

PROPOSED RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 3040]

Subsidized Child Day Care Eligibility

Statutory Authority

The Department of Public Welfare (Department), Office of Children, Youth and Families, under the authority in section 201(2) of the Public Welfare Code (62 P.S. § 201(2)), which authorizes regulations necessary for eligibility for Federal funding (for example, 45 CFR 98.30(f)(1)(iv), which requires the option of in-home child care), section 403 of the Public Welfare Code (62 P.S. § 403), which authorizes regulations governing public assistance and section 703 of the Public Welfare Code (62 P.S. § 703), which authorizes regulation of "county institution districts or their successors," here the county commissioners, intends to amend the regulations set forth in Annex A.

Purpose

The purpose of these proposed amendments is to provide in-home care as a child care service option for a family that is eligible for the subsidized child day care program. The proposed amendments will respond to the requirements of the Child Care and Development Block Grant (CCDBG) (42 U.S.C.A. § 9858 et seq.) and its regulations, 45 CFR 98.30(f)(1)(iv) and the Title IV-A At-Risk Child Care Program (45 CFR Part 257.40(b)) which requires in-home care as a service option whenever the service is available to others. The proposed amendments will establish requirements to be met by the child day care provider, the eligible family and the eligibility agent. The proposed amendments apply to all subsidized child day care funding sources that are administered under Chapter 3040 (relating to subsidized child day care eligibility).

Need for Amendments

CCDBG and the At-Risk Block Grant require states to provide subsidy-eligible families the same child care options that are available to families who are not eligible for subsidy. Currently, a subsidy-eligible family does not have the option of selecting child care provided in the child's own home. Current child day care regulations define child day care service as out-of-home care provided for part of the 24-hour day. The Department has not implemented the in-home child care option under the Federal mandate.

The Department recently submitted the CCDBG Plan for Federal Fiscal Years 1994-96, which details the use of Federal funds. The plan has not been approved by the Federal Government because the in-home child care option is not in place under the Federal mandate. Failure to receive Federal approval will jeopardize the Commonwealth's \$42 million share of CCDBG and At-Risk funds. A loss of these Federal funds will result in the termination of services to nearly 12,000 children currently receiving subsidized child day care service through these Federal funds. The Department has advised the Federal Government that it is taking immediate steps to implement the in-home requirement.

Requirements

In-home care is a child care service that is provided in the child's home. The Department does not currently include in-home care in the regulations for subsidized child day care. It is necessary for the Department to set forth requirements to be followed when an eligible family chooses an in-home child care arrangement. Additionally, the Department proposes to clearly define the employer-employee relationship between the family that chooses the in-home care option and the in-home care provider.

In Fiscal Year 1991-92, the Department received additional child care funding from two Federal funding sources, the CCDBG and the At-Risk Block Grant, to implement a parent-choice subsidized child day care program. The CCDBG regulation requires the in-home child care option as follows:

"For services provided under § 98.50, certificates under paragraph (a)(2) of this section must permit parents to choose from a variety of child care categories, including:

- (1) Center-based child care;
- (2) Group home child care;
- (3) Family child care; and
- (4) In-home child care, as limited, pursuant to § 98.16(a)(7)(ii).

Under each of the above categories, care by a sectarian provider may not be limited or excluded." (45 CFR, Subpart D, 98.30(f)(1)).

The At-Risk regulation permits the in-home care option as follows:

"If more than one category of child care is available, e.g., center-based child care, group home child care, family child care or in-home child care, the family must be provided an opportunity to choose the arrangement." (45 CFR 257.40(b))

The Department operates the subsidized child day care program based on the requirements of the CCDBG and the parent-choice model. The CCDBG requires that eligible parents must be given the option of in-home care. The Department's position is that the in-home care option must also be extended to families funded by At-Risk and any other Federal or State funding source.

Following is a description of the proposed amendments that will implement the Federal requirement for the in-home care option:

Definition of service (§ 3040.2). The current definition of service is "...out-of-home care provided for part of the 24-hour day" (§ 3040.2(a)). The Department proposes to delete the term "out-of-home" from subsection (a). Deleting this term will permit in-home care as well as out-of-home care. The Department proposes to add the phrase "in lieu of parental care" in subsection (a). This language is added to clarify that a parent caring for his own children cannot receive subsidized funds under this regulation. The Department proposes to amend subsection (b) to recognize that subsidized child day care service may occur in the child's home.

