



## Community Justice Project and Community Legal Services Proposed Compromise on Balance Billing

In our comments on DHS's Final Form Child Care regulations, the Community Justice Project and Community Legal Services have supported DHS's decision in the final form regulations to delete subsection 3042.14(d) permitting child care providers to charge low-income families, on top of their co-pay, the difference between DHS's provider payment rate and the provider's published private pay rate.

This decision by DHS met with opposition from child care provider groups, and DHS has decided to pull back the package of regulations in order, we hope, to explore possible middle ground between a complete ban on balance billing and granting providers free rein to charge low-income families the full differential between DHS's payment rate and the provider's private pay rate, which can be several times the amount of the family's co-pay.

In the spirit of compromise, we suggest that Section 3042.14(d) be revised so as to:

- Establish a floor below which no family may be charged any more than the family's co-pay. This would protect the lowest income and most vulnerable families from additional charges that could very well make it impossible for them to afford high quality child care. We suggest the floor be set at 150% of the Federal Poverty Income Guidelines.
- Authorize the Department to establish limits on additional "balance billing" charges for families above 150% of the FPIGs, but without specifying by regulation what those limits should be. This would allow DHS flexibility to set and adjust limits on additional charges based upon appropriate variables, such as DHS provider payment rates and family co-pay amounts, at any given point in time. This is, in fact, precisely the kind of balancing required of states that permit balance billing by federal CCDF regulations.<sup>1</sup> Whatever process is established by DHS to set limits on additional provider charges should be one that allows for public review and comment.

Here are proposed revisions to Section 3042.14(d) reflecting our suggested approach:

### § 3042.14. Payment of provider charges.

(d) If a parent or caretaker selects a provider whose published rate exceeds the Department's payment rate, the provider may charge the parent or caretaker some or all of the difference between these two amounts, in addition to the weekly co-payment, under the following conditions:

- (i) A parent or caretaker whose income is equal to or less than 150% of the Federal Poverty Income Guidelines may not be charged any amount of the difference between the provider's

<sup>1</sup>States that permit balance billing must demonstrate that this practice, based upon an "analysis of the interaction between any such additional amounts with the required family co-payments," will promote, and not undermine, affordability and access to child care. 45 C.F.R. § 98.45(b)(5).

published rate and the Department's payment rate in addition to the family's weekly co-payment.

(ii) Charges in addition to the weekly co-payment, where permitted, shall be subject to limits established by the Department in accordance with applicable federal law, and subject to public review and comment.

Thank you for considering our proposal.

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**EMBARGOED MATERIAL**

To: IRCC Commissioners

Dear Commissioners,

Thank you for the opportunity to provide public comment to the final-form regulation for Regulation #14-545 Subsidized Child Care Eligibility.

Trying Together supports high-quality care and education for young children by providing advocacy, community resources, and professional growth opportunities for the needs and rights of children, their families, and the individuals who interact with them. Trying Together is pleased to partner with PennAEYC to support the Pittsburgh Chapter of PennAEYC.

As a principal partner of Start Strong PA, we are also writing to express our opposition to the removal of §3042.14(d) from the regulation, which permits child care providers to charge parents/caretakers receiving subsidized child care the difference between the provider's private pay rate and their state subsidy reimbursement. Eliminating the ability to charge the difference will negatively impact Pennsylvania families, as well as child care programs.

The child care sector is under-resourced and programs operate on razor thin budgets, especially those serving a high number of families utilizing subsidies. The estimated \$16.5 million loss to child care programs if this change would occur would also impact families. Child care providers may have to make the difficult decision to no longer serve children/families using subsidies in order to keep their doors open, further decreasing the availability of child care to working families who need it the most.

While much of the remaining regulation seeks to comply with federal child care subsidy rules, it is important to note that the federal Child Care and Development Block Grant regulations do not prevent child care providers from charging the difference in payments. We applaud the Office of Child Development and Early Learning's (OCDEL) and the Department of Human Services' leadership for the efforts to align eligibility requirements with the federal Child Care and Development Block Grant Act of 2014 and sections of the Human Services Code. Many of the other proposed changes are very beneficial to the families who utilize subsidies and that are served by the Early Learning Resource Centers. We have provided additional specific comments on the regulations in the chart attached to this letter.

Thank you for your consideration,

Cara Ciminillo  
Executive Director, Trying Together



Topic and Proposed Regulation	Trying Together Comment
<b>Subsidy benefits</b>  3042.13	Trying Together supports the efforts taken to remove barriers for parents and caretakers that work non-traditional hours, such as requiring a parents' shift to end between certain hours. This change will allow more families to become eligible and to receive care when they need it.
<b>Subsidy limitations</b>  3042.15(b)	Trying Together strongly supports parent choice. Allowing a kindergarten-age child one additional year of kindergarten at the parent or caretaker's request, allows parents or caretakers eligible for child care subsidy to make the same decision a private pay parent or caretaker may make. Allowing for parent choice here provides equity between parents and caretakers who receive a child care subsidy and parents and caretakers who are private pay.
<b>Subsidy limitations</b>  3042.15(d)	<p>Trying Together appreciates the clarification in response to feedback during proposed rulemaking: "Department clarified this section to provide that a child is ineligible for failure to enroll within 30 days unless the eligibility agency determines that enrollment has been delayed because of circumstances outside of a parent's or caretaker's control."</p> <p>The child care sector is currently facing severe staffing shortages as a result of the low pay, which is leading to classroom closures. Our campaign conducted a survey of programs in February 2023 to assess the impacts. Of the over 1,100 programs which responded, they indicated over 30,000 children were on their waiting lists for child care and that almost 1,600 classrooms were closed as a result of almost 4,000 open positions. There are 6,491 child care programs in Pennsylvania so our survey is only estimating the minimal impacts of the current staffing crisis. Closed classrooms and waiting lists at the program level may impact a family's ability to enroll in a program and they should not lose eligibility.</p>



