

Regulatory Analysis Form

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(1) Agency Department of Public Welfare	This space for use by IRRC <div style="text-align: right; font-weight: bold;">2008 MAR 10 PM 1: 03</div> <div style="text-align: center; font-weight: bold;">INDEPENDENT REGULATORY REVIEW COMMISSION</div>
(2) I.D. Number (Governor's Office Use) <div style="font-size: 1.2em; font-weight: bold;">14-506</div>	IRRC Number: 2539.
(3) Short Title Child Care Facilities	
(4) PA Code Cite 55 Pa. Code Chapters 3270, 3280, 3290 and 3300	(5) Agency Contacts & Telephone Numbers Primary Contact: Linda Warren, 346-4036 Secondary Contact: Jennifer Lau, 772-4850
(6) Type of Rule Making (Check One) <input type="checkbox"/> Proposed Rule Making <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rule Making Omitted	(7) Is a 120-Day Emergency Certification Attached? (To be used only for emergency-certified regulations.) <input type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor
(8) Briefly explain the regulation in clear and nontechnical language. <p style="margin-left: 40px;">The child care facility regulations in Chapters 3270, 3280 and 3290 provide standards designed to protect the health, safety and rights of children and to reduce risks to children in child day care centers, group child day care homes (GDCH) and family child day care homes (FDCH). The regulations identify the minimum level of compliance necessary to operate a child care center, GDCH or FDCH.</p>	
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. Articles IX and X of the Public Welfare Code (62 P. S. §§ 901-922 and 1001-1087).	
(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action. The regulation is not mandated by a Federal or state law, court order or regulation.	

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(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The final-form rulemaking is needed to update the minimum standards for child care facilities. The current regulations were published at 22 Pa.B. 1651 (April 4, 1992) and must be updated to reflect the current laws that directly impact the operation of child care facilities, to incorporate the Department's statements of policy issued since 1992, to implement developments in recommended health and safety practices and to reflect best practice in the field of child care.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

The Department cannot require an individual who wants to operate a child care facility to attend the Department's orientation training without the regulation. Attendance at orientation increases the facility's level of compliance with regulations and improves health and safety for children in care.

The Department cannot address inclusion of children with special needs in all child care facilities if Chapter 3300 is not deleted and the requirements relating to care for children with special needs are addressed within Chapters 3270, 3280 and 3290.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The final-form regulation updates and codifies statements of policy. Since the current child care service regulations were published in April 1992, many changes have occurred that affect the regulations and operation of a child care facility. The Department published 11 statements of policy clarifying or interpreting the regulations, including statements of policy regarding emergency plans, supervision of children, Syrup of Ipecac, release of children, posting inspection summaries, Departmental access and swimming pool accessibility. Laws that impact operating a child care facility have changed regarding certificate of occupancy, vehicle safety, childhood immunizations and children with special needs. New research has resulted in changes to health and safety recommendations regarding Sudden Infant Death Syndrome (SIDS) prevention, playground safety and tuberculosis testing. In addition, the Department noted areas in which facilities have difficulty complying with requirements and examined the reasons for noncompliance. The final-form rulemaking makes changes that will assist facilities to comply with the regulations and continue to ensure minimum health and safety at a facility.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

Facilities may be adversely affected by the costs associated with the amendments relating to mandatory orientation training, child service report form and protective surface coverings under outdoor play equipment. The costs of compliance may be offset by other cost savings resulting from amendments related to kindergarten children, child health reports and staff health.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Child day care centers, group child day care homes and family child day care homes are required to comply with the regulation. As of October 31, 2007, 4055 child care centers, 813 GDCHs and 4133 FDCHs were certified or registered by the Department.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Office of Child Development and Early Learning (OCDEL) held a stakeholders meeting to discuss proposed regulations. Attendees included individuals who operate profit and nonprofit child care centers, GDCHs and FDCHs; representatives of provider organizations and child advocacy groups; representatives from the Departments of Health and Education and OCDEL staff.

As a result of the stakeholders meeting, OCDEL convened a subgroup of stakeholders to discuss amendments related to serving children with special needs. Attendees included individuals who operate profit and nonprofit child care centers, group child day care homes and family child day care homes; representatives of provider organizations, the Department of Education, the Department's Office of Legislative Affairs, Early Intervention specialists and OCDEL staff.

In February 2006, OCDEL conducted leadership forums regarding initiatives for fiscal year 2006-2007. The forums were held in several locations across the state. Approximately 500 people attended the forums. Participants were provided the option of attending several topic-specific sessions regarding upcoming initiatives, including an overview and discussion of the proposed regulatory amendments.

Draft regulatory amendments were shared with all stakeholders who were invited to attend the two work group meetings, the Director of the Department's Policy Office and

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the Department's legal counsel. All recipients were invited to submit written comments regarding the draft regulation amendments. The comments received were reviewed and considered in developing the regulation amendments proposed for publication.

Following publication of proposed rulemaking, the Department received 46 comments during the 30-day public comment period and three comments within 30 days following the close of the public comment period.

The comments received during the public comment period came from 18 child care providers, 13 advocacy organizations, seven medical professionals or organizations, three attorneys, three consumers, one Pennsylvania Key employee and one former Department employee.

The comments received within 30 days following the close of the public period came from two providers and one medical professional.

The Department also received comments from the House Children and Youth Committee and the Independent Regulatory Review Commission (IRRC).

Following publication of proposed rulemaking, the Department held two meetings of the previously formed regulation work group. During the public comment period, the work group met once to discuss strategy to solicit comments regarding the proposed amendments. Following the close of the public comment period, the work group met to discuss the content of the comments and revisions to the proposed rulemaking. In addition, Department staff contacted work group members who were unable to attend the meeting in order to get their input.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures that may be required.

Kindergarten child as a young school-age child

The final-form rulemaking changes the definition of "young school-age child" to include a kindergarten child. A school-age child care center or GDCH that enrolls a kindergarten child will be able to maintain its status as a school-age facility and will result in cost savings relating to staffing and physical site. (See 55 Pa.Code §§ 3270.241 and 3280.221 (relating to requirements specific to school-age programs).) The greatest cost savings will be to a school-age child care center that will not have to pay a director or group supervisor to be on-site at all times. According to the Pennsylvania Department of Labor and Industry (L&I) wage statistics, the average hourly wage for a director is \$20.35/hour. A child care center director must be on site at least 30 hours per week when the facility provides care for children younger than

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school-age children. The director's salary at 30 hours per week is \$610.50. At a school-age center, the number of hours a director must be on-site depends upon the number of hours of facility operation. When a school-age child care center operates 30 hours or less per week, a director must be on-site 20% of the time or six hours. The cost of having a director on-site for six hours is \$122.21. This represents a cost savings of \$488.29 per week.

A child care center must employ a group supervisor for each group of 45 enrolled children when the facility provides care for children younger than school-age children. The group supervisor must be on-site a minimum of 30 hours per week. A group supervisor is often referred to as a "teacher". According to the L&I wage statistics, the average wage for a preschool teacher is \$10.44 per hour. The group supervisor's salary at 30 hours per week is \$313.20. At a school-age center, a group supervisor is not required until there are 46 or more children enrolled at the facility. For a school-age center enrolling less than 46 children, this represents a cost savings of \$313.20 per week.

A facility that transports kindergarten and school-age children to and from school will be able to count the driver in the staff:child ratio and will no longer have to supply an additional staff person on the vehicle to comply with staff:child ratio requirements related to transporting preschool children. According to the L&I wage statistics, the average wage for a child care worker is \$8.90 per hour. The facility will save an average of \$8.90 for each hour of transportation.

The staff:child ratio for young school-age children is 1:12 and for preschool children is 1:10. The income produced from a group of 12 young school-age children is greater than the income produced from a group of 10 preschool children. The cost of child care is established by each facility; therefore, the income difference is illustrated below in the discussion of the regarding the statewide average child care subsidy rate.

Changing the definition of young school-age to include kindergarten children may result in lower reimbursement rates for facilities that participate in the child care subsidy program. Currently, kindergarten children are preschool children. On average, the reimbursement rate for a preschool child is higher than the reimbursement rate for a young school-age child. The chart below illustrates the average subsidy reimbursement rates for a preschool (PS) child and young school-age (YSA) child and the differences between those rates.

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STATEWIDE AVERAGE SUBSIDY REIMBURSEMENT RATES FOR PS AND YSA CHILD

Facility Type	FULL-TIME CARE 5 or more hours/day			PART-TIME CARE Less than 5 hours/day		
	Average PS Rate	Average YSA Rate	Difference	Average PS Rate	Average YSA Rate	Difference
Child Care Center	\$26.55	\$23.70	- 2.76	\$21.07	\$18.64	- 2.43
Group Child Care Home	\$23.62	\$21.76	- 1.86	\$18.54	\$17.14	- 1.40
Family Child Care Home	\$22.59	\$20.80	-1.79	\$17.20	\$15.74	-1.46

The chart below illustrates the fluctuation in rates across the state:

		YSA < PS	YSA = PS	YSA > PS
Center Full-time Rate	# Counties	59	3	5
	Average difference	- \$3.23	0	+ \$1.80
	Range of difference	-\$1.00 to -\$7.37	0	+ 1.00 to +\$3.71
Center Part-time Rate	# Counties	54	3	10
	Average difference	- \$3.42	0	+ \$2.60
	Range of difference	-\$.25 to -\$15.25	0	+ \$.10 to +\$9.74
GCDH Full-time Rate	# Counties	53	7	7
	Average difference	- \$2.48	0	+ \$1.03
	Range of difference	-\$.15 to -\$11.40	0	+ \$.32 to +\$2.00

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GCDH Part-time Rate	# Counties	45	15	7
	Average difference	- \$3.23	0	+ \$1.70
	Range of difference	-\$.41 to \$7.50	0	+ \$.40 to + \$4.30
FCDH Full-time Rate	# Counties	61	6	0
	Average difference	- \$1.97	0	0
	Range of difference	-\$.40 to - \$6.30	0	0
FCDH Part-time Rate	# Counties	53	13	1
	Average difference	- \$1.92	0	+ 1.50
	Range of difference	-\$.10 to - \$6.30	0	0

Additional information is attached detailing the differences in reimbursement rates.

For many facilities, the decrease in reimbursement rate will be offset by the lowered operating costs realized by lessened staff:child ratio. Facilities that transport children to school will save the cost of providing an additional staff person in the vehicle. School-age facilities will see additional cost savings.

The wages for child care staff often vary according to position. The majority of staff in child care facilities are qualified as assistant group supervisor (AGS). An AGS is permitted to be alone with children. According to the L&I wage statistics, the average wage for a child care worker is \$8.90 per hour. The staff:child ratio for preschool children is 1:10. The staff:child ratio for young school-age children is 1:12. The greatest rate difference is seen in the full-time center rate. Using the full-time rate, the income from each group of children is as follows:

\$ 26.55	average preschool rate
<u> x 10</u>	preschool children per one staff person
\$265.50	income from one group of 10 preschool children

\$ 23.70	average young school-age rate
<u> x 12</u>	young school-age children per one staff person
\$284.40	income from one group of 12 young school-age children

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If the children are in care full-time, using an estimate of a 10 hour full-day of care, the cost of staffing is:

\$ 8.90	average hourly child care worker wage
<u>x 10</u>	full day child care
\$89.00	cost of AGS for 10 hours

\$265.50	income from one group of 10 preschool children
<u>- 89.00</u>	cost of staffing
\$176.50	difference

\$284.40	income from one group of 12 young school-age children
<u>- 89.00</u>	cost of staffing
\$195.40	difference

The addition of two children to the staff:ratio offsets the lower rate for a young school-age child.

A child care center must have one group supervisor (GS) for every group of 45 enrolled children. A GS has more qualifications than an AGS, may supervise children alone and is often referred to as a "teacher". According to the L&I wage statistics, the average wage for a preschool teacher is \$10.44 per hour. If a GS is counted as a staff person, the costs are as follows:

\$10.44	average hourly preschool teacher wage
<u>x 10</u>	full day child care
\$104.40	cost of GS for 10 hours

\$265.50	income from one group of 10 preschool children
<u>- 104.40</u>	cost of staffing
\$161.10	difference

\$284.40	income from one group of 12 young school-age children
<u>- 104.40</u>	cost of staffing
\$180.00	difference

The addition of two children to the staff:ratio offsets the lower rate for a young school-age child.

Mandatory orientation training:

Mandatory orientation training may create costs to an individual who wants to open a child care facility. The training will require a full day including travel and training time. The individual's costs will vary depending on the distance the individual must travel to

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participate in training. Using the Commonwealth mileage rate, an individual who travels 200 miles round trip would incur a travel cost of \$97.00.

For individuals currently operating or working in child care facilities, attendance at orientation training would be part of their job duties.

An individual who operates a family child day care home or group child day care home and who wants to open a new facility may have to arrange for staff to work at the facility while the individual attends orientation training. According to the Pennsylvania Department of Labor and Industry (L&I), the average wage for a child care worker is \$8.90 per hour. If substitute staff must be hired to cover an eight hour shift, the estimated cost is \$71.20.

An individual who is employed outside the child care field and who wants to open a facility may miss a day of work to attend orientation training and may lose wages for that day. Based on L&I's statistics regarding the average state wage, the individual may lose \$158 in wages to attend orientation training.

Indoor temperature:

The current child care center regulation requires that when the indoor temperature exceeds 85° F in a child care space, a means of mechanical air circulation shall be operating. Many facilities already have a means of ventilation in place at the facility. Ventilation may be provided through using a fan. If a facility has to purchase a fan, the cost of a fan will vary depending on the type of fan i.e., standing fan, window fan, wall fan or ceiling fan. The estimated costs would be anywhere from \$15.00 to \$100.00 depending upon the type of fan chosen by the provider.

Disposable, nonporous gloves in first aid kit:

The addition of disposable, nonporous gloves to the first aid kit represents increased cost to a facility. The use of gloves is a universal precaution to prevent the spread of disease transmitted via body fluids. The cost of a box of 100 gloves ranges from \$2.99 to \$8.99. The rate at which the gloves are used to administer first aid is unknown. The health and safety protection afforded to children and staff by using gloves outweighs the cost.

Protective surfacing under outdoor play equipment:

The amendment relating to surface covering under outdoor embedded play equipment may result in increased costs for facilities. Many facilities already meet the CPSC guidelines. The current regulation requires at least six inches of loose-fill material under the equipment. The CPSC standards state that six inches of uncompressed wood chips, the most common protective surface covering used at child

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care facilities, provides protection up to a fall height from seven feet. The current requirement for six inches of loose-fill material will be adequate for most child care facilities.

If the facility must modify the protective surface to comply with the final-form regulation, the cost will depend upon the fall height from the equipment, the type of surface covering used and the size of the area that must be covered. Below is a chart showing the average cost of different surface coverings that may be used to meet the regulation.

Surfacing	Cost
Gravel	\$13.00 per square foot
Wood mulch	\$15.00 per cubic yard
Sand	\$17.00 per ton
Rubber mulch	\$25.00 per cubic yard
Safety tiles (unitary surface)	\$50.00 per square yard

A facility that has a unitary surface covering that currently meets the requirements in the Department's statement of policy will be in compliance with the amended regulation.

Child service report form:

Facilities will incur added costs in preparing a service report form for each child every six months. The current regulation at Chapter 3300 requires that each child with special needs must have a program plan that is reviewed every three months and rewritten annually. The final-form regulation requires the facility to complete a semi-annual service report form for each infant, toddler and preschool child and for each school-age child who attends the facility more than 15 hours per week. The Department estimates that on average, a service report form will take 10 minutes to complete. The estimated cost for a facility to update service report forms twice a year is illustrated in the table below. The average wage is determined based on the fact that the child care center director, GDCH primary staff person or FDCH operator is responsible for the child service report form review.

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Facility	Average enrollment	Six month service report forms per year	Total time preparing service report forms	Average hourly wage	Cost
Center	50	100	17 hours	\$20.35	\$345.95
GDCH	12	24	4 hours		\$81.40
FDCH	6	12	2 hours		\$40.70

Staff health:

Staff persons will save money from the decreased requirements for staff health appraisals. By changing the requirement for annual health appraisals to bi-annual health appraisals, each staff person will save \$75.00 to \$150.00 per year. In addition, eliminating the requirement for bi-annual tuberculosis testing will save each staff person an additional \$25.00 to \$75.00 every two years.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures that may be required.

There are no new costs or savings to local governments associated with compliance with this proposed regulation. No new legal, accounting or consultant procedures are required.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures that may be required.

Kindergarten child as a young school-age child:

Changing the definition of young school-age to include kindergarten children may result in lower reimbursement rates for some providers who participate in the child care subsidy program. This will result in cost savings for state government. Using the average statewide reimbursement rates illustrated in the chart in #17, the average savings will be from \$1.40 to \$2.76 per kindergarten child who receives child care subsidy. The Department does not have statistics regarding the number of children who attend kindergarten and also receive child care subsidy. Statistics from September 2007 show the following number of children who receive child care subsidy

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and were five years old, the usual age at which a child is eligible to attend kindergarten:

6,472	kindergarten children receiving subsidy in child care centers:
431	kindergarten children receiving subsidy in group child care homes
<u>713</u>	kindergarten children receiving subsidy in family child care homes
7,616	kindergarten children in all regulated facilities

Using the above figures, a total of 7,616 children may be impacted by change in definition of a young school-age child.

Mandatory orientation training:

The Department currently provides orientation training for individuals who want to open child care facilities. The Department will not incur additional costs related to the proposed amendment requiring attendance at orientation training.

2-8-08
Robt. M. ...

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:						
Regulated Community	7,482,612	7,482,612	7,482,612	7,482,612	7,482,612	7,482,612
Local Government						
State Government						
Total Savings	7,482,612	7,482,612	7,482,612	7,482,612	7,482,612	7,482,612
COSTS:						
Regulated Community	2,446,388	2,446,388	1,876,075	1,876,075	1,876,075	1,876,075
Local Government						
State Government						
Total Costs	2,446,388	2,446,388	1,876,075	1,876,075	1,876,075	1,876,075
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	0	0	0	0	0	0

(20a) Explain how the cost estimates listed above were derived.

Kindergarten child as young school age

- No fiscal impact due to potential reduced subsidy payment offset by reduced stringency of requirements.

Orientation Training - Costs

- Based on statistics for FY 06-07, the Department received new applications for 460 centers, 161 GDCH, and 680 FDCH for total of 1301 new applications for a full fiscal year.
- Assume only half of centers and groups are for new legal entities so use 230 and 81 respectively for a total of 311.
- Yearly estimate of new applications = $\frac{1}{2}$ centers + $\frac{1}{2}$ GDCH + FDCH = 991.
- Assume average travel per staff person of 100 miles round trip at Commonwealth mileage rate = $\$48.50 \times 1010 = \$48,985$.
- Assuming use of substitute staff in centers and GDCH at rate of $\$8.90/\text{hour} = \71.20 for 8-hour shift = $\$71.20 \times 311 = \$22,143$
- Assuming FDCH may lose a day of work, L & I average state wage statistics indicate loss of $\$158$ for a day of training so $\$158 \times 680 = \$107,440$
- Total new cost to providers = **$\$178,568$**

Ventilation required at 82 F- Costs

- Assume that only a tenth of currently regulated centers, GDCH, and FDCH will have to purchase a fan (because most already have mechanical ventilation). Using the figures from October 31, 2007, the total number of regulated facilities is 9001 facilities. One tenth equals 900 facilities.
- Cost of fan can vary from $\$15$ to $\$100$, depending on the type purchased. Taking an average cost of about $\$57.50 \times 900 = \mathbf{\$51,750}$.

Disposable, non-porous gloves in first aid kit - Costs

- Majority of injuries that occur in child care occur on playgrounds (> 60% of cases). Further, majority of injuries on playgrounds are due to falls and inadequate protective surface materials.
- Due to proposed regulations regarding surface play materials, this should reduce the amount of injuries requiring the use of gloves.
- As a conservative estimate, assume that staff will use gloves to treat injuries on 25% of children in all centers, GDCH, and FDCH. Total capacity as of October 31, 2007 is 356,380, and a 2002 study suggested enrollment as 80% of capacity = 285,104 so total number of children injured estimated at 71,276 and need 2 gloves/child so 142,552 gloves.

2-8-08
Robert M. ...

- Box of gloves costs in range of \$2.99 to \$8.99 so use the average cost for a box of 100 as \$5.99; gives $142,552/100 = 1,425.52$ boxes x \$5.99 = **\$8,538.86**

Protective surface under outdoor play equipment - Costs

- 90% centers have outdoor play space, all imbedded = 3,650
- Assume 50% of them will have to add mulch or wood chips = 1,825
- 20ft x 15ft as average play space for 3 inches of mulch at \$15 cubic yards = \$625 per site
- $\$625 \times 1,825 = \$1,140,625$, which is a one-time cost spread over 2 years
- $\$1,140,625 \div 2 = \mathbf{\$570,312.50}$ per year for a 2 year period.

