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Regulatory Analysis Form

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(1) Agency Department of Public Welfare	This space for use by IRRC INDEPENDENT REGULATORY REVIEW COMMISSION IRRC Number: 2549
(2) I.D. Number (Governor's Office Use)	

(3) Short Title
 Child Care

(4) PA Code Cite 55 Pa.Code Ch. 168	(5) Agency Contacts & Telephone Numbers Primary Contact: Robert Frein (717) 346-9323 Secondary Contact: Karen Mercadante, (717) 772-4848
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(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 checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor
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(8) Briefly explain the regulation in clear and nontechnical language.

The purpose of the final-form rulemaking is to establish consistent child care policies within the Office of Income Maintenance (OIM) and Office of Child Development (OCD) that best meet the needs of all families receiving subsidized child care and improve child care services to families receiving Temporary Assistance for Needy Families (TANF), General Assistance (GA) and Food Stamp benefits. The Department's goal is to establish for cash assistance and food stamps recipients a "user-friendly" child care system that is accessible to eligible families who need help finding and paying for quality child care that is responsive to their needs.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Articles II and IV of the Public Welfare Code or the Public Welfare Code (62 P. S. §§ 201 – 211; 401 – 493).

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(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.

This final-form rulemaking is not mandated by a Federal or state law, court order or regulation.

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

The final-form rulemaking benefits children and families receiving TANF, GA and Food Stamp benefits by allowing easier access to affordable, quality child care. Improvements include: incorporating the eligibility requirements for GA and Food Stamp families receiving child care with the eligibility requirements for TANF families receiving child care; establishing consistent child care policies within OIM and OCD that best meet the needs of all families receiving subsidized child care.

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

Failure to implement the final-form rulemaking will make it more difficult for some families receiving TANF, GA or Food Stamp benefits to achieve financial self-sufficiency. Child care is a critical part of the pathway to self-sufficiency. Providing child care to meet the parents' needs during their hours of work, education or training helps families to move toward financial self-sufficiency.

There are risks to children associated with non-regulation. The final-form rulemaking will help families receiving TANF, GA or Food Stamp benefits to obtain quality and affordable child care. Without the final-form rulemaking, it would be more difficult for families to secure critical child care services. Without the final-form rulemaking, families will also continue to face barriers because child care services and payment would not be streamlined through a single subsidy system that provides specialized and comprehensive parent information, counseling and resource and referral services.

(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 rulemaking benefits on a monthly basis approximately 47,000 children and approximately 27,650 families of low income by allowing easier access to affordable, quality child care.

(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.)

No adverse affects are anticipated.

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(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.)

The final-form rulemaking affects on a monthly basis approximately 27,650 families who apply for or receive subsidized child care and 158 agencies authorized by the Department to administer subsidized child care.

Families are affected by the requirements in the final-form rulemaking that specify the eligibility conditions, verification and reporting requirements that they must meet to access subsidized child care. Providers are affected by the simplified requirements that apply to the families receiving child care services. Agencies authorized by the Department to administer subsidized child care are affected since the rulemaking changes the process and requirements related to the eligibility determination procedures and child care payment.

(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 Department has worked closely with families who access the subsidized child care program, child development and community service advocates, providers, agencies authorized by the Department to administer subsidized child care and other interested stakeholders to listen and respond to the needs, concerns and suggestions of each of these groups. The final-form rulemaking is the result of an ongoing, inclusive process between the child care community and the Department.

(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.

There are no new costs or savings to the regulated community associated with compliance with this final-form rulemaking.

(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 government associated with compliance with this final-form rulemaking.

Linda J. Leffering 11-2-06

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(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						
Local Government						
State Government CAO - 10264	\$0	\$1.003	\$3.398	\$3.398	\$3.398	\$3.398
Total Savings	\$0	\$1.003	\$3.398	\$3.398	\$3.398	\$3.398
COSTS:						
Regulated Community						
Local Government						
State Government Cash Grants - 10265		\$619 M	3.172 M	3.965 M	4.758 M	\$5.551 M
Child Care - 10253	\$0	\$3.910 M	\$6.143 M	\$6.327 M	\$6.517 M	\$6.712 M
Total Costs		\$4.529 M	\$9.315 M	\$10.292 M	\$11.275 M	\$12.263 M
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

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

The costs were derived by taking the total population of children receiving child care services in these programs and dividing by the average statewide staff-to-child ratio. Salaries, benefits and operating costs were calculated from the additional staff complement required to serve the additional children. A one-time cost was included in the first year to cover unique implementation expenses. State savings do not include any inflationary factor in future planning years. State savings could be more significant depending on the future State Labor Contract. In addition, state government costs include the costs of children in TANF families utilizing higher quality child care programs. This cost is outweighed by the benefits of investing in early childhood education, with every \$1 in pre-school funding leading to \$7 in benefits from reduced public spending on students that are held back, special education, teen pregnancy and criminal justice, as well as increased revenue from better-paying jobs later in life.

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

Program	FY -3	FY -2	FY -1	Current FY
Child Care Services (State)	59,683	60,877	80,209	107,671
County Assistance Offices (State)	252,318	244,871	254,304	250,417
Cash Grants (State)	330,772	384,182	434,931	488,838

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

A single, unified child care system at the local level for all families, whether TANF, GA or FS recipients, former TANF, or low-income subsidy-eligible, with specialized services and trained staff has many benefits for families and children. The TANF family would have one place to go for child care from the moment they enter the path towards self-sufficiency through employment/training at a CAO until they become a former TANF family. TANF families will now have full access to parent counseling, resource and referral information, and specialized child care services.

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

No non-regulatory alternatives were considered.

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

As the proposed rulemaking indicated, the Department considered more extensive revisions. There was no difference in the costs associated with the alternatives. The limited revisions in this final-form rulemaking accomplish the most important goals of making administrative and payment policies consistent for all families receiving subsidized child care.

(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.

This final-form rulemaking is not more stringent than Federal standards.

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

The final-form rulemaking will not put Pennsylvania at a competitive disadvantage with other states. Other states have also recognized the advantages of a single, consolidated child care system. Some of the states that have a single system of eligibility are Illinois, Maryland, Connecticut, Ohio, Rhode Island, Vermont, Wisconsin, Utah, Michigan, New Jersey and South Dakota.

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

This 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 meet and discuss specific issues relating to the final-form regulation with affected individuals and organizations, based on the public comments received.

(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.

No new reports, forms, recordkeeping or paperwork are required by this final-form regulation.

(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.

No special groups are affected by this final-form rulemaking.

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(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?

This rulemaking is effective upon final publication in the *Pennsylvania Bulletin*.

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

This rulemaking will be reviewed on an ongoing basis as the Department continues to review the demand for child care and the expenditures of the subsidized child care program.

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REVIEW COMMISSION

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(Pursuant to Commonwealth Documents Law)

2549

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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>By: _____ (Deputy Attorney General)</p> <p>_____ Date of Approval</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p>DEPARTMENT OF PUBLIC WELFARE (Agency)</p> <p>LEGAL COUNSEL: <u>Jean E. Graybill</u></p> <p>DOCUMENT/FISCAL NOTE NO. <u># 14-505</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u>Estelle B. Kildine</u></p> <p>TITLE: <u>SECRETARY OF PUBLIC WELFARE</u> (Executive Officer, Chairman or Secretary)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>By: <u>Andrew J. Clark</u> NOV 8 2006</p> <p>_____ Date of Approval</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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NOTICE OF FINAL-FORM RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

OFFICE OF OFFICE OF CHILD DEVELOPMENT

55 Pa.Code Chapter 168

Child Care

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 II and IV of the Public Welfare Code (62 P. S. §§ 201--211 and 401--493).

Notice of proposed rulemaking was published at 36 Pa.B. 3262 on July 1, 2006.