Definitions (§ 3040.3). The Department proposes amendments to this section. The following definitions are proposed: "CPSL"; "ChildLine"; "founded report"; "indicated report"; "in-home care"; "in-home care provider" and "perpetrator." The definitions of "provider" and "service

site" have been amended. The definition of "provider" is amended to correct the current definition. The second sentence of the definition references organizations or individuals who may be considered the provider. For purposes of this chapter, the term "provider" means the organization or individual who directly delivers the child care service. The definition of "service site" is amended to include the child's home as a location where subsidized child day care service may be delivered.

Additional conditions or additional charges (§ 3040.17). This section currently does not include the option for additional conditions. In this section, the Department proposes that additional conditions will be added at § 3040.81 (relating to the caretaker eligibility requirements for in-home care) if the caretaker chooses the in-home care option.

Caretaker eligibility requirements for in-home care (§ 3040.81). The current regulation does not include caretaker eligibility requirements for an in-home care option. Federal regulations require that states establish an in-home care option in a parent-choice system.

Proposed § 3040.81 establishes requirements for the use of the in-home care option. The proposal is affected by other laws and regulations. The Fair Labor Standards Act (FLSA) (29 U.S.C.A. § 206(a)) requires domestic workers, such as in-home care providers to receive no less than minimum wage for employment. The in-home care provider must also comply with certain health and safety standards (45 CFR 98.41). The proposal represents funding standards only for in-home child day care services supported through the subsidized child day care program.

The Department desires to clearly define the role of the caretaker as the employer of the in-home care provider. The proposal defines the caretaker as the employer. The eligibility agent will be required to establish an agreement with the caretaker to assure that all health and safety standards are met. The caretaker will have the responsibility of gathering information from the in-home care provider to share with the eligibility agent. The caretaker will receive the monthly reimbursement from the eligibility agent and the caretaker will make payment to his employer, the in-home care provider.

Section § 3040.81 proposes the following caretaker requirements for in-home subsidized child day care:

In paragraph (1), the Department proposes that the caretaker and the caretaker's spouse or live-in companion shall be employed or be receiving training outside the home and shall verify employment and training status on a monthly basis. This requirement assures that the caretaker or the caretaker's spouse or live-in companion is not available to care for the child and that the family continues to meet the eligibility regulation requirements at § 3040.34(1) and (3) (relating to nonfinancial eligibility requirement). This section lists the requirement for working or training at least 20 hours per week and need for service.

In paragraph (2), the Department proposes that the caretaker will assure that the in-home care provider meets certain requirements. It is the caretaker's responsibility to verify this information with the eligibility agent because the caretaker is the employer and is seeking the subsidized child day care assistance.

In paragraph (2)(i), the Department proposes that the caretaker will assure that the provider is 18 years of age or older. That age is established in accordance with day care service regulations related to age found in Chapters

3270, 3280 and 3290 (relating to child day care centers, group child day care homes and family child day care homes).

In paragraph (2)(ii), the Department proposes that the caretaker will assure that the provider resides outside the child's home. This requirement is included as an effort to avoid payment for: live-in household help, such as a nanny; 24-hour-a-day care; or arrangements which have been established within the family unit to provide child care.

In paragraph (2)(iii), the Department proposes that the caretaker must assure that the service is provided in the child's home. This requirement assures that the child is not receiving child day care service in an unregulated facility or in a home that does not meet appropriate health and safety standards.

In paragraph (2)(iv), the Department proposes that an individual who wishes to be an in-home provider shall submit a Pennsylvania Child Abuse History Clearance form to ChildLine. The form submitted to ChildLine shall indicate that the request is voluntary. The Department determines that this requirement is needed in order to ensure a high level of protection for the child in care.

In paragraph (2)(v) and (vi), the Department proposes that the caretaker must assure that the provider does not have a substantiated history of abusing children, listed as founded or indicated, and that the provider has not been convicted of a crime reflected in the CPS Law. This requirement is the same as the Department's requirement for all certified or registered child day care providers, found at § 20.71(b) (relating to conditions for denial, nonrenewal or revocation) and 23 Pa.C.S. § 6344(c) (relating to information relating to prospective childcare personnel).

