



OFFICE OF CHILDREN, YOUTH AND FAMILIES BULLETIN

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WELFARE

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SUBJECT:

Clean Indoor Air Act Compliance Guidance

BY:

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SCOPE:

County Children and Youth Social Service Administrators
Private Children and Youth Social Service Agencies
Chief Juvenile Probation Officers
Juvenile Court Judges

PURPOSE:

The purpose of this bulletin is to provide clarification and direction regarding the impact of the Clean Indoor Air Act (CIAA) specifically on resource families and on the agencies that approve, monitor and evaluate these families.

BACKGROUND:

On June 13, 2008, Governor Edward G. Rendell signed Senate Bill (SB) 246, Printer's Number (PN) 2099, into law, creating Act 27 of 2008, otherwise known as the Clean Indoor Air Act, and often referred to as 'The Smoking Ban'. This law went into effect on September 11, 2008. The CIAA effectively prohibits smoking within most public enclosed areas, as well as enclosed areas, including vehicles, used to provide services to the public. Enforcement and monitoring will be the responsibilities of the Department of Health (DOH), local Boards of Health (in counties that so elect) and State licensing/approving agencies, upon referral by DOH. Violations of the Act may also be reported directly to law enforcement, and will be subject to potential criminal and financial penalties.

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:
Regional Directors

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The CIAA has extensive impact on public businesses, but it is clear that the legislative intent is to protect the non-smoking public, particularly its most vulnerable citizens, from the deleterious effects of exposure to second-hand smoke. According to the Surgeon General's report, excerpted on the website for DOH, second-hand smoke has been designated as a "known human carcinogen" by multiple health organizations. Further, second-hand smoke can cause disease and premature death in children and adults who are exposed to it, as well as increased risk for Sudden Infant Death Syndrome, acute respiratory problems and more severe asthma in children. No 'risk free' level of exposure has been determined to exist.

DISCUSSION:

While the CIAA is primarily targeting public workplaces and commercial establishments into which the public is permitted or invited, *it also includes private homes which provide "child-care services ... or services related to the care of children and youth in State or county custody"*. As such, CIAA requirements apply to resource homes approved to provide foster or pre-adoptive services to children and youth under the care and custody of a county children and youth agency (CYA), to youth served under shared case responsibility with the Juvenile Probation Office (JPO) and/or to adjudicated delinquent youth in foster care under the supervision of JPO.

This applicability to resource homes means that all resource parents, including formal kinship caretakers, with an active placement cannot smoke in any part of their homes or vehicles *while the foster or pre-adoptive children are present in the home or vehicle*. 'Smoking', under the CIAA, refers to use of a lighted cigar, cigarette, pipe or other smoking device; therefore, smoking of non-tobacco products is included in the prohibition. Chewing tobacco is allowed. Resource parents are also required to post 'no smoking' signs in their home. Failure to abide by these provisions of the law could result in potential financial and/or criminal penalties, depending on which agency receives the complaint.

The Office of Children, Youth and Families (OCYF) is committed to keeping children safe and as healthy as possible, and to promoting all efforts that preserve or enhance their well-being. OCYF supports the CIAA, for that reason. While smoking in resource homes located in Philadelphia is already restricted by City Ordinance, the act of smoking in resource homes has never been specifically prohibited by regulations or by OCYF policy. However, nothing prevented foster care agencies from instituting their own smoking policies, and many already choose to limit smoking around foster children as good practice, especially around very young children and those with respiratory issues.

Nevertheless, even as the number of resource parents who smoke declines through attrition and through a general decrease of smoking in the population as a whole, there are still resource parents who do smoke, and for whom this law will present a conflict with their desire to continue as a resource parent. Agencies also face a struggle as they contemplate how to enforce the new law while preserving placement stability and resource parent satisfaction.

OCYF recognizes these issues, and is dedicated to easing the transition for agencies and resource families to completely non-smoking placement settings. To that end, per an agreement negotiated with DOH, *smoking will be permitted in the home or vehicle, when the foster or pre-adoptive children are on a visit or in school or otherwise outside of the home or vehicle.*

