

#3216

14-542-59

**Graeff, Melissa**

**From:** Lissa Geiger Shulman <lissa@tryingtogether.org>  
**Sent:** Tuesday, November 13, 2018 2:46 PM  
**To:** PW, CC Reg Changes  
**Cc:** Ferguson, Tamula; Cara Ciminillo  
**Subject:** Public comment on proposed child care regulations  
**Attachments:** Trying Together Comments on Regulation #14-542\_ Child Care Facilities.pdf

Please see attached.



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2018 NOV 16 P 12:30

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**IRRC Regulatory Analysis**

***Section 19***

Trying Together has significant concerns with the accuracy of the cost estimation in this section. The source for wage data of affected employees is the "Pennsylvania Occupational Wages Statewide" from the Center for Workforce Information & Analysis Website. However, the categories cited are those in the education sector and not the service sector, specifically the occupation title of "childcare workers". The wages included from the education sector are applicable to some employees working in child care programs offering state-funded Pre-K Counts programs. However, the majority of child care programs impacted by these regulations offer wages aligned to this service sector. Thus, we believe the cost analysis in this document is likely inaccurate.

Trying Together would be happy to work with the relevant administrative departments and the General Assembly to promulgate policies and associated funding that ensures the entire workforce affected by these regulations receives wage parity with the education sector wages cited in this analysis.

**Effective Date**

Trying Together strongly suggests a delay in the effective date of the regulations for at least 120 days in order for the Department to develop and share communication tools in advance of new regulations taking effect. Communication will be needed to the department's certification staff, as well as from that staff to early childhood programs.

**Updating Terminology - "Day Care" to "Child Care"**

***Throughout 3270, 3280 and 3290, as well as 3041.13***

Trying Together strongly supports this language change as we worked with the General Assembly to pass HB 1677 of 2018 which requires this change. The words used to describe this work and the field matter because they affect the public's perception and the field's own accountability in providing high-quality care. Using "child care" rather than "day care" recognizes the important work done by adults and the children who are trying to learn, develop, and grow. Accurate language is critical to gaining respect, validation, and resources to support child care programs.





**Increased Annual Professional Development**  
**3270.31(e), 3280.31(e), 3290.31(f)**

Trying Together strongly supports increasing the number of annual training hours from six to twelve. We believe this requirement strengthens the minimum standards set for all child care staff, further promoting the importance of health and safety, as well as quality improvement. NAEYC's position statement on professional development recommends 24 hours of training per year (1993), demonstrating the importance of continued education and the reasonableness of 12 hours.

In the "purpose" section DHS notes the one-time only professional development can count towards the twelve hours for a new staff person in their first year of employment. However, this provision is not in the actual regulation. We recommend it be added.

Also in the "purpose" section, DHS uses language regarding "providers that participate in the Keystone STARS quality initiative". Because all regulated providers are now part of Keystone STARS, this language should be updated accordingly.

The importance of these trainings to the health and safety of the children in care outweighs the cost. However, we appreciate DHS noting programs will likely incur overtime costs or substitute staff costs in order to comply.

**Annual Unannounced Inspections**

**3270.11(g), 3270.24(d), 3280.11(h), 3280.23(d), 3290.11(k), 3290.11(m)(2), 3290.21(d)**

Trying Together strongly supports the new federal requirement for annual, unannounced inspections and the inclusion of this provision in the regulation. Unannounced inspections provide a more accurate depiction of facility operations and the care provided to children than those which are planned. The National Association for the Education of Young Children (NAEYC) states the importance of an effective system of public regulation and monitoring to protect children's health and safety in early education settings in its position statement on licensing and public regulation of early childhood programs, including unannounced inspections (1997). Research has also demonstrated unannounced visits are especially effective when targeted to providers who have a history of poor compliance with state rules (Fiene 1996).

The "purpose" section of the proposed regulation notes that the Department of Human Services (DHS) will use the inspection to offer technical assistance on how to meet regulatory requirements and provide quality child care services, including information on Keystone





STARS. However, this language does not appear in the regulation. We recommend DHS consider adding such a provision to the actual regulations in order to better integrate the role of certification and quality monitoring. This is also an opportunity for DHS certification staff to develop a collaborative relationship with programs to support increased quality.

**Certification of Family Child Care Homes**

***3290.2, 3290.3(d), 3290.4 various definitions, 3290.11(c) and all changes of “registration” to “compliance” throughout Ch. 3290***

Trying Together supports requiring certification and regular inspections of family child care homes as it provides better protection for children and provides opportunities for staff to participate in systems and supports for increasing program quality.

