed the providers' approved program capacity to allow for an increase in the providers' rates for the time period of an individual's extended absence because of medical, hospital or therapeutic leave.

Some new costs were expected to be associated with this rulemaking regarding staff training since more staff persons must receive training in areas such as rights, abuse prevention and incident reporting. It is critical that all persons who provide services, including ancillary services, have the minimum training necessary to identify and know what to do if they observe abuse, an incident or a violation of rights. The department developed and offered online training

[176] 23 Pa.C.S. §§ 6301-6388.
[177] The Pa. child abuse check is rarely required since approximately 87% of the individuals who receive services under Ch. 6100 are adults.
[178] 23 Pa.C.S. § 6344(b)(3).
[179] *Id.* § 6344.2. The impact of this requirement is limited, however, since only approximately 13% of the individuals covered by this rulemaking are children.

courses free of charge related to the required core training topics, such as individual rights protections, abuse prevention and incident reporting.

A requirement that the human rights team include a professional who has a recognized degree, certification or license relating to behavior support who did not develop the behavior support component of the plan was added to this rulemaking.[180] The qualifications of the behavior specialist are intentionally broad to permit an array of professionals to serve in this capacity. Many providers already employed or contracted with a behavior specialist to provide consultation to develop and review individual plans for individuals for whom a restrictive procedure is appropriate. If the provider does not have a behavior specialist on staff or under contract, the provider may use a county mental health, intellectual disability and autism program human rights team (county team) or coordinate with other providers to share this position. If the provider has a behavior specialist or if a county team is used, there would be no new costs to implement this section.

A requirement was added for a behavior specialist to develop the behavior support component of an individual plan if a physical restraint will be used or if a restrictive procedure will be used to modify an individual's rights.[181]

Decreased paperwork was expected to result from the reduction of the provider's regulatory compliance efforts due to the coordination of multiple chapters of regulations and the reduction in the number of regulations. An opportunity was provided for the department and the county programs to better coordinate and reduce duplicative monitoring efforts between licensing and waiver compliance management; this monitoring reduction was expected to reduce paperwork for the provider, the county program, the designated managing entity and the department.

Increased paperwork for the provider may result from the expansion of the scope of the persons for which background checks and training is required. Many providers already required and tracked background checks and training across a larger segment of employees than was previously required, thus minimizing the paperwork increase for many providers. In addition, better protections for the individuals who receive services outweigh any increase in paperwork related to the background checks and training.

Decreased provider paperwork was expected to result from the elimination of duplicate and conflicting incident reporting requirements for licensing and waiver compliance. In § 6100.401 (relating to types of incidents and timelines for reporting), incident reports for emergency room visits and non-prescribed over-the-counter medication errors are no longer required, reducing the number of incidents to be reported. Also eliminated was the provider paperwork required by the licensing regulations to maintain a record of incidents that are not reportable, such as minor illnesses. While many providers might have chosen to retain this documentation as best practice, the department no longer reviews this documentation for regulatory compliance.

Amendments were made to Chs. 6400 and 6500 to include autism in the scope of licensing for community homes for individuals with an intellectual disability or autism.

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[180] 55 Pa. Code §§ 2380.154, 2390.174, 6100.344, 6400.194 & 6500.164.
[181] *Id.* §§ 2380.155(d), 2390.175(d), 6100.345(d), 6400.195(d) & 6500.165(d).

The resolution requests "recommendations of methods to draft statutes and regulations in a trauma-informed manner to mitigate trauma." As an introduction, there is really a two-step process to applying trauma-informed considerations to statutes and regulations, namely the development of practices, policies, procedures and programs--which then get drafted into statutes and regulations. Mitigating trauma in the implementation of programs, practices, and procedures to deliver services as dictated by statutes and rules will more likely result from policy considerations rather than drafting methods. Consequently, the advisory committee considered some other states' initiatives[182] and the executive's legislative review.