<b>Absence</b>  3042.18(a), 3042.18(d)	<p>Trying Together supports the intent of this change to meet the CCDBG requirement to delink payment for child care from a child's occasional absences.</p> <p>These changes remove barriers for parents and caretakers, to allow the eligibility agency to suspend enrollment if the child is absent for more than five consecutive days and increase the number of total paid absences to 40, allowing parents and caretakers to maintain eligibility and increase stability for the child and family.</p>
<b>Face-to-face meeting</b>  3042.56(e)	<p>Trying Together supports removing barriers for parents and caretakers who have hardship in participating in a face-to-face meeting with the eligibility agency. We applaud the department for taking it a step further in removing "face-to-face" meeting and replacing with "personal interview" to clarify that a meeting can take place in person, by telephone, or by other means approved by the Department.</p>
<b>Waiting list</b>  3042.57(c)	<p>Trying Together appreciates clarification that children must enroll with an eligible child care provider within 30 calendar days of funding becoming available, unless the eligibility agency determines that enrollment has been delayed because of circumstances outside of a parent's or caretaker's control. The staffing crisis is referenced above as a potential circumstance that may delay enrollment.</p>
<b>Homelessness</b>  3042.142	<p>Trying Together supports permitting waivers to parents or caretakers who are experiencing homelessness.</p>





## COMMUNITY JUSTICE PROJECT

### **Community Justice Project Comments on the Department of Human Services' March 23, 2023 Final Form Child Care Works Regulations** (April 12, 2023)

The Community Justice Project (CJP), on behalf of Success Against All Odds (SAO)<sup>1</sup> and the many low-income, working families we represent, submit these comments on the Pennsylvania Department of Human Services (DHS) final form regulations governing the Department's Child Care Works (CCW) subsidized child care program. The Child Care Works program provides critical child care assistance to low-income, working families in Pennsylvania.

The final form rulemaking rescinds the entire chapter of Child Care Works regulations at 55 Pa Code Chapter 3041 and replaces it with Chapter 3042.

While the primary purpose of the proposed rewrite of CCW regulations is to implement new federal requirements set forth in the federal Child Care and Development Block Grant Act of 2014 (CCDBG) (42 U.S.C.A. §§ 9857—9858r, as reauthorized by Pub.L. No. 113-1), DHS has also taken the opportunity to further improve the program by proposing changes to regulations not affected by the 2014 CCDBG reauthorization.

CJP and SAO strongly supported the majority of the regulatory changes proposed by DHS in Chapter 3042 the Department's November 14, 2020 proposed rulemaking. We believe that these changes will further the central goals of Congress in its reauthorization of the CCDBG Act in 2014, which were to: (i) ensure continuity of care for children in quality early learning child care settings; and (ii) enable working parents to achieve and maintain financial stability, knowing that their children are being cared for in a stable, nurturing environment.

In our December 14, 2020 comments on the proposed regulations we suggested a number of changes and clarifications intended to further strengthen the regulatory package. DHS accepted many of our recommendations in the final form regulations. We were particularly pleased to see that, in response to our comments, DHS deleted a provision at 55 Pa. Code §3042.14(d) that allowed child care providers to charge low-income families, on top of their co-payment, the difference between the Department's payment rate and the provider's published, private pay rate.

We argued that this provision effectively imposed a "super" copay on parents. The whole purpose of a co-pay scale based upon family size and income is to ensure that child care costs for these families are affordable. The "super" co-pay permitted by this regulation flew in the face of DHS's equitable and carefully constructed co-pay scale.

It also undermined parent choice of providers, arguably in violation of the federal Child Care and Development Block Grant Act, establishing the right of parents to entrust the care of their children to

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<sup>1</sup> SAO is an organization of parents who advocate to improve access to adult and postsecondary education for low-income, single parents, and to ensure access for their families to supports, such as child care subsidies, needed by these parents to succeed in their efforts. The majority of SAO members are themselves either currently seeking to further their education as a means of achieving self-sufficiency or have already attained this goal through such efforts.

the child care provider of their choice.<sup>2</sup> Because of their limited means, parents who would opt to select a particular provider based upon location, quality of care, and reputation, among other factors, were effectively precluded from doing so, when that provider charged a “super” co-pay, pursuant to this regulatory provision.

DHS agreed with our reasoning and, citing additional reasons of its own, ended this “balance billing” provision by deleting subsection (d) of Section 3042.24.

While there are a number of areas where DHS did not accept our recommendations, we feel that on balance, the final form Child Care Works regulations will substantially improve Pennsylvania’s subsidized child care program to the benefit of low-income working. In discussion following the submission of our comments on the proposed regulations, the Office of Early Learning and Child Development (OCDEL) pledged to look at areas of concern to us, such as modernizing eligibility verification policies and practices, with a view toward making further improvements to the program in the coming years.

In summary, we strongly support DHS’s final form Child Care Works regulations and urge the Independent Regulatory Review Commission (IRRC) to approve this package.

Respectfully submitted:



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<sup>2</sup> See, 45 CFR §§ 98.30(f)(2); 98.15(a)(5); 98.1(a)(2).