In paragraph (3), the Department proposes that the caretaker will review with the in-home care provider information regarding certain health and safety issues which focus on the prevention and control of infectious diseases. This service is not recognized under Articles IX and X of the Public Welfare Code (62 P. S. §§ 901—922 and 1001—1059) and the service is delivered in the child's home and the Department does not choose to intrude in the manner in which the caretaker maintains the physical conditions in the child's home. The Department is proposing minimal standards which reflect the requirement for health and safety cited in 45 CFR 98.41 health and safety requirements. Federal requirements for CCDBG and the At-Risk Block Grant state that the Department must ensure that basic health and safety information is shared with the in-home child day care provider. The Department distributes basic health and safety information to the eligibility agent who then provides the information to the caretaker. The Department requires the caretaker to share this information with the in-home care provider as specified in the agreement between the Department's agent and the eligible caretaker who chooses an in-home care arrangement.

In paragraph (4), the Department proposes that the caretaker will employ a minimum of one provider for every six children receiving care. The current statute and regulations governing out-of-home family day care permit one provider to care for up to six unrelated children. The definition of related includes a child, step-child, foster child, adopted child or grandchild of the provider. This standard was established for regulated family day care homes in order to assure a safe caregiver-child ratio for children in care. This funding standard for in-home care

is established using the same caretaker-child ratio, which is cost-effective and which supports the safety of children.

In paragraph (5), the Department proposes that the caretaker will be permitted unlimited access to his child during the hours of child day care service. This requirement is the same as the Department's requirement in all certified or registered child day care services.

In paragraph (6), the Department proposes that the caretaker will be considered the employer of the provider and will accept full responsibility for payment to the provider. The Federal Department of Health and Human Services requires that the in-home care provider must be paid at least the Federal minimum wage because in-home care providers are classified as domestic service workers under the FLSA (29 U.S.C.A. § 206(a)) and are covered under minimum wage and tax requirements. To assure that the provider receives at least minimum wage, the caretaker will pay the difference between the cost of care and minimum wage. The caretaker will be required to report the wages paid to the provider and any other tax-related information to the Internal Revenue Service. The Department will aid the employer by providing information which outlines the appropriate steps in becoming an employer and the obligations of an employer.

In paragraphs (7)—(10), the Department proposes amendments relating to health and safety. The caretaker will be required to have operable smoke detectors on each level of the home and to store cleaning materials and other toxic materials in the original labeled containers or in a container which specifies the contents. Toxics will need to be kept in a locked area or in an area inaccessible to children and separate from food, food preparation spaces and child care spaces. The caretaker will be required to place unloaded weapons and firearms in a locked cabinet and shall lock ammunition in a separate area from weapons and firearms. The caretaker will be required to notify the provider when weapons, firearms or ammunition are present in the home. The Department determines that subsidized child day care services must be provided in a safe and secure environment.

Eligibility agent responsibilities when an eligible caretaker chooses in-home care (§ 3040.82). The current regulation does not include the responsibilities of the eligibility agent when an eligible caretaker chooses the in-home day care option. In this proposal, the Department outlines the eligibility agent's role in supporting and maintaining a caretaker's option for using in-home child day care service supported through the subsidized child day care program.

In subsection (a)(1)—(4), the Department proposes that the eligibility agent will distribute information regarding child immunizations, health and safety topics related to the care of children, training programs available for the provider and the caretaker's responsibilities as the employer.

In subsection (b), the Department proposes that the eligibility agent will establish an agreement with each caretaker who chooses in-home care. This agreement defines the relationship between the caretaker who chooses in-home care and the eligibility agent. This agreement also outlines the requirements found in § 3040.81 (relating to caretaker eligibility requirements for in-home care).

In subsection (c), the Department proposes that the eligibility agent will reimburse the eligible caretaker monthly. The amount of the reimbursement shall be the cost of care for each child in care minus the assessed

weekly family fee (§ 3040.3). The current regulation at § 3040.61 (relating to general requirements regarding fee payment) establishes the requirement that an eligible family in the subsidized child day care program shall be assessed a weekly family fee and must pay that assessed weekly family fee on a regular basis. The current regulation at § 3040.63 (relating to computing weekly family fee) lists the process for establishing the amount of the weekly family fee.

In subsection (d), the Department proposes that the eligibility agent notify the Department of the name of each in-home child day care provider. The Department will maintain a Statewide listing of in-home child day care providers who receive funds through the subsidized child day care program. The Department will use this listing to distribute information regarding child care issues to providers.

