

Privatization as a means to bypass IRRC -3/23/17

Pennsylvania submits proposed regulations and regulatory changes to an intensive review process, incorporating public comment, executive department review, and legislative review. This approach does ensure that regulations are thoughtfully scrutinized, but the process can take up to two years.

The difficulties in obtaining approval for new regulations creates an incentive for executive agencies to attempt to find ways to bypass the regulations. For example, in ____ the Pennsylvania Office of Mental Retardation (now Office of Developmental Programs) sought to expand the number of types of reportable incidents from 12 to 14, adding restraint use and medication errors. They attempted to do this by issuing a bulletin directing providers to now report on the two additional categories. Most providers complied, but two providers refused, citing that these new expectations were not codified by regulation. The agencies noted that while this particular request was reasonable, they opposed the change because it bypassed regulatory review, and they feared that if successful, further intrusions would occur at the direction of the agency. More recently, former Secretary of Public Welfare Gary Alexander attempted to bypass regulatory review by issuing Chapter 51 regulations that would authorize him (or predecessor) to bypass regulatory review of regulatory changes.

Privatization has become a core component of social services. Not only are most service providers now semi-private organizations, the oversight agencies have become privatized as well. For example, CBH is a non-profit 501.c(3) that oversees and ensures the delivery of children's mental health services for Philadelphia. Many of these services are provided by Residential Treatment Facilities licensed under the 3800 regulations and reviewed/inspected by the Office of Mental health and Substance Abuse Services. The 3800 regulations require a direct support professional (called a child care worker in the regulations) to have a high school diploma. To this regulatory requirement, CBH added 12 credit hours of college work in social service courses. This increased requirement has the weight of regulatory authority because an agency cannot do children's mental health business with Philadelphia without complying with the additional CBH requirements, but IRRC has never reviewed these enhanced expectations.

Also in Philadelphia, the operation of much of the child welfare department responsibilities have been turned over to ten Community Umbrella Agencies (CUA). These privately owned agencies have the responsibility to contract with providers for various children's services. Some of these CUAs have taken the liberty to add expectations to their contracts with providers that are unrelated to child welfare, unrelated to regulation, and never authorized by the IRRC. Again, compliance is expected, but IRRC review was bypassed.

One must wonder whether these additional expectations were simply the product of well intended efforts to improve systems, or whether more sinister intentions were involved. With regard to CBH, it is noted that the Office of Children and Youth, when under Deputy Secretary Gold, was open in its dissatisfaction with Residential Treatment Facilities and public in expressing wishes for less of them. With the increased quasi-regulatory expectations, all RTFs are having difficulty complying with the educational requirements (which appear to lack an empirical basis), and some have decided to withdraw from the RTF business.

Ultimately, the question is whether a non-governmental agency, acting on behalf of the government, has the authority to institute requirements that carry the weight of regulation without

authorization from IRRIC. This is a significant concern as much of the social service industry is moving to managed care models in which non-governmental entities are assuming responsibilities formerly held by state agencies. The question is whether we want our public policy to be created by non-governmental agencies without appropriate forms of review.