**Announced Pre-Certification Inspections**

***3270.24(e), 3280.23(e), 3290.11(i) and (m)(1), 3290.21(e)***

Trying Together strongly supports the new federal requirement for pre-certification, announced inspections and the inclusion of this provision in the regulation. NAEYC recommended this requirement to ensure the health and safety of children as a facility opens (1997).

The “purpose” section of the proposed regulation notes that DHS will ensure the applicant understands the responsibilities involved to meet regulation requirements, inform the applicant of any health or safety issues, alert the applicant to technical assistance and quality child care initiatives, and alert the applicant of any information that they must report to DHS. However, this language does not appear in the regulation. We recommend DHS consider adding such a provision to the actual regulations. While the regulations are the floor for operation, it is important for DHS to use opportunities with programs to develop a collaborative relationship that promotes increased program quality.

**One-Time Health & Safety Professional Development**

***3270.11(c), 3270.31(f), 3280.11(c), 3280.31(f), 3290.11(e), 3290.31(g)***

Trying Together supports the federal requirement of one-time professional development and its inclusion in the regulation. The ten health and safety areas identified are critical as appropriate training that protects children from serious illness, injury, or even death. We appreciate the inclusion of “pediatric CPR” specifically as this is an improvement on current regulatory requirements that do not specifically state training is needed for providing CPR to children.





Trying Together supports the application of this provision to new child care programs and current staff. The “purpose” section of the regulation notes professional development sessions that have been completed within two years prior to the date of publication of the final-form rulemaking will satisfy this requirement. However, this does not appear in the regulation itself. We recommend this language be added to the regulation. In addition, the one-time only implementation period of 180 days for current staff may not provide enough time for completion. DHS should consider a waiver for providers that need more time to comply. We recommend a waiver be allowed for a reasonable timeframe of one-year total if programs can document reasoning for an extension and a plan to complete the training.

The importance of these trainings to the health and safety of the children in care outweighs the cost. However, we appreciate DHS noting programs will likely incur overtime costs or substitute staff costs in order to comply.

#### **Pediatric CPR**

***3270.33(d), 3280.33(c), 3290.32(d)***

Trying Together supports this one-time professional development requirement which applies to all current and new staff, includes pediatric CPR. Updating the existing regulation noting one or more facility persons competent in CPR shall be at the facility when children are in care, to include pediatric CPR provides consistency in the regulation.

#### **Emergency Plans**

***3270.27(a)(5)(6) and (f), 3280.26(a)(4)(5) and (f), 3290.24(a)(5),(d) and (g)***

Trying Together supports the changes in this section which require drills annually and sharing a copy of the emergency plan with the local municipality. Trying Together especially supports the provision requiring specific accommodations for infants, toddlers, children with disabilities and children with chronic medical conditions. It is important that children who may have additional needs be considered in the emergency planning process as strategies for evacuation, staff to child ratio, etc. may need to change recognizing a child’s age and/or physical, developmental, or mental health condition.

Trying Together also notes that the regulations should add that emergency plans should require a procedure for lockdowns, per federal Child Care and Development Block Grant Act requirements.





**Updated Clearance and Mandated Reporting Requirements**

***3270.19(b), 3280.11 (e), 3280.18(b), 3290.11(h), 3290.16(b)***

Trying Together supports clarifying provisions related to mandatory reporting to comply with the Child Protective Services Law, as well as inclusion of clearance provisions for household members age 18 and older who reside in group child care or family child care homes.

Trying Together notes that to be in compliance with federal Child Care and Development Block Grant Act requirements, two additional changes to these sections should be added:

1. prospective employees must present at least one of the three required clearances (DHS, FBI, or Pennsylvania state police clearance), not just evidence that they have applied for all three.
2. In addition to the three required Pennsylvania state clearances, anyone required to have these clearances (child care staff, and household members who reside in a FCCH or a GCCH) who has lived outside of Pennsylvania during the past five years must also obtain a child abuse clearance and a criminal history clearance from each state they have resided in during the past 5 years.

**Identification of Staff**

***3270.34(c), 3280.34(a), 3290.31(a)(3)***

Trying Together supports the requirement that a program director, primary staff person, or operator present a photo ID at inspection. While this recommendation may be a response to a specific instance where staff falsified their identity, this is an easy and smart protection to prevent fraud.