Purpose of Regulation

The purpose of the final-form rulemaking is to establish consistent policies for administration and payment for subsidized child care within the Office of Income Maintenance (OIM) and Office of Child Development (OCD) that best meet the needs of all families receiving subsidized child care and improve child care services to families receiving Temporary Assistance for Needy Families (TANF), General Assistance (GA) and Food Stamp (FS) benefits. Families receive subsidized child care under this chapter after being determined eligible for cash assistance or FS benefits. Those recipients also must have an approved Agreement of Mutual Responsibility (AMR) or an Employment Development Plan (EDP) pursuant to Chapter 165 (relating to road to economic self-sufficiency through employment and training (RESET) program). Subsidized child care is one of the supportive services provided to cash assistance and FS recipients to enable them to meet employment and training requirements. Eligibility for all special allowances for supportive services is determined under Chapter 165.

The Department's goal is to establish for cash assistance and FS recipients a "user-friendly" child care system that is accessible to eligible families who need help finding and paying for quality child care that is responsive to their needs. The final-form

rulemaking supports families and children by making consistent administrative and payment policies for all families receiving subsidized child care.

Affected Individuals and Organizations

The final-form rulemaking will on a monthly basis affect approximately 47,000 children who receive subsidized child care, 27,650 families who apply for or receive subsidized child care, and 158 agencies authorized by the Department to administer subsidized child care, including the 59 Child Care Information Services (CCIS) agencies.

Children and families are affected by the provisions in the final-form rulemaking that specify the requirements that they must meet to access subsidized child care. Agencies authorized by the Department to administer subsidized child care are affected since the final-form rulemaking changes the process and requirements related to child care payment.

The Department has worked closely with families who access the subsidized child care program, child development and community service advocates, providers, agencies authorized by the Department to administer subsidized child care and other interested stakeholders to listen and respond to the needs, concerns and suggestions of each of these groups.

Accomplishments and Benefits

The final-form rulemaking benefits on a monthly basis approximately 47,000 children and 27,650 families of low income by allowing easier access to affordable, quality child care.

Fiscal Impact

The final-form rulemaking will result in no additional costs to parents receiving subsidized child care or providers. During a phase-in period in the first year, the estimated net cost is \$3.526 million for additional staff and related operating costs.

Paperwork Requirements

There are no changes in paperwork requirements as a result of the final-form rulemaking.

Public Comment

Written comments, suggestions and objections regarding the proposed rulemaking were requested within a 30-day period following publication. The Department received a total of 15 comments within the 30-day comment period. The Department received comments from every sector of the community that will be affected by the rulemaking, including child development and community service advocates, providers and CCIS agencies.

Public commentators included 12 comment letters from individual entities, including one legal services agency, two child advocate associations, six CCIS agencies, one United Way organization, one provider and the Income Maintenance Advocacy Committee (IMAC). The Department also received three comment letters from organizations on behalf of 128 member agencies.

The majority of the comments supported the rulemaking. The United Way of Pennsylvania, on behalf of 80 United Way agencies urged approval of the regulations,

as did Quality Early Education through Salaries and Training (QUEST), on behalf of itself and 45 member entities.

Keystone Christian Education Association (KCEA), the Pennsylvania Family Institute and REACH Alliance submitted one comment letter in which all three joined to collectively voice concern regarding a parent's right to choose a faith-based facility for child care.

The majority of the commentators, including the Pennsylvania Child Care Association (PACCA), QUEST and the United Way of Pennsylvania, indicated that the rulemaking will enable the Department to integrate child care services for all children, parents and providers in the subsidized child care program. In addition, it will provide a seamless and fully coordinated child care system in the Commonwealth.

Discussion of Comments and Major Changes

This final-form rulemaking is more limited in scope than the notice of proposed rulemaking. This final-form rulemaking achieves the major goals of changes in administrative and payment processes for subsidized child care for families receiving TANF, GA and FS benefits. These changes include the addition of § 168.4 (relating to authority to administer subsidized child care). Coordinating changes were made in several sections to reflect the Department's authority to delegate administrative responsibility to the CCIS.

Additional changes to make policies consistent for all families receiving subsidized child care include: the requirement of a face-to-face interview, the change in co-payment from monthly to weekly and the requirement that a family select a provider

within 30 days following the date the Department notifies the family the child may be enrolled in care.

The following is a summary of comments received and the Department's response to those comments regarding provisions in this final-form rulemaking. A summary of major changes from proposed rulemaking is also included.

General--Workload

Two commentators, including QUEST, expressed concern that the CCIS agencies may be overburdened with additional cases and suggested that the Department monitor staffing levels at the CCIS to ensure that the additional workload is handled efficiently.

Response

The Department will monitor staffing levels at the CCIS in conjunction with its overall auditing of CCIS agreements.

General—Business Practices & Procedures

Two commentators requested clarification regarding policy, business practices and procedures for interacting with TANF, GA and FS clients and the role of the CCIS versus the CAO. Also, commentators requested clarification regarding funding to administer the subsidized child care program given the additional clients. PACCA suggested the Department seek input from the CCIS agencies regarding payment, but did not elaborate on the suggestion.

Response

The Department will provide training to clarify policy, business practices and procedures for interacting with TANF, GA and FS clients and the role of the CCIS

versus the CAO. The training will occur prior to implementation of the final-form rulemaking. Section 168.4 (relating to authority to administer subsidized child care) provides authority for the Department to delegate responsibilities set forth in this chapter to another approved entity, including a CCIS.

Funding issues are outside the scope of this rulemaking.

General—Editorial Suggestions

Two commentators suggested a re-draft of the rulemaking with a variety of editorial suggestions. The Independent Regulatory Review Commission (IRRC) suggested using the term “parent/caretaker” rather than “parent” throughout the rulemaking.

Response

The Department decided to continue to use the term “parent/caretaker” in the final-form rulemaking.

General—Provision of Subsidized Child Care

Two commentators requested a provision allowing subsidized child care for individuals who need regular mental health or behavioral health treatment in order to move toward self-sufficiency, but who cannot obtain this treatment because they lack child care.

Two commentators requested a provision allowing care of dependent disabled adult household members when necessary for the FS household member to participate in an employment and training program. In addition, they requested the same provision when a TANF or GA household member participates in a work activity.

Response

Although the Department appreciates these comments, we find that the suggested changes are outside the scope of the final-form rulemaking. The Department policy does not provide for payment of child care for purposes other than participation in employment or training. Special allowances for care of a disabled adult are provided under Chapter 165 (relating to road to economic self-sufficiency through employment and training (RESET) program).

General—Suggested addition of cross-reference to 7 CFR 273.7

Two commentators suggested a cross-reference to 7 CFR 273.7 (relating to work provisions) be added to seven sections of the final-form regulations. However, they offered no rationale for this recommendation.

Response

The Department has determined that it is unnecessary to add repeated cross-references to Federal FS employment and training regulations. It is clear throughout this chapter and in Chapter 165 (relating to road to economic self-sufficiency through employment and training (RESET) program) that the provisions apply to a FS recipient who has an approved EDP.

GENERAL PROVISIONS

§ 168.1(a). Policy on payment of child care

Two commentators suggested that payment for child care be made to enable a parent not only to participate in a work activity but also to volunteer. The commentators stated that since TANF, GA and FS regulations allow parents to volunteer to participate

in approved education and training programs and to receive supportive services, child care should be offered in these circumstances.

Response

If the volunteer activity is part of the parent's AMR or EDP, subsidized child care is provided to support this activity. Providing subsidized child care for volunteer activities not included in the AMR or EDP is outside the scope of this rulemaking.

§ 168.1(b). Policy on payment of child care

One commentator requested clarification of when and how often advance payment will occur. Another commentator supported the provision regarding advance payment at paragraph (3), but suggested the provision be revised as a separate section.

Response

With regard to when and how often advance payment will occur, the section cross-references § 165.42 (relating to advance payment of special allowances for supportive services), which limits the circumstances in which advance payment is made. The Department will provide more clarification in training, which will occur prior to implementation of the final-form rulemaking.

With regard to the suggestion to revise paragraph (3) as a separate section, the Department found that this would require a major change in formatting. It is more appropriate to keep paragraph (3) in this subsection since it describes information the Department provides to the parent in need of child care.