Affected Individuals, Groups and Organizations

Groups and individuals affected by the proposed amendments include caretakers applying for and receiving service, child day care providers of in-home care and eligibility agents who determine eligibility for the subsidized day care program.

Accomplishments/Benefits

These proposed amendments will ensure continuation of the funding from the Federal CCDBG and the At-Risk Block Grant to support the subsidized child day care program. Furthermore, the Department considers these amendments to be in the public interest since it affords a subsidy-eligible family the same child care options as a nonsubsidy-eligible family.

These proposed amendments expand the child day options for those families who are eligible for assistance with the cost of child day care arrangements.

Fiscal Impact

Public Sector

Commonwealth

The proposed amendments set forth in Annex A will not increase the Department's expenditures for the subsidized child day care program.

Political Subdivisions

There will be no fiscal impact on political subdivisions as a result of the proposed amendments.

Private Sector

There will not be a fiscal impact on licensed and registered child day care facilities.

General Public

There will be no fiscal impact on the general public as a result of these proposed amendments. Some additional eligible families may choose to participate in the subsidized program because of the increased opportunity to choose an in-home child day care arrangement.

Paperwork Requirement

These proposed amendments will not affect the paperwork requirement for political subdivisions or the general public.

These proposed amendments will increase tracking requirements for eligibility agents and caretakers.

Effective Date

These proposed amendments will be effective immediately after promulgation as final rulemaking in the *Pennsylvania Bulletin*.

Sunset Date

There is no sunset date applicable to the proposed amendments.

Public Hearings

The Department will not conduct public hearings concerning these proposed amendments.

Public Comment Period

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to the Department of Public Welfare, Jolene M. Gregor, Policy Specialist, P. O. Box 2675, Bertolino Building, 4th Floor, Harrisburg, PA, 17105, (717) 787-8691, within 30 days after the date of publication of this notice in the *Pennsylvania Bulletin*. All comments received within 30-calendar days will be reviewed and considered in the preparation of the final regulations. Comments received after the 30-day comment period will be considered for any subsequent revisions of these regulations.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (Voice users), or may use the Department of Public Welfare TDD by calling (717) 787-3616. Persons who require another alternative should contact India Wood at (717) 783-2212.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of these proposed amendments on July 10, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Aging and Youth and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final publication of the amendments, by the Department, the General Assembly and the Governor.

FEATHER O. HOUSTOUN,
Secretary

Fiscal Note: 14-422. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE

**PART V. CHILDREN, YOUTH AND FAMILIES
MANUAL**

Subpart B. ELIGIBILITY FOR SERVICES

**CHAPTER 3040. SUBSIDIZED CHILD DAY CARE
ELIGIBILITY**

INTRODUCTION

§ 3040.2. Definition of service.

(a) Child day care service is [out-of-home] care provided for part of the 24-hour day in lieu of parental care. Subsidized child day care service is available to a child from birth to the date of the child's 13th birthday.

(b) A caretaker shall be employed, self-employed or receiving training to be eligible for subsidized child day care service. A family [that] who is eligible for Title IV-A supportive services which include child day care is not eligible for Federal or State funds related to subsidized child day care service. Subsidized child day care service may not be provided as a substitute for publicly-funded educational programs, such as kindergarten, or other specialized treatment programs. This service is provided in certified day care centers and group day care homes, registered family day care homes and those exempt under Chapters 3270, 3280 and 3290 (relating to the operation of child day care centers; group day care homes; and family day care homes). **This service may also be provided in the child's home as in-home care if the home and the provider meet the requirements established in § 3040.81 (relating to caretaker eligibility requirements for in-home care).**

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§ 3040.3. Definitions.

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

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CPSL—Child Protective Services Law, 23 Pa.C.S. §§ 6301—6385.

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ChildLine — An organizational unit of the Department established under section 6332 of the CPSL (relating to establishment of Statewide toll-free telephone number) which operates a toll-free system for receiving reports of suspected child abuse. This unit refers the reports for investigation and maintains the reports in the appropriate files. The unit also receives and processes requests for Pennsylvania Child Abuse History Clearances.

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Founded report—As defined in section 6303 of the CPSL (relating to definitions).

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Indicated report—As defined in section 6303 of the CPSL.

In-home care—Child day care service that is provided in the child's home.

In-home care provider—An individual employed by an eligible family to provide in-home care.

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Perpetrator—As defined in section 6303 of the CPSL.