Child Service Report Form - Costs

- $\$282.88/\text{center} + \$66.56/\text{GDCH} + \$33.28/\text{FDCH} = \$1,402,827.55 + \$66,178.20 + \$168,213.10$
- Total = **\$1,637,218.55**

Staff Health – Savings

- Assume 12 staff at each center, 2 staff at GDCH, 1 staff at FDCH
- $48,660 + 1626 + 4133 = 54,419$
- Appraisals cost \$75 - \$150 so take the average of \$112.50
- TB test costs \$25 - \$75 every 2 years so average is \$25/year
- Total savings = $6,122,137.50 + \$1,360,475 = \mathbf{\$7,482,612.50}$

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 2004-2005	FY -2 2005-2006	FY -1 2006-2007	Current FY 2007-2008
CCDFBG – Admin	\$13,127,000	\$13,480,000	\$13,480,000	13,480,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The benefits of the final-form rulemaking outweigh the costs because of the additional health and safety protection afforded to children. The major cost associated with the amendments is the requirement related to protective surface covering under outdoor play equipment. Falls from play equipment can result in serious, debilitating injuries and death. The health and safety protection gained outweighs the cost.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No nonregulatory alternatives were considered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no applicable Federal regulations for child care facilities.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Research of other states revealed that Pennsylvania's regulations for child care facilities generally present higher standards of care than other states.

In addition, 46 states include kindergarten children in the definition of school-age child. Eight states require orientation training for individuals who want to operate child care facilities. Most states include requirements related to providing care for children with special needs in the same regulatory chapters as the general standards relating to child care facilities.

Ten other states require that protective surface covering under outdoor play equipment must comply with the requirements of the CPSC or an equivalent standard.

Four states require child health assessments and screenings in accordance with the American Academy of Pediatrics (AAP) recommendations. The remaining 45 states' requirements are as follows:

- Two states do not require health reports.
- 27 states require a health report at the time of admission or enrollment and require

no updates.

- 12 states require annual health reports.
- Two states require bi-annual health reports.
- Two states differentiate the frequency of health reports according to age groups:
 - One state requires annual reports for children 24 months of age and younger and bi-annual health reports for children 25 months of age and older.
 - One state requires health reports every six months for infants, annually for toddlers, every 18 months for preschool children and every three years for school-age children.

The final-form rulemaking requiring a health report every six months for infants and young toddler and every 12 months for older toddlers and preschool children exceeds the requirements in 45 states.

The Department's final-form rulemaking relating to child health reports exceeds the health report requirements in the 45 states that do not require health reports and screenings in accordance with the AAP recommendations.

Twenty-one other states require that infants be placed on their backs to sleep.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The final-form rulemaking does not affect existing or proposed regulations of the Department or another state agency.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Department will continue to meet with affected individuals and organizations to discuss the application and effectiveness of this regulation.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports that will be required as a result of implementation, if available.

The regulation requiring a semi-annual service report form will result in increased paperwork. The Department will develop tools to assist the provider in completing the service report form.

The regulation requiring that each child care center and GDCH operator must certify that no hazardous equipment is on the premises will result in increased paperwork. The Department will develop the certification document. It should take no more than

10 minutes for a facility to complete the self-certification form. Family child care home providers self-certify compliance with the regulation at the time of initial application and every two years at renewal. The existing self-certification process will include the regulation prohibiting hazardous equipment.

(29) Please list any special provisions that have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

This final-form rulemaking applies to all child care facilities. There are special provisions relating to children with special needs to address and promote inclusion of all children in child care facilities.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The final-form rulemaking will be effective 120 days after publication in the Pennsylvania Bulletin. In addition, the Department will allow facilities to comply with the requirement relating to protective surface covering under outdoor play equipment two years after the effective date of the final-form regulation.

(31) Provide the schedule for continual review of the regulation.

On an ongoing basis, the Department will review inspection results to determine trends related to regulatory compliance. In addition, the Department will review updates related to health and safety recommendations for child care facilities and assess the need for any further regulatory amendments.

AVERAGE SUBSIDY RATES FOR PRESCHOOL AND YOUNG SCHOOL-AGE

Facility	Full-Time Care			Part-Time Care		
	Average Pre-school Rate	Average Young School-age Rate	Difference	Average Pre-school Rate	Average Young School-age Rate	Difference
Child Care Center	\$26.55	\$23.70	- 2.76	\$21.07	\$18.64	- 2.43
Group Child Care Home	\$23.62	\$21.76	- 1.86	\$18.54	\$17.14	- 1.40
Family Child Care Home	\$22.59	\$20.80	-1.79	\$17.20	\$15.74	-1.46

COMPARISON OF YOUNG SCHOOL-AGE RATE AND PRESCHOOL RATE

CHILD CARE CENTER FULL-TIME RATE					
Young School-Age Rate <i>LESS</i> Than Preschool Rate					
Number of counties	59	Average difference	- \$3.23	Range of difference	-\$1.00 to -\$7.37
Breakout by Range and Number of Counties					
Range of difference	No. of Counties	Range of difference	No. of Counties	Range of difference	No. of Counties
- 1.00 - 1.49	7	- 3.00 - 3.49	10	- 5.00 - 5.49	4
- 1.50 - 1.99	3	- 3.50 - 3.99	3	- 5.50 - 5.99	1
- 2.00 - 2.49	9	- 4.00 - 4.49	11	- 6.00 - 6.49	1
- 2.50 - 2.99	6	- 4.50 - 4.99	3	- 7.00 - 7.49	1
Young School-Age Rate <i>EQUALS</i> Preschool Rate					
Number of counties	3	Average difference	0	Range of difference	0
Young School-Age Rate <i>MORE</i> Than Preschool Rate					
Number of counties	5	Average difference	+ \$1.80	Range of difference	+ \$1.00 to +\$3.71
Breakout by Range and Number of Counties					
Range of difference	No. of Counties	Range of difference	No. of Counties	Range of difference	No. of Counties
+ 1.00 - 1.49	2	+ 1.50 - 1.99	2	+ 3.50 - 3.99	1

CHILD CARE CENTER PART-TIME RATE					
Young School-Age Rate <i>LESS</i> Than Preschool Rate					
Number of counties	54	Average difference	-\$3.42	Range of difference	-\$0.25 to -\$15.25
Breakout by Range and Number of Counties					
Range of difference	No. of Counties	Range of difference	No. of Counties	Range of difference	No. of Counties
-.01-.49	1	- 3.00-3.49	7	- 7.50-7.99	2
-.50-0.99	5	- 3.50-3.99	5	- 8.00-8.49	1
- 1.00-1.49	6	- 4.00-4.49	6	- 9.00-9.49	1
- 1.50-1.99	4	- 4.50-4.99	1	- 15.00-15.49	1
- 2.00-2.49	4	- 5.00-5.49	4		
- 2.50-2.99	5	- 7.00-7.49	1		
Young School-Age Rate <i>EQUALS</i> Preschool Rate					
Number of counties	3	Average difference	0	Range of difference	0
Young School-Age Rate <i>MORE</i> Than Preschool Rate					
Number of counties	10	Average difference	+\$2.60	Range of difference	+\$0.10 to +\$9.74
Breakout by Range and Number of Counties					
Range of difference	No. of Counties	Range of difference	No. of Counties	Range of difference	No. of Counties
+.01 -.49	3	+ 1.00 - 1.49	2	+ 5.50 - 5.99	2
+ .50-.99	1	+ 1.50 - 1.99	1	+ 9.50 - 9.99	1

GROUP CHILD CARE HOMES FULL-TIME RATE					
Young School-Age Rate <i>LESS</i> Than Preschool Rate					
Number of counties	53	Average difference	-\$2.48	Range of difference	-\$0.15 to -\$11.40
Breakout by Range and Number of Counties					
Range of difference	No. of Counties	Range of difference	No. of Counties	Range of difference	No. of Counties
-.01 - .49	4	- 2.50 - 2.99	2	- 5.00 - 5.49	3
-.50 - .99	5	- 3.00 - 3.49	8	- 5.50 - 5.99	1
- 1.00 - 1.49	8	- 3.50 - 3.99	1	- 6.00 - 6.49	1
- 1.50 - 1.99	8	- 4.00 - 4.49	1	- 11.00-11.49	1
- 2.00 - 2.49	8	- 4.50-4.99	2		
Young School-Age Rate <i>EQUALS</i> Preschool Rate					
Number of counties	7	Average difference	0	Range of difference	0
Young School-Age Rate <i>MORE</i> Than Preschool Rate					
Number of counties	7	Average difference	+\$1.03	Range of difference	+\$0.32 to +\$2.00
Breakout by Range and Number of Counties					
Range of difference	No. of Counties	Range of difference	No. of Counties	Range of difference	No. of Counties
+.01 - .49	1	+ 1.00 - 1.49	3	+ 2.00 - 2.49	1
+.50 - .99	2				

GROUP CHILD CARE HOMES PART-TIME RATE					
Young School-Age Rate <i>LESS</i> Than Preschool Rate					
Number of counties	45	Average difference	-\$3.23	Range of difference	-\$\$.41 to \$7.50
Breakout by Range and Number of Counties					
Range of difference	No. of Counties	Range of difference	No. of Counties	Range of difference	No. of Counties
-.01-.49	2	- 2.00-2.49	4	- 4.00-4.49	5
-.50-.99	6	- 2.50-2.99	5	- 6.00-6.45	1
- 1.00-1.49	8	- 3.00-3.49	4	- 7.00-7.49	1
- 1.50-1.99	7	- 3.50-3.99	1	- 7.50 - 7.99	1
Young School-Age Rate <i>EQUALS</i> Preschool Rate					
Number of counties	15	Average difference	0	Range of difference	0
Young School-Age Rate <i>MORE</i> Than Preschool Rate					
Number of counties	7	Average difference	+\$1.70	Range of difference	+\$\$.40 to +\$4.30
Breakout by Range and Number of Counties					
Range of difference	No. of Counties	Range of difference	No. of Counties	Range of difference	No. of Counties
+.01 - .49	1	+ 1.00 - 1.49	3	+ 4.00 - 4.49	1
- .50-.99	1	+ 3.00 - 3.49	1		

FAMILY CHILD CARE HOMES FULL-TIME RATE					
Young School-Age Rate <i>LESS</i> Than Preschool Rate					
Number of counties	61	Average difference	-\$1.97	Range of difference	-\$\$.40 to -\$6.30
Breakout by Range and Number of Counties					
Range of difference	No. of Counties	Range of difference	No. of Counties	Range of difference	No. of Counties
-.01 -.49	3	- 2.00 - 2.49	21	- 4.00-4.49	1
-.50 -.99	8	- 2.50-2.99	3	- 4.50-4.99	1
- 1.00 - 1.49	9	- 3.00 - 3.49	5	- 5.00-5.49	1
- 1.50 - 1.99	7	- 3.50 - 3.99	1	- 6.00 - 6.49	1
Young School-Age Rate <i>EQUALS</i> Preschool Rate					
Number of counties	6	Average difference	0	Range of difference	0
Young School-Age Rate <i>MORE</i> Than Preschool Rate					
Number of counties	0	Average difference	0	Range of difference	0

FAMILY CHILD CARE HOMES PART-TIME RATE					
Young School-Age Rate <i>LESS</i> Than Preschool Rate					
Number of counties	53	Average difference	-\$1.92	Range of difference	-\$0.10 to -\$6.30
Breakout by Range and Number of Counties					
Range of difference	No. of Counties	Range of difference	No. of Counties	Range of difference	No. of Counties
-.01 - .49	4	- 2.00-2.49	5	- 4.00 - 4.49	1
-.50 - .99	7	- 2.50 - 2.99	4	- 5.00 - 5.49	2
- 1.00 - 1.49	11	- 3.00 - 3.49	6	- 6.00-6.49	1
- 1.50 - 1.99	10	- 3.50 - 3.99	2		
Young School-Age Rate <i>EQUALS</i> Preschool Rate					
Number of counties	13	Average difference	0	Range of difference	0
Young School-Age Rate <i>MORE</i> Than Preschool Rate					
Number of counties	1	Difference	+\$1.50		

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NOTICE OF FINAL-FORM RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

OFFICE OF CHILD DEVELOPMENT

[55 Pa. Code Chapter 3270, Child Day Care Centers]
[55 Pa. Code Chapter 3280, Group Child Day Care Homes]
[55 Pa. Code Chapter 3290, Family Child Day Care Homes]
[55 Pa. Code Chapter 3300, Specialized Day Care Services for Children with Disabilities]

Child Care Facilities

Statutory Authority

The Department of Public Welfare (Department), by this order, adopts the regulation set forth in Annex A pursuant to the authority of Articles IX and X of the Public Welfare Code (62 P. S. §§ 901--922 and 1001--1087). Notice of proposed rulemaking was published at 36 Pa.B. 2686 on June 3, 2006.

Purpose of Regulation

The child care facility regulations in Chapters 3270, 3280 and 3290 provide standards designed to protect the health, safety and rights of children and to reduce risks to children in child day care centers, group child day care homes (GDCH) and family child day care homes (FDCH). The regulations identify the minimum level of compliance necessary to operate a child day care center, GDCH or FDCH.

The final-form rulemaking is needed to update the minimum standards for child care facilities. The current regulations were published at 22 Pa.B. 1651 (April 4, 1992) and must be updated to reflect the current laws that directly impact the operation of child care facilities, to incorporate the Department's statements of policy issued since 1992, to implement developments in recommended health and safety practices and to reflect best practice in the field of child care.

Affected Individuals and Organizations

Children and families are directly affected by the final-form rulemaking. The minimum health and safety standards in Chapters 3270, 3280 and 3290 protect children who attend the more than 9000 child care facilities in Pennsylvania. The cost of child care is of concern to families and directly affects the choices that families make regarding child care. The final-form rulemaking may result in decreased costs to parents due to the decreased costs associated with providing updated child health reports to the facility. The final-form rulemaking also will facilitate inclusion of children with special needs in child care facilities.

Child care facilities and staff also are affected by the final-form rulemaking. The final-form rulemaking may increase costs to some facilities. The effective date of the regulation provides 120 days from the publication date for facilities to assess and plan for increased costs. In addition, a facility has 2 years to comply with the requirements relating to playground surfacing. The delay in implementation of the final-form rulemaking will afford the Department time to provide information and tools to assist in understanding and complying with the final-form rulemaking to facilities. The final-form rulemaking relating to staff health appraisals and tuberculosis testing will decrease costs to facilities and staff.

Accomplishments and Benefits

The final form regulation updates and codifies statements of policy. Since the child care service regulations were last published in April 1992, many changes have occurred that affect the regulations and operation of a child care facility. The Department published 11

statements of policy clarifying or interpreting the regulations, including statements of policy regarding emergency plans, supervision of children, Syrup of Ipecac, release of children, posting inspection summaries, Departmental access and swimming pool accessibility. Laws that impact operating a child care facility have changed regarding certificate of occupancy, vehicle safety, childhood immunizations and children with special needs. New research has resulted in changes to health and safety recommendations regarding Sudden Infant Death Syndrome (SIDS) prevention, playground safety and tuberculosis testing. In addition, the Department noted areas in which facilities have difficulty complying with requirements and examined the reasons for noncompliance. The final-form rulemaking makes clarifications that will assist facilities to comply with the regulations and continue to ensure minimum health and safety at a facility.

The final-form rulemaking also addresses the child abuse and criminal history clearance requirements for household members in a family child care home enacted by Act 2006-179. (23 Pa.C.S.A. § 6344.1 (relating to information relating to family day-care home residents).) Act 179 amends the Child Protective Services Law (CPSL) and became effective on May 28, 2007. Act 179 requires that the operator of a family child care must submit along with the application for registration certificate child abuse and criminal history clearances as required by the CPSL for each individual 18 years of age and older who resides in a family child care home for at least 30 days in a calendar year. This change appears at § 3290.11(m) (relating to application for and issuance of a certificate of registration).

The final form rulemaking also extends the prohibition against hazardous toys and equipment to FDCHs at § 3290.102(f) (relating to condition of play equipment). Children receiving care in FDCHs also need the protection afforded by the regulation.

Fiscal Impact

Kindergarten child as a young school-age child

The final-form rulemaking changes the definition of “young school-age child” to include a kindergarten child. A school-age child care center or GDCH that enrolls a kindergarten child will be able to maintain its status as a school-age facility and will result in cost savings for many child day care centers and GDCHs relating to staffing and physical site. (See 55 Pa.Code §§ 3270.241 and 3280.221 (relating to requirements specific to school-age programs).) A facility that transports kindergarten and school-age children to and from school will be able to count the driver in the staff:child ratio and will no longer have to supply an additional staff person on the vehicle to comply with staff:child ratio requirements related to transporting preschool children. The staff:child ratio for young school-age children is 1:12 and for preschool children is 1:10.

Changing the definition of young school-age to include kindergarten children may result in lower reimbursement rates for some facilities that participate in the child care

subsidy program. On average, the subsidy reimbursement rate for a preschool child is \$2.73 higher per day than the reimbursement rate for a young school-age child. Using the average full-time child care center reimbursement rates of \$26.55 per day for preschool child and \$23.70 per day for young school-age child and the required staff:child ratio of 1:10 for preschool children and 1:12 for young school-age children, the income from each group of children is \$265.50 for one group of 10 preschool children and \$284.40 for one group of 12 young school-age children.

The wages for child care staff often vary according to position. The majority of staff in child care facilities are qualified as assistant group supervisor (AGS). An AGS is permitted to be alone with children. According to the Pennsylvania Department of Labor and Industry (L&I) wage statistics, the average wage for a child care worker is \$8.90 per hour. Using an estimate of a 10-hour full day of care, the cost of a child care worker for 10 hours is \$89.00. The income produced from a group of 10 preschool children less the cost of the child care worker is \$176.50. The income produced from a group of 12 preschool children less the cost of the child care worker is \$195.40. The addition of two children to the staff:ratio offsets the lower rate for a young school-age child.

A child care center must have one group supervisor (GS) for every group of 45 enrolled children. A GS has more qualifications than an AGS, may supervise children alone and is often referred to as a "teacher". According to the L&I wage statistics, the average wage for a preschool teacher is \$10.44 per hour. If a GS is counted as a staff person, the cost of a GS for 10 hours is \$104.40. The income produced from a group of

10 preschool children less the cost of the GS is \$161.20. The income produced from a group of 12 preschool children less the cost of the child care worker is \$180.00. Again, the addition of two children to the staff:ratio offsets the lower rate for a young school-age child.

Mandatory orientation training:

Mandatory orientation training may create costs to an individual who wants to open a child care facility. The training will require a full day including travel and training time. The individual's costs will vary depending on the distance the individual must travel to participate in training. Using the Commonwealth mileage rate, an individual who travels 200 miles round trip will incur a travel cost of \$97.00.

For individuals currently operating or working in child care facilities, attendance at orientation training will be part of their job duties.

An individual who operates a FDCH or GDCH and who wants to open a new facility may have to arrange for staff to work at the facility while the individual attends orientation training. According to L&I wage statistics, the average wage for a child care worker is \$8.90 per hour. If substitute staff must be hired to cover an eight hour shift, the estimated cost is \$71.20.

An individual who is employed outside the child care field and who wants to open a facility may miss a day of work to attend orientation training and may lose wages for that day. Based on L&I's statistics regarding the average state wage for all workers in Pennsylvania, the individual may lose \$158 in wages to attend orientation training.

Indoor temperature of 82° F:

The final-form rulemaking requires mechanical air circulation at 82° F, instead of 85° F, which is the current standard. Many facilities already have a means of ventilation in place. Ventilation may be provided through using a fan. If a facility has to purchase a fan, the cost of a fan will vary depending on the type of fan, such as a standing fan, window fan, wall fan or ceiling fan. The estimated costs would be anywhere from \$15.00 to \$100.00 depending upon the type of fan chosen by the provider.

Disposable, nonporous gloves in first aid kit:

The addition of disposable, nonporous gloves to the first aid kit represents increased cost to a facility. The use of gloves is a universal precaution to prevent the spread of disease transmitted via body fluids. The cost of a box of 100 gloves ranges from \$2.99 to \$8.99. The rate at which the gloves are used to administer first aid is unknown. The health and safety protection afforded to children and staff by using gloves outweighs the cost.

Protective surfacing under outdoor play equipment:

The final-form rulemaking relating to surface covering under outdoor embedded play equipment may result in increased costs for facilities. Many facilities already meet the United States Consumer Product Safety Commission (CPSC) recommendations. The current regulation requires at least six inches of loose-fill material under embedded play equipment. The CPSC recommendations state that six inches of uncompressed wood chips, the most common protective surface covering used at child care facilities, provides adequate protection from a fall height from seven feet. Six inches of loose-fill material will be adequate for most child care facilities. If a facility must modify the protective surface to comply with the regulation, the cost will depend upon the fall height from the equipment, the type of surface covering used and the size of the area that must be covered.