As the new law will not significantly impact facilities licensed under 55 Pa. Code, Chapter 3800 (relating to child residential and day treatment facilities), given that those regulations, at §3800.147, have addressed smoking prohibitions since 1999, this bulletin will not include such facilities in its focus. Likewise, the CIAA will not apply to the city of Philadelphia, as it specifically exempts cities of the first class. Philadelphia has its own smoking ordinance which can be accessed at: http://philadelphia.about.com/library/weekly/blsmoking_ordinance_1.htm; the basic requirements parallel the CIAA in terms of resource home application. While the enforcement process under the CIAA will not apply to the monitoring of resource home compliance in Philadelphia, OCYF monitoring policy and procedures will apply. Any DPW-licensed agency wishing to approve resource homes in Philadelphia will need to familiarize itself with the requirements of Philadelphia's ordinance, and insure that homes abide by those requirements. Additionally, agencies will need to insure that all OCYF policies related to smoking in resource homes are followed, *unless specifically exempted in this bulletin.*

POLICY AND PROCEDURES:

It is always the responsibility of all foster care agencies licensed by DPW to insure that resource homes approved to provide care to children under the care and custody of CYA, including youth under shared case responsibility with JPO, and/or to youth who are adjudicated delinquent in foster care under the supervision of JPO, (CYA/JPO child/ren), comply with all pertinent Federal and State statutes, as well as with local ordinances relating to health, safety and rights. Like Philadelphia's smoking ordinance, the CIAA becomes another law for which agencies must assume monitoring and enforcement responsibility, just as they do, for instance, with motor vehicle codes governing safe transporting of children.

There is a provision in the CIAA that complaints made to DOH about violations of the smoking ban will be referred to the licensing/approving agency for investigation and enforcement. Agencies that approve resource homes (outside of Philadelphia) would then be responsible for doing the follow-up to assure compliance in their own resource family homes in such cases. However, if a complaint is made directly to a county board of health, in counties that elect that option, or to a local law enforcement agency, that board or agency must complete the follow-up investigation of the complaint and any applicable enforcement.

Minimum Expectations for CIAA Compliance

The immediate and minimum expectations that agencies must have, of resource homes they certify, are that no one smokes in any part of the home or in any vehicle while any CYA/JPO child is present in the home or vehicle, and that the family posts at least one 'no smoking' sign where it can be prominently seen,

and understood, on the main living level of the home. The sign can be hand-made, purchased or down-loaded from the following website by clicking on 'Toolkit': <http://www.dsf.health.state.pa.us/health/cwp/view.asp?q=250974> .

Practice Considerations

Following is a delineation of key process points and guidance for each:

Approval of New Resource Homes

During application and orientation processes, prospective resource parents, both kinship and non-relative, need to be informed of the impact of the CIAA or, in Philadelphia, of the city's smoking ordinance, on homes providing care to CYA/JPO children. The information should be provided both verbally and in writing, with other language editions available. *No waivers are permitted because this is a statutory requirement, and DPW may not waive State statute or City ordinance.* As part of the final home approval, prospective resource parents, who choose to continue with the process, must sign a statement that they will comply with the CIAA/City ordinance, and that they understand the consequences of not doing so. Agencies may use the statement template in Attachment A, or develop their own statement for signature. Agencies have the option of expanding on the minimum expectations and consequences.

Compliance of Existing Approved Resource Homes (Outside of Philadelphia)

Agencies must disseminate at least the minimum expectations for compliance with the CIAA to all existing approved resource homes, along with the consequences for non-compliance. It is recommended that the DOH website be provided on this document so that families may learn more about the background of the law, as well as access the language of the law and the downloadable signage included in the toolkit. Compliance statements must be signed and collected no later than the next annual evaluation of each home; agencies may use the statement template in Attachment A, or develop their own statement for signature.

It is anticipated that some resource homes will not wish to comply with these expectations, and the agency should work with them to insure a smooth transition for any children placed in the home. *Again, no waivers are permitted by DPW for a statutory requirement.* Depending on the permanency goal in a case, pursuit of a transfer of legal custodianship or discharge to a fit and willing relative, depending on whether the child is in a long-standing non-relative or relative resource home, may be viable options for consideration.

Placement Considerations

Children under the age of 5, and children with asthma or other respiratory disorders or any medical conditions that could be aggravated by the presence of tobacco smoke, should not be placed in *any* resource homes, in which there are household members who smoke. Even though smoking is not prohibited when the

children are out of the home, the environmental pollutants produced by smoking continue to be present and could pose a health hazard to very young or health-compromised children, if preventive measures are not taken.

In order to make the best placement plan for a particular child, an agency has the flexibility to consider a resource home, particularly a formal kinship home, in which there are smoking household members, as long as the resource parent, in addition to the minimum compliance expectations, takes reasonable precautions to keep environmental pollutants to a minimum, and restricts smoking, during the periods the child is out of the home, to an area of the house in which the child does not go, and which does not have a shared ventilation system with the rest of the house.