Provider—An organization or individual who directly delivers the child care service. [The term may include the prime contractor, the contractually designated

subcontractor or another licensed or registered child day care service site.]

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Service site—The child day care center, group child day care home [or], family child day care home or the child's home where care is delivered to the child. To receive subsidized child day care funds, a service site will be certified by the Department or shall be exempt from the requirement for Departmental certification under Chapters 3270, 3280 and 3290 (relating to child day care centers; group day care homes; and family day care homes).

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GENERAL REQUIREMENTS

§ 3040.17. Additional conditions or additional charges.

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(b) Additional conditions or charges are permitted as follows:

(1) The eligibility agent shall require the caretaker who chooses an in-home child day care arrangement to meet the conditions listed in § 3040.81 (relating to caretaker requirements for in-home care) to access in-home child day care services.

[(1)] (2) ***

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[(2)] (3) ***

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[(3)] (4) ***

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CARETAKER ELIGIBILITY REQUIREMENTS

§ 3040.81. Caretaker eligibility requirements for in-home care.

A caretaker who chooses an in-home child day care arrangement shall demonstrate to the eligibility agent that the caretaker meets the following requirements:

(1) The caretaker and the caretaker's spouse or live-in companion are employed or receiving training outside the home. Employment or training status shall be verified each month.

(2) The caretaker has determined that the in-home care provider meets the following conditions:

- (i) Is at least 18 years of age.
(ii) Resides outside the child's home.
(iii) Will provide child day care services in the child's home.
(iv) Has submitted a Pennsylvania Child Abuse History Clearance form to ChildLine indicating that the request for clearance is voluntary.
(v) Has not been named as the perpetrator of a founded or indicated report of child abuse.

(vi) Has not been convicted of a crime listed in section 6344 of the CPSL (relating to information relating to prospective child-care personnel).

(3) The caretaker has instructed the provider in the following health and safety practices to ensure

the prevention and control of infectious diseases while the provider cares for the subsidy-eligible child:

(i) Washing hands after toileting, after diapering a child, after assisting a child with toileting, and before preparing or handling food.

(ii) Ensuring that the child's hands are washed after toileting, after being diapered and before eating.

(4) The caretaker shall employ at a minimum one provider for every six or fewer children who meet the following conditions:

- (i) Are eligible to receive care.
(ii) Are included in the subsidy-eligible family's composition.

(iii) Reside in the subsidy-eligible family's home.

(5) The caretaker has established with the provider that the caretaker will have unlimited access to the child during the hours of child day care service.

(6) The caretaker agrees to be considered the employer of the provider and, accordingly, to do the following:

(i) Accept full responsibility for paying the provider.

(ii) Pay the provider at least the minimum wage. If the cost of care does not equal minimum wage, the caretaker must agree to pay the difference.

(iii) Report the wages paid to the provider and other tax-related information to the appropriate Federal, State and local authorities, including the Internal Revenue Service.

(7) The caretaker has placed operable smoke detectors on each level of the home.

(8) The caretaker stores cleaning materials and other toxic materials in their original labeled containers or in containers which specify the contents. These toxics are kept in a locked area or in an area inaccessible to children and separate from food, food preparation spaces and child care spaces.

(9) The caretaker keeps firearms and other weapons in a locked cabinet and locks ammunition in a separate area. The caretaker has notified the provider if firearms, weapons and ammunition are in the home.

(10) The caretaker has reviewed all information distributed by the eligibility agent under § 3040.82(a) (relating to eligibility agent responsibilities when an eligible caretaker chooses in-home care).

§ 3040.82. Eligibility agent responsibilities when an eligible caretaker chooses in-home care.

(a) The eligibility agent shall provide the caretaker who chooses an in-home child day care arrangement with information regarding the following topics:

- (1) Child immunizations.
(2) Health and safety topics related to the care of children.
(3) Training programs available for the provider.

(4) Reporting wages to the appropriate Federal, State and local authorities, including the Internal Revenue Service and the responsibilities of an employer of an in-home child day care provider.

(b) The eligibility agent shall establish a written agreement detailing the conditions in § 3040.81 (relating to caretaker eligibility requirements for in-home care).

(c) The eligibility agent shall reimburse the eligible caretaker monthly. The reimbursement pay-

ment shall be the cost of care for each child in care minus the assessed weekly family fee.

(d) The eligibility agent shall notify the Department of the name of each in-home child day care provider.

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