§ 168.1(c). Policy on payment of child care

Two commentators suggested addition of the term "EDP." Another commentator

requested clarification regarding the roles of the CAO and CCIS in providing a family with information about child care allowances.

Response

With regard to adding a reference to the EDP, the Department has not made this change and is using the language in the current regulation.

With regard to the request for clarification of the roles of the CAO and CCIS in providing a family with information on child care allowances, the CAO informs eligible families of the availability of child care allowances when the AMR or EDP is completed. The CCIS informs the family of their child care choices and how to obtain child care benefits.

§ 168.1(f). Policy on payment of child care

Two commentators suggested including the term "EDP." In addition, a commentator requested clarification of the CAO and CCIS roles.

Response

With regard to the request to add the term "EDP," the Department has not made this change and is using the language in the current regulation. As stated above, the Department has clarified the roles and responsibilities of the CAO and the CCIS in response to the public comment.

§ 168.2. Definitions--AMR

IRRC stated the term AMR is defined in greater detail in existing regulations at § 165.2 (relating to definitions) and suggested the definition should include a reference to Section 165.2.

Response

The Department has not made this change and is using the language in the current regulation.

§ 168.2. Definitions--Budget group

Two commentators suggested revising the definition of budget group by deleting the cross-reference to § 183.2 (relating to definitions). The commentators stated that the definition at § 183.2 omits a child on SSI and that subsidized child care should be available for these children.

Response

The Department has not made this change and is using the language in the current regulation. The Department deleted the cross-reference to § 183.2 (relating to definitions).

§ 168.2. Definitions--Care and control

Two commentators suggested the inclusion of a definition for "care and control" as "exercising responsibility for the care and control of the child. This means actually participating in making plans for the support, education and maintenance of the child and supervising and carrying out the plans." The commentators stated that the definition comes from the definition of specified relative at § 151.42 (relating to definitions). The commentators further stated that this suggestion is consistent with their suggested revision of the definition of "parent."

Response

The Department has not made this change.

§ 168.2. Definitions—Co-payment

The IRRC suggested the use of the phrase “subsidized child care” for consistency throughout the rulemaking.

Response

This change was made.

§ 168.2. Definitions—EDP—Employment Development Plan

Two commentators suggested defining “EDP (Employment Development Plan).” The IRRC suggested that a definition for EDP be added and should reflect the definition in Chapter 165 (relating to road to economic self-sufficiency through employment and training (RESET) program).

Response

The Department has not made this change.

§ 168.2. Definitions—Household

The IRRC stated that the citation of “7 CFR 273.1(a)(2)” was too specific and indicated agreement with the Department’s plan to broaden the reference to include other paragraphs of 7 CFR 273.1 (relating to household concept).

Response

The Department has not added a definition of “household” as the final-form rulemaking does not include that term.

§ 168.2. Definitions—Nontraditional hours

One commentator recommended that the definition should also include a statement “and meets the standards as set forth by CCIS regulations.”

Response:

The Department finds it is unnecessary to include this statement. Hours of care are defined by time. All care must meet applicable standards of care, regardless of whether the hours are traditional or nontraditional.

§ 168.2. Definitions--Parent

The IRRC recommended including the term "caretaker" and the concept of "care and control" in the definition. IRRC also questioned the use of the term "TANF specified relative" in the definition and stated the word "TANF" does not appear in Section 151.42 (relating to definitions) but the term "specified relative" does appear.

Eleven commentators, including PACCA, QUEST and the United Way of Pennsylvania, supported the definition of parent. Three commentators opposed the definition and voiced concern about situations in which a parent is denied subsidy because another individual in the home is expected to care for the child although the individual is not legally responsible for the child.

Response

The Department has not made this change. The Department is using the term "parent/caretaker" that exists in the current regulation, making this definition unnecessary.

§ 168.2. Definitions--Preexpenditure approval

The IRRC stated the definition is unclear and indicated that if the definition is retained the wording and intent must be clarified.

One commentator requested clarification regarding the definition. Other commentators opposed the definition of preexpenditure approval. The commentators who opposed the definition suggested the definition be deleted.

Response

The Department deleted the definition.

§ 168.2. Definitions--Provider agreement

The IRRC questioned the contents of the "Provider Agreement" and suggested that if the terms of the agreement are binding on providers, the contents or basic requirements should be in the regulations.

Response

The Department deleted this definition. With regard to the question regarding the contents of the provider agreement, there are three types of provider agreements: in-home, relative/neighbor, and regulated provider. The provider agreement contains recordkeeping, reporting and billing requirements and payment rates. It also includes health and safety requirements for participation. Flexibility to amend these agreements is essential to the efficient and effective administration of the subsidized child care program.

Accordingly, the Department has determined it is not appropriate to put the terms of the provider agreement in regulations. To do so would impede prompt amendment of that agreement when change is required by Federal law or is desired for efficient administration of the program. The Department notes that agreements for other providers and vendors are not promulgated as regulations.

§ 168.11(a). *General requirements*

The IRRC requested clarification regarding how the Department intends to address eligibility for non-profit providers who are not certified or registered under the existing child care facilities regulations. The IRRC noted the concern of several commentators that they might be excluded from the list of eligible providers. IRRC also noted the recent decision of the Commonwealth Court of Pennsylvania in St. Elizabeth's Child Care Center v. Department of Public Welfare, 895 A.2d 1280 (2006). That decision held that the Department could not require a non-profit religious child day care center to obtain a Certificate of Compliance in order to operate. One commentator also expressed a concern that religious facilities operating without a license would be excluded as an option for parents to choose to provide care for a child receiving subsidized child care services.

The IRRC also questioned as unnecessary use of the phrase "specifically exempt" at Subsections (a)(4) and (5).

Response

The St. Elizabeth's litigation is not relevant in the context of the child care subsidy regulation. Articles II and IV of the Public Welfare Code (62 P.S. §§ 201 et seq. and 401 et seq.) provide full statutory authority for the Department to promulgate the child care subsidy regulation. The St. Elizabeth's court recognized that the Department has full power to regulate non-profit facilities. Further, the law of the case in St. Elizabeth's currently is that the Department has an automatic stay of the Commonwealth Court decision. See *Public Advocate v. Philadelphia Gas Commission*, 646 A.2d 19

(Pa.Cmwth.Ct. 1994). See 284 MAL 2006 Pa. Supreme Ct. filed April 24, 2006. The current standards for receipt of subsidy are neutral with respect to religion.

The Department is not amending this regulation except to delete the phrase "special allowances" and replace it with the word "payment."

§ 168.11(b). General requirements

The IRRC requested clarification regarding the difference between requirements for providers and the Department's standards for provider participation. The IRRC suggested that cross-referencing might be helpful. The IRRC recommended that requirements and standards for provider participation be set forth in the final-form rulemaking.

The IRRC and two commentators suggested that the word "may" be replaced with the terms "shall have the right to." The commentators explained that states must allow a parent the opportunity to choose among the various types of providers under Federal law governing subsidized child care (45 CFR 98.30(e) (relating to parental choice)). The commentators further stated that the language should reflect the language in § 3041.13 (relating to parent choice).

Response

The Department has deleted reference to standards for provider participation. Requirements for provider participation are set forth in § 168.19 (relating to child care arrangements), as well as in the provider agreement. Standards for provider participation vary appropriately with provider type. Providers not subject to regulation must comply with standards set forth in the Provider Agreement, e.g. have a working telephone and smoke detectors.

The Department has determined it is not appropriate to put the terms of the provider agreement in regulations. To do so would impede prompt amendment of that agreement when change is required by Federal law or is desired for efficient administration of the program. The Department notes that agreements for other providers and vendors are not promulgated as regulations.

With regard to the request to include cross-reference to § 168.19, the Department has not made this change. The Department has replaced the term “may” with the terms “shall have the right to.”

§ 168.11(c). General requirements

Commentators requested clarification regarding the provision related to preexpenditure approval. One commentator opposed the provision and suggested deletion.

Response

The Department deleted the provision.