Current placements of such children may continue as long as the resource parents sign the compliance statement, and there are no reports of smoking violations. However, it would be good practice to pursue the permanency plans for these children in as timely a manner as possible.

Adolescent Smoking Issues

In addition to not smoking themselves, no resource parent should be allowing an underage adolescent to smoke in the home, and certainly, no resource parent should be supplying underage adolescents with tobacco products. By State law, no one under age 18 may purchase tobacco products. If children under age 18 are smoking, they are either engaging in unlawful behavior by purchasing the tobacco products themselves, or they are an accessory to unlawful behavior if they are buying the cigarettes from an adult who purchased tobacco products for them. Moreover, some municipalities have outlawed use and/or possession of tobacco products by minors in public places; resource homes have now been classified as public places by the CIAA. Resource parents who provide care to youth age 18 and older, who may legally smoke, should insure that they comply with the provisions of this bulletin.

Children in County Custody Residing in Non-approved Homes

Some children are found by the court to be dependent and are placed in the legal custody of the CYA, but allowed to remain in the physical custody of their parents or guardians. The CIAA does not apply to these homes since the parents or guardians are not contracted to provide 'child care services' to their children.

Permitted Smoking Areas

There is no provision in the law that describes how far from the enclosed area in which smoking is prohibited a person must be to smoke. Therefore, as long as a resource family household member, or visitor, is located outside of the house, and is not standing in an open doorway or window, they will be considered to be in compliance with minimum expectations. Smoking in a detached building on the property, when that building is not being used by CYA/JPO children, would also be allowed.

Complaint Options

As with many other child welfare concerns, some reports of a resource parent smoking, or allowing smoking in the home or vehicle while CYA/JPO children are present, or of not having the required signage, will be made to the agencies most often called with child welfare concerns: ChildLine, the local CYA, the OCYF regional office or the agency with which the home is known to be certified, if other than the public agency. Since those agencies are not the mandated investigative bodies for such reports, there is an option to treat such reports as 'informal' complaints, and direct them to the agency that approved the home for follow-up. *For homes outside of Philadelphia*, complaints that come directly to ChildLine, the OCYF regional office or any State-licensed public or private agency must be recorded on the form in Attachment B, and maintained in a separate log, per below.

However, complaints made directly to DOH, via the Clean Indoor Air Helpline (1-877-835-9535) or on complaint forms at http://www.portal.state.pa.us/portal/server.pt/community/clean_indoor_air/14187/clean_indoor_air_-_menu/557664, to the county board of health or to local law enforcement will be considered 'formal' complaints. Formal complaints to DOH will be referred to the agency that approved the home for follow-up investigation and enforcement, and will also be logged on the form in Attachment B. Formal complaints made to local county boards of health or to local law enforcement will be investigated and enforced by those entities. Since the CIAA requires that DOH submit annual reports concerning the number of complaints received, and the number of enforcement actions, the actions taken on formal complaints, whether by the DPW-licensed agency that approved the home, the local board of health or law enforcement, will need to be reported back to DOH.

Resource parents should be alerted to the potential consequences of a formal complaint being made, as there may be criminal and/or financial penalties if violations are found to have occurred. If local law enforcement is the investigating entity, and they find that a violation has occurred, the resource parent could be charged with a summary offense, and fined up to \$250 if convicted. Likewise, an investigation by the local board of health could incur such a penalty. *At this time*, on complaints referred by DOH for investigation, if OCYF determines that a violation occurred, it will be OCYF policy to effectively waive the financial penalty allowed by the CIAA by setting the penalty at zero dollars. If that policy changes in the future, OCYF will develop a mechanism by which the regional offices will handle the collection and distribution of fines levied.

In all cases in which a financial penalty has been imposed by local law enforcement or the local board of health, additional violations will result in higher financial penalties, of up to \$1000. If it is determined in the course of the investigation that the resource parent had no control of the violating act, such as not home or tried to stop it, the resource parent will not be held liable; the law terms such situations as 'affirmative defenses'.

In the case of an 'informal' complaint coming to the approving agency directly, or from ChildLine or any entity other than DOH, the agency has a wider range of options for follow-up, and does not have to report the results of the follow up to DOH, though the complaint and follow-up actions must be recorded and maintained as discussed below. As with all other complaints made about a resource home, it is incumbent on the approving agency to investigate the complaint and to determine the validity of the information before planning a further course of action.

