#3275 PUBLIC REMARKS

START STRONG PA

September 21, 2023

Testimony before the Independent Regulatory Review Commission on the #14-545 Subsidized Child Care Eligibility Resubmitted Final-Form Rulemaking

Good morning, Commissioners and staff. I am Jen DeBell, Executive Director of the Pennsylvania Association for the Education of Young Children. I am testifying on behalf of Start Strong PA, a statewide, non-partisan issue advocacy campaign focused on increasing access to and the affordability of high-quality child care for Pennsylvania's children and working families. Start Strong PA is led by the following 10 principal partner statewide and regional organizations:

- Children First
- Fight Crime: Invest in Kids
- First Up
- Mission: Readiness
- Pennsylvania Association for the Education of Young Children
- Pennsylvania Child Care Association
- Pennsylvania Head Start Association
- Pennsylvania Partnerships for Children
- Trying Together
- United Way of Pennsylvania

Our organizations represent over 1,000 organizations operating over 1,500 child care programs and more than 3,300 individual early care and education professionals, as well as the interests of children and families. We would like to thank you for the opportunity to comment on the subsidized child care eligibility resubmitted final-form rulemaking (Regulation #14-545).

We are writing to express our support for the revised final-form rulemaking, which will align Pennsylvania's subsidized child care eligibility requirements with the Child Care and Development Block Grant reauthorization of 2014. Without Child Care Works, Pennsylvania's child care subsidy program, in-need families would struggle to access and afford high-quality child care. Promulgating these regulatory changes will help to remove barriers for families in accessing and maintaining eligibility in Child Care Works. The regulation improves child care consistency for working families, supporting them to achieve financial stability. It also creates greater stability for their children, promoting healthy development and early education opportunities.

In addition, Start Strong PA would like to again acknowledge the Office of Child Development and Early Learning's prior request to the Independent Regulatory Review Commission (IRRC) to disapprove the previous final-form rulemaking and thank the IRRC for its disapproval. As you know, the previous final-form regulation forbid child care providers from charging the difference between their private pay and subsidy rates. In their prior Regulatory Analysis Form, the Department of Human Services (DHS) estimated a $16.5 million annual loss for child care providers as a result of eliminating this provision. We are pleased the revised final-form rulemaking maintains the status quo, allowing providers to charge the difference between the rates.

Pennsylvania's child care system is significantly under resourced, with families struggling to afford and find high-quality child care, programs receiving subsidy reimbursements that do not reflect the cost to provide quality child care, teachers and staff paid abysmally low wages at an average of $12.43/hour and programs and classrooms closing as a result of the staffing crisis.

Some providers need to charge the difference in rates to keep their programs open and while we recognize this means low-income families experience greater financial hardship, forbidding this practice would have further exacerbated the child care crisis. We would have seen more program and classroom closures, resulting in private pay and subsidy-enrolled families waiting and waiting longer to access child care in order to work. In addition, forbidding the practice would have led to greater inequity in the system by forcing child care providers to limit the number of subsidy families they enroll in order to keep teachers employed and classrooms open. Some providers may have refused to participate in the program overall, resulting in fewer low-income children participating in programs proven to support healthy child development and prepare children for school success. The other option would have been for programs to increase rates for private pay families to make up the difference, some of whom are Asset Limited, Income Constrained, Employed (ALICE), households who need child care to be able to work, and cannot afford dramatic price increases. We again thank OCDEL and IRRC for recognizing none of these impacts are acceptable.

If programs were funded appropriately for the subsidy-enrolled children they serve, there would be no need to charge parents/caretakers more than their copayment. This is just one example demonstrating why it is imperative that policymakers prioritize new investments in our child care system.

We encourage the Commission to approve the rulemaking and thank you for the opportunity to comment.

CJP COMMUNITY JUSTICE PROJECT

Community Justice Project Comments on the Department of Human Services' July 27, 2023 Resubmitted Final Form Child Care Works Regulations

(September ____, 2023)

The Community Justice Project (CJP), on behalf of Success Against All Odds (SAO)[1] 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, which were resubmitted to the Independent Regulatory Review Commission (IRRC) on July 27, 2023.