§ 168.17(2). Eligible children

The IRRC stated that the reference to 7 CFR 273.1(b) (relating to household concept) was incomplete. The IRRC indicated its agreement with the Department’s plan to change that reference to 7 CFR 273.1(b)(1)(iii). Commentators suggested deleting the provision because they believed it to be confusing. The commentators stated that the provision does not seem to apply to non-FS households and appears to be unnecessary for FS households.

Response

The Department deleted clause (ii)(B) which contained the cross-reference to 7 CFR. In addition, the Department reformatted subparagraph (2)(ii), eliminating the clauses.

§ 168.17(4)(iii). Eligible children

The IRRC and one commentator recommended that Subparagraph (4)(iii) be revised as a new separate Paragraph (5). Other commentators suggested revising the language to state "if the child does not have age-appropriate immunizations and is not exempt from immunization, child care shall be authorized and the parent shall be given 90 days to obtain immunizations for the child and self-certify that the child has the required immunizations or is exempt from immunization."

Response

The Department has not added paragraph (4). In final-form rulemaking the Department has retained paragraph (3) in the current regulation, which addresses immunization.

§ 168.18(a). Need for child care

Two commentators suggested that payment for child care be made to enable a parent not only to participate in a work activity but also to volunteer. The commentators stated that since TANF, GA and FS regulations allow parents to volunteer to participate in approved education and training programs and to receive supportive services, child care should be offered in these circumstances. The same commentators also

suggested that payment for child care be made to enable a parent to participate in medical treatment that is needed for rehabilitation or to ameliorate their disabilities.

Response

Subsidized child care under this rulemaking is provided for approved activities included in the parent's AMR or EDP, including volunteer activities. Enlarging the type of activities that can be approved in an AMR or EDP is outside the scope of this rulemaking.

§ 168.18(b)(1). Need for child care

Two commentators requested clarification regarding whether care would be provided for a single parent with a disability at the initial request for care.

Response

This provision did not change. A single parent with a disability can qualify for subsidized child care as needed to participate in an approved work activity in the AMR or EDP.

§ 168.18(b)(2). Need for child care

Commentators requested clarification regarding the family composition and eligibility requirements related to a teen parent.

Response

The Department has retained the language in the current regulation. Eligibility requirements for teen parents have not changed. The CAO will continue to determine a family's eligibility for subsidized child care.

§ 168.18(f). Need for child care

The IRRC recommended the Department clarify in the final-form rulemaking that the parent is required to attend the face-to-face interview with the CCIS and requested clarification regarding the procedures a CCIS will follow to avoid disruption in child care services when a parent cannot get transportation to the face-to-face interview or experiences other legitimate problems in completing the interview that are beyond the parent's control.

Commentators, including PACCA, QUEST and the United Way of Pennsylvania, supported the requirement as written. One commentator requested clarification regarding data collection and management. Other commentators suggested that time spent in the face-to-face interview should count as time spent in a work activity.

One commentator suggested revising the language to allow for subsidy suspension following failure to meet the face-to-face requirement until the date the parent attends a face-to-face interview or otherwise meets the requirement. Another commentator suggested that eligibility be reinstated retroactive to the date the parent failed to meet the requirement if the parent later meets the requirement.

Some commentators opposed the face-to-face requirement, but suggested the following changes if the requirement remained intact: count the face-to-face interview as an excused work absence, make the CCIS staff available to interview parents at EARN contractor sites, count time spent in the face-to-face interview as work participation, and waive the requirement for parents who have formerly attended a face-to-face interview with the CCIS.

Response

As stated earlier, the Department will provide training that will include clarification regarding data collection and management, including the face-to-face interview. The training will occur prior to implementation of the final-form rulemaking.

The face-to-face interview is essential to providing counseling and information to the parent regarding quality child care and additional resources available to the family. Accordingly, the Department has determined that it is not appropriate to eliminate the face-to-face requirement, suspend eligibility or allow retroactive eligibility for a parent who fails to complete the face-to-face interview within 60 days.

The regulation provides for an additional 30 days to complete the face-to-face interview if the parent has a hardship, such as transportation or another legitimate problem. In addition, it provides for use of a telephone interview after two 30-day periods for a face-to-face interview if scheduling a face-to-face interview would require the parent to miss work. The Department finds that the accommodations for parents are flexible and provide adequate time for parents to meet the face-to-face requirement.

Counting attendance at the face-to-face interview as a work activity for employment and training purposes is outside the scope of this rulemaking. As to the suggestion that appearance at a face-to-face interview be counted as an excused work absence, that is a matter for the employer.

§ 168.19(2)(i). Child care arrangements

Commentators suggested that the terms "biological or adoptive parent" continue to be used.

Response

The Department agrees and retained this language.

§ 168.20(c) and (d). Child care co-payment

Two commentators suggested that the language reflect that a change in co-payment may happen as the result of a partial redetermination in addition to a full redetermination.

At (d), commentators also suggested that the terms "written advance notice" replace the term "notification." The commentators offered no rationale for these changes.

Response

The Department finds that it is unnecessary to modify the term redetermination. The term "redetermination" encompasses both partial and complete redeterminations.

With regard to the suggestion to replace the term notification, the Department has made this change.

§ 168.21(a). Ineligibility for failure to pay co-payment

Commentators questioned whether the provision permitting satisfactory arrangements to pay delinquent co-payment reflects current CCIS policy or regulation.

Response

Yes. This regulation is consistent with current CCIS policy.

§ 168.41(3). Verification requirements

One commentator opposed the use of a collateral contact with the provider as a means to verify child care costs.

Response

The Department believes the use of a collateral contact is acceptable. Paragraph (4) clarifies that when payment is made based on a collateral contact, the provider must submit written information within 30 days. Furthermore, the provision for collateral contact is included in the regulation to address circumstances in which a provider has submitted monthly the Attendance Invoice but there are issues pending resolution. The collateral contact supplements the Attendance Invoice in these circumstances.

§ 168.43. Verification of a child's injury or impairment

The IRRC recommended revising the title of the section replacing the term "disability" with the terms "injury or impairment." The IRRC and one commentator requested clarification regarding to whom the parent must submit the verification.

Other commentators suggested revising the language to state "For a child between the ages of 13 and 19 to be eligible for care pursuant to Section 168.17(3)(ii) (relating to eligible children), a..." The commentators also suggested the inclusion of the term "herself" in addition to the term "himself."

Response

The Department has not made this change and is using the language in the current regulation.

§ 168.44. Verification of a parent's disability

The IRRC and one commentator requested clarification regarding to whom the parent must submit the verification.

Other commentators suggested deleting the section, but offered no rationale for the suggestion.

Response

The Department has not made this change and is using the language in the current regulation.

168.49. Verification of payment of co-payment for the employed budget group

Most commentators supported the provision, but two commentators opposed it and stated that satisfactory arrangements to pay a delinquent co-payment are unacceptable and do not reflect current CCIS policy or regulation.

Response

The Department has not changed this section. The provision permitting satisfactory arrangements to pay a delinquent co-payment is consistent with current CCIS policy.

§ 168.61. Reporting requirements

The IRRC requested clarification regarding to whom the parent must report changes in child care arrangements.

Response

Currently, parents report changes in child care arrangements to the CAO. In the future, responsibility for administration of subsidized child care for TANF, GA and FS recipients will be assumed by CCIS. At that time, parents must begin reporting changes to the CCIS. The Department has revised the language to clarify that the parent must submit verification to the Department or its designated agent.

§ 168.71(3). Monthly payment determination

Commentators suggested keeping this provision, but offered no rationale for the suggestion.

Response

The Department has not changed this paragraph.

§ 168.72. Determining monthly child care costs

One commentator requested revision of this provision. The commentator stated that the wording "The actual child care costs reported and verified as paid or incurred in a month are considered. Actual child care costs include: ..." does not accurately reflect the payment policies currently used by the CCIS.

Response

The Department agrees and deleted the language in question.