Unless the foster child is reporting the violation, an agency should avoid interrogating the child, if possible, since doing so could have a destabilizing effect on the placement. Other than in cases in which children have made allegations of abuse or neglect against their resource parents, children should not be placed in the position of reporting on their resource parents. However, routine quality visits with the child should incorporate a review of a wide range of safety, health and well-being issues, including environmental concerns in the home and elsewhere. Planning such a visit with a child as part of a follow-up to a report of a smoking violation would be reasonable.

Agency Response to Complaints

Whether complaints are formal or informal, if an incident of smoking is found to have occurred in a resource home, the agency responsible for approving that home must follow a prescribed course of action, just as they would for any other non-compliance issue in a resource home. Agencies will need to develop their own policies regarding this particular non-compliance issue, or supplement existing non-compliance policies, and disseminate these to all resource homes they approve. Provider agencies will need to share these policies with the county agencies with which they have contracts, as well as with their OCYF regional office during annual re-licensing inspections.

OCYF requires that agencies develop policies with corrective plans of action in response to any reported and validated violations of the smoking ban, whether the reports result from informal or formal complaints. The extent of any corrective plan should depend on the nature of the infraction, the attitude of the resource parent and the vulnerability of the child placed in the home. In cases of formal complaints that involve the levying of fines and/or criminal convictions, resource parents may choose to close their homes, rather than risk higher level repercussions. Whether or not the resource parent wants to continue providing care which, for the sake of the child or children placed in the home, is desirable, the agency will need to report actions it has taken to DOH for inclusion in the annual report DOH must compile.

While an agency may choose to have a policy that requires immediate removal of a child, and closure of a home for a smoking violation of the CIAA, OCYF recommends that the agency plan a course of action that takes into account the child's total well-being, and the circumstances of the violation. Unless a child has known health issues that are exacerbated by exposure to cigarette smoke, making removal reasonable, precipitous action as an 'across-the-board' response

is unlikely to promote placement stability, or to keep the best interests of an individual child as primary concern. Moreover, it does not consider whether the violation was perpetrated by the resource parent, or someone else, including the foster child, and whether the act was in the control of the resource parent. These factors should influence the agency's response.

Agencies need to incorporate compliance with the CIAA into the full spectrum of all requirements with which resource parents are expected to comply, and consider their current protocol for non-compliance issues.

OCYF Response Recommendations

All recommendations made are with the assumption that what is being reported is an isolated incident in a resource home with a signed compliance statement, and not a report of ongoing and repeated non-compliance with the CIAA or with Philadelphia's City ordinance, or compliance issues in a resource home that is already being transitioned to a closed status. In the case of ongoing and repeated non-compliance, or in the case of resource parents who will not sign the compliance statement, the agency will have no choice, but to initiate proceedings to transition such homes to a closed status, making the best plans possible for the child or children placed in the home.

Moving up the time-line on the child's permanency plan could be helpful. If reunification and adoption have been ruled out, and the resource parents are eligible and willing to become Permanent Legal Custodians (PLC) for the child, that may be a viable option to pursue. If custodianship is transferred from the agency to the PLC, there is no prohibition against smoking by the PLC; however, since compliance with the CIAA, or with Philadelphia's City ordinance, is required for approval as a resource home, and a PLC must meet those standards to be approved for a subsidy agreement, a subsidized PLC situation would only be possible if the prospective PLC caregivers agree to be compliant until the court transfers custodianship. This compliance would also be necessary for an adoption subsidy agreement. Once the agency no longer has custody of the child and the home is closed as a resource home, no further actions relative to the CIAA or to Philadelphia's City ordinance need be taken.

In situations in which an agency substantiates an informal complaint, or in which financial and/or criminal penalties are levied against a resource parent, as a result of a formal investigation of a validated smoking violation of the CIAA, the resource parent may elect to remain in the program. In such cases an agency should develop a corrective action plan, and issue a provisional approval to the resource home to insure that no other children will be placed in the home until the plan of correction has been satisfied. The corrective action plan should, at a minimum, include a reorientation to the requirements of the CIAA, information about the incremental rises in penalties for subsequent validated formal complaints, the agency's policy with respect to compliance and a re-signing of the compliance statement. A provisional approval, based solely on CIAA non-compliance, should be imposed until the plan of correction is completed. As part of the plan of correction, OCYF recommends making unannounced visits to the

resource home during this period. No Title IV-E foster care maintenance may be claimed for any placements that continued during the provisional license period.

If any CIAA violation is reported and validated, whether as a result of a formal or informal complaint during the period the home is on provisional approval, specifically related to a prior CIAA violation, the procedure to remove the child or children from the home, and to close the home, should be initiated.

