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INDEPENDENT REGULATORY  
REVIEW COMMISSION

*Proposed Rule Making  
Department of Public Welfare  
Child Care Facilities*

OFFICE OF CHILD DEVELOPMENT

*[PA Code CHS 3270, 3280, 3290 and 3300]  
Regulation # 14-506*

June 27, 2006

Presented by  
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Pennsylvania Child Care Association (PACCA) is a statewide non-profit association representing organizations and individuals with a professional and business interest in the child care field. Our membership is very diverse and includes Child Care Information Service agencies, Child Care Regional Keys, many Head Start facilities as well as the vast majority of our membership - licensed child care providers. These providers care for the Commonwealth's children in registered family day care and certified, group and center child care settings. Our members provide care to over 200,000 children in the Commonwealth from infants through school age.

PACCA focuses its energies on the development of sound public policy aimed at improving the provision of and access to child care services in the Commonwealth. We thank you for giving the association the opportunity to share the child care providers perspective on these regulations which will impact our members operations and care given to children.

PACCA acknowledges the efforts that the Department of Public Welfare's Office of Child Development provides in ensuring minimum standards in protecting the health, safety and rights of children and families in child care. We note that the current regulations are out of date since there have been new laws, policies, and administrative bulletins enacted in the last 14 years. By updating and publishing revised regulations, child care providers will have a better understanding of current certification requirements for someone operating a center, group home or family home-based child care program.

Overall PACCA feels the Department is moving in a very positive direction by blending Chapter 3300 (regulations for children with special needs) into Chapters 3270, 3280, 3290. This change will bring the Commonwealth into better

compliance with the ADA and recent court decisions that children should be in environmentally inclusive settings or in the least restrictive natural environment. PACCA acknowledges that blending the Chapter 3300 regulations into 3270, 3280, and 3290 is not as easy as it might seem. Therefore, many of our concerns reflect the need for some clarification.

As relates to specific sections, PACCA offers these comments:

**3270.17, 3280.16, and 3290.15 (relating to service to child with a disability)**

This proposed rulemaking requires the facility operator to make reasonable accommodation to provide care to a child with special needs and to permit service providers (such as speech therapists, occupational therapists, etc.) to work with the child onsite. This proposed change is in keeping with the American with Disabilities Act (ADA). Allowing service workers access to the child care site to work with the child is good for the child and can provide essential information to the child care provider. This can strengthen the care given to the child and benefit the child.

We note that the Department will provide information and materials to child care programs regarding community resources for children with special needs. Though this information is good to share with staff and parents, child care providers will need much more than brochures to care for children with special needs. The resources PACCA notes as necessary are specialized Skill Building and trained service providers to be on site for the necessary transition period. Additionally, grants may need to be made available to assist the child care provider in making reasonable accommodations to the facility. We note that any costs for these changes cannot be past on to the parent of the child with a disability; this would be a violation of ADA. Capital improvements for accommodation can be financed by the Department and would be appropriate to better serve children with special needs.

**3270.133, 3280.133 and 3290.133 (relating to child medication and special diets)**

The Department proposes to amend Chapters 3270, 3280, and 3290 to require a facility to make reasonable accommodation to administer a prescribed medication or special diet to a child with special needs. PACCA recognizes that to refuse could be a violation of ADA. However, PACCA notes that some insurance companies may see an increase in risk in administering medication without proper training and procedures in place. The Department has very good curriculum, training practices and procedures within its Office of Mental Retardation which could be shared with the Office of Child Development.

In addition, PACCA requests that the Office of Child Development negotiate with the Nurse Practice Board a waiver to the Nurse Practice Act. This waiver would allow trained child care staff to administer prescribed medication to a child with special needs without putting the child care program in violation of the Nurse Practice Act and their staff person in a situation of "practicing nursing without a license."

### **3270.4, 3280.4 and 3290.4 (relating to definitions)**

#### *Child with special needs*

PACCA agrees with and supports the change in terminology from child with disability to child with special need.

PACCA agrees with the proposed definitions.

#### *Age level*

PACCA has gone on record with the DPW as supporting the change in classification of a Kindergarten child to school age. We realize that this change could result in less money for subsidy reimbursement but can be a cost savings in staffing and transportation. This change in definition could be a positive for the child and family especially since many times this care is provided in school buildings; buildings over which our members do not have authority. Authority is necessary to comply with the regulations for Preschool care as relates to physical plant (water temperatures, toileting facilities, fencing, etc.). This change in definition better allows our providers to care for kindergarten age children in school buildings without conflicting with certification regulations specific to Preschoolers.

PACCA would like clarification on the Department's stipulation that there be access to a working phone by child care staff in a school building. Many times the school's phone is in a locked room in the school building to which child care staff does not have access. However, the child care provider may have a cellular telephone. PACCA requests clarification as to whether a cell phone could be recognized as appropriate access to a working telephone.