§ 168.72(2). Determining monthly child care costs

The IRRC recommended that the Department consider revising the language to include provision for specific reasons for absences beyond illness. Some commentators suggested keeping the terms "vacation and the like." The commentators stated that under current regulation at § 3041.19(a) (relating to absence), the Department will pay for up to 10 consecutive absences for any reason and believe this language should be mirrored in this rulemaking. The commentators further stated that they believe this language is more restrictive and keeping the terms would permit a child's spot to be retained when a child's absence is for a legitimate, family-related reason.

Response

The Department has revised the language to not restrict the reasons the child was not in attendance.

§ 168.81. Payment methods

One commentator requested clarification regarding this provision. The commentator believed the section should be revised to more clearly reflect that all providers must participate in the vendor payment system (i.e., sign a Provider Agreement).

Response

The Department finds that this section clearly reflects that all providers participate in vendor payment. Exceptions for payment to the parent are limited to those set forth in the regulation. Accordingly, the Department finds that no change in content is necessary. The Department reformatted for clarity.

§ 168.82. Time frames for authorization of payment

The IRRC questioned as unnecessary the inclusion of the section and requested clarification if the Department retains the section. Some commentators suggested the deletion of the section. Other commentators suggested including a new section stating that "Coverage of child care costs shall begin on the date the family began to incur child care costs for a work activity approved on the AMR or EDP."

Response

The section was deleted. In addition, the request for an additional section is outside the scope of this rulemaking. The determination of when a parent is eligible for child care and on what date the child care need begins is made by the CAO under Chapter

165 (relating to road to economic self-sufficiency through employment and training (RESET) program).

§ 168.91. Restitution

One commentator requested clarification regarding the contents of this section. The commentator believes the section is ambiguous and not understandable.

Response

The Department finds that the content of Chapter 255 (relating to restitution), cross-referenced in this section, clarifies the requirements regarding restitution.

Additional changes

In addition to the major changes discussed previously, the Department made several changes in preparation of the final-form rulemaking including correcting typographical errors and revising language to enhance clarity and conform to the changes previously discussed.

The Department deleted the following definitions as the terms are not used in the final-form rulemaking: "Regulated care," "Self-certification," "Service month" and "Unregulated care." The Department also deleted the definitions of "CAO," "Disability" and "Family" as unnecessary. In addition, the Department changed the definition of "In-home care" and "Relative/neighbor care" for clarity.

Regulatory Review Act

Under § 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on **NOV 08 2006** 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 Articles II and IV of the Public Welfare Code (62 P. S. §§ 201–211 and 401–493).

The Department acting pursuant to Articles II and IV of the Public Welfare Code (62 P. S. §§ 201–211 and 401–493) 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 upon publication in the ***Pennsylvania Bulletin.***

Annex A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart C. ELIGIBILITY REQUIREMENTS

CHAPTER 168. CHILD CARE

GENERAL PROVISIONS

§ 168.1. Policy on payment of child care.

(a) To the extent funds are available, payment for child care will be made to enable the {parent/caretaker} parent to participate in {work-related} work activities as defined in §§ 165.31 and 501.6 (relating to RESET participation requirements; and employment and training program). To qualify for a child care payment the {individual must be eligible to receive cash assistance, including persons who do not receive a cash payment due to the minimum monthly check requirement or due to a month of zero cash payment. Child care payments are considered a reimbursement for past or future child care expenses for food stamp eligibility purposes.} parent shall be eligible to receive food stamps or cash assistance. This includes parents who do not receive a cash payment due to the minimum monthly check requirement or due to a month of zero cash payment.

(b) The [CAO] Department will promptly inform a recipient of food stamps or cash assistance who is in need of child care about the following:

(1) The types and locations of child care providers ~~and the services the providers offer.~~

(2) The services available from the [Local Management Agency (LMA), also known as the Child-Care Child Care Information Services (CCIS) Agency] CCIS, for help in finding and selecting a child care provider.

(3) Child care payments will be paid in advance of the date that payment is required by the provider, consistent with the requirements and time frames in § 165.42 (relating to advance payment of special allowances for supportive services), to ensure that the [participant] ~~parent~~ will have access to the child care provider of the [participant's] ~~parent's~~ choice. The advance payment requirement does not apply to vendor payments for child care. [Advance payments are considered a reimbursement of future child care expenses for food stamp eligibility purposes.]

(i) The Department will make an exception to the provisions which limit advance payment to instances in which the provider requires it, and which restrict advance payment for providers enrolled in the child care vendor payment system ~~as set forth in § 165.42 (relating to advance payment of special allowances for supportive services)~~ for a TANF budget group determined prospectively ineligible as a result of starting new employment under § 168.71(1)(ii) (relating to monthly payment determination).

(ii) The [CAO] Department will make an advance payment ~~to cover the period~~ from the first day of employment until the date of discontinuance if the information regarding

~~new employment~~ is verified through a collateral contact consistent with § 168.41(4) (relating to verification requirements).

(c) At application, reapplication and whenever the [agreement of mutual responsibility is developed or revised, the CAO will inform applicants and recipients] ~~AMR is developed or revised as specified in §§ 165.25 and 165.31 (relating to RESET participation requirements following exemption; and RESET participation requirements).~~ ~~the Department will inform parents~~ in writing and orally of the availability of child care allowances.

* * * * *

(f) The [CAO] Department will discuss the maximum child care allowances and the co-payment sliding fee scale in Chapter 3041, Appendix B (relating to co-payment chart, family co-payment scale), whenever the [Agreement of Mutual Responsibility (AMR)] ~~AMR~~ is developed or revised and reflects a need for child care. The [CAO] Department will advise [clients] ~~parents~~ that copies of the maximum child care allowances and the co-payment sliding fee scale are available upon request [at the CAO].

(g) The [CAO] Department will [refer the client to the LMA/CCIS whenever help is needed] provide help in finding and selecting a child care provider, ~~including providing information about how to identify high quality providers.~~

§ 168.2. Definitions.

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

~~AMR--Agreement of Mutual Responsibility.~~

~~Budget group--[A group of persons receiving TANF. A child receiving SSI benefits and for whom child care payments are requested is included in the budget group.] As defined in § 183.2 (relating to definitions).~~

~~GAO--County Assistance Office--The local office of the Department responsible for the determination of eligibility in the Cash Assistance, Food Stamp and Medical Assistance Programs.~~

CCIS--Child Care Information Services Agency--A public or private agency with which the Department has a contract to manage the subsidized child care program in part of a county, a county or several counties. [The subsidized child care program is for families not receiving TANF. This agency is also known as an LMA.

Child care vendor file--A listing of regulated child care providers who have signed the required agreement to receive a vendor payment from the Department.]

Co-payment--The [monthly] weekly amount the family pays for SUBSIDIZED child care that is subsidized.

Co-payment sliding fee scale--A scale based on family [sizes] size and income from which a determination of the child care co-payment is made as set forth in Chapter 3041, Appendix B (relating to co-payment chart, family co-payment scale).

~~Disability--A physical or mental impairment that precludes a parent's ability to participate in work, education or training.~~

~~*Family*—A budget group or a household requesting help in paying child care costs.~~

* * * * *

[*Full-time employment*—Employment which averages at least 30 hours per week in a calendar month.]

~~*Household*—As defined in 7 CFR 273.1(a)(2) (relating to household concept).~~

~~*In-home care*—Child care provided by an individual who is specifically exempt from certification or registration under Chapters 3270, 3280 and 3290 (relating to child day care centers, group child day care homes, and family child day care homes) and who cares for a child in the child's home.~~

[*LMA*—*Local Management Agency*—A public or private agency with which the Department has a contract to manage the subsidized child care program for families who are not receiving TANF. This agency may be known as a CCIS agency of part of a county, a county or several counties.]

MCCA—*Maximum child care allowance*—The ceiling set by the Department for payment of child care services [to budget groups eligible for child care payment].

Nontraditional hours—Hours of child care [which include evening, night, early morning, holiday or weekend hours] provided to a child whose parent/CARETAKER works on Saturday, Sunday or between the hours of 6 p.m. and 6 a.m.