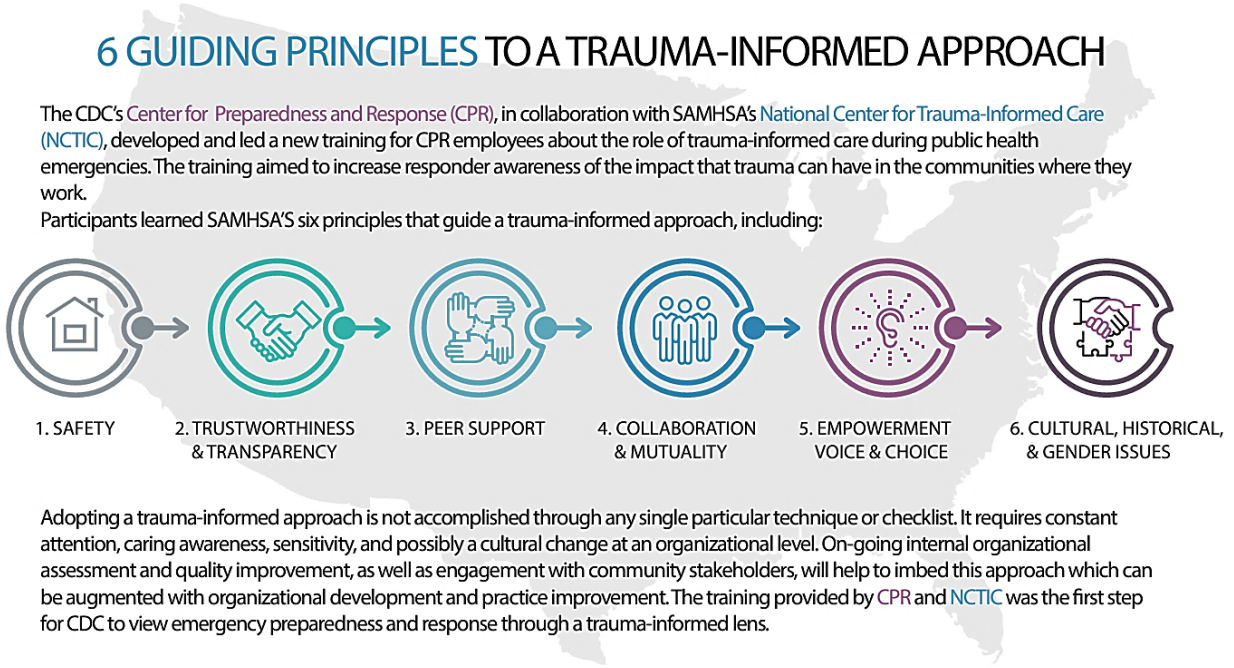
Applying the Principles for a Trauma-informed Approach

The advisory committee's review included the trauma-informed approach in the Substance Abuse and Mental Health Services Administration (SAMHSA) *Practical Guide for Implementing a Trauma-Informed Approach*,[183] which includes these principles:

- safety (physical/psychological)
- trustworthiness/transparency
- peer support
- collaboration (staff/public)
- empowerment/choice
- humility/responsiveness (race, ethnicity, sex, age, geography).

Even more simply, a trauma-informed approach is "[h]ow an agency, program, organization, or community thinks about and responds to those who have experienced (or at risk of experiencing) trauma."[184]

[182] *E.g.*, appdx. B, *infra* p. 59.
[183] Substance Abuse & Mental Health Servs. Admin., U. S. Dep't of Health & Human Servs., *Practical Guide for Implementing a Trauma-Informed Approach* 10 (2023), *available at* https://store.samhsa.gov/sites/default/files/pep23-06-05-005.pdf.
[184] HEAL PA, Res.: More about Trauma, https://www.healpa.org/more-about-trauma, *last visited* (Oct. 28, 2023).