### **3270.119, 3280.119 and 3290.118 (relating to program plan)**

PACCA notes that this proposal has a program plan now being required and prepared for each child in care. This requirement comes as a result of blending in the 3300 Chapter into 3270, 3280, 3290 and extending it to each child in care. We caution the Department to rethink and reword this section so that it is clear where the responsibility lies for program planning. This will be exceedingly challenging for many child care programs given staff qualifications, reimbursement rates to finance staffing, and issues around school age environment and time school-agers are in care.

PACCA has a concern relating to individual program plan for each child. There is no doubt that this would be good for children. However, PACCA notes that having individual plans for each child is not a current requirement in public schools and is at a higher performance level within the child care quality improvement program, Keystone STARS. So more thought and guidance by the Office of Child Development should go into how this can be accomplished in child care programs that range from small single sites to multi sites given the constraints of staffing requirements, turnover and Fair Labor Laws.

PACCA notes that an IFSP or IEP for a young child with special needs is done by a team of individuals including the parent. From a statewide perspective, PACCA feels that child care does not always have staff that are at a stage in their

professional development that they could put together a plan for a child that may later be diagnosed with special needs. However, PACCA notes that child care staff need to be part of that team in developing and implementing the plan. Currently, child care staff typically are not asked to participate on the team. Child care does need to be included, but the department must remember the challenge child care has in meeting ratios, lack of substitutes for coverage during those meetings, and finances for travel and staff time to participate in the meetings if they are not held at the child care site.

This proposal if approved would now have program plan by child become part of the certification inspection. PACCA questions if inspectors have the background and expertise to "assess" and "evaluate" a program plan for all children including children with special needs. Or perhaps the intent for role of the certification inspector could be that of checking off that a plan does exist and is in the child's file. PACCA raises these concerns not to be oppositional to the proposed change but rather as an opportunity for the Department to re-examine the proposal and provide clarification, development of suggested plan templates, tools for providers, and inspection protocols.

**3290.31 (relating to age and training)**

PACCA agrees with the proposal that requiring family home based providers to have a high school diploma or GED is a good educational practice and reflects minimum levels of literacy. Literacy is important for early education and care of children as well as for business operations. The proposal to transition to this regulation at time of renewal of the program's certificate of registration is a reasonable one as well. We note and support that new family providers will have to have the diploma or GED at time of certification while current operators who do not have a diploma or GED could be grandfathered.

**3270.11, 3280.11 and 3290.11 (relating to application for and issuance of a certificate of compliance)**

Pre service orientation training for legal entities is offered periodically in some regions of the state currently and generally this offering has shown to make a positive difference in child care operations and health and safety standards. PACCA notes that this is a proposed mandatory requirement and is appreciative that this will be a free training.

**Section 3270.102, 3270.233, 3280.102, 3290.102 (surface covering under outdoor play)**

PACCA agrees that it is appropriate as proposed for surface covering under outdoor play equipment that requires embedded mountings must meet the guidelines for loose-fill or unitary playground protective surface covering established by the US Consumer Product Safety Commission. The association feels that Pennsylvania will go a long way in helping children and improving the health and safety standards for outdoor play by factoring in the height of the equipment and the type or depth of surface covering. We note that this will be a cost factor for child care operations.

PACCA agrees with and supports other health and safety proposed regulations including:

- Prohibiting the use of children's products and toys determined hazardous by the CPSC is a positive step. Referring the provider to the Consumer Product Safety Commission website is helpful and is a free resource. PACCA notes that there are thousands of recalled toy and play items; and therefore, the OCD's recommended self-certification to this provision is the most cost effective way for a certification inspector to implement this requirement.
- The provision that children may not be restrained by using bonds, ties or straps to restrict a child' and the examples sited with the exception for use of prescribed adaptive equipment.
- Ventilation by mechanical means when in door temperatures reach 82 degrees.
- Health assessments for child care staff.
- Immunizations for children in child care facilities. PACCA notes that the proposed change would mandate that providers exclude the child from care or in other words "terminate care if a child is not immunized". PACCA recognizes that immunization is an important aspect of healthy child growth but question if terminating care is in the overall best interest of the child and the child's physical, social, emotional, and cognitive development. Terminating care does not help working families.
- The wording that the Department has provided for supervision of children during facility excursions off premises is good clarification over current regulatory language.

We note that many of these changes are reflect changes that have occurred as a result of medical research and it is timely to include them in the child care regulations. Experienced and knowledgeable providers know about the changes (for example, sleeping babies on their back) but new providers may not be aware of current health and safety practices.

PACCA thanks the Department of Public Welfare for the opportunity to offer the above comments and is available for further conversations or discussions with the Department of Public Welfare, members of the Legislature, and the Independent Regulatory Review Commission. The association will make its resources available to help providers understand the proposed regulations and assist them in linking with resources, and information.