While the primary purpose of this CCW regulatory package 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 also took the opportunity to further improve the program by proposing changes to regulations not affected by the 2014 CCDBG reauthorization.

CJP and SAO has strongly supported the majority of the changes reflected in the resubmitted final form regulatory package and in the initial final form submission prior to that. 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.

When the CCW regulatory package was published as proposed rulemaking in November of 2020 we submitted comments suggesting a number of changes and clarifications that we thought would further strengthen the regulatory package. DHS accepted many of our recommendations in the final form regulations initially submitted to the IRRC on March 23, 2023. We were particularly pleased to see, at that time, that, in response to our comments, DHS deleted a provision at proposed 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 – a practice known as "balance billing."

This change sparked an outcry of opposition from the child care provider community, which ultimately led DHS to request that the IRRC disapprove the Department's March 23, 2023 submission, allowing it to resubmit the CCW regulatory package with the balance billing provision at §3042.14(d) reinstated. Importantly, however, that is not the end of the story with regard to balance billing. As explained on pages 14-15 of the Preamble to DHS's July 27, 2023 submission, DHS has committed to further examine the issue of balance billing by conducting stakeholder meetings with providers and advocates and

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[1] 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.

collecting data to assess the impact of balance billing on affordability and equal access to quality care for low-income families, as required by federal Child Care and Development Fund regulations:[2]

> *As noted above, in order to further examine this issue and obtain additional data regarding access and affordability, the Department intends to hold additional stakeholder meetings with both providers and early learning advocates and families to discuss this provision and its impacts on providers, families, and the two-generation approach articulated under the CCDF. More specifically, the Department intends to hold the meetings with each interest group individually, as well as collectively, to further discuss these charges in practice to better gauge how changes to this provision would impact each interested party. The Department will also continue to look at the provider rates and the sufficiency of reimbursement. Once additional information has been collected and examined, the Department will engage these parties to discuss the impact on affordability and equal access, as required by the CCDF. See 45 CFR 98.45.*
>
> *The Department looks forward to engaging with all parties to find a balance that ensures affordability and equal access for CCDF families and improved financial solvency for providers.*

While we continue to object to balance billing, we accept the Department's decision to maintain the status quo while it further examines this issue. There is no need to reiterate here each of the arguments we have raised in opposition to balance billing in previous comments submitted to the IRRC, as these are already a matter of record. But, we would emphasize that, as DHS further examines the practice of balance billing, it must do so within the constraints of federal law governing the Child Care and Development Fund program. And, although these federal regulations do not expressly prohibit balance billing, neither do they grant states carte blanche to permit this practice.

All states must certify to the U.S. Department of Human Services (HHS) that its co-payments, based upon a sliding fee scale, are affordable. For states that permit balance billing, this certification must include:

> [a] demonstration that the policy promotes affordability and access; analysis of the interaction between any such additional amounts with the required family co-payments, and of the ability of subsidy payment rates to provide access to care without additional fees; and data on the extent to which CCDF providers charge such additional amounts to families . . .[3]

This is precisely the kind of information and data we anticipate DHS collecting and analyzing as part of its examination of balance billing.[4]

We are heartened by DHS's commitment to examine relevant data and to consider potential solutions to the issues raised by balance billing, and we look forward to participating in stakeholder meetings.

Shifting the focus back to the resubmitted regulatory package as a whole, we feel that, on balance, the final form Child Care Works regulations will substantially improve Pennsylvania's subsidized child care

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[2] 45 C.F.R. § 98.45(b)(5).

[3] See, 45 C.F.R. § 98.45(b)(5).

[4] On the question of affordability and equal access to care, we would note that, in Pennsylvania, providers are permitted to charge families the ***full*** difference between the state's provider payment rate and the provider's private pay rate, which can be as much as $40 to $100 per week. Thus, if a family's co-pay is $20 per week and the provider charges them an additional $40 per week, they end up paying $60 a week for the provider of their choice or ***three times*** the amount the state has determined to be affordable for a family of their size and income. Whether such additional charges "promote affordability and access" will be a key question for DHS to address.

program to the benefit of low-income working families. For that reason, we ask the Independent Regulatory Review Commission to approve this package.

Respectfully submitted:

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