Source:
https://www.cdc.gov/orr/infographics/00_docs/TRAINING_EMERGENCY_RESPONDERS_FINAL_2022.pdf

These principles for a trauma-informed approach do not constitute legislative drafting methods. Moreover, the advisory committee's discussion concerning the ramifications of statutes and regulations result from policy and its development rather than drafting issues. A trauma-informed approach involves both policy development and invokes expenditure-benefits core issues rooted in strong beliefs. A clear example that comes to mind demonstrating that a trauma-informed approach involves policy development, preferences and consultation rather than drafting methods are these. "In all criminal prosecutions the accused hath a right . . . to be confronted with the witnesses against him."[185] This is not a trauma-informed principle when applied to child victims and witnesses and those victims or witnesses with an intellectual disability or autism. Accordingly, statutory provisions were enacted "to promote the best interests" of these victims and witnesses as well as "to provide . . . procedures which will protect them during their involvement with the criminal justice system."[186] Notably, this involves development of procedures compatible with the constitutional right rather than drafting methods.

An example of a statute that can exacerbate trauma in children and families would be one that imposes a minimum, mandated prison sentence.[187]

[185] Pa. Const. art. I, § 9.
[186] 42 Pa.C.S. § 5981. *See also, id.* § 5991.
[187] Obviously, this example is not for when a convict's victims are members of his own family.

> Parental incarceration generates a wide range of problems for the child, from economic to psychological. . . . The emotional trauma of the loss of a parent and formidable practical difficulties of disrupted family life are exacerbated by the lack of societal support, by the feeling of rejection and shame, of real or perceived prejudice against not only inmates themselves but against their children and their family members as well.[188]

Parental incarceration is one of the adverse childhood experiences that may cause generational effects. There are various crimes for which an offender may be incarcerated so that this is not commenting on penal policy but on the development of policy that might not consider (or otherwise target) children and families—yet can exacerbate trauma. Nonetheless, it is offered as another example involving a policy decision that is not addressable by a drafting method.

Consideration by the Executive and the General Assembly

Many federal mandates and health and safety initiatives address issues that could benefit from trauma-informed social policy. In common legislative practice, it appears that an issue is presented and often accompanied by a proposed solution in the form of proposed legislation. Under this scenario, sometimes trauma-informed principles might not be addressed or considered. In other words, an initiative or stimulus precipitates introducing a proposed rule or statute, which then drives the adoption of the rule or enactment of the statute. Under this scenario, someone says that this is my issue, and here is how to fix it. The broader view of enacting trauma-informed rules and statutes would require a more collaborative process or at least an extra consideration, slowing down the enactment process.

The initial step of the legislative enactment process is referring a proposed bill to the appropriate committee prior to being considered by the full House or Senate.[189] It is common to move a bill by a vote and not hold a hearing.[190] Implementation of an enactment follows sometimes without appropriate follow up (*i.e.*, Is federal funding being used appropriately? Is adequate staff training provided and executed? Is feedback concerning implementation collected? Is the feedback used to correct deficiencies?). Drafting trauma-informed legislation is broader than incorporating discrete drafting principles using specific terms.

When the Department of Human Services' staff (as well as other state agencies' personnel) completes a legislative review, a standard form is used, including financial (or potential financial) impacts (costs to the Commonwealth, counties, state agencies, and private providers); which stakeholders support it; which stakeholders oppose it; *etc.*. Questions could be added to this form addressing: 1) racial and ethnic responsiveness; and, 2) the possible traumatic impact of the

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[188] Pa. J. State Gov't Comm'n, *The Effects of Parental Incarceration on Children: Needs & Responsive Servs*. 6, 7 (2011), *available at* http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2011-267-children%20of%20incarcerated%20parents.pdf.

[189] Pa. Const. art. III, § 2.

[190] Plenty of times, staff and legislators consult others for input outside of committee hearings.

proposed legislation. It might not be immediately clear if the proposed legislation would exacerbate trauma, so a well-thought questionnaire might need to be developed to be able to flush out potential trauma-inducing provisions.