**Family Child Care Supervision of Children**

***3290.113(f)***

This proposed regulation requiring family child care providers to use a monitoring device with a video camera or other video or sight technological device to supervise a child if the operator is not able to directly see, hear, direct and assess the activity of a child. While Trying Together acknowledges that this provision will allow for supervision of children, there will be cost to programs. DHS notes a potential cost of \$125 per family child care home. We strongly encourage DHS to work with stakeholders on developing a shared service opportunity to purchase monitors, with the aim of lowering the cost by buying in bulk.





**Work Hour Limits in Family Child Care**  
**3290.113(g)**

Trying Together supports limiting working hours to no more than 16 in a 24-hour day. This will ensure staff have time to sleep, providing a safer environment for the children in care.

**Human Milk**  
**3270.166(7), 3280.166(7), 3290.166(7)**

Trying Together supports language disallowing the use of microwaves to warm human milk. In the purpose section of the regulation, DHS cites the American Academy of Pediatrics (AAP) and other standards and notes using warm running water or bottle warmers.

In addition, Trying Together recommends including additional requirements regarding human milk – at minimum including its handling, storage, preparation and feeding methods. DHS should also consider training so that child care staff working with infants and toddlers are knowledgeable and supportive of all infant and toddler feeding styles and support breastfeeding mothers of children in care and on their own staff. Trying Together recommends consultation with the AAP, other child health organizations, and breastfeeding organizations for the proper provisions to include.

**Adding Foster Mother/Father to Definition of Parent**  
**3270.4 Definitions, 3280.4 Definitions, 3290.4 Definitions**

Trying Together supports this change which provides consistency with Act 75 of 2015 and recognizes a foster mother and/or father may be making child care decisions for a child. All children in foster care should have the same opportunities to participate in age-appropriate every day activities, as all other children.

**Health Information**  
**3270.131(a), 3280.131(a), 3290.131(a)**

Trying Together supports requirement of an initial health report. Acknowledging that programs have limited control over families' access to health insurance, ability to schedule appointments, and the costs that many be associated with obtaining this documentation, Trying Together proposes that an initial child health assessment be required at 45 days (rather than 30) to align with the time period for a developmental assessment.





We recognize there could be circumstances in which families do not have a current health assessment and may struggle to get a doctor’s appointment in the 30-day window. We recommend providing for an exception for families in these circumstances, allowing an additional 30 days only if the family has documentation that an appointment is scheduled.

**Definition of “relative” in Family Child Care Homes**

***3290.4 Definitions***

DHS is proposing to align the regulatory definition with the Human Services Code (62 P.S. §1001) definition. However, we ask DHS to consider if it is legally able to require staff:child ratios and space requirements to apply to unrelated and related children, as there is no limit on the maximum number of related children in care.

**Lead Paint**

***3270.69 and 3270.77, 3280.69 and 3238.77, 3290.67 and 3290.75***

While the proposed regulation does not address these sections, Trying Together is aware of local and state efforts to reduce lead exposure as it is a health and safety concern. We recommend the following be considered:

Include the following language in section 3290.75, which is currently found in 3270.77(d) and (f) and 3280.77(d) and (f), to bring existing regulations regarding lead paint in family child care homes in line with child care center and group child care home regulations:

- “Removal, clean-up and disposal of leaded paint dust and debris shall be accomplished in a manner that avoids dispersal of dust and debris into the environment.”
- “Dust and debris generated by removal shall be disposed of in accordance with applicable Federal, State and local regulations.”

Trying Together requests that DHS consider adding language to 3270.77, 3280.77 and 3290.75 requiring facilities built prior to 1978 operating as a child care center, group child care home or family child care home to obtain certification from a certified lead inspector stating their property is lead free/safe based on Environmental Protection Agency and/or Department of Environmental Protection (DEP) standards. The requirement should be part of the certification process to open a facility, and existing providers could be given a reasonable number of years to comply in line with the timing of their current certification renewal.







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DHS should also consider adding language to 3270.69, 3280.69 and 3290.67 requiring facilities operating as child care center, group child care home or family child care home to test for lead in their water supply. If lead is discovered, an alternative water source should be required. DHS should consult with the DEP to determine appropriate action related to remediation given it may not be under the provider's control to fix the problem, and there may be financial barriers to remediate. DHS should also consult with DEP on the appropriate testing frequency and level that requires an alternative water source to be used. If lead is discovered it should be reported to OCDEL certification staff, and parents should be notified with an explanation of the alternative water source being used to provide clear communication regarding child safety. It is our understanding that the following states/city require child care facilities to test water for lead and could be used as a guide for developing Pennsylvania regulations: California, Connecticut, Illinois, New Jersey, Rhode Island and Washington, and New York City.