A facility that has a unitary surface covering that meets the requirements in the Department's statements of policy at §§ 3270.102a, 3280.102a and 3290.102a (relating to condition of play equipment – statement of policy) at 27 Pa.B 2827 (June 14, 1997) is in compliance with the final-form rulemaking.

Child's service report form:

Facilities will incur added costs in preparing a service report form every six months for each infant, toddler and preschool child and for each school-age child who

attends the facility more than 15 hours per week. The Department estimates that on average, a form will take 10 minutes to complete. The Department estimates the average costs of preparing service report forms to be as follows: child care center - \$345.95; GDCH \$81.40; FDCH - \$40.70.

Staff health:

The final-form rulemaking changes the requirement for annual health appraisals to health appraisals every 2 years and eliminate bi-annual tuberculosis testing. These changes will save each staff person \$75.00 to \$150.00 per year and an additional \$25.00 to \$75.00 every two years.

Paperwork Requirements

Facilities must complete a service report form every six months for each infant, toddler and preschool child and for each school-age child who attends the facility more than 15 hours per week. The Department will develop a form for facilities to use. The form will take approximately 10 minutes to complete.

Each child care facility must ensure that no hazardous equipment is used by children on the premises. The Department will provide an affirmation form to child day care center and GDCH operators for this purpose. The form will take no more than 10 minutes for the facility to complete. In a FDCH, the operator's self-certification of

compliance with all applicable regulatory requirements at the time of initial and renewal application will serve as certification of compliance with the regulation relating to no hazardous equipment in the facility.

Public Comment

Following publication of proposed rulemaking, the Department received 46 comments during the 30-day public comment period and three comments within 30 days after the close of the public comment period. The comments received during the public comment period came from 18 child care providers, 13 advocacy organizations, seven medical professionals or organizations, three attorneys, three consumers, one Pennsylvania Key employee and one former Department employee.

The comments received within 30 days after the close of the public period came from two providers and one medical professional.

The Department also received comments from the House Children and Youth Committee and the Independent Regulatory Review Commission (IRRC).

Prior to publication of proposed rulemaking, the Department formed a regulation work group to gain input regarding the proposed rulemaking. Work group participants represent a variety of stakeholders interested in child care including providers from all types of child care facilities, advocates, medical professionals, early intervention

professionals and representatives of the Departments of Education and Health. The work group met twice.

In February 2006, the Office of Child Development and Early Learning conducted leadership forums regarding initiatives for fiscal year 2006-2007. The forums were held in several locations across the state. Approximately 500 people attended the forums. Participants were provided the option of attending several topic-specific sessions regarding upcoming initiatives, including an overview and discussion of the proposed regulatory amendments.

Following publication of proposed rulemaking, the Department held two additional work group meetings. During the 30-day public comment period, the work group met once to discuss strategy to solicit comments regarding the proposed amendments. Following the close of the public comment period, the work group met to discuss the comments and possible revisions to the proposed rulemaking. In addition, Department staff contacted work group members who were unable to attend the meeting in order to get their input.

Discussion of Comments and Major Changes

Following is a summary of the major comments received within the public comment period following publication of the proposed rulemaking and the Department's

response to those comments. A summary of major changes from proposed rulemaking is also included.

Statutory authority.

The IRRC, citing the *en banc* Commonwealth Court's April 3, 2006 opinion and order in St. Elizabeth's Child Care Center v. Dep't of Public Welfare, 895 A.2d 1280 (Pa. Commw. 2006), has questioned the Department's authority to "regulate" Article IX nonprofit child care facilities. In that case, the Court held that the Department lacked statutory authority under Article IX of the Public Welfare Code to promulgate regulations that require a nonprofit day care center to obtain a Certificate of Compliance in order to operate. The St. Elizabeth's case did not address the issue of whether the Department was authorized to issue regulations under the supervisory authority conferred by Article IX, apart from any requirement to obtain a certificate of compliance.

Under Article IX, the Department retains the statutory right to enter, visit, inspect and make and enforce rules in its supervision of all "children's institutions" and "supervised institutions" in the Commonwealth, which includes child care facilities, both before and after the facilities commence operation.

In response to the Commonwealth Court's ruling, the Department filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court. The Supreme Court granted the Department's Petition for Allowance of Appeal at 23 MAP 2007. See 591

Pa. 720, 919 A.2d 960 (Pa. 2007). The grant of the Petition for Allowance of Appeal operates as an automatic stay of the Commonwealth Court's order. Pa.R.A.P. 1736(b) (relating to exemption from security).

Despite the stay of the St. Elizabeth's order, the Department does not intend to take legal action to enforce its regulations that require Article IX nonprofit child care facilities to obtain a Certificate of Compliance, pending the disposition of the Supreme Court case at 23 MAP 2007. However, as provided in 62 P.S. § 911(b) under Article IX, such facilities shall continue to be subject to unannounced inspections by the Department and the Department shall have free and full access to the facilities. Should the Department, pursuant to such inspections or access, find conditions deemed in its opinion to be unlawful, unhygienic or detrimental, the Department shall have the authority to pursue the statutory remedies set forth under 62 P.S. § 911(c).

§§ 3270.4, 3280.4, 3290.4. Definitions--Preschool and young school-age child

Fifteen commentators responded to the changed definitions of preschool and young school-age child. Seven commentators supported the change. Commentators stated the change will reduce operating costs. Another commentator stated that the change will increase opportunities for kindergarten children to participate in school-age child care programs, especially school-based, school-age care programs and that kindergarten children's access to regulated care will increase as a result. Another commentator stated that the change makes sense because the needs of children

attending kindergarten are more similar to those of a school-age child as opposed to a preschool child.

Eight commentators opposed the change. Seven of the commentators opposed the change because the child care subsidy reimbursement rate is lower in their counties for a young school-age child than for a preschool child.

The House Children and Youth Committee opposed the change due to concerns that a lower child care subsidy reimbursement rate for young school-age children will negatively impact providers.

The IRRC also stated that the Department should carefully examine the impact of this change on facilities that provide care primarily to preschool children and provides care for only a few kindergarten children. Such a facility may not benefit from the less stringent staff:child ratio for young school-age children but will receive less subsidy reimbursement.

Response

The Department finds that including a kindergarten child in the definition of young school-age child will facilitate care for kindergarten children.

The majority of kindergarten children (63%) are participating in full-day kindergarten classrooms in Pennsylvania. School-age child care programs are established to meet the needs of children who need child care only before and after school hours, including kindergarten children. The Department's regulation permits a child day care center or GDCH in which care is provided exclusively to school-age children to comply with fewer requirements than a facility that provides care for children of all age levels. (See 55 Pa.Code §§ 3270.241 and 3280.221 (relating to requirements specific to school-age programs).) In addition, a school-age child care program located in a school building is exempt from physical site requirements in accordance with Section 7-776.1 of the Public School Code of 1949. (See 24 P.S. § 7-776.1.) A facility that enrolls a kindergarten child cannot be considered a school-age program under the current regulation because the facility is not providing care exclusively to school-age children. As a result, the facility must comply with all the requirements in Chapters 3270 and 3280 and will incur higher costs.

Some school-age child care programs transport children between school and the child care facility. The Department's current regulation relating to transportation of children states the driver may not be counted in the staff:child ratio when preschool children are transported but may be counted in the ratio when only school-age children are being transported. (See 55 Pa.Code §§ 3270.173(b) and (c) and 3280.173(b) and (c) (relating to transportation ratio).) When a kindergarten child is being transported, the facility cannot count the driver as part of the staff:child ratio and must provide more staff on the vehicle in order to meet the preschool staff:child ratio of 1:10 rather than the

young school-age ratio of 1:12. The cost of transporting a kindergarten child is, therefore, higher than the cost of transporting a school-age child.

Defining a kindergarten child as a preschool child under the Department's current regulation creates a disincentive for a school-age child care program to enroll a kindergarten child. By changing the definition of young school-age child to include a child in kindergarten, a school-age child care facility will be able to enroll a kindergarten child and continue to operate as a school-age program as provided in §§ 3270.241 and 3280.221 (relating to requirements specific to school-age programs). The facility will not incur the higher costs of providing care to a preschool child as discussed more fully in our fiscal impact analysis. The final-form rulemaking will facilitate before- and after-school care for kindergarten children.

The child care subsidy reimbursement rate was the basis for comments opposing changing the definition to make a kindergarten child a young school-age child. The subsidy reimbursement rate is a separate issue from the child care facility regulations and is outside the scope of this final-form rulemaking. Therefore, the Department made no changes to the final-form rulemaking.

§§ 3270.4, 3280.4, 3290.4. Definitions--Child with special needs

Nine commentators addressed the proposed definition of child with special needs. Eight commentators supported the change in definition. One commentator

made suggestions to include reference to a service agreement pursuant to 22 Pa.Code Chapter 15 (relating to protected handicapped students) as a document that identifies that a child has a special need. The same commentator objected to the term “formal behavioral plan” and suggested that a behavioral plan written by a certified behavior analyst should be accepted as indication that the child has a special need.

The IRRC commented that a service agreement pursuant to 22 Pa.Code Chapter 15 should be included as a document that identifies that a child has a special need. IRRC also objected to the use of the word “formal” in reference to the behavioral plan and suggested adding a certified behavior analyst to the list of professionals who may write a behavioral plan.

Response

The Department agreed and incorporated the suggested changes into the final-form rulemaking. In addition, the Department made the editorial change of deleting “psychiatrist” from the definition at subparagraphs (ii) since “physician” already includes a “psychiatrist”. (See 1 Pa.C.S.A. § 1991 (relating to definitions).)

§§ 3270.4, 3280.4, 3290.4. Definitions--IEP, IFSP, service agreement.

The IRRC suggested that adding the following definitions to the regulation will provide clarity:

- Define *individualized education program (IEP)* as in 22 Pa.Code §§ 14.01 (relating to definitions) and 14.131-133 (relating to IEP; ESY; and behavior support).
- Define *individualized family service plan (IFSP)* as in 55 Pa.Code Chapter 4226 (relating to early intervention services).
- Define *service agreement* as in 22 Pa.Code Chapter 15 (relating to protected handicapped students).

Response

The Department added these definitions to the final-form rulemaking.

§§ 3270.17, 3280.16, 3290.15. Service to child with special needs.--Overall comments

Six commentators made general comments regarding the proposed amendment to §§ 3270.17, 3280.16 and 3290.15. Five supported the amendment. One commentator opposed the amendment based on concerns about the need for staff training specific to a child's special need and providing a program tailored to a child's special need without additional supports or funding.

Response

Training in numerous topic areas relating to children with special needs is available through the Pennsylvania Key Professional Development System, the Department's contracted comprehensive statewide training system for child care providers. Over 70 such training opportunities were offered statewide in fiscal year 2005-2006. Individuals who provide specialized services to a child with special needs can come to the facility to provide those services. In addition, Federal and State laws provide guidance and parameters regarding reasonable accommodations that a facility may be required to make in caring for a child with a special need.

Changes to each section are discussed below.

§§ 3270.17(a), 3280.16(a), 3290.15(a). Service to child with special needs.

Four commentators supported the requirement to make reasonable accommodation to include a child with special needs but expressed concerns regarding the definition of reasonable accommodation and reference to the Americans with Disabilities Act (ADA) only.

Response

Federal and State laws establish requirements relating to reasonable accommodation. The requirements regarding reasonable accommodation are not identical for all child care facilities and the regulation cannot address every situation.

The Department changed the language to reference applicable Federal and State laws in general. Consistent with other rulemaking (35 Pa.B.2499 (April 23, 2005)), the regulation does not provide an exhaustive list of applicable laws. A comprehensive list of laws is unnecessary because their applicability does not depend on this final-form rulemaking.

§§ 3270.17(b), 3280.16(b), 3290.15(b). Service to child with special needs.

Three commentators supported the requirement to permit service providers to come into the facility. One commentator suggested adding a reference to services specified in a service agreement under 22 Pa.Code Chapter 15 (relating to protected handicapped students) or by a licensed practitioner.

The IRRC commented that some parents may not share the IEP or IFSP with the facility and the regulation should acknowledge this by instructing child care staff that it is up to the parent to provide the document. The IRRC also asked whether Early Intervention must include a child care facility representative on an IFSP team pursuant to Chapter 4226 (relating to early intervention services).

Response

A service agreement applies only to a school setting; therefore, the Department did not add to the final-form rulemaking the suggested reference to a service

agreement. The Department considers the reference to licensed practitioner to be covered by an IEP or IFSP and did not add to the final-form rulemaking the suggested reference to a licensed practitioner. At this time, the Department's regulation relating to Early Intervention does not require inclusion of a child care facility representative in development of the IFSP; however, participation of a child care facility representative is encouraged in Early Intervention policy. The Department will provide information to facilities regarding Early Intervention services and will include information that a parent is not required to provide a copy of an IEP or IFSP to the facility.

The Department made minor changes to this subsection to add clarity.

§§ 3270.17(c), 3280.16(c), 3290.15(c). *Service to child with special needs.*

Two commentators supported the requirement that the facility must provide information regarding resources for early intervention services to facility staff and to the parent of a child who staff believe may need an assessment for early intervention services. One commentator cautioned that child care staff should not make a diagnosis regarding whether a child has special needs.

The House Children and Youth Committee commented that the proposed rulemaking places the facility director in a difficult situation in which the director must determine if parents have or have not had their child evaluated and if it is prudent to

advise them to have the child evaluated. The Committee recommended changing this requirement to a suggestion.

The IRRC also expressed concern about training for child care staff to complete the developmental checklist and to talk with a parent regarding a child who may need an assessment. The IRRC recommended that child care staff should complete training before completing an observation of a child's development, assessing a child for a possible disability and approaching a parent with referral information.

Response

The Department changed the final form language to require that the operator shall make staff persons and parents aware of community resources for the family of a child who may have special needs. The Department will provide to the operator information regarding community resources.

§§ 3270.27, 3280.26 and 3290.24. Emergency plan.

The IRRC requested that the Department add a definition of emergency to the regulation and referred to the definition of emergency that appears in the child care emergency planning tool kit prepared by the Pennsylvania Emergency Management Agency (PEMA). The IRRC commented that the list of requirements regarding the information that must be included in the emergency plan is unclear and incomplete and

cited the requirements regarding shelter of children during an emergency and evacuation of children during an emergency. The IRRC also commented that the plans for evacuation during a fire should cross-reference the existing regulations regarding "evacuation routes" and "evacuation plans" at §§ 3270.94(f) and (g), 3280.94(f) and (g) and 3290.94(f) and (g) (relating to fire drills) to avoid conflict or confusion regarding evacuation routes.

Response

The Department incorporated into the final-form regulation the existing statement of policy at §§ 3270.21a, 3280.20a and 3290.18a (relating to emergency plan - statement of policy) requiring emergency plans that was published at 33 Pa.B 6428 (December 27, 2003) and has been in effect since June 2004. The definition of emergency has never been questioned during that time period. The Department did not add a definition of emergency because the Department intends for "emergency" to retain its dictionary definition.

The Department revised the language relating to shelter and evacuation of children in an emergency as per the IRRC's comments.

§ 3290.31(a).; § 3290.213. *Age and training.*

The Department received 13 comments regarding the requirement that an FDCH operator submit to the Department at the time of first certificate renewal proof that the operator has a high school diploma or general educational development (GED) certificate. Twelve commentators support the proposed rulemaking, including two family child care provider associations. Four of the twelve commentators suggested that the Department extend the timeline to get a GED, provide financial assistance for an operator to get a GED and grandfather all current operators at any location.

The House Children and Youth Committee stated that a family child care home operator does not need a high school diploma or GED to operate a quality family child care program and recommended deletion of the requirement.

Response

Currently, 97% of registered FDCH operators have a high school diploma or GED. As of the effective date of the final-form rulemaking, a newly registered FDCH operator who does not have a high school diploma or GED will have 2 years, which is one full registration period, to obtain the credential and must demonstrate compliance at the time of the first registration renewal. GED classes are offered free of charge statewide in 150 locations. The cost of taking the examination to obtain a GED is \$40.00 to \$60.00. The Department maintains that 2 years is sufficient time to obtain a GED and did not change the timeline for compliance in the final-form rulemaking.

The FDCH registration system is a self-certification system. The applicant for a registration certificate submits to the Department a signed statement certifying that the applicant has read and is in compliance with the FDCH regulation. By requiring the operator to have a high school diploma or GED at the time of certificate renewal, the Department is requiring a minimum level of literacy sufficient to comply with the regulation and operate a small business. This requirement will increase the health and safety of children in FDCHs and will also codify what already is the minimal educational background of 97% of current FDCH operators.

Further, this final-form regulation aligns staffing requirements across all child care settings since primary staff in child care centers and GDCHs are required to have a high school diploma or GED. In fact, any staff in centers or GDCHs who do not meet this educational requirement must be supervised at all times by a staff person with the required educational background.

In the final-form rulemaking, the Department permanently grandfathered all currently registered FDCH operators even if the operator moves to a new location.

§§ 3270.70, 3280.70 and 3290.68. Indoor temperature.

One commentator opposed the proposed rulemaking as it does not address the heat index.

The IRRC noted the comment regarding factoring in the heat index and the standard published in Caring for Our Children: National Health and Safety Performance Standards: Guidelines for Out-of-Home Child Care, 2nd Edition which references maintaining the humidity in a child care space at 30%-50%. The IRRC suggested that the Department should review its policy concerning allowable high temperature.

Response

The Department researched the impact of referencing the heat index in the final-form regulation. The National Weather Service defines "heat index" as an accurate measure of how hot it really feels when the relative humidity is added to the actual air temperature. In order to determine the heat index, one must measure the relative humidity. Hygrometers are the instruments that measure relative humidity. The price for one hygrometer ranges from approximately \$30.00 to hundreds of dollars. In order to monitor relative humidity, the facility would need a hygrometer in each child care space and would incur significant costs.

The National Health and Safety Performance Standards represent state-of-the-art child care facility standards. The Department reviewed the child care facility regulations of the adjacent seven states which have climates similar to Pennsylvania. None of the seven states' regulations reference indoor humidity. Only three of the

seven states' regulations establish a maximum indoor temperature and require ventilation above the maximum temperature.

The Department did not change the final-form regulation.

§§ 3270.102(c), 3280.102(c) and 3290.102(c). Condition of play equipment; §§ 3270.233, 3280.215, and 3290.212. Play surfaces.

Twenty-two commentators addressed the requirement that the surface covering under outdoor play equipment that requires embedded mounting must meet the guidelines for loose-fill or unitary playground protective surface covering established by the United States Consumer Product Safety Commission (CPSC). Ten commentators supported the change.

Twelve commentators did not support the change. Eight commentators cited cost as the reason for opposing the change. Four commentators do not believe that FDCH and GDCH facilities located in residences should have to comply with the requirement. One commentator felt that two years was not sufficient time to come into compliance. Another commentator opposed the requirement because public schools are not required to comply.

Response

The CPSC guidelines for loose-fill and unitary surface coverings reflect the fall height of the equipment and the type and depth of surface covering required to protect a child from injury if the child falls from the highest point of the equipment. The CPSC standards state that six inches of uncompressed wood chips, the most common protective surface covering used at child care facilities, provides protection up to a fall height of seven feet. The previous requirement for six inches of loose-fill material will be adequate for most child care facilities; thus, the majority of facilities are not likely to incur additional costs associated with implementation of the final-form rulemaking. Facilities that do not meet this requirement have two years to comply.

The Department did not change the final-form regulation.

§§ 3270.119, 3280.119 and 3290.118. Program plan

Thirty-one commentators addressed the proposed rulemaking to require a program plan for each child in care. Five commentators supported the proposal. Twenty-six commentators opposed the proposal.

The House Children & Youth Committee also commented on the proposed rulemaking. The Committee perceived a lack of clarity in the proposed rulemaking and were concerned about licensing repercussions if the plan was not followed, the burden of paperwork and costs to the provider, whether a provider is qualified to develop a program plan, the provider's inability to access a child's IEP or IFSP and have information regarding early intervention services being provided to the child, difficulty in

writing program plans for school-age children who are in care for short periods of time and a complaint system for parents who disagree with the program plan.

The IRRC expressed the same concerns as the House Children and Youth Committee with regard to lack of clarity, particularly regarding a child who has an IEP or IFSP and a child who does not. The IRRC expressed concern regarding whether child care staff have sufficient experience, training and education to develop plans similar to IEPs and IFSPs. The IRRC suggested that if the Department reduces the requirement and instead requires a semi-annual statement of the child's use of child care services and the child's developmental progress, then the Department should develop a form and prescribe the contents of the form.