Responses to these legislative reviews go to the department's Policy Office and then to the Governor's Policy Office for review. Adding a traumatic component into an established policy review process might be a good starting point to insert trauma-informed principles in the legislative process. The Governor's Office of General Counsel has a Deputy General Counsel whose "practice . . . focuses on legislative and policy matters affecting the Governor's Office, executive branch, and independent Commonwealth agencies."[191] Another Deputy General Counsel "concentrates on legislative matters on behalf of the Governor's Office and in conjunction with various executive agencies."[192] Another Deputy General Counsel "focuses on legislative and transactional matters on behalf of the Governor's Office and in conjunction with various executive agencies."[193] Still another Deputy General Counsel "focuses on legislative matters on behalf of the Governor's Office and in conjunction with various executive agencies."[194] Aside from these four Deputy General Counsels, Office of General Counsel also employs a Legislative Coordinator.

It can also be helpful to include review on a public-facing outlet to allow other organizations and advocates to review and comment, which is done to a limited (and maybe uneven) extent for the legislative process and done more routinely for the rulemaking process. Nonetheless, if a legislative committee decides to vote on a bill that has not been the subject of a hearing, legislators and staff would need to specifically consider and adequately consult others to insert trauma-informed principles in the legislation under consideration.

A Possible Statutory Resource for the Legislative, Executive and Judicial Branches

The advisory committee decided that it might be useful to adapt the role of the current Child Advocate in the Governor's Office of Advocacy and Reform to serve as a statutory resource for the legislative, executive, and judicial branches. This office's ability and responsibility would be to insert trauma-informed principles into the legislative process. The Commonwealth's child advocate position (and Office of Advocacy and Reform) was established by executive order 2019-05[195] (rather than by statute). Under this executive order, the child advocate is "a liaison . . . to connect children and families with appropriate . . . government services;" recommends "system-wide improvements . . . to benefit . . . rights of children;" triages "complaints regarding government services for children and families . . .;" represents "the . . . welfare interests of children before the

[191] Pa. Office of Gen. Counsel, OGC Main Office Att'ys, https://www.ogc.pa.gov/About%20Us/OGC%20Attorneys/Pages/MainOfficeAttorneys.aspx (2023).
[192] *Id.*
[193] *Id.*
[194] *Id.*
[195] https://www.oa.pa.gov/Policies/eo/Documents/2019-05.pdf.

General Assembly;" and carries out other appropriate duties.[196] A Trauma-Informed Plan was published;[197] and HEAL PA was developed.[198]

Appendix B[199] is a table listing statutory child advocates in a dozen, other states. At least three-quarters of those act independently. Their duties are detailed, but the key one implicating drafting methods to mitigate trauma are that some of them recommend legislation or amendments to laws and rules as well as report to their legislatures (in addition to reporting to the governor). A statutory child advocate could serve as a permanent resource to inform the governor, state departments, the General Assembly and the public.

Last year, House Bill no. 813[200] was referred to the H.R. Committee on Children and Youth. This bill would amend The Administrative Code of 1929 by adding an article relating to office of child advocate. Among the Child Advocate's duties in this bill would be to report to the General Assembly, consult with executive agencies and recommend regulations, work with the executive and "General Assembly to review laws . . . impacting childhood trauma", and "[w]ork with [s]tate agencies to . . . make the Commonwealth a trauma-informed state."

Earlier this year, Senate Bill no. 1036[201] was referred to the S. Committee on Health and Human Services. This bill would amend the Human Services Code by adding an article relating to office of child advocate. Among the Child Advocate's duties in this bill would be to annually report on "[r]ecommendations regarding legislation to improve the safety of and promote better outcomes for children and families receiving services in child health, safety and well-being programs in this Commonwealth."

