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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 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 (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 promoting the following goals:

1. Family self-sufficiency by giving parents reliable child care so they can work or improve their skills and earning potential through education or training, while working.
2. Parent choice by providing parents with a broad range of child care options and empowering them to make their own decisions on the child care that best meet the needs of the child and the family.

### *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 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 final-form rulemaking changes the process and requirements related to the eligibility determination procedures and 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. The final-form rulemaking simplifies the verification requirements to make it easier for families to apply and qualify for 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*

The following is a summary of the major comments received and the Department's response to those comments. 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 term “parent” used in the final-form rulemaking is defined by incorporating by reference the definitions used in the benefit programs under which individuals qualify for subsidized child care. For purposes of this chapter, a parent might not be the biological or adoptive parent but is recognized as the adult head of the household for eligibility purposes.

### *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 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*

The Department added reference to the EDP.

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*

The Department agrees and added the term “EDP.” 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 agreed and made the change.

*§ 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 finds that a specific reference to a child receiving SSI is unnecessary. The parent who needs child care in order to work or comply with an AMR or EDP qualifies for subsidy for every eligible child who needs child care in order for the parent to work. This is true regardless of whether the child himself is receiving TANF or SSI, so long as the child is a dependent in the parent's household and meets the requirements of an eligible child under § 168.17 (relating to eligible children).

*§ 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 finds this change is unnecessary. The definition of "parent" incorporates by reference the definition of "specified relative" in § 151.42.

*§ 168.2. Definitions—Co-payment*

The IRRRC 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 agrees and has added a definition of "EDP" as "EDP—Employment Development Plan—as defined in § 165.2 (relating to definitions)."

*§ 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 agrees and revised the cross-reference to be 7 CFR 273.1(a)(3), (b)(1), (b)(4), (d) and (e) (relating to household concept).

*§ 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 amended the definition to include "a specified relative for the TANF program as defined in § 151.42."

With regard to the concern expressed about situations in which a parent is denied subsidy on the basis of this definition, the Department used the definition that is used in the benefit programs that generate the need and eligibility for subsidized child care. By using these definitions, an adult who is required to participate in a work activity in order to preserve eligibility for cash assistance or FS benefits is also a parent for the purposes of determining eligibility for subsidized child care.

*§ 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--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*

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 decision in St. Elizabeth's does not address the Department's authority to set requirements and standards for child care providers to participate in the subsidized child care program.

Federal law and regulations applicable to the subsidized child care program require that the Department certify that there are in effect within the state both licensing requirements and health and safety requirements for child care providers. Child Care and Development Block Grant Act of 1990 (42 U.S.C.A. § 9858c(c)(2)(E) and (F) (relating to application and plan)); 45 CFR 98.15(b)(4) and (5) (relating to assurances

and certifications). "Licensing or regulatory requirements" is defined as "requirements necessary for a provider to legally provide child care services." 45 CFR 98.2 (relating to definitions).

Federal law also requires that the state have procedures in effect to ensure that child care providers who receive subsidized child care funds comply with all applicable state or local licensing, regulatory and health and safety requirements. Child Care and Development Block Grant Act of 1990 (42 U.S.C.A. § 9858c(c)(2)(G) (relating to application and plan)); 45 CFR 98.15(b)(6) (relating to assurances and certifications). For a child care provider subject to regulation, the license or certificate of compliance is the means of ensuring that the regulated child care provider is in compliance with all applicable state licensing, regulatory and health and safety requirements. This requirement is consistent with other Department regulations at §3041.13 (relating to parent choice).

Absent requiring a certificate of compliance, the Department would be required to establish an alternate means for a regulated provider to prove it is complying with all regulations. Establishing an alternate, duplicative process would be inconsistent with efficient administration of State government.

Accordingly, the Department will continue to require that a non-profit child care provider have a certificate of compliance as proof that the non-profit provider is complying with applicable state regulations.

In any case, even if the order of the Commonwealth Court in St. Elizabeth's somehow applies to participation in subsidized child care, the order has been stayed by virtue of the filing of a Petition for Allowance of Appeal to the Pennsylvania Supreme



Court, 284 MAL 2006 (filed April 24, 2006), as the IRCC noted. Accordingly, it would be premature for the Department to make a change in policy prior to a ruling by the Pennsylvania Supreme Court.

The Department agreed with the comment regarding paragraphs (4) and (5) of Subsection (a) and removed the word "specifically."

#### *§ 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*

Requirements for provider participation are set forth in §§ 168.19 and 168.41 (relating to child care arrangements; and verification requirements), as well as in the provider agreement. Standards for provider participation vary appropriately with provider type. Providers subject to regulation under Chapters 3270 (relating to child day care centers), 3280 (relating to group child day care homes), and 3290 (relating to

family child day care homes) must comply with those Chapters, as well as the Provider Agreement. Unregulated providers not subject to those Chapters must comply with standards set forth in the Provider Agreement, e.g. have a working telephone and smoke detectors.

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.

The Department has included cross-references to §§ 168.19 and 168.41 and replaced the term "may" with the terms "shall have the right to" as recommended by IRRC and two commentators.

*§ 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*

As stated above, the Department revised the cross-reference to 7 CFR 273.1(b)(1)(iii). The Department also reformatted the provision to place it in paragraph (1). This clarifies the family must include an eligible child as determined under TANF or FS rules.

*§ 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 agreed and made these changes.

*§ 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 determination of whether a teen parent is eligible for child care is made by the CAO and is based on the family composition and employment and training

requirements. The CAO refers the family for child care following the determination of eligibility.

*§ 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 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 resulting from 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 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 revised the title of the section as recommended. The Department has revised the language to clarify that the parent must submit verification to the Department or its designated agent. With regard to the recommendation to add reference to the age of the child, the Department finds that addition unnecessary.



Section 168.17(2) (relating to eligible children) contains the age limitations. Use of the term "himself" is consistent with the *Pennsylvania Code and Bulletin Style Manual*.

*§ 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 revised the language to clarify that the parent must submit verification to the Department or its designated agent.

The Department finds that requiring verification of a parent's disability is appropriate and has retained the section.

*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 provision permitting satisfactory arrangements to pay a delinquent co-payment is consistent with current 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 finds that the cross-references in this paragraph are obsolete and is deleting 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 IRRRC 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 is necessary.

*§ 168.82. Time frames for authorization of payment*

The IRRRC 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.

*Regulatory Review Act*

Under § 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on

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the Department submitted a copy of this regulation to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services 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***.