

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
DANIEL F. CLARK, ESQ.
ARTHUR COCCODRILLI
MURRAY UFBERG, ESQ.
ROBERT E. NYCE, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

November 12, 2004

Honorable Estelle B. Richman, Secretary
Department of Public Welfare
333 Health and Welfare Building
Harrisburg, PA 17105

Re: Regulation #14-489 (IRRC #2429)
Department of Public Welfare
Subsidized Child Care Eligibility

Dear Secretary Richman:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

evp

Enclosure

cc: Honorable George T. Kenney, Jr., Majority Chairman, House Health and Human Services Committee

Honorable Frank L. Oliver, Democratic Chairman, House Health and Human Services Committee

Honorable Harold F. Mowery, Jr., Chairman, Senate Public Health and Welfare Committee

Honorable Vincent J. Hughes, Minority Chairman, Senate Public Health and Welfare Committee

Comments of the Independent Regulatory Review Commission

on

Department of Public Welfare Regulation #14-489 (IRRC #2429)

Subsidized Child Care Eligibility

November 12, 2004

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Department of Public Welfare (Department) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on October 12, 2004. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. Additional responsibilities of eligibility agencies and costs for currently enrolled children. – Fiscal impact.

The Department has indicated that this rulemaking will allow an additional 3,388 children to receive subsidized child care annually. The estimated cost of this rulemaking is \$5.5 million for the remainder of the 2004-2005 fiscal year and \$9.9 million per year thereafter. The Department has indicated that these costs relate only to day care for new children eligible for subsidized child care. We have two concerns related to the fiscal impact of this regulation.

First, some child care information service (CCIS) agencies have commented that the rulemaking will increase their administrative duties and costs of operating. They claim their costs will rise due to new requirements of record keeping and verifying eligibility factors. Since none of the additional funding will be dedicated to these program costs, how will the CCIS agencies be reimbursed for additional expenses they may incur under this regulation?

Second, the rulemaking will allow families currently enrolled in the subsidized child care program to qualify for more hours of care. In addition, parents/caretakers in education programs who work fewer hours could pay lower co-payments which would result in higher costs to the Department. How much additional funding is needed to serve the children currently enrolled in the subsidized child care program? How will these costs be funded?

2. Policy revisions. – Fiscal impact; Reasonableness.

The Department has proposed numerous policy changes in an effort to accomplish its stated goals of making high quality child care more accessible to families, promoting family self-sufficiency and promoting parental choice of child care options. Some CCIS agencies have expressed opposition to or concern with the following policy changes:

- Eliminating the existing requirement for the parent or caretaker to seek court-ordered child support;

- Eliminating the cap on the number of hours of subsidy in a seven-day period;
- Allowing receipt of subsidy for child care to cover travel time and sleep time (§§ 3041.14(a)(1) and (2));
- Increasing the time period during which a parent/caretaker may continue to receive subsidy from the date of an involuntary loss of work, the date a strike begins or the date the parent/caretaker completes an education program from 30 days to 60 days;
- Eliminating a live-in companion's income from the family income determination;
- Including only a portion of a stepparent's income in the family income determination (§ 3041.33(5));
- Reducing the minimum required number of work hours from 25 to 20 per week, or a combination of 10 hours per week of work and 10 hours per week of training (§ 3041.43(a) and (c)); and
- Eliminating the requirement that the parent/caretaker earn at least minimum wage.

The commentators are concerned that these changes will: raise the Department's and CCIS agencies' costs of administering the subsidized child care program; discourage families from becoming self-sufficient; and significantly increase waiting lists. We request the Department further explain how these proposed policy changes will achieve its stated goal of promoting family self-sufficiency. We also request that the Department explain how these proposed changes will meaningfully increase access to care if waiting lists are expanded.

3. Section 3041.3. Definitions – Reasonableness.

The term "self-certification" is defined as, "A written statement provided by a parent or caretaker for the purpose of establishing selected factors of nonfinancial eligibility." The Department has noted that "self-certification" will make it easier for families to apply and qualify for subsidized child care. Given that self-certification does not require follow-up documentation, is there a risk that non-eligible families may obtain subsidized child care to which they are not entitled?

4. Section 3041.16. Subsidy limitations. – Clarity.

Subsection (d) allows a family with two parents or caretakers to be eligible for subsidized child care if one of the parents or caretakers is unable to care for the child because of a physical or mental disability. This subsection should include a cross-reference to Section 3041.71, relating to verification of permanent inability to work.

5. Section 3041.20. Subsidy continuation during breaks in work. – Reasonableness.

This section allows a family's eligibility for subsidized child care to continue during specified interruptions of work. Maternity leave is not included in the list of interruptions. Based on discussions with Department staff, we understand that the Department intended to include maternity leave. Therefore, the final-form regulation should be amended to reflect the Department's intent.

6. Section 3041.22. Subsidy disruption. – Reasonableness.

Under Subsection (c), if subsidized care is disrupted because the eligibility agency does not have sufficient State or Federal funding, the subsidy for children whose families have the highest income is disrupted first. Since family sizes vary, we question the reasonableness of basing

disruption of subsidy solely on income level. The Department should explain the rationale for this approach.