There are other possible powers and duties of a child advocate, but the advisory committee was focused on how a child advocate might benefit the Commonwealth when it comes to drafting statutes and regulations in a trauma-informed manner to mitigate trauma—which is a focus of House Resolution no. 228.[202] Additionally, there are other possible bureaucratic forms for an office that is independent, such as a coalition or council. Each of these could be separate from or within an independent office. The advisory committee focused on the form of a child advocate because the Commonwealth already has one appointed by the executive, and legislation has been proposed to statutorily establish this office as an independent agency.

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[196] *Id.* at 2.
[197] Office of Advocacy & Reform, Office of the Pa. Governor, *Trauma-Informed PA: A Plan to Make Pa. a Trauma-Informed, Healing-Centered State* (2020), *available at* https://www.scribd.com/document/470553274/2020-Trauma-Informed-PA-Plan?secret_password=AcWbQ2CvooqQQ8w20WZO.
[198] https://www.healpa.org/.
[199] *Infra* p. 59.
[200] https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2023&sInd=0&body=H&type=B&bn=0813.
[201] https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2023&sInd=0&body=S&type=B&bn=1036.
[202] Sess. of 2022.

PRINTER'S NO. 3466

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 228 Session of 2022

INTRODUCED BY DeLISSIO, DELOZIER, HANBIDGE, KINSEY, FREEMAN, HOHENSTEIN, MADDEN, SANCHEZ, FITZGERALD, SCHLEGEL CULVER, SOLOMON, SCHLOSSBERG AND BRADFORD, SEPTEMBER 14, 2022

REFERRED TO COMMITTEE ON CHILDREN AND YOUTH, SEPTEMBER 14, 2022

A RESOLUTION

Directing the Joint State Government Commission to conduct a comprehensive study of statutes and regulations promulgated under Titles 23 and 67 of the Pennsylvania Consolidated Statutes and the Human Services Code in the past five years currently in effect in this Commonwealth that have exacerbated trauma in children and families and make recommendations of methods to draft statutes and regulations in a trauma-informed manner to mitigate trauma.

WHEREAS, Adverse childhood experiences (ACEs) are stressful or traumatic events that occur in childhood from birth to 17 years of age that negatively impact a child's health, development and long-term well-being; and

WHEREAS, The greater number of ACEs a child experiences the more profound the effect on a child's developing brain and body; and

WHEREAS, ACEs may cause poor health and emotional, cognitive and social impairments and are linked to chronic mental illness and substance use problems in adulthood, negatively impacting education, job opportunities and earning potential and leading to somatic and mental difficulties during the individual's

adulthood that may even cause death; and

WHEREAS, An adverse childhood experience may include physical, emotional or sexual abuse, physical or emotional neglect or household dysfunction, including substance abuse, an untreated mental illness, incarceration of a household member, domestic violence or separation or divorce involving a household member; and

WHEREAS, The statistics are startling, indicating that 50% of substance use, 78% of intravenous drug use, 65% of alcoholism, 52% of domestic violence, 62% of sexual assaults, 58% of attempted suicides and 50% of depression diagnoses can be linked to ACEs; and

WHEREAS, Individuals with six or more ACEs have a life expectancy of 20 years less than someone with no ACEs; and

WHEREAS, In late 2019, the Department of Health released a report on ACEs in this Commonwealth, and the research highlighted the challenges this Commonwealth faced even prior to the COVID-19 pandemic; and

WHEREAS, The study found that half of all Pennsylvanians had at least one adverse childhood experience, more than 19% have experienced three or more ACEs and 38% of all Pennsylvanians have experienced either physical or emotional abuse as a child; and

WHEREAS, Approximately 8 to 10 children in every Pennsylvania school return home to face some kind of abuse; and

WHEREAS, The most significant levels of trauma occur in waves not only for children, but for their entire family system; and