Response

The Department changed the final-form rulemaking to require the completion of a service report form for each infant, toddler and preschool child and for each school-age child who attends the facility more than 15 hours per week. The form must be completed every six months and will address information about the child's growth and development within the context of the child care services provided by the facility. The form is referenced in amendments to §§ 3270.123(a)(3), 3280.123(a)(3) and 3290.123(a)(3) (relating to agreement). The Department will provide a form for the facility to use. The elements in the Department's form are based on the guidelines of the American Public Health Association, the American Academy of Pediatrics, and the Maternal and Child Health Bureau of the U.S. Department of Health and Human

Services published in Caring for Our Children: National Health and Safety Performance Standards: Guidelines for Out-of-Home Child Care, 2nd Edition. The information on the form parallels the health and developmental information that pediatricians request during check up visits. The facility must give the child's parent a copy of each report.

§§ 3270.120, 3280.120 and 3290.119. Infant sleep position (now designated as §§ 3270.119, 3280.119 and 3290.118. Infant sleep position)

Fifteen commentators supported the proposed rulemaking to require infants be placed on their backs to sleep in accordance with the current American Academy of Pediatrics (AAP) policy relating to Sudden Infant Death Syndrome (SIDS) prevention. Three commentators wanted to expand the requirement to include the entire content of the AAP policy relating to items in a crib. Three commentators suggested changing the language to reference the current AAP recommendation regarding infant sleep position so that the regulation would not have to be amended if the policy changed.

The IRRC suggested changing the language to reference the AAP recommendation for preventing SIDS and to inform providers how they may obtain copies of the AAP recommendation.

Response

The Department revised this section to require facilities to comply with the current AAP recommendation on infant sleep position. The Department also added language at §§ 3270.106(j), 3280.105(j) and 3290.105(j) (relating to rest equipment) to prohibit toys, bumper pads and pillows in a crib while an infant is sleeping in the crib as per the AAP recommendation. The Department previously provided facilities with information regarding SIDS prevention, including brochures and materials regarding the AAP recommendation, and will continue to do so.

§§ 3270.131(a)-(d), 3280.131(a)-(d) and 3290.131(a)-(d). Health information.

Nine commentators supported the proposed changes related to the frequency and content of child health reports. Five of those commentators were providers and three commentators represented advocacy organizations.

Twelve commentators opposed the changes regarding the frequency and content of child health reports. Seven of those commentators were medical professionals or representatives of medical organizations and two were providers. Six of the twelve commentators specifically opposed the deletion of the requirement that health reports must include a review of age-appropriate screenings according to the standards of the AAP.

The IRRC commented that the Department should retain current requirements relating to the AAP recommended schedule for health examinations and screenings but

should provide for exceptions when families cannot meet the requirement or have privacy concerns. The IRRC further commented that by doing so, the Department can gather useful information, provide facilities with relief from enforcement complications and encourage families to obtain recommended screenings. The IRRC also asked for further explanation of the benefits of the changed requirements. The IRRC also noted that a commentator said that the changed requirements would be inconsistent with the policies for Head Start; the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program in the Medical Assistance Program and the goals of the Department of Health.

Response

The Department added to the final-form rulemaking two requirements relating to the content of the child health report, which is to be completed by the child's health care professional. First, the health report must include specific information regarding abnormal results of vision, hearing and lead screenings. This will provide the facility with valuable information regarding the child's health that may impact on the child within the context of the child care program. Second, the health report must also include a statement indicating whether AAP recommended screenings were conducted since the date of the child's previous health report. This statement will serve as the requested reminder to parents and health care providers about AAP recommended screenings.

There are wide variations in the source of a child's health care coverage, and in some instances, a lack of health care coverage. Thus, requiring the facility to have on file child health reports and health screening information that comply with the AAP recommendations may far exceed the scope of the health care coverage available to the family. If the facility does not comply, the Department cites the facility for noncompliance with the regulation and requires the facility to correct the violation.

Parents may incur added costs to comply with the AAP schedule if their health care coverage does not cover all the examinations and screenings included in the AAP schedule. In addition, some physicians charge parents to complete the health report required by regulation. In some areas of the state, facilities report that parents must wait months for well-child appointments and cannot meet the timelines due to lack of availability of qualified physicians.

The Department is concerned about creating a regulation that provides for exceptions whereby a parent can simply document that the parent cannot get health information or has a privacy concern. The result is a lack of health information that is necessary to protect all children in care or to deal with a medical emergency involving a child.

The final-form rulemaking provides for submission of health information on a regular schedule, requires the child care facility to know if the AAP recommendations have been fulfilled, and focuses on submission of information that the facility needs to

protect the health and safety of the child and all other children in the facility. The modifications in the final-form regulation also serve as a reminder and incentive to parents to have their children receive primary pediatric care in accordance with the AAP recommendations.

§§ 3270.131(e), 3280.131(e) and 3290.131(e). *Health information.*

Eight commentators specifically addressed the proposed immunization requirements which match the Department of Health requirements at 28 Pa.Code § 27.77 (relating to immunization requirements for children in child care group settings). Seven commentators supported the change. One commentator did not support the requirement to exclude a child who did not get immunizations within the time prescribed in the regulation.

Response

The immunization requirements in the Department's current regulations differ from the Department of Health's immunization requirements. The current differing requirements create confusion to providers and parents. The final-form rulemaking creates consistency in immunization requirements by adopting the Department of Health's immunization requirements for children who attend child care facilities. (See 28 Pa.Code § 27.77 (relating to immunization requirements for children in child care group settings).)

The Department did not change the final-form regulation.

§§ 3270.133, 3280.133 and 3290.133. Child medication and special diets.

Eleven commentators supported the proposed rulemaking. One commentator stated the Department should reference other laws regarding disability discrimination that may impact on providing medication related to child's special need. Two commentators supported adding a requirement for medication administration training.

The IRRC recommended that the Department add a requirement for medication administration training like that required for staff in Personal Care Homes at 55 Pa.Code § 2600.190 (relating to medication administration training) and include a citation to the pertinent section of the ADA requiring reasonable accommodation. The IRRC also noted that the language of the regulation could be interpreted to require administration of any and all medications or special diets to a child with a special need rather than only medications or special diets related to a child's special need. If this is not the Department's intent, the final-form regulation should be reworded to clearly state the intent.

Response

The ADA is not the only statute regarding disability discrimination. The Department changed the final-form rulemaking to reference all applicable Federal and State laws. The Department also changed the final-form regulation to specify that the requirement to administer medication or a special diet pertains only to a medication or special diet related to a child's special need.

The Department will not require medication administration training. Medication administration training is currently available to providers through the Pennsylvania Keys to Professional Development system. At this time, the Department does not know how many children with special needs will require medication during the time they are in care. Child care is provided for only a portion of the day; thus, medication schedules may not include the hours a child is in care. In order to meet the needs of some children with special needs, staff persons may need specialized training or instruction in administration that can be provided by the child's parent or a service provider or medical professional who works with the child. In addition, service providers who come on-site to provide services to the child may be responsible for administering medication. The Department will monitor medication administration in child care facilities to determine whether it is necessary to require medication administration training for facility staff persons.

In addition to the major changes discussed previously, the Department made several changes in preparation of the final-form rulemaking including reformatting to

enhance readability, revising language to enhance clarity and conforming to the changes previously discussed.

Regulatory Review Act

Under § 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on **MAR 10 2008** the Department submitted a copy of this regulation to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Children and Youth and the Senate Committee on Public Health and Welfare. In compliance with the Regulatory Review Act the Department also provided the Committees and the IRRC with copies of all public comments received, as well as other documentation.

In preparing the final-form regulation, the Department reviewed and considered comments received from the Committees, the IRRC and the public.

In accordance with § 5.1 (j.1) and (j.2) of the Regulatory Review Act, this regulation was [*deemed*] approved by the Committees on . The IRRC met on and approved the regulation.

In addition to submitting the final-form rulemaking, the Department has provided the IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

Order

The Department finds:

- (a) The public notice of intention to amend the administrative regulation by this Order has been given pursuant to §§ 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202) and the regulations at 1 Pa.Code §§ 7.1 and 7.2.
- (b) That the adoption of this regulation in the manner provided by this Order is necessary and appropriate for the administration and enforcement of the Public Welfare Code.

The Department acting pursuant to the authority of Articles IX and X of the Public Welfare Code (62 P. S. §§ 901--922 and 1001--1087) orders:

- (a) The regulation of the Department is amended to read as set forth in Annex A of this Order.
- (b) The Secretary of the Department shall submit this Order and Annex A to the Offices of General Counsel and Attorney General for approval as to legality and form as required by law.

- (c) The Secretary of the Department shall certify and deposit this Order and Annex A with the Legislative Reference Bureau as required by law.

- (d) This order shall take effect 120 calendar days after publication in the **Pennsylvania Bulletin** except for §§ 3270.102(c) and (e), 3280.102(c) and (e), and 3290.102(c) and (e) (relating to condition of play equipment) which shall take effect two years after the effective date of the regulation.

Annex A

TITLE 55. PUBLIC WELFARE

PART V. CHILDREN, YOUTH AND FAMILIES MANUAL

Subpart D. NONRESIDENTIAL AGENCIES, FACILITIES AND SERVICES

ARTICLE I. LICENSING/APPROVAL

CHAPTER 3270. CHILD DAY CARE CENTERS

GENERAL PROVISIONS

§ 3270.4. Definitions.

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

* * * * *

ACIP--The Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, United States Department of Health and Human Services.

* * * * *

[*Age-appropriate child health assessment*--A written report assessing a child's health status. The report is signed by a physician or a CRNP and includes the child's health

history, the child's physical examination and a plan for treatment of health problems identified in the health assessment.]

Age level--The grouping category appropriate for the child's age.

(i) *Infant*--A child from birth [through 12 months] to 1 year of age.

(ii) *Young toddler*--A child from [13 through 24 months] 1 to 2 years of age.

(iii) *Older toddler*--A child from [25 through 36 months] 2 to 3 years of age.

(iv) *Preschool child*--A child from [37 months of age through] 3 years of age to the date the child enters [1st grade of] kindergarten in a public or private school system.

(v) *Young school-age child*--A child [from the 1st grade through the 3rd] who attends kindergarten to the date the child enters the 4th grade of a public or private school system.

(vi) *Older school-age child*--A child [from] who attends the 4th grade of a public or private school system through 15 years of age.

* * * * *

Child with [a disability] special needs--A child who [does not function according to age-appropriate expectations in the areas of emotional, cognitive, communicative, perceptual-motor, physical or social development and requires special adaptations, program adjustments and related services on a regular basis to function in an adaptive manner. Examples of a child with a disability include a child who has:

(i) A developmental delay.

(ii) A neurologically-based condition, such as mental retardation, cerebral palsy, autism, epilepsy or another condition closely related to mental retardation or requiring treatment similar to that required by mentally retarded children.

(iii) Mental retardation associated with sociocultural or psychosocial disadvantage.

(iv) A genetic disorder or physiological condition usually associated with mental retardation.

(v) Problems of social or emotional adjustment.

(vi) A physical disability such as visual impairment, hearing impairment, speech or language impairment, or a physical handicap.] has one or more of the following:

(i) A disability or developmental delay identified on an Individualized Education Program or IEP, an Individualized Family Service Plan IFSP OR A SERVICE AGREEMENT.

(ii) A formal WRITTEN behavioral plan that has been determined by a licensed physician, psychiatrist, or licensed psychologist OR CERTIFIED BEHAVIOR ANALYST.

(iii) A chronic health condition diagnosed by a licensed physician, physician's assistant or CRNP that requires health and related services of a type or amount beyond that required by children generally.

* * * * *

IEP – INDIVIDUALIZED EDUCATION PROGRAM AS DEFINED IN 22 PA.CODE § 14.101 (RELATING TO DEFINITIONS) AND §§ 14.131-14.133 (RELATING TO IEP; ESY; AND BEHAVIOR SUPPORT).

IFSP – INDIVIDUALIZED FAMILY SERVICE PLAN AS DEFINED IN § 4226.5 (RELATING TO DEFINITIONS) AND §§ 4226.71-4226.77.

Inspection summary--A document prepared by an agent of the Department describing each regulatory noncompliance item confirmed as a result of a facility inspection.

* * * * *

SERVICE AGREEMENT – A SERVICE AGREEMENT AS DEFINED IN 22 PA.CODE § 15.2 AND §15.7 (RELATING TO DEFINITIONS; AND SERVICE AGREEMENT).

* * * * *

GENERAL REQUIREMENTS

§ 3270.11. Application for and issuance of a certificate of compliance.

* * * * *

(b) A legal entity or a representative of the legal entity shall participate in a precertification AN orientation training provided by the Department within 12 months prior to issuance of a certificate of compliance COMMENCING OPERATION OF THE CHILD DAY CARE CENTER. The precertification orientation does not count toward the

annual minimum of 6 hours of child care training required in § 3270.31(e) (relating to age and training).

(c) Application for a certificate of compliance shall be submitted to the appropriate regional day care office in accordance with Chapter 20 (relating to the licensure or approval of facilities and agencies).

[(c)] (d) * * *

[(d)] (e) * * *

[(e)] (f) * * *

[(f)] (g) * * *

[(g)] (h) A facility whose certificate of compliance is current as of [April 4, 1992,] _____ (*Editor's Note: The blank refers to the effective date of adoption of this final-form rulemaking.*) will not be inspected under this chapter until the current certificate of compliance is due to be renewed or when a regulatory violation is alleged and the Department responds to the alleged violation with an inspection.

§ 3270.15. [Firesafety approval] Certificate of occupancy BUILDING CODES.

A certificate of compliance will not be granted by the Department until the legal entity provides a certificate of occupancy as proof of compliance with the applicable requirements of the Department of Labor and Industry [at] in 34 Pa. Code [Chapter 54

(relating to Group B educational) or local authorities in Scranton, Pittsburgh or Philadelphia] § 403.23 (relating to child day care facilities).

* * * * *

§ 3270.17. Service to a child with [a disability] special needs.

[A facility serving a child with a disability as defined in § 3270.4 (relating to definitions) shall also comply with applicable sections of Chapter 3300 (relating to specialized day care service for children with disabilities).]

(a) The operator shall make reasonable accommodation to include a child with special needs in accordance with the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101–12213) APPLICABLE FEDERAL AND STATE LAWS.

(b) The operator shall permit an adult individual who provides specialized services to a child with special needs to provide those services on the facility premises as specified in the child's Individualized Education Program IEP, Individualized Family Service Plan IFSP, formal OR WRITTEN behavioral plan or program plan as defined in § 3270.119 (relating to program plan).

(c) The operator is responsible to SHALL make staff persons AND PARENTS aware of community resources for the family of a child with possible WHO MAY HAVE special needs. THE DEPARTMENT WILL PROVIDE TO THE OPERATOR INFORMATION REGARDING COMMUNITY RESOURCES.

~~(1) When the director believes a child may need an assessment due to developmental, behavioral or health concerns, the director shall inform the child's parent of the concern and provide information to the parent regarding resources for referral and assistance.~~

~~(2) When a staff person believes a child may need an assessment due to developmental, behavioral or health concerns, the staff person shall inform the director. The director shall inform the child's parent of the staff person's concern and provide information to the parent regarding resources for referral and assistance.~~

§ 3270.24. Departmental access.

* * * * *

(c) An agent of the Department will inspect for compliance with this chapter in all areas of the facility premises that are accessible to children.

§ 3270.25. Availability of certificate of compliance and applicable regulations.

(a) The facility's current certificate of compliance and a copy of the applicable regulations under which the facility is certified shall be posted in a conspicuous location used by parents, with instructions for contacting the appropriate regional day care office posted at the same location.

(b) The operator shall post a copy of each inspection summary issued by the Department next to the facility's certificate of compliance in a conspicuous location used by parents. The inspection summary shall remain posted until an agent of the

Department verifies that each regulatory noncompliance item cited on the inspection summary has been corrected.

§ 3270.27. Emergency plan.

(a) The facility shall have an emergency plan that provides for:

(1) Shelter of children during an emergency INCLUDING SHELTER IN PLACE AT THE FACILITY AND SHELTER AT LOCATIONS AWAY FROM THE FACILITY PREMISES.

(2) Evacuation of children from the facility BUILDING AND EVACUATION OF CHILDREN TO A LOCATION AWAY FROM THE FACILITY PREMISES. THE EVACUATION ROUTES AND EVACUATION PLANS TO EXIT THE BUILDING MAY BE THE SAME AS THOSE REQUIRED BY § 3270.94 (F) AND (G) (RELATING TO FIRE DRILLS).

(3) A method for facility persons to contact parents as soon as reasonably possible when an emergency situation arises.

(4) A method for facility persons to inform parents that the emergency has ended and to provide instruction as to how parents can safely be reunited with their children.

(b) The operator shall review the emergency plan at least annually and update the plan as needed. Each review and update of the emergency plan shall be documented in writing and kept on file at the facility.

(c) Each facility person shall receive training regarding the emergency plan at the time of initial employment, on an annual basis and at the time of each plan update. The date of each training and the name of each facility person who received the training shall be documented in writing and kept on file at the facility.

(d) The emergency plan shall be posted in the facility at a conspicuous location.

(e) The operator shall provide to the parent of each enrolled child a letter explaining the emergency procedures described in subsection (a). The operator shall also provide to the parent of each enrolled child a letter explaining any subsequent update to the plan.

(f) The operator shall send a copy of the emergency plan and subsequent plan UPDATES to the county emergency management agency.

FACILITY PERSONS

§ 3270.31. Age and training.

* * * * *

(d) CHILD CARE PROFESSIONAL CREDENTIALS ARE EQUIVALENT TO THE STAFF QUALIFICATIONS LISTED BELOW:

(1) A Child Development Associate (CDA) credential or a Certified Childcare Professional (CCP) credential, ~~as it applies to the staff qualifications in this chapter,~~ is equivalent to [one of the following:

(1) Fifteen] 9 credit hours from an accredited college or university in early childhood education or child development and 1 year of experience with children.

[(2) Thirty credit hours from an accredited college or university in early childhood education or child development.]

(2) A PENNSYLVANIA SCHOOL-AGE PROFESSIONAL CREDENTIAL IS EQUIVALENT TO 9 CREDIT HOURS FROM AN ACCREDITED COLLEGE OR UNIVERSITY IN ELEMENTARY EDUCATION OR CHILD DEVELOPMENT AND 1 YEAR OF EXPERIENCE WITH CHILDREN.

* * * * *

STAFF-CHILD RATIO

§ 3270.52. Mixed age level.

When children are grouped in mixed age levels, [the following child group sizes and ratios of staff persons apply:] the age of the youngest child in the group determines the staff:child ratio and maximum group size in accordance with the requirements in § 3270.51 (relating to similar age level).

[Mixed Age Levels	Maximum			Total Number of Staff Required for the Maximum Group Size
	Staff	Children	Group Size*	
Infant/young or older	1	4	8	2

toddler

Infant/preschool	1	4	8	2
Young toddler/ preschool	1	5	10	2
Older toddler/ preschool	1	6	12	2
Preschool/young or older	1	10	20	2

school-age

*No more than 50% of each group may be of the older age level.]

PHYSICAL SITE

§ 3270.61. Measurement and use of indoor child care space.

* * * * *

(h) The capacity established for an indoor space may not be exceeded except [at] in the following situations:

(1) At naptime, when toddler or preschool children are resting on rest equipment described in § 3270.106 (relating to rest equipment).] if the following conditions are met:

[(1)] (i) * * *

[(2)] (ii) * * *

(2) When older toddler, preschool or school-age children are participating in a program activity if the following conditions are met:

(i) The capacity of the indoor child care space may be exceeded for no more than two separate 1/2 hour time periods daily.

(ii) Each time period shall be designated on the facility's schedule of daily activities.

(iii) The space may not be occupied by children of the infant or young toddler age levels during a time period when the capacity is exceeded.

(iv) The number of children present in the space may not be more than twice the measured capacity of the space.

(3) When a meal is served in a space designated and measured as indoor child care space if the following conditions are met:

(i) The capacity of a space may be exceeded when children are eating for no more than 1 hour daily.

(ii) The meal time shall be designated on the facility's schedule of daily activities.

(iii) The number of children present in the space may not be more than twice the measured capacity of the space.

(i) The total number of children receiving child day care services at the facility at any one time may not exceed the FACILITY'S maximum capacity stated on the facility's certificate of compliance.

§ 3270.70. Indoor temperature.

* * * * *

(b) If the indoor temperature exceeds [85°] 82°F in a child care space, a means of mechanical air circulation shall be operating.

§ 3270.75. First-aid kit.

* * * * *

(c) A first-aid kit [shall] must contain the following: soap, an assortment of adhesive bandages, sterile gauze pads, tweezers, tape, scissors and [Syrup of Ipecac] disposable, nonporous gloves. [Instructions for use of the Syrup of Ipecac shall be included as described at § 3270.133(9) (relating to child medication and special diets).]