~~Parent~~ A TANF specified relative as defined in § 151.42 (relating to definitions), the ~~General Assistance payment name as defined in § 171.21(b)(2) (relating to policy) or a responsible member of the food stamp household as defined in 7 CFR 273.1(d) (relating to household concept).~~

* * * * *

[~~Pre-expenditure~~] ~~Preexpenditure approval~~ Approval by [a person] an individual specified by the Department prior to the [recipient's] recipient of food stamps or cash assistance incurring an expense for child care.

~~Provider agreement~~ A document signed by the child care provider in order to participate in the Department's subsidized child care program.

~~Regulated care~~—[Child care given by a person or entity which is licensed by or registered with the Department or approved by the Department of Education] Child care provided by a child care center certified under Chapter 3270, a group child day care home certified under Chapter 3280 or a family child day care home registered under Chapter 3290.

~~Relative/neighbor care~~—[Care given by a person who is exempt from certification or registration under Chapters 3270, 3280 and 3290 (relating to child day care centers; group child day care homes; and family child day care homes)] Child care provided by an individual who is specifically exempt from certification or registration under Chapters 3270, 3280 and 3290 and who cares for three or fewer children unrelated to the [caregiver] provider in the provider's home.

* * * * *

Satisfactory arrangement--[The plan made by the budget group to pay overdue fees which are] The plan made by the parent to pay an overdue co-payment which is acceptable to the child care provider.

Self-certification—A written statement provided by the parent for the purpose of establishing verification of a child's immunization or exemption from immunization.

Service month—The calendar month during which child care services were provided.

* * * * *

Sleep-time--[Hours of care following third shift employment when the parent/caretaker has an eligible child in the home and needs care for the child in order] Care provided for a child when the parent's/CARETAKER'S work shift ends between the hours of 12 a.m. and 9 a.m. to allow the parent/CARETAKER time to sleep.

* * * * *

Unregulated care—Relative/neighbor care and in-home care.

Vendor payment--A child care payment made by the Department directly to a [regulated] child care provider who has signed [the Child Care Vendor Program Enrollment Request Agreement and is enrolled in the child care vendor payment system] a Provider Agreement.

§ 168.3. Child abuse reporting:

Suspected child abuse shall be reported in accordance with 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and Chapter 3490 (relating to child protective services):

§ 168.4. Authority to administer subsidized child care.

The Department may delegate to another approved entity, such as the CCIS, the responsibilities set forth in this chapter for the purpose of administering subsidized child care.

ELIGIBILITY REQUIREMENTS

§ 168.11. General requirements.

(a) [Special allowances] Payment for child care [are] is available for the following types of [child care] providers:

(1) [Center-based] A child day care center certified under Chapter 3270 (relating to child day care centers).

(2) [Group home] A group child day care home certified under Chapter 3280 (relating to group child day care homes).

(3) [Family] A family child day care home registered under Chapter 3290 (relating to family child day care homes).

(4) [Relative/neighbor care] A relative or neighbor provider specifically exempt from certification or registration under Chapters 3270, 3280 and 3290.

(5) ~~{In-home care} An in-home provider specifically exempt from certification or registration under Chapters 3270, 3280 and 3290.~~

(b) The ~~{parent/caretaker shall have the right to} parent may~~ choose from any ~~{type of} child care provider~~ that is ~~a type of provider~~ available under this chapter ~~{and the right to choose any child care provider} who meets the requirements of this chapter and who meets the Department's standards for provider participation.~~

(e) ~~{Pre expenditure} Preexpenditure approval is required unless the child care is for a job interview and the {client} parent documents that he was unable to contact the worker prior to the scheduled interview.~~

§ 168.17. Eligible children.

To be eligible for a child care payment, the ~~{budget group} family~~ shall include a child who meets the following criteria~~]. The child meets the following conditions]:~~

* * * * *

(2) ~~{Meets one of the following conditions:~~

(i) Is under 13 years of age.

(ii) Is 13 years of age or older ~~and meets one of the following conditions:~~

~~(A) Is BUT under 19 years of age and not physically capable IS PHYSICALLY OR MENTALLY INCAPABLE of caring for himself as verified by a physician OR LICENSED PSYCHOLOGIST.~~

~~(B) is under 19 years of age with a developmental age of less than 13 years of age as verified by a physician or licensed psychologist.] Is considered a mandatory feed stamp household member as specified in 7 CFR 273.1(b) (relating to household concept).~~

(3) {Is age appropriately immunized. If the child does not have age-appropriate immunizations, the parent/caretaker has 90 days to obtain and document immunizations for the child unless one of the following applies:

(i) The parent/caretaker objects to immunizations on religious grounds.

(ii) The child's medical condition contraindicates immunizations as verified by a physician.] Meets one of the following conditions:

~~(i) Is under 13 years of age.~~

~~(ii) Is 13 years of age or older but under 19 years of age and is incapable of caring for himself as verified by a physician or licensed psychologist.~~

~~(4) Is age appropriately immunized unless one of the following applies:~~

~~(i) The parent/caretaker objects to immunizations on religious grounds.~~

~~(ii) The child's medical condition contraindicates immunization.~~

~~(iii) If the child does not have age appropriate immunizations and is not exempt from immunization, the parent has 90 days to obtain immunizations for the child.~~

§ 168.18. Need for child care.

(a) Child care must be needed to enable a {member of the budget group} parent to participate in a {work-related} work activity as defined in §§ 165.31 and 501.6 (relating to RESET participation requirements; and employment and training program).

(b) Child care services will not be considered as needed when an unemployed {parent/caretaker} parent of the child is in the home, unless one of the following applies:

(1) The {parent/caretaker} parent is physically or mentally incapable of providing child care, as verified by a physician or licensed psychologist.

(2) The {parent/caretaker} parent is involved in {work-related} work activities as defined in §§ 165.31 and 501.6, or the custodial parent is participating in {a Department of Education Pregnant and Parenting Youth Program} an education program for pregnant or parenting youth that is approved by the Department.

[(3) The child is at risk because of suspected child abuse.]

(c) Child care will be considered as needed for entry into or during breaks in approved {work-related} work activities as defined in §§ 165.31 and 501.6 for [one of the following:

(1) Up to 2 weeks.

(2) Up to 30 days when it is verified that the child care arrangements would otherwise by lost in the interim] up to 30 days.

(d) ~~{Child CARE will not be considered as needed when the biological or adoptive parent, specified relative or legal guardian of the child is the owner/operator of a child is the owner/operator of a child care business where care is available for the child.} When a parent is the operator of a child day care center, group child day care home or family child day care home as specified in Chapter 3270, Chapter 3280 or Chapter 3290 (relating to child day care centers; group child day care homes; and family child day care homes) or is the operator of a home that is exempt from certification or registration under section 1070 of the Public Welfare Code (62 P. S. § 1070) and when space is available to enroll the parent's child at the facility operated by the parent, that child is not eligible to receive subsidized child care.~~

(e) Subsidized child care may not be used as a substitute for a publicly funded educational program, such as kindergarten or a specialized treatment program.

(f) A parent/CARETAKER is ineligible for subsidized child care if he does not attend a face-to-face interview no later than 30 calendar days following the request for care. The Department may extend the 30-day time frame for the face-to-face interview if, on or before the 30th calendar day, the parent/CARETAKER claims hardship due to conflicts with the parent's/CARETAKER'S working hours, transportation problems or illness of the parent/CARETAKER or another family member. At the time the parent/CARETAKER claims hardship, the Department may grant an additional 30 days from the date the hardship is claimed for the interview. The Department may substitute a telephone contact for a face-to-face interview if a face-to-face interview cannot be scheduled without the parent/CARETAKER having to take time off from work.

(g) A parent/CARETAKER is ineligible for subsidized child care if he does not select an eligible child care provider and enroll the child within 30 calendar days following the date the Department notifies the parent/CARETAKER that the child may be enrolled or that the family's current child care provider is ineligible to participate in the subsidized child care program.

§ 168.19. Child care arrangements.