WHEREAS, The discussion should not only be about issues related to a child's safety and well-being, but should include the discussion of the role of a child's family and community;

and

WHEREAS, Since those who enter the child welfare system are disproportionately poor and children of color, those children often carry the weight of community trauma even before they become part of the system; and

WHEREAS, For this Commonwealth to have a prosperous and healthy populace, a thriving economy and a reduction in social services and health care costs, the most important actions to take are to prevent ACEs and to heal children and parents from ACEs they have experienced; and

WHEREAS, ACEs can be prevented and mitigated; and

WHEREAS, To prevent and mitigate ACEs, our Commonwealth's statutes and regulations should ideally help to ameliorate ACEs and not exacerbate ACEs; and

WHEREAS, Unfortunately, some statutes and regulations in effect in the Commonwealth may have inadvertently exacerbated trauma; and

WHEREAS, Trauma-Informed Care (TIC) and trauma-informed policy should apply to all health-and-human-service-related statutes and regulations in this Commonwealth; and

WHEREAS, TIC is an approach in the human services field that assumes that an individual is more likely than not to have a history of trauma, recognizes the presence of trauma symptoms and acknowledges the role trauma may play in an individual's life; and

WHEREAS, If the Commonwealth is truly committed to developing a trauma-informed system, the Commonwealth must demonstrate a relentless commitment to strengthening families as the primary caregivers of children, support the communities in which families live and offer our fellow citizens the power of hope,

healing, redemption and recovery; therefore be it

RESOLVED, That the House of Representatives direct the Joint State Government Commission to establish an advisory committee consisting of the following members within 90 days of the adoption of this resolution:

(1) The Secretary of Human Services or a designee.

(2) The Secretary of Health or a designee.

(3) The Secretary of Education or a designee.

(4) The Attorney General or a designee.

(5) The chair of the Pennsylvania Commission on Crime and Delinquency or a designee.

(6) A representative from the National Association of Social Workers-Pennsylvania Chapter.

(7) A representative from the Office of Child Development and Early Learning of the Department of Education.

(8) A representative from the Pennsylvania Association of School Nurses and Practitioners.

(9) A representative from the Pennsylvania Chapter of the American Academy of Pediatrics.

(10) A representative from the Pennsylvania Parent Teacher Association.

(11) A representative from the Pennsylvania Psychological Association.

(12) A representative from the Pennsylvania School Counselors Association.

(13) A representative from the Children's Advocacy Centers of Pennsylvania.

(14) The Child Advocate of the Governor's Office of Advocacy and Reform or designee.

(15) A representative from the Pennsylvania Court Appointed Special Advocates Association.

(16) Representatives from other departments, agencies or entities that the Joint State Government Commission deems appropriate in conducting the study;

and be it further

RESOLVED, That the Joint State Government Commission, in collaboration with the advisory committee, conduct a comprehensive study of statutes and regulations promulgated under Titles 23 and 67 of the Pennsylvania Consolidated Statutes and the Human Services Code in the past five years currently in effect in this Commonwealth that have exacerbated trauma in children and families; and be it further

RESOLVED, That the Joint State Government Commission make recommendations of methods to draft statutes and regulations in a trauma-informed manner to mitigate trauma; and be it further

RESOLVED, That the Joint State Government Commission, in collaboration with the advisory committee, submit a report of the findings along with statutory or regulatory recommendations to the following within one year of the adoption of this resolution:

(1) The President pro tempore of the Senate.

(2) The Majority Leader and Minority Leader of the Senate.

(3) The Speaker of the House of Representatives.

(4) The Majority Leader and Minority Leader of the House of Representatives.

(5) The chair and minority chair of the Aging and Youth Committee of the Senate.

(6) The chair and minority chair of the Children and

Youth Committee of the House of Representatives.