(d) One first-aid kit per child care group [shall] must accompany children and facility persons on excursions from the facility. Each first aid kit taken on an excursion must contain a bottle of water in addition to the items specified at subsection (c).

* * * * *

§ 3270.82. Toilet areas.

* * * * *

(f) Toilets and training chairs may not be located in an area used for cooking or eating. [If the toilet area is not on the same floor as the child care space, an adult shall accompany toddler and preschool children going to and from the toilet area.]

* * * * *

EQUIPMENT

§ 3270.102. Condition of play equipment.

* * * * *

(c) Outdoor equipment that requires embedded mounting [shall] must be mounted over [at least 6 inches of loose-filled, impact-absorbing materials,] a loose-fill or unitary playground protective surface covering that meets the recommendations of the United States Consumer Product Safety Commission. The equipment must be anchored firmly and be in good repair.

* * * * *

(g) Children's equipment and toys AND EQUIPMENT, INCLUDING FURNITURE AND REST EQUIPMENT, described as hazardous by the United States Consumer Product Safety Commission may not be used by children at the facility and may not be on the premises at the facility. AT THE TIME OF INSPECTION, THE OPERATOR SHALL SUBMIT TO THE DEPARTMENT WRITTEN AFFIRMATION ON A FORM PROVIDED BY THE DEPARTMENT STATING THAT THE FACILITY IS IN COMPLIANCE WITH THIS REQUIREMENT.

§ 3270.104. Furniture.

(a) Furniture [shall] must be durable, safe, easily cleaned and appropriate for the child's size, age and [disability] special needs.

* * * * *

§ 3270.106. Rest equipment.

* * * * *

(J) TOYS, BUMPER PADS, OR PILLOWS MAY NOT BE PRESENT IN A CRIB WHILE AN INFANT IS SLEEPING IN THE CRIB.

* * * * *

PROGRAM

§ 3270.113. Supervision of children.

(a) Children on the facility premises and on facility excursions off the premises shall be supervised by a staff person at all times. Outdoor play space used by the facility is considered part of the facility premises.

(1) Each staff person shall be assigned the responsibility for supervision of specific children. The staff person shall know the names and whereabouts of the children in his assigned group. The staff person shall be physically present with the children in his group on the facility premises and on facility excursions off the facility premises.

(2) The requirement for supervision on and off the facility premises includes compliance with the staff:child ratio requirements in §§ 3270.51--3270.54 3270.55.

* * * * *

(e) A facility person may not restrain a child by using bonds, ties or straps to restrict a child's movement or by enclosing the child in a confined space, closet or locked room. The prohibition against restraining a child does not apply to the use of adaptive equipment prescribed for a child with special needs.

§ 3270.115. Water activity.

(a) *Swimming.*

* * * * *

(3) An aboveground swimming pool which is not in use [shall] must be made inaccessible to children in accordance with the swimming pool barrier guidelines of the United States Consumer Product Safety Commission.

* * * * *

§ 3270.117. Release of children.

(a) A child shall be released only to the child's parent or to an individual designated in writing by the enrolling parent. A child shall be released to either parent unless a court order on file at the facility states otherwise.

§ 3270.119. Program plan.

~~—(a) The director or group supervisor shall develop a program plan specific to the child no later than 60 days following the child's first day of attendance at the facility. The program plan for a child with special needs must incorporate the Individualized Education Program, Individualized Family Service Plan or formal behavioral plan if that plan is reviewed and implemented within the 60 days.~~

~~—(b) The child's program plan must include the following:~~

~~—(1) A documented observation of the child's development.~~

~~—(2) If applicable, identification of the child's unique needs and recommendations, plans or referrals as appropriate. The director shall inform the parent of the possible special needs of the child and provide information to the parent regarding resources for referral and assistance.~~

~~—(3) A plan to facilitate the child's continued development and participation in the daily activities described in § 3270.111 (relating to daily activities), including involvement of a specialist who may be helping to support the child and family.~~

~~—(c) The director or group supervisor shall review the child's program plan according to the following schedule:~~

~~—(1) For an infant, toddler or preschool child, the plan shall be reviewed at least every 6 months.~~

~~—(2) For a school-age child, the plan shall be reviewed at least every 12 months.~~

~~—(3) For a child with special needs, the program plan shall also be reviewed according to the schedule specified in the Individualized Education Program, Individualized Family Service Plan or formal behavioral plan.~~

~~—(d) The director or group supervisor shall revise the plan as needed to meet the needs of the child at each review.~~

~~—(e) The director or group supervisor shall provide to the following individuals an opportunity to provide input into the development of the child's initial program plan and each review of the child's program plan:~~

~~—(1) The child's parent.~~

~~—(2) Other staff persons who supervise the child at the facility.~~

~~—(3) Other individuals who provide early intervention or special education services, treatment, therapy or other specialized services to the child.~~

~~—(4) The child if the child is a school-age child.~~

~~—(f) The director or group supervisor shall date and sign the child's initial program plan and each reviewed or updated program plan. The child's parent shall be given an~~

~~opportunity to sign each program plan and receive a copy of each dated and signed program plan.~~

~~(g) A signed and dated copy of the child's initial program plan and each reviewed or updated program plan shall be placed in the child's facility record.~~

§ 3270.120. Infant sleep position.

~~Infants shall be placed on their backs to sleep~~ IN THE SLEEPING POSITION RECOMMENDED BY THE AMERICAN ACADEMY OF PEDIATRICS unless there is a medical reason an infant should not sleep in this position. The medical reason shall be documented in a statement signed by a physician, physician's assistant or CRNP and placed in the child's record at the facility.

PROCEDURES FOR ADMISSION

§ 3270.122. Admission interview.

A child shall be interviewed or observed by the operator and when possible shall have the opportunity to visit the facility prior to being admitted for care. The child shall be told as much about the service being planned as he can understand. If the parent indicates that the child has a [disability or handicapping condition] special need, the operator shall discuss the condition with the parent, refer to § 3270.4 (relating to definitions), and comply with §§ 3270.17, 3270.124 and 3270.131 (relating to service to a child with [a disability] special needs; emergency contact information; and health [assessment] information).

§ 3270.123. Agreement.

(a) An agreement signed by the operator and the parent shall specify the following:

* * * * *

(3) The services to be provided to the family and the child, INCLUDING THE DEPARTMENT'S APPROVED FORM TO PROVIDE INFORMATION TO THE FAMILY ABOUT THE CHILD'S GROWTH AND DEVELOPMENT IN THE CONTEXT OF THE SERVICES BEING PROVIDED. THE OPERATOR SHALL COMPLETE AND UPDATE THE FORM AND PROVIDE A COPY TO THE FAMILY IN ACCORDANCE WITH THE UPDATES REGARDING EMERGENCY CONTACT INFORMATION AT § 3270.124(F).

* * * * *

§ 3270.124. Emergency contact information.

* * * * *

(b) Emergency contact information [shall] must include the following:

* * * * *

(5) Information on the [disability of the child] child's special needs, as specified by the child's parent [or], physician, physician's assistant or CRNP, which is needed in an emergency situation.

* * * * *

CHILD HEALTH

§ 3270.131. Health ~~[assessment]~~ information.

(a) [An] The operator shall require the parent of an enrolled child, including a child, a foster child and a relative of an operator or a facility person, [shall have an age-appropriate] to provide an initial health report [on record at the facility] no later than 60 days following [enrollment] the first day of attendance at the facility.

(1) The initial health report for an infant must be dated no more than 3 months prior to the first day of attendance at the facility.

(2) The initial health report for a young toddler must be dated no more than 6 months prior to the first day of attendance at the facility.

(3) The initial health report for an older toddler or preschool child shall be dated no more than 1 year prior to the first day of attendance at the facility.

(4) The initial health report for a school-age child must be dated in accordance with the requirements for medical examinations for school attendance in 28 Pa. Code § 23.2 (relating to medical examinations).

(b) [An age-appropriate health assessment shall be conducted according to the recommended schedule for routine health supervision as referenced in the most current edition of the American Academy of Pediatrics (AAP) *Guidelines for Health Supervision*. This publication can be obtained from the American Academy of Pediatrics, 141 Northwest Point Boulevard, Post Office Box 927, Elk Grove Village, Illinois 60007.] The

operator shall require the parent to provide an updated health report in accordance with the following schedules:

(1) At least every 6 months for an infant or young toddler.

(2) At least every 12 months for an older toddler or preschool child.

(c) A health [assessment shall be conducted and a] report [shall] must be written and signed by a physician, physician's assistant or a CRNP. The signature [shall] must include the individual's professional title.

(d) The health report shall include the following information:

(1) A review of the child's [previous] health history.

(2) [The results of a physical examination] A list of the child's allergies.

(3) [An assessment of the child's growth patterns] A list of the child's current medication and the reason for the medication.

(4) [The physician's or CRNP's] An assessment of [a disability or a] an acute or chronic health problem or special need and recommendations for treatment or services, INCLUDING INFORMATION REGARDING ABNORMAL RESULTS OF SCREENING TESTS FOR VISION, HEARING OR LEAD POISONING.

(5) A review of the child's immunized status according to recommendations of the [AAP] ACIP. [The Department will provide the AAP guidelines upon request.]

(7) [A review of age-appropriate screenings according to the standards of the AAP.] A statement that the child is able to participate in child care and appears to be free from contagious or communicable disease.

(8) A STATEMENT THAT AGE-APPROPRIATE SCREENINGS RECOMMENDED BY THE AMERICAN ACADEMY OF PEDIATRICS WERE CONDUCTED SINCE THE TIME OF THE PREVIOUS HEALTH REPORT REQUIRED BY THIS SECTION.

(e) [The operator shall comply with the Department of Health (DOH) regulation at 28 Pa. Code § 27.121a (Reserved) and shall implement dismissal policies in accordance with that section. The Department will provide the DOH regulation upon request.] The facility may not accept or retain an infant 2 months of age or older, a toddler or a preschool child at the facility for more than 60 days following the first day of attendance at the facility unless the parent provides written verification from a physician, physician's assistant, CRNP, the Department of Health or a local health department of the dates (month, day and year) the child was administered immunizations in accordance with the recommendations of the ACIP.

(1) The facility shall require the parent to provide updated written verification from a physician, physician's assistant, CRNP, the Department of Health or a local health department of ongoing vaccines administered to an infant, toddler or preschool child in accordance with the schedule recommended by the ACIP.

(2) Exemption from immunization must be documented as follows:

(i) Exemption from immunization for religious belief or strong personal objection equated to a religious belief shall be documented by a written, signed and dated statement from the child's parent or guardian. The statement shall be kept in the child's record.

(ii) Exemption from immunization for reasons of medical need must be documented by a written, signed and dated statement from the child's physician, physician's assistant or CRNP. The statement shall be kept in the child's record.

(3) The facility shall implement dismissal policies in accordance with the Department of Health regulation in 28 Pa. Code § 27.77 (relating to immunization requirements for children in child care group settings).

(4) The facility shall comply with the annual immunization reporting requirements in accordance with the Department of Health regulation in 28 Pa. Code § 27.77.

§ 3270.133. Child medication and special diets.

The operator shall make reasonable accommodation in accordance with the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101–12213) APPLICABLE FEDERAL AND STATE LAWS to facilitate administration of medication or a special diet THAT IS prescribed by a physician, physician's assistant or CRNP for a child with AS TREATMENT RELATED TO THE CHILD'S special needs. Facility persons are not required to administer [child] medication or special diets which are requested or required by a parent, a physician, a physician's assistant or a CRNP to a child who does not have BUT ARE NOT TREATMENT RELATED TO THE CHILD'S

special needs. [If child] When medication or special diets are administered, the following requirements apply:

* * * * *

[(9) A staff person who administers Syrup of Ipecac shall request case-specific instruction for administration from a poison control center or a physician. The staff person shall record in the child's file the date and time instruction was received, the name of the individual who issued the instruction, the content of the information and the time, date and amount of Syrup of Ipecac administered.]

§ 3270.135. Diapering requirements.

(a) When children are diapered, the facility shall use disposable diapers, a diaper service or arrange with the parent to provide a daily diaper supply.

* * * * *

(3) If disposable diapers are provided by a parent or by a facility, a soiled diaper shall be discarded [in one of the following ways] by immediately placing the diaper into a plastic-lined, hands-free covered can. [The diaper shall be:

- (i) immediately placed into a lined outdoor trash container.
- (ii) Placed in an individual, tied bag and discarded indoors until outdoor disposal is possible.]

* * * * *

(e) A staff person shall check a child's diaper at least every 2 hours and whenever the child indicates discomfort or exhibits behavior that suggests a soiled diaper. A staff person shall change a child's diaper when the diaper is soiled.

ADULT HEALTH

§ 3270.151. Health assessment.

(a) A facility person providing direct care who comes into contact with the children or who works with food preparation shall have a health assessment conducted within [3] 12 months prior to providing initial service in a child care setting and every [year] 24 months thereafter. A health assessment is valid for [12] 24 months following the date of signature, if the person does not contract a communicable disease or develop a medical problem.

(b) A health assessment shall be conducted and a report shall be written and signed by a physician, physician's assistant or CRNP. The signature [shall] must include the individual's professional title.

(c) The health assessment [shall] must include the following:

* * * * *

(2) Tuberculosis screening by the Mantoux method at initial employment [and subsequently at least once every 2 years]. Subsequent tuberculosis screening is not required unless directed by a physician, physician's assistant, CRNP, the Department of Health or a local health department.

* * * * *

TRANSPORTATION

§ 3270.175. Safety restraints.

(a) A child [4] 7 years of age or younger shall be transported in accordance with the requirements for parents and guardians as stated in 75 Pa.C.S. § 4581 (relating to restraint systems).

* * * * *

§ 3270.176. Vehicles.

* * * * *

(f) IN ACCORDANCE WITH THE REQUIREMENTS OF 67 PA. CODE CHAPTER 171 (RELATING TO SCHOOL BUSES AND SCHOOL VEHICLES), the facility may not transport a child in an 11-15 passenger van in accordance with the requirements of 67 Pa. Code Chapter 171 (relating to school buses and school vehicles).

CHILD RECORDS

§ 3270.182. Content of records.

A child's record shall contain the following information:

(1) Initial and subsequent health [assessments] reports.

* * * * *

[NIGHT CARE]

(Editor's Note: As part of this final-form rulemaking, the Department is deleting the text of §§ 3270.201--3270.210, which appears at 55 Pa. Code pages 3270-54 to 3270-56, serial pages (204590) to (204592).)

§ 3270.201. (Reserved).

§ 3270.202. (Reserved).

§ 3270.203. (Reserved).

§ 3270.204. (Reserved).

§ 3270.205. (Reserved).

§ 3270.206. (Reserved).

§ 3270.207. (Reserved).

§ 3270.208. (Reserved).

§ 3270.209. (Reserved).

§ 3270.210. (Reserved).

SPECIAL EXCEPTIONS

§ 3270.233. **Play surfaces.**

(a) A facility ~~certified by the Department~~ **LAWFULLY OPERATING** as of [April 4, 1992, is exempt from the requirement to provide an impact-absorbing ground cover, as

described in § 3270.102(c) (relating to condition of play equipment)] _____ (*Editor's Note:* The blank refers to the effective date of adoption of this final-form rulemaking.) has until _____ (*Editor's Note:* The blank refers to a date 2 years after the effective date of adoption of this final-form rulemaking.) to comply with the protective surface requirement described in § 3270.102(c) (relating to condition of play equipment).

(b) A facility ~~certified by the Department~~ LAWFULLY OPERATING as of [April 4, 1992,] _____ (*Editor's Note:* The blank refers to the effective date of adoption of this final-form rulemaking.) which has a play surface not in compliance with § 3270.102(e) [is exempt from the requirement unless the surface is replaced] has until _____ (*Editor's Note:* The blank refers to a date 2 years after the effective date of adoption of this final-form rulemaking.) to comply with the requirement described in § 3270.102(e).

SCHOOL-AGE PROGRAMS

§ 3270.241. Requirements specific to school-age programs.

* * * * *

(b) A facility or a space in a facility in which care is provided exclusively to school-age children shall comply only with the following sections:

* * * * *

(2) *General requirements.* Sections 3270.11--[3270.26] 3270.27 (relating to general requirements).

* * * * *

(7) *Equipment.* Sections 3270.101, 3270.102(a)--(c) and (g), 3270.104, 3270.107 and 3270.108.

(8) *Program.* Sections 3270.111, 3270.113, 3270.115(a) and (b), 3270.116 [~~and~~], AND 3270.118 and 3270.119.

(9) *Procedures for admission.* Sections 3270.121—3270.124 (relating to procedures for admission). WHEN A SCHOOL-AGE CHILD ATTENDS THE FACILITY 15 HOURS OR LESS PER WEEK, THE OPERATOR IS NOT REQUIRED TO COMPLETE THE DEPARTMENT'S APPROVED FORM TO PROVIDE INFORMATION TO THE FAMILY ABOUT THE CHILD'S GROWTH AND DEVELOPMENT IN THE CONTEXT OF THE SERVICES BEING PROVIDED REFERENCED AT SECTION 3270.124(A)(3).

(10) *Child health.* Sections 3270.131--3270.134(a) and 3270.136--3270.138. An equivalent [age-appropriate] health [assessment] report completed by a school is acceptable as documentation of child health for a school-age child.

* * * * *

(17) Staff persons shall have immediate access to a working telephone on the facility premises. IF A LAND-LINE TELEPHONE IS NOT ACCESSIBLE TO STAFF PERSONS DURING THE HOURS OF FACILITY OPERATION, A WIRELESS TELEPHONE IS ACCEPTABLE.

CHAPTER 3280. GROUP CHILD DAY CARE HOMES

GENERAL PROVISIONS

§ 3280.4. Definitions.

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

ACIP--The Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, United States Department of Health and Human Services.

* * * * *

[*Age-appropriate child health assessment*--A written report assessing a child's health status. The report is signed by a physician or a CRNP and includes the child's health history, the child's physical examination and a plan for treatment of health problems identified in the health assessment.]

Age level--The grouping category appropriate for the child's age.

- (i) *Infant*--A child from birth [through 12 months] to 1 year of age.
- (ii) *Young toddler*--A child from [13 through 24 months] 1 to 2 years of age.
- (iii) *Older toddler*--A child from [25 through 36 months] 2 to 3 years of age.
- (iv) *Preschool child*--A child from [37 months of age through] 3 years of age to the date the child enters [first grade of] kindergarten in a public or private school system.

(v) *Young school-age child*--A child [from the first grade through the 3rd] who attends kindergarten to the date the child enters the 4th grade of a public or private school system.

(vi) *Older school-age child*--A child [from] who attends the 4th grade of a public or [private] private school system through 15 years of age.

* * * * *

Child with [a disability] special needs--A child who [does not function according to age-appropriate expectations in the areas of emotional, cognitive, communicative, perceptual-motor, physical or social development and requires special adaptations, program adjustments and related services on a regular basis in order to function in an adaptive manner. Examples of a child with a disability include a child who has:

- (i) A developmental delay.
- (ii) A neurologically-based condition, such as mental retardation, cerebral palsy, autism, epilepsy or another condition closely related to mental retardation or requiring treatment similar to that required by mentally retarded children.
- (iii) Mental retardation associated with sociocultural or psychosocial disadvantage.
- (iv) A genetic disorder or physiological condition usually associated with mental retardation.
- (v) Problems of social or emotional adjustment.

(vi) A physical disability such as visual impairment, hearing impairment, speech or language impairment, or a physical handicap.] has one or more of the following:

(i) A disability or developmental delay identified on an Individualized Education Program or IEP, an Individualized Family Service Plan IFSP OR A SERVICE AGREEMENT.

(ii) A formal WRITTEN behavioral plan that has been determined by a licensed physician, psychiatrist, or licensed psychologist OR CERTIFIED BEHAVIOR ANALYST.

(iii) A chronic health condition diagnosed by a licensed physician, physician's assistant or CRNP that requires health and related services of a type or amount beyond that required by children generally.

* * * * *

IEP – INDIVIDUALIZED EDUCATION PROGRAM AS DEFINED IN 22 PA.CODE § 14.101 (RELATING TO DEFINITIONS) AND §§ 14.131-14.133 (RELATING TO IEP; ESY; AND BEHAVIOR SUPPORT).

IFSP – INDIVIDUALIZED FAMILY SERVICE PLAN AS DEFINED IN § 4226.5 (RELATING TO DEFINITIONS) AND §§ 4226.71-4226.77.

Inspection summary--A document prepared by an agent of the Department describing each regulatory noncompliance item confirmed as a result of a facility inspection.

* * * * *

SERVICE AGREEMENT – A SERVICE AGREEMENT AS DEFINED IN 22 PA. CODE § 15.2 AND §15.7 (RELATING TO DEFINITIONS; AND SERVICE AGREEMENT).