Payment for child care will be made when the child care arrangements are as follows:

(1) The {person} ~~individual~~ or entity providing child care meets the following conditions:

(i) {Provides care in accordance with applicable standards of Federal, State and local law.} ~~Complies with the Department's standards for provider participation.~~

* * * * *

(ii) Is {a person who is at least} 18 years of age ~~or older~~.

(2) The {person or entity} ~~individual~~ providing child care may not be one of the following:

(i) The {biological or adoptive parent or legal guardian} ~~parent~~ of the child.

* * * * *

§ 168.20. Child care co-payment.

(a) The employed TANF budget group shall pay the required co-payment toward the cost of child care.

(b) The co-payment is due on the first day of the service week and each week thereafter, regardless of the day the child is enrolled.

(c) If the co-payment is decreased as the result of a redetermination, the employed TANF budget group shall begin paying the reduced co-payment on the first day of the service week following the date of the redetermination.

(d) If the co-payment is increased as the result of a redetermination, the employed TANF budget group shall begin paying the increased co-payment on the first service day of the week following the notification advising the budget group of the co-payment increase.

(e) If the co-payments for 1 month are equal to or exceed the monthly payment for care, the family is not eligible for subsidized child care with that provider.

§ 168.21. Ineligibility for failure to pay co-payment.

~~(a)~~ Ineligibility for child care payment results when the TANF budget group is employed and fails to pay the required co-payment toward the cost of child care as specified in § 168.20(b) (relating to child care co-payment). The TANF budget group is ineligible until ~~{overdue} delinquent~~ co-payments are paid or satisfactory arrangements to pay ~~{overdue} delinquent~~ co-payments are made with the provider.

~~(b) A co-payment is delinquent if it is not paid by the last day of the service week.~~

~~(c) On the day the provider reports the co-payment is delinquent, the Department will notify the TANF budget group in writing, with advance notice, that action will be taken to terminate subsidized child care for the child.~~

~~(d) When a co-payment is delinquent, the first payment made during a week is applied to the current week's co-payment. Subsequent payment during a week is applied to the delinquent co-payment.~~

VERIFICATION

§ 168.41. Verification requirements.

The {applicant or recipient} ~~parent~~ is required, as a condition of eligibility, to cooperate in providing necessary information and verification to establish eligibility.

(1) Before authorizing the initial child care payment, the {CAO} ~~Department~~ will determine the following:

(i) Whether the child care is necessary to participate in a {work-related} ~~work~~ activity ~~as defined in §§ 165.31 and 501.6 (relating to RESET participation requirements; and employment and training program).~~

* * * * *

(iii) The date the service is needed {by the participant}.

* * * * *

(2) When the {parent/caretaker} ~~parent~~ provides verification to the [CAO] Department that indicates a change in eligibility, payment will be reduced, terminated or increased, as appropriate, upon issuance of appropriate notice to the {parent/caretaker} ~~parent~~, in accordance with §§ 133.4 and 168.101 (relating to procedures; and appeal and fair hearing).

(3) Child care costs shall be verified ~~by the provider~~ monthly on a form specified by the Department {or by a written statement signed by the provider} or by a collateral contact by the [CAO and] Department with the child care provider.

(4) A collateral contact will be used whenever necessary to ensure that payment is made in advance of the date that payment is required by the child care provider consistent with § 168.1(b)(3) (relating to policy on payment of child care). When a child care [allowance] payment is authorized based on a collateral contact with or by a written statement from the provider, verification of the charge for child care on a form specified by the Department shall be submitted to the [CAO] Department within 30 days of the first day child care costs were incurred. The [CAO] Department will assist the {client} ~~parent~~, as needed, to obtain a completed verification form from the provider. Failure to provide verification within the specified time period could result in nonauthorization of the child care payment.

* * * * *

§ 168.43. Verification of {the disability of a child} ~~a child's disability~~.

A written statement from a physician or licensed psychologist which confirms that the child has a physical or mental {handicap} ~~injury or impairment~~ which prevents the child from caring for himself is required.

§ 168.44. Verification of {the disability of a parent/caretaker} ~~a parent's disability~~.

A written statement from a physician or licensed psychologist which confirms that the {biological or adoptive parent, specified relative or legal guardian has a physical or mental handicap} ~~parent has a disability~~ which prevents the {person} ~~parent~~ from providing child care is required.

§ 168.45. {Verification of suspected child abuse} ~~(Reserved)~~.

{The statement of the parent/caretaker, caseworker or other professional is acceptable evidence to verify suspected child abuse. Suspected child abuse will be reported in accordance with 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) as defined in Chapter 3490 (relating to protective services).}

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§ 168.49. Verification of payment of co-payment for the employed budget group.

{A signed, written statement from the child care provider on a Department form which confirms that the child care co-payment has been paid for a specified month is required. If co-payments are owed, a signed, written statement by the child care provider that the overdue co-payments have been paid or that satisfactory arrangements for payment have been made is acceptable.} ~~The provider is not required to report to the Department if a co-payment is paid timely. The provider shall report to the Department when a~~

~~co-payment is delinquent on the last day of the service week, when a delinquent co-payment has thereafter been paid and when satisfactory arrangements for payment of a delinquent co-payment have been made.~~

§ 168.51. Verification of age-appropriate immunizations.

{The parent/caretaker shall provide a signed, written statement on a form specified by the Department to verify that the child has received age-appropriate immunizations, or that the parent/caretaker objects to immunizations on the basis of religious grounds, or documentation from a physician to verify that the child's medical condition contraindicates immunizations.} ~~The parent shall provide self-certification indicating that the child has received age appropriate immunizations or that the child is exempt from immunization on the basis of religious grounds or a medical condition which contraindicates immunizations. Self-certification is a written statement provided by the parent for the purpose of establishing verification.~~

REPORTING REQUIREMENTS

§ 168.61. Reporting requirements.

The {budget group} ~~parent~~ shall report changes to IN child care arrangements [and child care costs monthly consistent with Chapter 142 (relating to monthly reporting) and § 125.24(d) (relating to responsibility for reporting changes). Documentation will be retained in the case record to support the determination of the payment, including child care costs. These documents are retained in accordance with cash assistance case record retention policies] **TO THE DEPARTMENT OR ITS DESIGNATED AGENT within** 10 calendar days from the date the change occurred. Documentation of child care

payment shall be retained in the case record in accordance with § 3041.85 (relating to record retention).

PAYMENT DETERMINATION

§ 168.71. Monthly payment determination.

The amount of the child care payment is determined for each month.

(1) The allowable child care payment is the [lowest of the actual child care costs, the rate charged the general public or the maximum allowance] rate the provider charges to the general public or the MCCA established by the Department, whichever is less.

(i) For [participants] ~~parents~~ in unpaid [work-related] ~~work~~ activities as defined in §§ 165.31 and 501.6 (relating to RESET participation requirements; and employment and training program), payment is [made for the actual costs of child care up to the maximum allowance] the rate the provider charges to the general public or the MCCA established by the Department [or the rate charged the general public], whichever is less.

(ii) For [participants] ~~parents~~ in paid [work-related] ~~work~~ activities as defined in §§ 165.31 and 501.6, payment is made for the actual costs of child care up to the maximum allowance established by the Department or the rate charged the general public, whichever is less, minus the family co-payment as determined in § 168.74 (relating to determining [monthly] weekly child-care [co-payments] co-payment for the employed TANF budget group).

(A) A TANF budget group determined prospectively ineligible for TANF benefits as a result of starting employment will have the co-payment waived from the first day of employment until the date of discontinuance of the TANF benefits in accordance with § 183.105 (relating to increases in income), if the budget group has reported timely in accordance with § 125.24(d) (relating to responsibility for reporting changes).

(B) A TANF budget group determined prospectively eligible for TANF benefits ~~as a result of~~ WHEN A PARENT/CARETAKER IS starting employment will have the co-payment waived from the first day of employment until the last day of the calendar month in which the first pay is received, provided the TANF budget group has reported timely in accordance with § 125.24(d).