APPENDIX B

Statutory Child Advocates

Statutory Child Advocates				
Statutory Authority	**Office of the Child Advocate**	**Independence**	**Duties**	**Funding**
Conn. Stat. §§ 46a-13k, -13l, -13m	w/in Office of Governmental Accountability	of any state dep't	evaluate servs. delivered by state agencies; rev. state agency procedures; rev. complaints; assist child/family; rev. facilities & procedures where children are placed; recommend state policies; publicize its servs.	non lapsing account in gen. fund for appropriations & grants
29 Del. Stat. §§ 9001A, 9003A, 9004A, 9005A	also serves as exec. dir. of Child Accountability Comm'n	serves at pleasure of exec. comm. of Child Accountability Comm'n	work w/advocates; promote sys. reform; recommend legal, procedural & policy changes; pub. educ.; refer complaints; evaluate effectiveness of child prot. sys.; train	appropriation; restricted receipt account for grants
Ga. Code §§ 15-11-742, -11-743; -11-744; -11-747	For the prot. of children	Assigned to Office of Planning & Budget[203] but performs independently	Resolves complaints on behalf of children regarding agency practice, policy or procedure; refers complaints to law enforcement; reps. annually to governor & gen. assem. to recommend changes in policies & procedures;[204] meet quarterly w/agencies working in child prot. to collaborate; pub. educ. & legis. advocacy;[205] meets 3/yr. w/advisory comm. to assess necessary systemic improvements	Accept grants from pub. & private agencies, founds.
20 Ill. Comp. Stat. 505/5e	Advocacy Office for Children & Families	w/in Dep't of Children & Family Servs.	Receive & respond to complaints by & on behalf of those receiving welfare servs.	--

[203] For admin. purposes only.
[204] "[T]o improve the health, safety, and welfare of children."
[205] "[C]oncerning the needs of children requiring the intervention, protection, and supervision of courts and state and county agencies."

Statutory Child Advocates				
Statutory Authority	**Office of the Child Advocate**	**Independence**	**Duties**	**Funding**
Mass. Gen. Laws ch. 18C, §§ 2, 5, 6, 7, 9, 10, 10A, 11, 14	Assisted by advisory council, which meets @ least annually; convenes childhood trauma task force to rep. annually to governor & legis.	Of any supervision or control by any exec. agency	Ensure children involved w/exec. agency receive effective servs. & dignified treatment; systematically examine servs. provided by exec. agencies; advise state gov't how to improve servs. to children & families; receives complaints; suggests legis. & regulatory changes; oversees agencies serving children; educates pub.; has access to funded programmatic & family ct. records; can issue subpoenas; adopt official rules; reps. annually to governor & legis.; annually recommends how to reduce no. of children waiting on clinically-appropriate behavioral health servs.; examine systematic responses to child abuse & neglect	Impose temporary cost-share agreements to ensure children's timely access to servs.; appoints personnel subject to appropriation; salary ltd. to $\leq$ 90% of chief justice & set by child advocate advisory council; applies for fed., local & private grants
Mo. Ann. Stat. §§ 37.700, 37.705, 37.710, 37.715	For children's prot. & servs.	w/in office of admin. (reps. to its commissioner); acts independently of dep'ts of soc. servs. & mental health + juvenile ct.	Assures that children receive adequate prot. from servs. offered by dep'ts of soc. servs. & mental health + juvenile ct.; communicates privately w/children under prot. servs. & entities providing treatment; can subpoena records; works w/guardians *ad litem*; recommends disposition of investigations; file briefs on behalf of children or parent; mediates w/sch. dists.; receives & resolves complaints; recommend changes in laws & rules; distribute educ. material; rep. annually to governor, legis. & sup. ct.	Accepts grants