* * * * *

GENERAL REQUIREMENTS

§ 3280.11. Application for and issuance of a certificate of compliance.

* * * * *

(b) A legal entity or a representative of the legal entity shall participate in a precertification AN orientation training provided by the Department within 12 months prior to issuance of a certificate of compliance COMMENCING OPERATION OF THE GROUP CHILD DAY CARE HOME. The precertification orientation does not count toward the annual minimum of 6 hours of child care training required in § 3280.31(e) (relating to age and training).

(c) Application for a certificate of compliance shall be submitted to the appropriate regional day care office in accordance with Chapter 20 (relating to the licensure or approval of facilities and agencies).

[(c)] (d) * * *

[(d)] (e) * * *

[(e)] (f) * * *

[(f)] (g) * * *

[(g)] (h) A facility whose certificate of compliance is current as of [April 4, 1992,] _____ (*Editor's Note:* The blank refers to the effective date of adoption of this final-form rulemaking.) will not be inspected under this chapter until the current certificate of compliance is due to be renewed or when a regulatory violation is alleged and the Department responds to the alleged violation with an inspection.

§ 3280.15. [Firesafety approval] ~~Certificate of occupancy~~ BUILDING CODES.

A certificate of compliance will not be granted by the Department until the legal entity provides a certificate of occupancy as proof of compliance with the applicable requirements of the Department of Labor and Industry [at] in 34 Pa. Code [Chapter 54 or 56 (relating to Group B educational; and division C-3 small group habitation) or local authorities in Scranton, Pittsburgh or Philadelphia] § 403.23 (relating to child day care facilities.)

* * * * *

§ 3280.16. Service to a child with [a disability] special needs.

[A facility serving a child with a disability as defined in § 3280.4 (relating to definitions) shall also comply with applicable sections of Chapter 3300 (relating to specialized day care service for children with disabilities).]

(a) The operator shall make reasonable accommodation to include a child with special needs in accordance with the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101–12213) APPLICABLE FEDERAL AND STATE LAWS.

(b) The operator shall permit an adult individual who provides specialized services to a child with special needs to provide those services on the facility premises as specified in the child's Individualized Education Program IEP, Individualized Family Service Plan IFSP, formal OR WRITTEN behavioral plan or program plan as defined in § 3270.119 (relating to program plan).

(c) The operator is responsible to SHALL make staff persons AND PARENTS aware of community resources for the family of a child with possible WHO MAY HAVE special needs. THE DEPARTMENT WILL PROVIDE TO THE OPERATOR INFORMATION REGARDING COMMUNITY RESOURCES.

~~(1) When a primary staff person believes a child may need an assessment due to developmental, behavioral or health concerns, the primary staff person shall inform the child's parent of the concern and shall provide information to the parent regarding resources for referral and assistance.~~

~~(2) When a staff person believes a child may need an assessment due to developmental, behavioral or health concerns, the staff person shall inform the primary staff person. The primary staff person shall inform the child's parent of the staff person's concern and shall provide information to the parent regarding resources for referral and assistance.~~

§ 3280.23. Departmental access.

* * * * *

(c) An agent of the Department will inspect compliance with this chapter in all areas of the facility premises that are accessible to children.

§ 3280.24. Availability of certificate of compliance and applicable regulations.

(a) The facility's current certificate of compliance and a copy of the applicable regulations under which the facility is certified shall be posted in a conspicuous location used by parents, with instructions for contacting the appropriate regional day care office posted at the same location.

(b) The operator shall post a copy of each inspection summary issued by the Department next to the facility's certificate of compliance in a conspicuous location used by parents. The inspection summary shall remain posted until an agent of the Department verifies that each regulatory noncompliance item cited on the inspection summary has been corrected.

§ 3280.26 Emergency plan.

(a) The facility shall have an emergency plan that provides for:

(1) Shelter of children during an emergency INCLUDING SHELTER IN PLACE AT THE FACILITY AND SHELTER AT LOCATIONS AWAY FROM THE FACILITY PREMISES.

(2) Evacuation of children from the facility BUILDING AND EVACUATION OF CHILDREN TO A LOCATION AWAY FROM THE FACILITY PREMISES. THE EVACUATION ROUTES AND EVACUATION PLANS TO EXIT THE BUILDING MAY BE THE SAME AS THOSE REQUIRED BY § 3280.94 (F) AND (G) (RELATING TO FIRE DRILLS).

(3) A method for facility persons to contact parents as soon as reasonably possible when an emergency situation arises.

(4) A method for facility persons to inform parents that the emergency has ended and to provide instruction as to how parents can safely be reunited with their children.

(b) The operator shall review the emergency plan at least annually and update the plan as needed. Each review and update of the emergency plan shall be documented in writing and kept on file at the facility.

(c) Each facility person shall receive training regarding the emergency plan at the time of initial employment, on an annual basis and at the time of each plan update. The date of each training and the name of each facility person who received the training shall be documented in writing and kept on file at the facility.

(d) The emergency plan shall be posted in the facility at a conspicuous location.

(e) The operator shall provide to the parent of each enrolled child a letter explaining the emergency procedures described in subsection (a). The operator shall also provide

to the parent of each enrolled child a letter explaining any subsequent update to the plan.

(f) The operator shall send a copy of the emergency plan and subsequent plan UPDATES to the county emergency management agency.

FACILITY PERSONS

§ 3280.31. Age and training.

* * * * *

(d) CHILD CARE PROFESSIONAL CREDENTIALS ARE EQUIVALENT TO THE STAFF QUALIFICATIONS LISTED BELOW:

(1) A Child Development Associate (CDA) credential or a Certified Childcare Professional (CCP) credential, ~~as it applies to the staff qualifications in this chapter,~~ is equivalent to [one of the following:

(1) Fifteen] 9 credit hours from an accredited college or university in early childhood education or child development and 1 year of experience with children.

[(2) Thirty credit hours from an accredited college or university in early childhood education or child development.]

(2) A PENNSYLVANIA SCHOOL-AGE PROFESSIONAL CREDENTIAL IS EQUIVALENT TO 9 CREDIT HOURS FROM AN ACCREDITED COLLEGE OR

UNIVERSITY IN ELEMENTARY EDUCATION OR CHILD DEVELOPMENT AND 1
 YEAR EXPERIENCE WITH CHILDREN.

* * * * *

STAFF-CHILD RATIO

§ 3280.52. Ratio requirements.

* * * * *

(c) When children are grouped in mixed age levels, [the following child group sizes and ratios of staff persons apply:

	Staff	Children	Maximum Group Size	Total Number of Staff Required for the Maximum Group Size
Infant/young or older toddler	1	4	12	3
Young toddler/older toddler	1	5	12	3
Older toddler/ preschool	1	6	12	2
Preschool/young school- age	1	10	12	2
Young school- age/older	1	12	12	1]

school-age

the age of the youngest child in the group determines the staff:child ratio and maximum group size in accordance with the requirements at subsection (b).

PHYSICAL SITE

§ 3280.61. Measurement and use of indoor child care space.

* * * * *

(h) The capacity established for an indoor space may not be exceeded except in the following situations:

(1) At naptime, when toddler or preschool children are resting on rest equipment described in § 3280.105 (relating to rest equipment) if the following conditions are met:

(i) The capacity is determined by the requirement for placement of rest equipment described in § 3280.105(f).

(ii) The capacity may be exceeded for no longer than 2 1/2 consecutive hours and no more than twice in a program day.

(2) When older toddler, preschool or school-age children are participating in a program activity if the following conditions are met:

(i) The capacity of the indoor child care space may be exceeded for no more than two separate 1/2 hour time periods daily.

(ii) Each time period shall be designated on the facility's schedule of daily activities.

(iii) The space may not be occupied by children of the infant or young toddler age levels during a time period when the capacity is exceeded.

(iv) The number of children present in the space may not be more than twice the measured capacity of the space.

(3) When a meal is served in a space designated and measured as indoor child care space if the following conditions are met:

(i) The capacity of a space may be exceeded when children are eating for no more than 1 hour daily.

(ii) The meal time shall be designated on the facility's schedule of daily activities.

(iii) The number of children present in the space may not be more than twice the measured capacity of the space.

§ 3280.70. Indoor temperature.

* * * * *

(b) If the indoor temperature exceeds [85°] 82°F in a child care space, a means of mechanical air circulation shall be operating.

§ 3280.75. First-aid kit.

* * * * *

(c) A first-aid kit shall contain the following: soap, an assortment of adhesive bandages, sterile gauze pads, tweezers, tape, scissors and [Syrup of Ipecac] disposable, nonporous gloves. [Instructions for use of the Syrup of Ipecac shall be included as described at § 3270.133(9) (relating to child medication and special diets).]

(d) One first-aid kit per child care group [shall] must accompany children and facility persons on excursions from the facility. Each first aid kit taken on an excursion must contain a bottle of water in addition to the items specified at subsection (c).

EQUIPMENT

§ 3280.102. Condition of play equipment.

* * * * *

(c) Outdoor equipment that requires embedded mounting shall be mounted over [at least 6 inches of loose-filled, impact-absorbing materials,] a loose-fill or unitary playground protective surface covering that meets the recommendations of the United States Consumer Product Safety Commission. The equipment must be anchored firmly and be in good repair.

* * * * *

(f) Children's equipment and toys AND EQUIPMENT, INCLUDING FURNITURE AND REST EQUIPMENT, described as hazardous by the United States Consumer Product Safety Commission may not be used by children at the facility and may not be on the premises at the facility. AT THE TIME OF INSPECTION, THE OPERATOR

SHALL SUBMIT TO THE DEPARTMENT WRITTEN AFFIRMATION ON A FORM PROVIDED BY THE DEPARTMENT STATING THAT THE FACILITY IS IN COMPLIANCE WITH THIS REQUIREMENT.

* * * * *

§ 3280.105. Rest equipment.

* * * * *

(J) TOYS, BUMPER PADS, OR PILLOWS MAY NOT BE PRESENT IN A CRIB WHILE AN INFANT IS SLEEPING IN THE CRIB.

* * * * *

§ 3280.108. Furniture.

(a) Furniture [shall] must be durable, safe, easily cleaned and appropriate for the child's size, age and [disability] special needs.

* * * * *

PROGRAM

§ 3280.113. Supervision of children.

(a) Children on the facility premises and on facility excursions off the premises shall be supervised by a staff person at all times. Outdoor play space used by the facility is considered part of the facility premises.

(1) Each staff person shall be assigned the responsibility for supervision of specific children. The staff person shall know the names and whereabouts of the children in his assigned group. The staff person shall be physically present with the children in his group on the facility premises and on facility excursions off the facility premises.

(2) The requirement for supervision on and off the facility premises includes compliance with the staff:child ratio requirements in §§ 3280.51--3280.54 3280.53.

* * * * *

(e) A facility person may not restrain a child by using bonds, ties or straps to restrict a child's movement or by enclosing the child in a confined space, closet or locked room.

The prohibition against restraining a child does not apply to the use of adaptive equipment prescribed for a child with special needs.

§ 3280.115. Water activity.

(a) *Swimming.*

* * * * *

(3) An aboveground swimming pool which is not in use [shall] must be made inaccessible to children in accordance with the swimming pool barrier guidelines of the United States Consumer Product Safety Commission.

* * * * *

§ 3280.117. Release of children.

(a) A child shall be released only to the child's parent or to an individual designated in writing by the enrolling parent. A child shall be released to either parent unless a court order on file at the facility states otherwise.

* * * * *

§ 3280.119. Program plan.

~~(a) The primary staff person shall develop a program plan specific to the child no later than 60 days following the child's first day of attendance at the facility. The program plan for a child with special needs must incorporate the Individualized Education Program, Individualized Family Service Plan or formal behavioral plan if that plan is reviewed and implemented within the 60 days.~~

~~(b) The child's program plan must include the following:~~

~~(1) A documented observation of the child's development.~~

~~(2) If applicable, identification of the child's unique needs and recommendations, plans or referrals as appropriate. The director shall inform the parent of the possible special needs of the child and provide information to the parent regarding resources for referral and assistance.~~

~~(3) A plan to facilitate the child's continued development and participation in the daily activities described in § 3280.111 (relating to daily activities), including involvement of a specialist who may be helping to support the child and family.~~

~~—(c) The primary staff person shall review the child's program plan according to the following schedule:~~

~~—(1) For an infant, toddler or preschool child, the plan shall be reviewed at least every 6 months.~~

~~—(2) For a school-age child, the plan shall be reviewed at least every 12 months.~~

~~—(3) For a child with special needs, the program plan must also be reviewed according to the schedule specified in the Individualized Education Program, Individualized Family Service Plan or formal behavioral plan.~~

~~—(d) The primary staff person shall revise the plan as needed to meet the needs of the child at each review.~~

~~—(e) The primary staff person shall provide to the following individuals an opportunity to provide input into the development of the child's initial program plan and each review of the child's program plan:~~

~~—(1) The child's parent.~~

~~—(2) Other staff persons who supervise the child at the facility.~~

~~—(3) Other individuals who provide early intervention or special education services, treatment, therapy or other specialized services to the child.~~

~~—(4) The child if the child is a school-age child.~~

~~(f) The primary staff person shall date and sign the child's initial program plan and each reviewed or updated program plan. The child's parent shall be given an opportunity to sign each program plan and receive a copy of each dated and signed program plan.~~

~~(g) A signed and dated copy of the child's initial program plan and each reviewed or updated program plan shall be placed in the child's facility record.~~

§ 3280.120. Infant sleep position.

~~Infants shall be placed on their backs to sleep~~ IN THE SLEEPING POSITION RECOMMENDED BY THE AMERICAN ACADEMY OF PEDIATRICS unless a there is a medical reason an infant should not sleep in this position. The medical reason shall be documented in a statement signed by a physician, physician's assistant or CRNP and placed in the child's record at the facility.

PROCEDURES FOR ADMISSION

§ 3280.122. Admission interview.

A child shall be interviewed or observed by the operator and, when possible, shall have the opportunity to visit the facility prior to being admitted for care. The child shall be told as much as he can understand about the service being planned. If the parent indicates that the child has [a disability or handicapping condition] special needs, the operator shall discuss the condition with the parent, refer to § 3280.4 (relating to definitions), and comply with §§ 3280.16, 3280.124 and 3280.131 (relating to service to

a child with [a disability] special needs; emergency contact information; and health [assessment] information).

§ 3280.123. Agreement.

(a) An agreement signed by the operator and the parent shall specify the following:

* * * * *

(3) The services to be provided to the family and the child, INCLUDING THE DEPARTMENT'S APPROVED FORM TO PROVIDE INFORMATION TO THE FAMILY ABOUT THE CHILD'S GROWTH AND DEVELOPMENT IN THE CONTEXT OF THE SERVICES BEING PROVIDED. THE OPERATOR SHALL COMPLETE AND UPDATE THE FORM AND PROVIDE A COPY TO THE FAMILY IN ACCORDANCE WITH THE UPDATES REGARDING EMERGENCY CONTACT INFORMATION AT § 3280.124(F).

* * * * *

§ 3280.124. Emergency contact information.

* * * * *

(b) Emergency contact information [shall] must include the following:

* * * * *

(5) Information on the [disability of the child] child's special needs, as specified by the child's parent [or], physician, physician's assistant or CRNP, which is needed in an emergency situation.

* * * * *

CHILD HEALTH

§ 3280.131. Health [assessment] information.

(a) [An] The operator shall require the parent of an enrolled child, including a child, a foster child and a relative of an operator or a facility person, [shall have an age-appropriate] to provide an initial health report [on record at the facility] no later than 60 days following [enrollment] the first day of attendance at the facility.

(1) The initial health report for an infant must be dated no more than 3 months prior to the first day of attendance at the facility.

(2) The initial health report for a young toddler must be dated no more than 6 months prior to the first day of attendance at the facility.

(3) The initial health report for an older toddler or preschool child shall be dated no more than 1 year prior to the first day of attendance at the facility.

(4) The initial health report for a school-age child must be dated in accordance with the requirements for medical examinations for school attendance at in 28 Pa. Code § 23.2 (relating to medical examinations).

(b) [An age-appropriate health assessment shall be conducted according to the recommended schedule for routine health supervision as referenced in the most current edition of the American Academy of Pediatrics (AAP) *Guidelines for Health Supervision*. This publication can be obtained from the American Academy of Pediatrics, 141 Northwest Point Boulevard, Post Office Box 927, Elk Grove Village, Illinois 60007.] The operator shall require the parent to provide an updated health report in accordance with the following schedules:

(1) At least every 6 months for an infant or young toddler.

(2) At least every 12 months for an older toddler or preschool child.

(c) A health [assessment shall be conducted and a] report [shall] must be written and signed by a physician, physician's assistant or a CRNP. The signature [shall] must include the individual's professional title.

(d) The health report shall include the following information:

(1) A review of the child's [previous] health history.

(2) [The results of a physical examination] A list of the child's allergies.

(3) [An assessment of the child's growth patterns] A list of the child's current medication and the reason for the medication.

(4) [The physician's or CRNP's] An assessment of [a disability or a] an acute or chronic health problem or special needs and recommendations for treatment or

services, INCLUDING INFORMATION REGARDING ABNORMAL RESULTS OF SCREENING TESTS FOR VISION, HEARING OR LEAD POISONING.

(5) A review of the child's immunized status according to recommendations of the [AAP] ACIP. [The Department will provide the AAP guidelines upon request.]

* * * * *

(7) [A review of age-appropriate screenings according to the standards of the AAP.] A statement that the child is able to participate in child care and appears to be free from contagious or communicable disease.

(8) A STATEMENT THAT AGE-APPROPRIATE SCREENINGS RECOMMENDED BY THE AMERICAN ACADEMY OF PEDIATRICS WERE CONDUCTED SINCE THE TIME OF THE PREVIOUS HEALTH REPORT REQUIRED BY THIS SECTION.

(e) [The operator shall comply with the Department of Health (DOH) regulation at 28 Pa. Code § 27.121a (Reserved) and shall implement dismissal policies in accordance with that section. The Department will provide the DOH regulation upon request.] The facility may not accept or retain an infant 2 months of age or older, a toddler or a preschool child at the facility for more than 60 days following the first day of attendance at the facility unless the parent provides written verification from a physician, physician's assistant, CRNP, the Department of Health or a local health department of the dates (month, day and year) the child was administered immunizations in accordance with the recommendations of the ACIP.

(1) The facility shall require the parent to provide updated written verification from a physician, physician's assistant, CRNP, the Department of Health or a local health department of ongoing vaccines administered to an infant, toddler or preschool child in accordance with the schedule recommended by the ACIP.

(2) Exemption from immunization must be documented as follows:

(i) Exemption from immunization for religious belief or strong personal objection equated to a religious belief shall be documented by a written, signed and dated statement from the child's parent or guardian. The statement shall be kept in the child's record.

(ii) Exemption from immunization for reasons of medical need must be documented by a written, signed and dated statement from the child's physician, physician's assistant or CRNP. The statement shall be kept in the child's record.

(3) The facility shall implement dismissal policies in accordance with the Department of Health regulation in 28 Pa. Code § 27.77 (relating to immunization requirements for children in child care group settings).

(4) The facility shall comply with the annual immunization reporting requirements in accordance with the Department of Health regulation in 28 Pa. Code § 27.77.

§ 3280.133. Child medication and special diets.

The operator shall make reasonable accommodation in accordance with the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101-12213)

APPLICABLE FEDERAL AND STATE LAWS to facilitate administration of medication or a special diet AS prescribed by a physician, physician's assistant or CRNP for a child with AS A TREATMENT RELATED TO THE CHILD'S special needs. Facility persons are not required to administer [child] medication or special diets which are requested or required by a parent, a physician, a physician's assistant or a CRNP to a child who does not have BUT ARE NOT TREATMENT RELATED TO THE CHILD'S special needs. [If child] When medication or special diets are administered, the following requirements apply:

* * * * *

[(9) A staff person who administers Syrup of Ipecac shall request case-specific instruction for administration from a poison control center or a physician. The staff person shall record in the child's file the date and time instruction was received, the name of the individual who issued the instruction, the content of the information and the time, date and amount of Syrup of Ipecac administered.]

§ 3280.135. Diapering requirements.

(a) When children are diapered, the facility shall use disposable diapers, a diaper service or arrange with the parent to provide a daily diaper supply.

* * * * *

(3) If disposable diapers are provided by a facility or a parent, a soiled diaper shall be discarded [in one of the following ways] by immediately placing the diaper into a plastic-lined, hands-free covered can. [The diaper shall be:

- (i) immediately placed into a lined outdoor trash container.
- (ii) Placed in an individual, tied bag and discarded indoors until outdoor disposal is possible.]