(2) When the month of child care eligibility is not a full calendar month, the child care payment is prorated for the number of calendar days for which the TANF budget group is eligible.

{(3) Corrective or delayed payments are issued consistent with the requirements in Chapters 175 and 227 (relating to allowances and benefits; and central office disbursement).}

§ 168.72. Determining monthly child care costs.

~~The actual child care costs reported and verified as paid or incurred in the month are considered. Actual child~~ CHILD care costs include the following:

(1) A charge for child care [reasonably related to] during the hours of the [work-related] work activity as defined in §§ 165.31 and 501.6 (relating to RESET participation

~~requirements, and employment and training program~~, including travel time and sleep-time [for third shift employment].

(2) A charge [levied] for up to 10 consecutive days on which the child was not in attendance ~~due to illness~~[, vacation, and the like].

* * * * *

§ 168.74. Determining [monthly] weekly child care co-payment for the employed TANF budget group.

The co-payment is determined [for a month,] weekly based upon gross monthly income and [budget group] family size, using the co-payment sliding fee scale in Chapter 3041, Appendix B. Gross monthly income is determined based on anticipated or actual amounts as determined in accordance with Chapter 183 (relating to income).

* * * * *

CHILD CARE PAYMENT METHODS

§ 168.81. Payment methods.

(A) SUBJECT TO SUBSECTION (B), ~~THE~~ The Department will make a ~~child-care~~ VENDOR payment for child care expenses ~~paid or~~ incurred in a month [as one of the following:

(1) A direct check to the client when the child care provider is not enrolled in the Department's child care vendor payment system.

(2) A vendor payment to the child care provider when the provider is regulated and enrolled in the Department's child care vendor payment system except when it is verified that the client has paid the enrolled provider directly. Payment will then be issued directly to the client.

(3) A restricted endorsement check made payable to the client and the child care provider when it has been demonstrated that the client failed to use a prior child care payment for its intended purpose].

(B) Payment is made to A VENDOR UNLESS ONE OF THE FOLLOWING APPLIES the provider in accordance with the provisions of the provider agreement with the following exceptions:

(1) Payment is made to the parent when care CARE is provided in the child's home.

(2) Payment is made to the parent when the THE parent/CARETAKER requires reimbursement for child care costs incurred during retroactive periods of eligibility.

§ 168.82. Time frames for authorization of payment.

(a) When verification of child care costs as specified in § 168.41(3) (relating to verification requirements) is obtained or received by the Department within 5 calendar days following a request for child care payment, the Department will authorize payment no later than 10 calendar days following the date of request.

~~(b) When verification of child care costs as specified in § 168.41(3) is obtained or received by the Department more than 5 days following a request for child care payment, the Department will authorize payment no later than 5 calendar days after receipt of the verification.~~

~~(c) When the last day for authorization of payment falls on a weekend or holiday, the Department will authorize payment on or before the working day immediately preceding the weekend or holiday.~~

~~(d) Authorization of payment shall include actually processing the data needed to issue a check, including completing required forms and performing data entry.~~

~~(e) The Department will issue the written decision approving child care payment within the time frame for authorization of payment in this section.~~

~~(f) The Department will use the method of payment, such as a county or central issuance, that is best calculated to provide child care payment to the parent or provider in advance of the date that payment is required by the provider.~~

RESTITUTION

§ 168.91. Restitution.

The cash assistance provisions of Chapter 255 (relating to restitution) apply to a [recipient of] parent that has received a child care payment except that the provision for recoupment of an overpayment does not apply.

APPEAL AND FAIR HEARING

§ 168.101. Appeal and fair hearing.

The cash assistance provisions of Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings) apply to an applicant or recipient of a child care payment with one exception~~;~~: the requirement for an advance ~~written~~ notice of adverse action will not apply to a change in the method of payment, unless the change would result in a discontinuance, suspension, reduction or termination of benefits or would force a change in child care arrangements. If the ~~{parent/caretaker}~~ ~~parent~~ files an appeal within 10 days of the ~~date of the advance written~~ notice of adverse action, subsidy continues at the prior level until a final decision is made by the Bureau of Hearings and Appeals except when the adverse action is based solely on Federal or State law, regulations or policy or changes in Federal or State law, regulations or policy, or the Department lacks funding to continue ~~the~~ subsidy.

Comments Received BEFORE Deadline

#	NAME	ORGANIZATION	ADDRESS
1	Marci Place	SCAAP, CCIS of Adams, Franklin, and Fulton Counties	153 North Stratton Street Gettysburg, PA 17325
2	Judy Graziano	Northeastern Child Care Services	1356 North Washington Avenue Scranton, PA 18509
3	John T. Hogan	Coordinated Child Care Luzerne County CCIS	46 S. Washington Street, P.O. Box 2631 Wilkes-Barre, PA 18703-2631
4	Elaine Errico	Success by 6 - United Way of Lackawanna County	615 Jefferson Avenue, PO Box 526 Scranton, PA 18501
5	Ronald A. Kikta	CCIS of Cambria County	300 Prave Street, Suite 101 Ebensburg, PA 15931
6	Sharon Easterling Diane Halstead	QUEST	100 North 17th Street, 8th Floor Philadelphia, PA 19103
7	Joan L. Benso	PA Partnerships for Children	20 North Market Square, Suite 300 Harrisburg, PA 17101-1632
8	Tony Ross	United Way of Pennsylvania	17 South Market Street Harrisburg, PA 17101
9	Ellen Brenner	CCIS of Delaware County	20 South 69th Street Upper Darby, PA 19082
10	Mary T. Casey (Terry)	PACCA	2300 Vartan Way Harrisburg, PA 17110
11	Connie R. Whitson	CCIS of Montgomery County	1430 Dekalb Street Norrstown, PA 19404
12	Louise Hayes Amy Hirsh Richard P. Weishaupt	Community Legal Services, Inc.	Law Center North Central 3638 North Broad Street Philadelphia, PA 19140
13	Yvette Long	Income Maintenance Advisory Committee	c/o Philadelphia Welfare Rights Organization 1231 North Franklin Street Philadelphia, PA 19122
14	Rev. Theodore Clater	Keystone Christian Education Association	6101 Bell Road Harrisburg, PA 17111
14	Michael Geer	Pennsylvania Family Institute	23 North Front Street Harrisburg, PA 17101
14	Andrew LeFavre	REACH Alliance	P.O. Box 1283 Harrisburg, PA 17108
15	Peter Zurflieh	PA Child Care Campaign c/o Community Justice Project	118 Locust Street Harrisburg, PA 17101

Comments Received AFTER Deadline

#	NAME	ORGANIZATION	ADDRESS
16	Nancy S. Welker	Lawrence County Social Services	P.O. Box 189, 241 West Grant Street New Castle, PA 16103
17	Norma Finkelstein	CCIS - Northeast Philadelphia	1926 Grant Avenue Philadelphia, PA 19115
18	Katrina Harden	Community Action Partnership, Mercer County	75 South Dock Street Sharon, PA 16146
19	David Fair	United Way of SE PA	7 Benjamin Franklin Parkway Philadelphia, PA 19103-1294
20	Doreen A. Yeremian	Delco Child Day Care Association	352 Childs Avenue Drexel Hill, PA 19026
21	Dr. Robert J. O'Hara, Jr.	PA Catholic Conference	223 North Street, Box 2835 Harrisburg, PA 17105

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

RECEIVED

I.D. NUMBER:	14-505	
SUBJECT:	CHILD CARE	2006 NOV -8 PM 3: 23
AGENCY:	DEPARTMENT OF PUBLIC WELFARE	INDEPENDENT REGULATORY REVIEW COMMISSION

TYPE OF REGULATION

Proposed Regulation

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
X 11-8-06		HOUSE CHILDREN & YOUTH COMMITTEE
11/8/06	Jamie Buchenauer	
X 11/8/06	Jennifer Smely	SENATE PUBLIC HEALTH & WELFARE COMMITTEE
11/8/06	Jennifer Smely	
11/8/06	Dr. Helmet	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

November 8, 2006