If the home completes the plan of correction and becomes fully approved again, the same procedure should be followed for any subsequent substantiated violations of the CIAA. However, it is recommended that no more than three validated violations be allowed, prior to agency closure of the home.

Complaint Documentation Requirements

In order to monitor the impact that this new law will have on resource homes located outside of Philadelphia, as well as agency management of compliance issues, OCYF has developed a form on which agencies will be required to document complaints received as well as actions taken as follow-up. The complaint forms are to be maintained in a separate hard copy CIAA log book which OCYF regional representatives will review, at a minimum, during annual licensing inspections.

When a State-licensed agency receives any CIAA-related complaint about a resource home the agency has approved, the agency must record the information about the complaint, the nature and results of the investigation of the complaint and the follow-up course of action on the form supplied in Attachment B, or on an agency-developed form containing the elements listed below. This documentation applies regardless of the source of complaint. Included elements:

- Date complaint was received by the agency;
- DOH referral; or
- Name of complainant, if provided;
- Complainant's contact information, if provided;
- Name and address of the resource parent;
- Age(s) of the foster child(ren);
- Any known respiratory health issues of the child(ren);
- Date(s) or time period of alleged violation(s);
- Description of the alleged violation;
- Agency investigative response;
- Date of agency response;
- Violation validated or not;
- Financial/criminal penalty;
- Agency's planned remediation; and
- Resource parent agrees or not.

Attachment A

CLEAN INDOOR AIR ACT COMPLIANCE AGREEMENT

I/We, the undersigned prospective/approved resource parent(s), agree to comply with the 'no smoking' provisions of the Clean Indoor Air Act whenever a child under the care and custody of the county children and youth agency, or an adjudicated delinquent youth in foster care under the supervision of Juvenile Probation, is present in my/our home or vehicle. 'Smoking' refers to the use of a lighted cigar, cigarette, pipe or other smoking device and includes non-tobacco products. Chewing tobacco is permitted.

Specifically, I/we agree to the following:

- 1) No smoking by anyone, *including the child*, inside the home while the child is in the home;
- 2) No smoking by anyone, *including the child*, in the vehicle while the child is in the vehicle;
- 3) No smoking by anyone, *including the child*, in a detached building located on my/our home property while the child is in the detached building;
- 4) Prominently displaying a 'no smoking' sign on the home's main living level;
- 5) No providing of tobacco products to underage children or adolescents; and
- 6) If smoking outside, not standing near an open window or doorway.

If I/we accept placement of a child under age 5, or a child with asthma or another respiratory disorder, and there is a smoking household member who may smoke when the child is not present in the home/vehicle/detached building, I/we agree to manage environmental pollutants by observing the following guidelines:

- 1) Leaving a window open while smoking in the vehicle;
- 2) Not allowing the child to play in a detached building on my/our home property where smoking occurs; and
- 3) Smoking in a part of the house not used by the child and which does not share a ventilation system with the rest of the house.

I/We further understand that reported non-compliance with the above expectations may result in an investigation to determine the facts, and that a substantiated report, by law, incurs a fine of up to \$250 for a first-time violation. Any subsequent substantiated violations face increasing fines of up to \$1000. Additionally, the agency may impose a 'plan of correction' and place my/our home on provisional status until the plan is completed. After three documented non-compliance incidents, the agency may close my/our home.

Resource Parent: _____

Resource Parent: _____

Witness: _____ Date: _____

For information on the law, and to download signage, visit: www.health.state.pa.us

Attachment B

Clean Indoor Air Act (CIAA) Violation Complaint Report

Date report received: _____

Report Source: Department of Health ___ ChildLine ___ Regional Office ___ Other ___
(check one) Name: _____ Phone: _____
(For private citizen: permission to release? Yes ___ No ___)

Resource Parent Name: _____
Address: _____

Age(s) of Foster Child(ren): _____

Respiratory Issues of Foster Child(ren): _____

Date(s) or time period of CIAA violation(s) reported: _____

Description of the alleged violation(s): _____

Agency's investigative response:

Date of agency's response: _____

CIAA violation substantiated: No ___ (If no, stop here) Yes ___
Other (please explain) _____

Financial/criminal penalty imposed: No ___ Yes (please specify) _____

Agency's planned remediation (check all that apply): Child removal ___
Retraining ___ Resigning of Compliance Agreement ___
Provisional approval for ___ months

Resource parent agrees to remediation plan: Yes ___ No ___

Resource parent opts to close home: Yes ___ No ___

Agency opts to close home: Yes ___ No ___ Resource parent appeals: Yes ___ No ___