* * * * *

(e) A staff person shall check a child's diaper at least every 2 hours and whenever the child indicates discomfort or exhibits behavior that suggests a soiled diaper. A staff person shall change a child's diaper when the diaper is soiled.

ADULT HEALTH

§ 3280.151. Health assessment.

(a) A facility person providing direct care who comes into contact with the children or who works with food preparation shall have a health assessment conducted within [3] 12 months prior to providing initial service in a child care setting and every [year] 24 months thereafter. A health assessment is valid for [12] 24 months following the date of signature, if the person does not contract a communicable disease or develop a medical problem.

(b) A health assessment shall be conducted and a report shall be written and signed by a physician, physician's assistant or CRNP. The signature [shall] must include the individual's professional title.

(c) The health assessment [shall] must include the following:

* * * * *

(2) Tuberculosis screening by the Mantoux method at initial employment [and subsequently at least once every 2 years]. Subsequent tuberculosis screening is not required unless directed by a physician, physician's assistant, CRNP, Department of Health or local health department.

* * * * *

TRANSPORTATION

§ 3280.175. Safety restraints.

(a) A child [4] 7 years of age or younger shall be transported in accordance with the requirements for parents and guardians as stated in 75 Pa.C.S. § 4581 (relating to restraint systems).

* * * * *

§ 3280.176. Vehicles.

* * * * *

(f) IN ACCORDANCE WITH THE REQUIREMENTS OF 67 PA. CODE CHAPTER 171 (RELATING TO SCHOOL BUSES AND SCHOOL VEHICLES), the facility may not transport a child in an 11-15 passenger van in accordance with the requirements of 67 Pa. Code Chapter 171 (relating to school buses and school vehicles).

CHILD RECORDS

§ 3280.182. Content of records.

A child's record [shall] must contain the following information:

- (1) Initial and subsequent health [assessments] reports.

* * * * *

[NIGHT CARE]

(Editor's Note: As part of this final-form rulemaking, the Department is deleting the text of §§ 3280.201--3280.209, which appears at 55 Pa. Code pages 3280-49 and 3280-50, serial pages (204645) and (204646).)

§§ 3280.201--3280.209.

SPECIAL EXCEPTIONS

§ 3280.215. Play surfaces.

- (a) A facility ~~certified by the Department~~ LAWFULLY OPERATING as of [April 4, 1992, is exempt from the requirement to provide an impact-absorbing ground cover, as

described at § 3280.102(c) (relating to condition of play equipment)] _____ (*Editor's Note: The blank refers to the effective date of adoption of this final-form rulemaking.*) has until _____ (*Editor's Note: The blank refers to a date 2 years after the effective date of adoption of this proposed rulemaking.*) to comply with the protective surface requirement described in § 3280.102(c) (relating to condition of play equipment).

(b) A facility ~~certified by the Department~~ LAWFULLY OPERATING as of [April 4, 1992,] _____ (*Editor's Note: The blank refers to the effective date of adoption of this final-form rulemaking.*) which has a play surface not in compliance with § 3280.102(e) [is exempt from the requirement unless the surface is replaced] has until _____ (*Editor's Note: The blank refers to a date 2 years after the effective date of adoption of this final-form rulemaking.*) to comply with § 3280.102(e).

SCHOOL-AGE PROGRAMS

§ 3280.221. Requirements specific to school-age programs.

* * * * *

(b) A facility or a space in a facility in which care is provided exclusively to school-age children shall comply only with the following:

* * * * *

(2) *General requirements.* Sections 3280.11--[3280.25] 3280.26 (relating to general requirements).

* * * * *

(7) *Equipment.* Sections 3280.101, 3280.102(a)--(c) and (g), 3280.107 and 3280.108.

(8) *Program.* Sections 3280.111, 3280.113, 3280.115(a) and (b), 3280.116 [~~and~~],
AND 3280.118 and 3280.119.

(9) *Procedures for admission.* Sections 3280.121—3280.124 (relating to procedures for admission). WHEN A SCHOOL-AGE CHILD ATTENDS THE FACILITY 15 HOURS OR LESS PER WEEK, THE OPERATOR IS NOT REQUIRED TO COMPLETE THE DEPARTMENT'S APPROVED FORM TO PROVIDE INFORMATION TO THE FAMILY ABOUT THE CHILD'S GROWTH AND DEVELOPMENT IN THE CONTEXT OF THE SERVICES BEING PROVIDED REFERENCED AT SECTION 3280.124(A)(3).

* * * * *

(10) *Child health.* Sections 3280.131--3280.134(a) and 3280.136--3280.138. An equivalent [age-appropriate] health [assessment] report completed by a school is acceptable as documentation of child health for a school-age child.

* * * * *

(17) Staff persons shall have immediate access to a working telephone on the facility premises. IF A LAND-LINE TELEPHONE IS NOT ACCESSIBLE TO STAFF PERSONS DURING THE HOURS OF FACILITY OPERATION, A WIRELESS TELEPHONE IS ACCEPTABLE.

CHAPTER 3290. FAMILY CHILD DAY CARE HOMES

GENERAL PROVISIONS

§ 3290.4. Definitions.

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

ACIP--The Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, United States Department of Health and Human Services.

* * * * *

[*Age-appropriate child health assessment*--A written report assessing a child's health status. The report is signed by a physician or a nurse practitioner and includes the child's health history, the child's physical examination and a plan for treatment of health problems identified in the health assessment.]

Age level--The grouping category appropriate for the child's age.

- (i) *Infant*--A child from birth [through 12 months] to 1 year of age.
- (ii) *Young toddler*--A child from [13 through 24 months] 1 to 2 years of age.
- (iii) *Older toddler*--A child from [25 through 36 months] 2 to 3 years of age.
- (iv) *Preschool child*--A child from [37 months of age through] 3 years of age to the date the child enters [first grade of] kindergarten in a public or private school system.

(v) *Young school-age child*--A child [from the first grade through the 3rd] who attends kindergarten to the date the child enters the 4th grade of a public or private school system.

(vi) *Older school-age child*--A child [from] who attends the 4th grade of a public or private school system through 15 years of age.

* * * * *

Child with [a disability] special needs--A child who [does not function according to age-appropriate expectations in the areas of emotional, cognitive, communicative, perceptual-motor, physical or social development and requires special adaptations, program adjustments and related services on a regular basis, to function in an adaptive manner. Examples of a child with a disability include a child who has:

- (i) A developmental delay.
- (ii) A neurologically-based condition, such as mental retardation, cerebral palsy, autism, epilepsy or other condition closely related to mental retardation or requiring treatment similar to that required by mentally retarded children.
- (iii) Mental retardation associated with sociocultural or psychosocial disadvantage.
- (iv) A genetic disorder or physiological condition usually associated with mental retardation.
- (v) Problems of social or emotional adjustment.

(vi) A physical disability, such as visual impairment, hearing impairment, speech or language impairment, or a physical handicap.] has one or more of the following:

(i) A disability or developmental delay identified on an Individualized Education Program or IEP, an Individualized Family Service Plan IFSP OR A SERVICE AGREEMENT.

(ii) A formal WRITTEN behavioral plan that has been determined by a licensed physician, psychiatrist, or licensed psychologist, OR CERTIFIED BEHAVIOR ANALYST.

(iii) A chronic health condition diagnosed by a licensed physician, physician's assistant or CRNP that requires health and related services of a type or amount beyond that required by children generally.

* * * * *

IEP – INDIVIDUALIZED EDUCATION PROGRAM AS DEFINED IN 22 PA.CODE § 14.101 (RELATING TO DEFINITIONS) AND §§ 14.131-14.133 (RELATING TO IEP; ESY; AND BEHAVIOR SUPPORT).

IFSP – INDIVIDUALIZED FAMILY SERVICE PLAN AS DEFINED IN § 4226.5 (RELATING TO DEFINITIONS) AND §§ 4226.71-4226.77.

* * * * *

Inspection summary--A document prepared by an agent of the Department describing each regulatory noncompliance item confirmed as a result of a facility inspection.

* * * * *

Legal entity--A person, [society,] corporation[, governing authority] or partnership that is legally responsible for the administration of [one] the facility [or several facilities, or one type of facility or several types of facilities].

* * * * *

SERVICE AGREEMENT – A SERVICE AGREEMENT AS DEFINED IN 22 PA.CODE § 15.2 AND §15.7 (RELATING TO DEFINITIONS; AND SERVICE AGREEMENT).

* * * * *

GENERAL REQUIREMENTS

§ 3290.11. Application for and issuance of a certificate of registration.

* * * * *

(b) [An individual] A legal entity desiring to apply for a certificate of registration shall request application documents from the appropriate regional office of the Department.

(c) A legal entity or a representative of the legal entity shall participate in a precertification AN orientation training provided by the Department within 12 months prior to issuance of a certificate of compliance REGISTRATION. The precertification orientation does not count toward the biennial minimum of 12 clock hours of child care training required in § 3290.31(f) (relating to age and training).

[(c)] (d) Prior to providing child day care at any one time to more than three children unrelated to the operator, [an individual] the legal entity shall apply for and shall be issued a certificate of registration.

[(d) An individual] (e) A legal entity seeking to operate a facility shall apply to the appropriate regional office on a form approved by the Department. The [applicant] legal entity shall be required to submit information specified by the registration law and this chapter.

[(e)] (f) The [applicant] legal entity applying for a certificate of registration shall certify, in writing, compliance with the registration law and this chapter.

[(f)] (g) * * *

[(g)] (h) * * *

(1) A certificate of registration is issued to a specific [operator] legal entity at a specific location. A certificate of registration is not transferrable.

(2) A certificate of registration is void without notice if there is a change in the legal entity[, the operator] or the location of the facility.

(3) If a facility is to be operated at a new location or by a new legal entity [or operator], the [operator] legal entity shall advise the appropriate regional office at least 30 days in advance of the change.

[(h)] (i) * * *

[(i)] (j) If a certificate of registration lapses, the [applicant] legal entity shall file an original application and the supplemental information required by the Department.

[(j)] (k) Prior to expiration of a current certificate of registration, the [operator] legal entity will receive notice from the Department regarding renewal of the certificate.

[(k)] An operator] (l) A legal entity desiring to renew a certificate of registration shall submit a correct, completed application and other required materials to the appropriate regional office of the Department prior to the expiration of the current certificate of registration.

[(l)] (m) Regarding child abuse and criminal history clearances related to the CPSL, the following apply:

(1) At [renewal of a certificate of registration, new clearances will not be required by the Department if a correct, completed application for renewal is received prior to expiration of the current certificate of registration] INITIAL APPLICATION FOR A CERTIFICATE OF REGISTRATION, THE LEGAL ENTITY SHALL SUBMIT CLEARANCES FOR THE LEGAL ENTITY AND FOR EACH INDIVIDUAL 18 YEARS OF AGE AND OLDER WHO RESIDES IN THE FACILITY AT LEAST 30 DAYS IN A CALENDAR YEAR.

(2) AT RENEWAL, THE LEGAL ENTITY SHALL SUBMIT SHALL SUBMIT CLEARANCES FOR EACH INDIVIDUAL 18 YEARS OF AGE OR OLDER WHO

RESIDES IN THE FACILITY AT LEAST 30 DAYS IN A CALENDAR YEAR IF ANY OF THE FOLLOWING APPLIES:

(i) THE CURRENT REGISTRATION CERTIFICATE WAS ISSUED PRIOR TO MAY 28, 2007.

(ii) THE INDIVIDUAL ATTAINED 18 YEARS OF AGE FOLLOWING THE DATE OF THE PREVIOUS APPLICATION FOR A REGISTRATION CERTIFICATE.

(iii) THE INDIVIDUAL MOVED INTO THE FACILITY FOLLOWING THE DATE OF THE PREVIOUS APPLICATION FOR A REGISTRATION CERTIFICATE.

(3) New clearances FOR THE LEGAL ENTITY AND FOR EACH INDIVIDUAL 18 YEARS OF AGE OR OLDER WHO RESIDES IN THE FACILITY AT LEAST 30 DAYS IN A CALENDAR YEAR will be required by the Department if an application for renewal is received following expiration of the current certificate of registration.

[(m)] (n) An operator whose facility's certificate of registration is current as of [April 4, 1992,] _____ (*Editor's Note: The blank refers to the effective date of adoption of this final-form rulemaking.*) will not be required to certify compliance with this chapter until renewal of the certificate of registration or until the Department inspects in response to an alleged regulatory violation, whichever occurs first.

§ 3290.14. [Firesafety approval] Certificate of occupancy BUILDING CODES.

A certificate of registration will not be granted by the Department until the [operator] legal entity provides a certificate of occupancy as proof of compliance with the applicable requirements in 34 Pa. Code [Chapter 56 (relating to division C-3 small group

habitation) or local authorities in Scranton, Pittsburgh or Philadelphia] § 403.23 (relating to child day care facilities).

* * * * *

§ 3290.15. Service to a child with [a disability] special needs.

[A facility serving a child with a disability as defined in § 3290.4 (relating to definitions) shall also comply with applicable sections of Chapter 3300 (relating to specialized day care service for children with disabilities).]

(a) The operator shall make reasonable accommodation to include a child with special needs in accordance with the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101-12213) APPLICABLE FEDERAL AND STATE LAWS.

(b) The operator shall permit an adult individual who provides specialized services to a child with special needs to provide those services on the facility premises as specified in the child's Individualized Education Program IEP, Individualized Family Service Plan IFSP, ~~formal~~ OR WRITTEN behavioral plan or program plan as defined in § 3290.118 (relating to program plan).

(c) The operator is responsible to SHALL make staff persons AND PARENTS aware of community resources for the family of a child with possible WHO MAY HAVE special needs. THE DEPARTMENT WILL PROVIDE TO THE OPERATOR INFORMATION REGARDING COMMUNITY RESOURCES.

~~(1) When the operator believes a child may need an assessment due to developmental, behavioral or health concerns, the operator shall inform the child's parent of the concern and provide information to the parent regarding resources for referral and assistance.~~

~~(2) When a staff person believes a child may need an assessment due to developmental, behavioral or health concerns, the staff person shall inform the operator. The operator shall inform the child's parent of the staff person's concern and provide information to the parent regarding resources for referral and assistance.~~

§ 3290.21. Departmental access.

* * * * *

~~(c) An agent of the Department will inspect for compliance with this chapter in all areas of the facility premises that are accessible to children.~~

§ 3290.22. Availability of certificate of registration and applicable regulations.

* * * * *

~~(c) The operator shall post a copy of each inspection summary issued by the Department next to the facility's certificate of registration in a conspicuous location used by parents. The inspection summary shall remain posted until an agent of the Department verifies that each noncompliance item noted on the inspection summary has been corrected.~~

§ 3290.24 Emergency plan.

(a) The facility shall have an emergency plan that provides for:

(1) Shelter of children during an emergency INCLUDING SHELTER IN PLACE AT THE FACILITY AND SHELTER AT LOCATIONS AWAY FROM THE FACILITY PREMISES.

(2) Evacuation of children from the facility BUILDING AND EVACUATION OF CHILDREN TO A LOCATION AWAY FROM THE FACILITY PREMISES. THE EVACUATION ROUTES AND EVACUATION PLANS TO EXIT THE BUILDING MAY BE THE SAME AS THOSE REQUIRED BY § 3290.94 (F) AND (G) (RELATING TO FIRE DRILLS).

(3) A method for facility persons to contact parents as soon as reasonably possible when an emergency situation arises.

(4) A method for facility persons to inform parents that the emergency has ended and to provide instruction as to how parents can safely be reunited with their children.

(b) The operator shall review the emergency plan at least annually and update the plan as needed. Each review and update of the emergency plan shall be documented in writing and kept on file at the facility.

(c) Each facility person shall receive training regarding the emergency plan at the time of initial employment, on an annual basis and at the time of each plan update. The

date of each training and the name of each facility person who received the training shall be documented in writing and kept on file at the facility.

(d) The emergency plan shall be posted in the facility at a conspicuous location.

(e) The operator shall provide to the parent of each enrolled child a letter explaining the emergency procedures described in subsection (a). The operator shall also provide to the parent of each enrolled child a letter explaining any subsequent update to the plan.

(f) The operator shall send a copy of the emergency plan and subsequent plan UPDATES to the county emergency management agency.

FACILITY PERSONS

§ 3290.31. Age and training.

(a) The operator shall [be] have the following qualifications:

(1) Be 18 years of age or older.

(2) Have a high school diploma or a general educational development certificate and submit proof to the appropriate regional office of the Department at the time of registration renewal.

* * * * *

(e) CHILD CARE PROFESSIONAL CREDENTIALS ARE EQUIVALENT TO THE STAFF QUALIFICATIONS LISTED BELOW:

(1) A Child Development Associate (CDA) credential or a Certified Childcare Professional (CCP) credential, ~~as it applies to the staff qualifications in this chapter,~~ is equivalent to [one of the following:

(1) Fifteen] 9 credit hours from an accredited college or university in early childhood education or child development and 1 year of experience with children.

[(2) Thirty credit hours from an accredited college or university in early childhood education or child development.]

(2) A PENNSYLVANIA SCHOOL-AGE PROFESSIONAL CREDENTIAL IS EQUIVALENT TO 9 CREDIT HOURS FROM AN ACCREDITED COLLEGE OR UNIVERSITY IN ELEMENTARY EDUCATION OR CHILD DEVELOPMENT AND 1 YEAR EXPERIENCE WITH CHILDREN.

* * * * *

PHYSICAL PHYSICAL SITE

§ 3290.68. Indoor temperature.

* * * * *

(b) If the indoor temperature exceeds [85°] 82°F in a child care space, a means of mechanical air circulation shall be operating.

§ 3290.73. First-aid kit.

* * * * *

(c) A first-aid kit [shall] must contain the following: soap, an assortment of adhesive bandages, sterile gauze pads, tweezers, tape, scissors and [Syrup of Ipecac] disposable, nonporous gloves. [Instructions for use of the Syrup of Ipecac shall be included as described at § 3290.133 (relating to child medication and special diets).]

(d) One first-aid kit [shall] must accompany children and facility person on excursions from the facility. The first aid kit taken on an excursion must contain a bottle of water in addition to the items specified at (c).

EQUIPMENT

§ 3290.102. Condition of play equipment.

* * * * *

(c) Outdoor equipment that requires embedded mounting [shall] must be mounted over [at least 6 inches of loose-filled impact-absorbing materials,] a loose-fill or unitary playground protective surface covering that meets the recommendations of the United States Consumer Product Safety Commission. The equipment must be anchored firmly and be in good repair.

* * * * *

(F) CHILDREN'S TOYS AND EQUIPMENT, INCLUDING FURNITURE AND REST EQUIPMENT, DESCRIBED AS HAZARDOUS BY THE UNITED STATES CONSUMER

PRODUCT SAFETY COMMISSION MAY NOT BE USED BY CHILDREN AT THE FACILITY.

* * * * *

§ 3290.105. Rest equipment.

* * * * *

(J) TOYS, BUMPER PADS, OR PILLOWS MAY NOT BE PRESENT IN A CRIB WHILE AN INFANT IS SLEEPING IN THE CRIB.

* * * * *

PROGRAM

§ 3290.113. Supervision of children.

(a) Children on the facility premises and on facility excursions off the premises shall be supervised by a staff person at all times. Outdoor play space used by the facility is considered part of the facility premises. The requirement for supervision on and off the facility premises includes compliance with the staff:child ratio requirements in §§ 3290.51-3290.52 (relating to MAXIMUM NUMBER OF CHILDREN; AND STAFF:CHILD ratio requirements).

* * * * *

(e) A facility person may not restrain a child by using bonds, ties or straps to restrict a child's movement or by enclosing the child in a confined space, closet or locked room. The prohibition against restraining a child does not apply to the use of adaptive equipment prescribed for a child with special needs.

§ 3290.115. Water activity.

(a) *Swimming or wading.*

* * * * *

(2) An aboveground swimming pool which is not in use shall be made inaccessible to children in accordance with the swimming pool barrier guidelines of the United States Consumer Product Safety Commission.

* * * * *

§ 3290.116. Release of children.

(a) A child shall be released from care only to the child's parent or to an individual designated in writing by the enrolling parent. A child shall be released to either parent unless a court order on file at the facility states otherwise.

* * * * *

§ 3290.118. Program plan.