7. Section 3041.43. Work, education and training. – Reasonableness; Clarity.

Subsection (d) provides that a parent or caretaker who misses work due to “illness, injury, employer closings, holidays, temporary work slow-downs, emergencies or domestic violence” remains eligible for subsidy if he or she is normally scheduled to work 20 hours per week. We recognize that this subsection was written with the purpose of providing CCISs the flexibility to meet the particular needs of the families they serve. However, it contains vague language which may make it difficult for this provision to be administered consistently and uniformly throughout the Commonwealth. We have three concerns.

First, the term “temporary work slow-downs” is unclear. The final-form regulation should include the criteria the Department will use to determine what qualifies as a “temporary work slow-down.” Additionally, the Department should specify at what point a “temporary work slow-down” becomes a permanent reduction in work hours.

Second, the final-form regulation should specify for how long a person can have fewer than 20 hours per week of work and remain eligible for subsidized child care.

Finally, the term “emergency” is open to interpretation. The Department should either define this term or specify the criteria it will use to determine if a situation qualifies as an emergency.

8. Section 3041.46. Immunization. – Clarity.

Subsection (c) states, “The parent’s or caretakers’ self-certification on the application or on another form provided by the Department is verification of immunization or exemption from immunization requirements.” Section 3041.67 relating to *Verification of immunization* also provides that acceptable verification of immunization is the parent’s or caretaker’s self-certification.

These provisions could be interpreted as allowing children to enter child care facilities without documentation that they have the required immunizations, or an exemption from immunizations. Based on discussion with Department staff, we understand that this is not the intent. The purpose of the provisions in this regulation is to avoid duplication of paperwork requirements. Parents or caretakers will still have to provide immunization records to the child care provider as required by 55 Pa. Code § 3270.131(d)(5). The clarity of Section 3041.46(c) and Section 3041.67 could be improved by adding a cross-reference to the requirements in 55 Pa. Code § 3270.131(d)(5).

9. Section 3041.65. Verification of residence. – Reasonableness.

This section allows a parent or caretaker to self-certify their residency status on applications or eligibility redetermination forms. Self-certification does not require the applicant to supply documentation to support their claim. However, self-declaration does require an applicant to provide documentation within 30 days. Therefore, we recommend that this section be amended to allow a parent or caretaker to self-declare their residency status.

10. Section 3041.85. Record retention. – Need; Reasonableness.

Subsection (b) requires eligibility agencies to maintain records for at least seven years. The existing regulation requires records to be kept for four years. The Department should explain why it is necessary to increase record retention to seven years.

11. Section 3041.145. Self-declaration and reporting. – Clarity

Paragraph (1) requires Temporary Assistance for Needy Families (TANF) and former TANF parents or caretakers to self-declare several eligibility factors. We note that Subsection (d) of Section 3041.63, relating to *Self-declaration*, requires the parent or caretaker “to provide another form of acceptable verification no later than 30 calendar days following the date the written self-declaration is accepted” Section 3041.145(1), however, does not require this follow-up verification.

Based on discussions with Department staff, we understand that for families who move immediately from TANF to the subsidized child care program, follow-up verification is unnecessary because extensive records are maintained by the TANF program. These records would simply transfer to the subsidized child care eligibility agent. However, the regulation does not address follow-up verification for families who do not immediately transfer from TANF to subsidized child care. The final-form regulation should address the verification requirements for these families.

12. Miscellaneous clarity issues.

- Sections 3041.14(b) and 3041.32(1) use the phrase “biological or adoptive parent or stepparent.” This phrase is not defined and differs from the phrase “parent or caretaker” which is used throughout the remainder of the regulation. The final-form regulation should be amended to consistently use the phrase “parent or caretaker.”
- Section 3041.64, relating to verification of income, uses the terms “earned income” and “unearned income.” The final-form regulation should define these terms.
- Section 3041.101, relates to general co-payment requirements. Subsection (e) states that a co-payment is due on the first day of the family’s first full-service week. This conflicts with § 3041.104(f), relating to parent or caretaker co-payment requirements, which states that the co-payment is due on the first day of the service week. The final-form regulation should make these two provisions consistent.
- As published in the *Pennsylvania Bulletin*, there is a typographical error in the heading of the section relating to *Notice of overpayment*. The numeric heading for this section is printed as “§ 3040.167.” This should be changed to § 3041.167. (Emphasis added.)
- Section 3041.171(6) references “§ 3040.21.” This reference should be changed to § 3041.21. (Emphasis added.) Similarly, Section 3041.171(7) references “§ 3040.22.” This reference should be changed to § 3041.22. (Emphasis added.)

Facsimile Cover Sheet

Kristine M. Shomper
Administrative Officer



Phone: (717) 783-5419
Fax #: (717) 783-2664
E-mail: kriss@irrc.state.pa.us
Website: www.irrc.state.pa.us

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Shirley A. Nace
Stephanie Schubert
Ruth O'Brien, Esq.
Agency: Department of Public Welfare
Phone: 3-2201; 7-4063; 3-2800
Fax: 2-0717
Date: November 12, 2004
Pages: 6

RECEIVED
2004 NOV 12 AM 11:03
INDEPENDENT REGULATORY
REVIEW COMMISSION

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Public Welfare's regulation #14-489 (IRRC #2429). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Shirley A. Nace Date: 11-12-04

Fax5

RECEIVED TIME NOV. 12. 10:32AM

PRINT TIME NOV. 12. 10:34AM