Statutory Child Advocates				
Statutory Authority	**Office of the Child Advocate**	**Independence**	**Duties**	**Funding**
Nev. Rev. Stat. § 432.157	Office of Advocate for Missing or Exploited Children	Represent the clearinghouse; advocate best interest of missing or exploited children; appear as amicus curae; recommend legis.; prosecute alleged crime	Represent the clearinghouse; advocate best interest of missing or exploited children; appear as amicus curae; recommend legis.; prosecute alleged crime	Grants & appropriations go into special account (in gen. fund)
N.H. Rev. Stat. §§ 21-V:2, -V:6, -V:8	Office of the child advocate	Independent but attached to Dep't of Admins. Servs.	Oversees exec. agencies to prot. children's best interest; strength collaboration w/agencies; ensure children receive humane treatment; systematically examine servs. provided to children by agencies; advise governor, legis. & oversight comm'n on children's servs.; rev. & improve agencies' policies for programs affecting children; assist complaining children & families; inform pub.; advocate to further its mission; rev. insts. where children are placed; can subpoena; annually rep. to oversight comm'n on children's servs.	Grants from states, fed. & founds.
Or. Rev. Stat. §§ 417.805, 417.810, 417.815	Office of Children's Advocate	w/in Dep't of Human Servs.	Maintain toll-free no. for child abuse, take complaints re departmental action on child abuse, educ. pub. to prevent child abuse, cooperate w/law enforcement on investigation of child abuse, assist implementation of state & local programs on child abuse, rev. departmental handling of child abuse, analyze data on resolution of child abuse, rev. complaints & refer accordingly, can check crim. records	$1 filing fee on live births & $1 copy fee for certification of birth

Statutory Child Advocates				
Statutory Authority	**Office of the Child Advocate**	**Independence**	**Duties**	**Funding**
R.I. Gen. Laws §§ 42-73-1, -73.2.2, -73-2.3, -73-4, -73-5, -73-6, -73-8, -73-9, -73-9.1	Child advocate office	acts independently of dep't of children, youth, & families (but has an advisory comm.)	revs. case records for fatalities & near fatalities, reps. annually to governor & legis., advises children of welfare rights, revs. departmental procedures, revs. complaints, revs. insts. where children are placed, recommend procedural changes in dealing w/juveniles, pub. educ., advocate w/legis. & legally, assist special advocates representing children, rev. family ct. orders for children's best interests, can access & subpoena records, communicate w/child under prot. servs., commence civ. action for child under control of an agency	Ann. appropriations & vouchers; grants
S.C. Code §§ 63-11-2210, -11-2215, 11-2220, -11-2240, -11-2270, -11-2280, -11-2290, -11-2295	State Child Advocate	Heads Dep't of Children's Advocacy (administratively supported by Dep't of Admin.); complaints about dep't go to state inspector gen.	Ensure children receive adequate care from servs., safeguard well-being of children receiving servs., recommend improvement to quality of servs., make programs more effective for children & families, investigate & ensure complaints are resolved, educ. pub. on state servs. to children & families, rep. annually to governor & legis., access relevant ct. & state agency records, rev. critical incidents, est. toll-free no. & web submission for complaints	Ann. gen. appropriation

Statutory Child Advocates				
Statutory Authority	**Office of the Child Advocate**	**Independence**	**Duties**	**Funding**
Vt. Stat. tit. 33, §§ 3202, 3203, 3205, 3206, 3207, 3208	Office of the Child, Youth, & Family Advocate	Acts independently of any state agency; has an advisory council composed of stakeholders impacted by child welfare servs. provided by Dep't for Children & Families	Advances interests & welfare of children & youth, advocates for those receiving servs. from Dep't for Children & Families or in child prot.; works collaboratively to strengthen servs.; monitors dev. & implementation of rules & policies & recommends changes; revs. complaints & makes referrals; informs serv. recipients of rights & responsibilities; systematically informs pub., governor, state agencies & legis.; reps. ann. to governor & legis.; may assess if treatment is humane & dignified; addresses challenges accessing info; recommend servs. to children, youth & families; gets notified by dep't of phys. Injury of children in custody, seclusion of children in custody & fatalities of a child in custody (of the dep't); has access to records necessary to carry out duties; state agencies must comply w/reasonable requests for info & assistance	--