~~—(a) The operator shall develop a program plan specific to the child no later than 60 days following the child's first day of attendance at the facility. The program plan for a child with special needs shall incorporate the Individualized Education Program, Individualized Family Service Plan or formal behavioral plan if that plan is reviewed and implemented within the 60 days.~~

~~—(b) The child's program plan must include the following:~~

~~—(1) A documented observation of the child's development.~~

~~—(2) If applicable, identification of the child's unique needs and recommendations, plans or referrals as appropriate. The operator shall inform the parent of the possible special needs of the child and provide information to the parent regarding resources for referral and assistance.~~

~~—(3) A plan to facilitate the child's continued development and participation in the daily activities described in § 3290.111 (relating to daily activities) including involvement of specialist who may be helping to support the child and family.~~

~~—(c) The operator shall review the child's program plan according to the following schedule:~~

~~—(1) For an infant, toddler or preschool child, the plan shall be reviewed at least every 6 months.~~

~~—(2) For a school age child, the plan shall be reviewed at least every 12 months.~~

~~—(3) For a child with special needs, the program plan shall also be reviewed according to the schedule specified in the Individualized Education Program, Individualized Family Service Plan or formal behavioral plan.~~

~~—(d) The operator shall revise the plan as needed to meet the needs of the child at each review.~~

~~—(e) The operator shall provide to the following individuals an opportunity to provide input into the development of the child's initial program plan and each review of the child's program plan:~~

~~—(1) The child's parent.~~

~~—(2) Other staff persons who supervise the child at the facility.~~

~~—(3) Other individuals who provide early intervention or special education services, treatment, therapy or other specialized services to the child.~~

~~—(4) The child if the child is a school-age child.~~

~~—(f) The operator shall date and sign the child's initial program plan and each reviewed or updated program plan. The child's parent shall be given an opportunity to sign each program plan and will receive a copy of each dated and signed program plan.~~

~~—(g) A signed and dated copy of the child's initial program plan and each reviewed or updated program plan shall be placed in the child's facility record.~~

§ 3290.119. Infant sleep position.

Infants shall be placed on their backs to sleep IN THE SLEEPING POSITION RECOMMENDED BY THE AMERICAN ACADEMY OF PEDIATRICS unless there is a medical reason an infant should not sleep in this position. The medical reason shall be documented in a statement signed by a physician, physician's assistant or CRNP and placed in the child's record at the facility.

PROCEDURES FOR ADMISSION

§ 3290.122. Admission interview.

A child shall be interviewed or observed by the operator and when possible shall have the opportunity to visit the facility prior to being admitted for care. The child shall be told as much about the service being planned as the child can understand. If the parent indicates that the child has a [disability or handicapping condition] special need, the operator shall discuss the condition with the parent, refer to § 3290.4 (relating to definitions), and comply with §§ 3290.15, 3290.124 and 3290.131 (relating to service to a child with [a disability] special needs; emergency contact information; and health [assessment] information).

§ 3290.123. Agreement.

(a) An agreement signed by the operator and the parent shall specify the following:

* * * * *

(3) The services to be provided to the family and child, INCLUDING THE DEPARTMENT'S APPROVED FORM TO PROVIDE INFORMATION TO THE FAMILY

ABOUT THE CHILD'S GROWTH AND DEVELOPMENT IN THE CONTEXT OF THE SERVICES BEING PROVIDED. THE OPERATOR SHALL COMPLETE AND UPDATE THE FORM AND PROVIDE A COPY TO THE FAMILY IN ACCORDANCE WITH THE UPDATES REGARDING EMERGENCY CONTACT INFORMATION AT § 3290.124(E).

* * * * *

§ 3290.124. Emergency contact information.

* * * * *

(b) Emergency contact information [shall] must include the following:

* * * * *

(5) Information on the [disability of the child] child's special needs, as specified by the child's parent [or], physician, physician's assistant or CRNP, which is needed in an emergency situation.

* * * * *

CHILD HEALTH

§ 3290.131. Health [assessment] information.

(a) [An] The operator shall require the parent of an enrolled child [shall have an age-appropriate] to provide an initial health report [on record at the facility] no later than 60 days following [enrollment] the first day of attendance at the facility.

(1) The initial health report for an infant shall be dated no more than 3 months prior to the first day of attendance at the facility.

(2) The initial health report for a young toddler shall be dated no more than 6 months prior to the first day of attendance at the facility.

(3) The initial health report for an older toddler or preschool child shall be dated no more than 1 year prior to the first day of attendance at the facility.

(4) The initial health report for a school-age child shall be dated in accordance with the requirements for medical examinations for school attendance in 28 Pa. Code § 23.2 (relating to medical examinations).

(b) [An age-appropriate health assessment shall be conducted according to the recommended schedule for routine health supervision as referenced in the most current edition of the American Academy of Pediatrics (AAP) *Report of the Committee on Infectious Diseases*. This publication can be obtained from the American Academy of Pediatrics, 141 Northwest Point Boulevard, Post Office Box 927, Elk Grove Village, Illinois 60007.] The operator shall require the parent to provide an updated health report in accordance with the following schedules:

(1) At least every 6 months for an infant or young toddler.

(2) At least every 12 months for an older toddler or preschool child.

(c) A health [assessment shall be conducted and a] report [shall] must be written and signed by a physician, physician's assistant or a CRNP. The signature [shall] must include the individual's professional title.

(d) The health report [shall] must include the following information:

(1) A review of the child's [previous] health history.

(2) [The results of a physical examination] A list of the child's allergies.

(3) [An assessment of the child's growth patterns] A list of the child's current medication and the reason for the medication.

(4) [The physician's CRNP's] An assessment of [a disability or a] an acute or chronic health problem or special needs and recommendations for treatment or services, INCLUDING INFORMATION REGARDING ABNORMAL RESULTS OF SCREENING TESTS FOR VISION, HEARING OR LEAD POISONING.

(5) A review of the child's immunized status according to recommendations of the [AAP] ACIP. [The Department will provide the AAP guidelines upon request.]

* * * * *

(7) [A review of age-appropriate screenings according to the standards of the AAP.] A statement that the child is able to participate in child care and appears to be free from contagious or communicable disease.

(8) A STATEMENT THAT AGE-APPROPRIATE SCREENINGS RECOMMENDED BY THE AMERICAN ACADEMY OF PEDIATRICS WERE CONDUCTED SINCE THE TIME OF THE PREVIOUS HEALTH REPORT REQUIRED BY THIS SECTION.

(e) [The operator shall comply with the Department of Health (DOH) regulation at 28 Pa. Code § 27.121a (Reserved) and shall implement dismissal policies in accordance with that section. The Department will provide the Department of Health regulation upon request.] The facility may not accept or retain an infant 2 months of age or older, a toddler or a preschool child at the facility for more than 60 days following the first day of attendance at the facility unless the parent provides written verification from a physician, physician's assistant, CRNP, the Department of Health or a local health department of the dates (month, day and year) the child was administered immunizations in accordance with the recommendations of the ACIP.

(1) The facility shall require the parent to provide updated written verification from a physician, CRNP, the Department of Health or a local health department of ongoing vaccines administered to an infant, toddler or preschool child in accordance with the schedule recommended by the ACIP.

(2) Exemption from immunization must be documented as follows:

(i) Exemption from immunization for religious belief or strong personal objection equated to a religious belief shall be documented by a written, signed and dated statement from the child's parent or guardian. The statement shall be kept in the child's record.

(ii) Exemption from immunization for reasons of medical need must be documented by a written, signed and dated statement from the child's physician, physician's assistant or CRNP. The statement shall be kept in the child's record.

(3) The facility shall implement dismissal policies in accordance with the Department of Health regulation in 28 Pa. Code § 27.77 (relating to immunization requirements for children in child care group settings).

(4) The facility shall comply with the annual immunization reporting requirements in accordance with the Department of Health regulation in 28 Pa. Code § 27.77.

§ 3290.133. Child medication and special diets.

The operator shall make reasonable accommodation in accordance with the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101-12213)

APPLICABLE FEDERAL AND STATE LAWS to facilitate administration of medication or a special diet THAT IS prescribed by a physician, physician's assistant or CRNP for a child with AS TREATMENT RELATED TO THE CHILD'S special needs. Facility persons are not required to administer [child] medication or special diets which are requested or required by a parent, a physician, a physician's assistant or a CRNP to a child who does not have BUT ARE NOT TREATMENT RELATED TO THE CHILD'S special needs. [If child] When medication or special diets are administered, the following requirements apply:

* * * * *

[(9) A staff person who administers Syrup of Ipecac shall request case-specific instruction for administration from a poison control center or a physician. The staff person shall record in the child's file the date and time instruction was received, the name of the individual who issued the instruction, the content of the information and the time, date and amount of Syrup of Ipecac administered.]

§ 3290.135. Diapering requirements.

(a) When children are diapered, the facility shall use disposable diapers, a diaper service or arrange with the parent to provide a daily diaper supply.

* * * * *

(3) If disposable diapers are provided by a facility or a parent, a soiled diaper shall be discarded [in one of the following ways] by immediately placing the diaper into a plastic-lined, hands-free covered can [The diaper shall be:

(i) Immediately placed into a lined outdoor trash container.

(ii) Placed in an individual, tied bag and discarded indoors until outdoor disposal is possible.]

* * * * *

(e) A staff person shall check a child's diaper at least every 2 hours and whenever the child indicates discomfort or exhibits behavior that suggests a soiled diaper. A staff person shall change a child's diaper when the diaper is soiled.

ADULT HEALTH

§ 3290.151. Health assessment.

(a) A facility person [shall provide the Department with a satisfactory initial health assessment. A health assessment shall be submitted] providing direct care who comes into contact with the children or who works with food preparation shall have a health assessment on file at the facility.

(1) The operator shall submit a health assessment to the Department prior to issuance of an initial or renewal certificate of registration.

(2) A health assessment is valid for 24 months following the date of signature, if the person does not contract a communicable disease or develop a medical problem.

(b) A health assessment shall be conducted and a report [shall be] written and signed by a physician, physician's assistant or CRNP. The signature [shall] must include the individual's professional title.

(c) The health assessment [shall] must include the following:

* * * * *

(2) Tuberculosis screening by the Mantoux method at initial employment [and subsequently at least once every 2 years]. Subsequent tuberculosis screening is not required unless directed by a physician, CRNP, the Department of Health or a local health department.

* * * * *

TRANSPORTATION

§ 3290.173. Safety restraints.

(a) A child [4] 7 years of age or younger shall be transported in accordance with the requirements for parents and guardians as stated in 75 Pa.C.S. § 4581 (relating to restraint systems).

* * * * *

§ 3290.174. Vehicles.

* * * * *

(f) IN ACCORDANCE WITH THE REQUIREMENTS OF 67 PA. CODE CHAPTER 171(RELATING TO SCHOOL BUSES AND SCHOOL VEHICLES), the facility may not transport a child in an 11-15 passenger van in accordance with 67 Pa. Code Chapter 171 (relating to school buses and school vehicles).

CHILD RECORDS

§ 3290.182. Content of records.

A child's record [shall] must contain the following information:

(1) Initial and subsequent health [assessments] reports.

[NIGHT CARE]

(Editor's Note: As part of this final-form rulemaking, the Department is deleting the text of §§ 3290.201--3290.208, which appears at 55 Pa. Code pages 3290-35 and 3290-36, serial pages (204685)--(204686).)

§§ 3290.201--3290.208.

SPECIAL EXCEPTIONS

§ 3290.212. Play surfaces.

(a) A facility registered by the Department as of [April 4, 1992, is exempted from the requirement to provide an impact-absorbing ground cover,] _____ *(Editor's Note: The blank refers to the effective date of adoption of this final-form rulemaking.)* has until _____ *(Editor's Note: The blank refers to a date 2 years after the effective date of adoption of this final-form rulemaking.)* to comply with the protective surface requirement as described at § 3290.102(c) (relating to condition of play equipment).

(b) A facility registered by the Department as of [April 4, 1992] _____ *(Editor's Note: The blank refers to the effective date of adoption of this final-form rulemaking.)* which has a play surface or play surface not in compliance with § 3290.102(e) [is exempt from the requirement unless the surface is replaced] has until _____ *(Editor's Note: The blank refers to a date 2 years after the effective date of adoption of this final-form rulemaking.)* to comply with § 3290.102(e).

§ 3290.213. Age and training.

The operator of a facility WHO IS LAWFULLY OPERATING A FAMILY CHILD DAY CARE HOME registered by the Department as of _____ (*Editor's Note: The blank refers to the effective date of adoption of this final-form rulemaking.*) is permanently qualified as an operator at the currently registered OF A family CHILD day care home.

CHAPTER 3300. (Reserved)

(*Editor's Note: As part of this final-form rulemaking, the Department is proposing to delete the text of §§ 3300.1--3300.4, 3300.11--3300.13, 3300.31--3300.36, 3300.51--3300.54, 3300.71, 3300.101, 3300.102, 3300.111--3300.113, 3300.121, 3300.131, 3300.161 and 3300.171, which appears at 55 Pa. Code pages 3300-1 to 3300-15, serial pages (253095) to (253096) and (252719) to (252731).*)

§§ 3300.1--3300.4. (Reserved).

§§ 3300.11--3300.13. (Reserved).

§§ 3300.31--3300.36. (Reserved).

§§ 3300.51--3300.54. (Reserved).

§ 3300.71. (Reserved).

§ 3300.101. (Reserved).

§ 3300.102. (Reserved).

§§ 3300.111--3300.113. (Reserved).

§ 3300.121. (Reserved).

§ 3300.131. (Reserved).

§ 3300.161. (Reserved).

§ 3300.171. (Reserved).

COMMENTATORS - REGULATION 14-506

1- # 46 RECEIVED WITHIN 30-DAY PUBLIC COMMENT PERIOD
 # 47 - # 49 RECEIVED WITHIN 30 DAYS AFTER CLOSURE OF PUBLIC COMMENT PERIOD
 # 50 RECEIVED MORE THAN 30 DAYS AFTER CLOSURE OF PUBLIC COMMENT PERIOD

NO.	NAME	ORGANIZATION	ADDRESS	CODE
1	Timothy M. Allwein	Pennsylvania School Boards Association	PO Box 2042 Mechanicsburg, PA 17055	A
2	Betty Stoner, RN, BSN	Lawrence County Social Services-Head Start	301 East Long Avenue New Castle, PA 16101	M
3	Susan M. Williams	Lehigh Valley Child Care	1550 Hanover Avenue Allentown, PA 18109-2354	P
4	Betty Surbeck, PhD	Family Support Services	bsurbeck@fssinc.org	A
N/A	House Children & Youth Committee	Pennsylvania General Assembly		L
5	Ernestine Redd	Philadelphia School District	eredd@phila.k12.pa.us	P
6	Janice Maker	Department of Health	514 State Office Building 300 Liberty Avenue Pittsburgh, PA 15222	M
7	Susan Loucheim, CRNP		sue@louchheim.org	M
8	Donna Johnson Bullock	Child Care Law Project Community Legal Services	1424 Chestnut Street Philadelphia, PA 19102	AT

NO.	NAME	ORGANIZATION	ADDRESS	CODE
9	Lynn Thomas		thomaswinds@comcast.net	C
10	Harriet J. Williams	Williams Day Care	800 Lafayette Street Coatesville, PA 19320	P
11	Sister Joan Huggard, SSJ	St. Jerome Child Care Center	2950 Holme Avenue Philadelphia, PA 19136-1830	P
12	Salvatore Sandon	Zhang Sah Martial Arts	530 Bainbridge Street Philadelphia, PA 19147	P
13	Nancy A. Hubley	Education Law Center – PA Disabilities Lay Project	nhubley@elc-pa.org	AT
14	Bruce Dixon	Allegheny County Health Department	333 Forbes Avenue Pittsburgh, PA 15213	M
15	Bonnie Caldwell	Caldwells Family Child Care	115 McGee Avenue Curwensville, PA 16833	P
16	Bonnie Caldwell	Keystone Child Care Association	115 McGee Avenue Curwensville, PA 16833	A
17	Libby Ungvary	ECELS	Rose Tree Corporate Center 1400 North Providence Road Suite 3007 Media, PA 19063	M
18	Pam DeGeorge		pamdegeorge@comcast.net	C
19	Roxanne O'Hearn	Lehigh Valley Child Care	roxandjim@verizon.net	P

NO.	NAME	ORGANIZATION	ADDRESS	CODE
20	Terry Casey	Pennsylvania Child Care Association	2300 Vartan Way Suite 103 Harrisburg, PA 17110	A
21	Robin Foltz Michelle Russell	Pennsylvania School-Age Child Care Alliance	mrussell@sumcd.org	A
22	Allison Anderson Acevedo	Pennsylvania Citizens for Children and Youth	7 Benjamin Franklin Parkway Philadelphia, PA 19103	A
23	Diane Barber	Pennsylvania Partnerships for Children	20 North Market Squire Harrisburg, PA 17101-1632	A
24	Thomas Capper	Ball, Murren and Skelly	PO Box 1108 Harrisburg, PA 17108-1108	AT
25	Denise Dowell	Child Care Providers United	1319 Locust Avenue Philadelphia, PA 19107	A
26	Claudia Saitz	Carriage House Children's Center	5604 Solway Street Pittsburgh, PA 15217	P
27	Leslie Roesler	Pennsylvania Key	301 Market Street 8 th Floor Harrisburg, PA 17101	Pa Key
28	Robert Cicco MD FAAP	Pennsylvania Chapter American Academy of Pediatrics	Rose Tree Corporate Center II 1400 North Providence Road Suite 3007 Media, PA 19063	M
29	Beth A. Delconter, MD	State Interagency Coordinating Council for Early Intervention	peddrbeth@aol.com	M
30	Diana Link		dlink02@hotmail.com	C

NO.	NAME	ORGANIZATION	ADDRESS	CODE
31	Mindy Barbakoff	Childspace Too Day Care Center	ChildspaceGtown@aol.com	P
32	Lydia Tokash		1451 Chapman Lake Road Jermyn, PA 18433	P
33	V. Welles		VnWelles@aol.com	P
34	Ricky Pfeifer	Rocky Run YMCA	1299 West Baltimore Pike Media, PA 19063	P
35		Keystone Christian Education Association	6101 Bell Road Harrisburg, PA 17101	A
36		Pennsylvania Family Institute	23 North Front Street Harrisburg, PA 17101	A
37	Jim Mattera	Apple Pie Day Care	3 South State Road Upper Darby, PA 19082	P
38	Anne Harris	Ma Mas Day Care	1435 West Conley Street Philadelphia, PA 19141	P
39	Sheila Zuschling	Kids Corner Children's Center	72 Conneaout Lake Road Greenville, PA 16125	P
40	Carol Steely	Family Child Care Associates of Lehigh Valley	450 Arlington Street Easton, PA 18045	A
41	Susan Nemchick	Miss Susan's Learning Center	200 Schaffer Avenue Elizabeth, PA 15037	P

NO.	NAME	ORGANIZATION	ADDRESS	CODE
42	Denise Cressman	Cressmans Family Childcare	99 Clinton Street Danville, PA 17821	P
43	Denise Cressman	Pennsylvania Home-Based Child Care Providers, Inc.	PO Box 881 Indiana, PA 15701	A
44	Carol Steely	Carol Steely's Group Day Care Home	450 Arlington Street Easton, PA 18045	P
45	Maureen Barber-Carey	Barber National Institute	100 Barber Place Erie, PA 16507-1899	A
46	Jean Lozinger		No address provided	F
47	Barbara Dove		6334 Glen Road Coopersburg, PA 18036	P
48	Cheryl Frank, RN	Visiting Nurses Association of Central Pennsylvania	3315 Derry Street Harrisburg, PA 17111	M
49	Dionne Jennings	J&J Angels Child Care	2211 West Berks Street Philadelphia, PA 19121	P
N/A		Independent Regulatory Review Commission		I
50	Syamal Bhattacharya	Little People Day Care (Columbia)	littlepeople@DEJAZZD.com	P

COMMENTS RECEIVED WITHIN THE 30-DAY PUBLIC COMMENT PERIOD	
CATEGORY	NO. OF COMMENTS
Providers	18
Advocates/Advocacy Organizations	13
Medical Professionals/Organizations	7
Attorneys/Legal Organizations	3
Consumers	3
Pennsylvania Key	1
Former DPW Employee	1
Legislature	1

COMMENTS RECEIVED WITHIN 30 DAYS OF CLOSURE OF PUBLIC COMMENT PERIOD	
CATEGORY	NO. OF COMMENTS
Providers	2
Medical Professionals/Organizations	1
IRRC	1

COMMENTS RECEIVED MORE THAN 30 DAYS AFTER CLOSURE OF PUBLIC COMMENT PERIOD	
CATEGORY	NO. OF COMMENTS
Providers	1

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 14-506
SUBJECT: CHILD CARE FACILITIES
AGENCY: DEPARTMENT OF PUBLIC WELFARE

2008 MAR 10 PM 1:03

INDEPENDENT REGULATORY REVIEW COMMISSION

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
3/10/08	<i>Linda Lawrence</i>	Children and Youth Committee HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES
3/10/08	<i>Madeline Wood</i>	MAJORITY CHAIRMAN <u>Louise Williams Bishop</u>
3/10/08	<i>Laura C. Cullen</i>	SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE
3/10/08	<i>J. Crawford</i>	MAJORITY CHAIRMAN <u>Edwin B. Erickson</u>
3/10/08	<i>Dr. Belmont</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)