

RULES AND REGULATIONS

Title 55—HUMAN SERVICES

DEPARTMENT OF HUMAN SERVICES

[55 PA. CODE CHS. 20, 3270, 3280 AND 3290]

Regulations for Child Care Providers

The Department of Human Services (Department) amends Chapters 20, 3270, 3280 and 3290 to read as set forth in Annex A under the authority of Articles IX and X of the Human Services Code (act) (62 P.S. §§ 901—922 and 1001—1088). Notice of the proposed rulemaking was published at 48 Pa.B. 6564 (October 13, 2018).

Effective Date

This final-form rulemaking will take effect upon publication in the *Pennsylvania Bulletin*.

Purpose of Regulation

The child care facility regulations in Chapters 3270, 3280 and 3290 (relating to child day care centers; group child day care homes; and family child day care homes) provide standards to aid in protecting the health, safety and rights of families and to reduce risks to children in child care centers, group child care homes and family child care homes. The regulations identify the minimum level of compliance necessary to obtain the Department's certificate of compliance, which constitutes licensure or approval under Chapter 20 (relating to licensure or approval of facilities and agencies) to operate a child care center, a group child care home or a family child care home. For the purpose of this final-form rulemaking, "certified" refers to a child care center, a group child care home or a family child care home that has been granted a certificate of compliance by the Department. The process by which a child care operator becomes and remains certified is called "certification."

This final-form rulemaking is needed to strengthen the minimum standards for child care facilities and to implement the requirements under the Federal Child Care and Development Block Grant Act of 2014 (42 U.S.C.A. §§ 9857—9858r, as reauthorized by Pub.L. No. 113-186) (CCDBG), which was enacted on November 19, 2014, and to implement the requirements under section 1016(c) of the act (62 P.S. § 1016(c)) added under the act of July 14, 2020 (P.L. 639, No. 62), effective in 120 days.

Affected Individuals and Organizations

Children are directly impacted by this final-form rulemaking. There are approximately 7,163 total certified child care facilities operating that have a total licensed capacity to provide care to an estimated 382,158 children across this Commonwealth, all of whom will benefit from the increased health and safety standards established in this final-form rulemaking. The minimum health and safety standards in Chapters 3270, 3280 and 3290 protect all children who attend the 4,916 child care centers, 707 group child care homes and 1,540 family child care homes certified throughout this Commonwealth.

Certified child care facilities are impacted because they will be required to participate in additional professional development and be subject to annual, unannounced inspections as required by the CCDBG. The CCDBG requires that states inspect for compliance with health and safety standards at all certified child care facilities. As such, this final-form rulemaking requires all certified child care facilities to continue to maintain the fire

detection devices or systems that were initially required at the time the certificate of occupancy was issued; this is in compliance with section 1016(c) of the act. To bring certified family child care homes in line with group child care homes and child care centers, family child care homes will be required to conduct fire drills at least once every 60 days. In addition, certified family child care home operators must demonstrate that they have a means to ensure the supervision of children when the operator is taking a restroom break or preparing snacks or meals for the children in care. Also, family child care homes that provide 24-hour care will be required to employ a second caregiver because an operator will not be permitted to work or supervise children alone for more than 16 hours in a 24-hour time period.

There are an estimated 45,612 child care operators and staff throughout this Commonwealth who, after the effective date of the final-form rulemaking, will be required to satisfy the professional development requirements prescribed by the CCDBG (42 U.S.C.A. § 9858c(c)(2)(G)), as well as an additional 6 clock hours of professional development on an annual basis. Although the majority of the staff presently working at certified child care facilities throughout this Commonwealth have already taken the added professional development prescribed by the CCDBG, all staff will also be required to take an additional 6 clock hours, or 12 clock hours total annually, of professional development, as prescribed by the Department. Therefore, this final-form rulemaking will result in added costs to child care operators to satisfy the expanded professional development requirements for themselves and their staff.

Parents are also impacted by this final-form rulemaking, as they expect that their children will be healthy and safe in child care. At the same time, the cost of child care is a concern for parents and directly impacts the choices that parents make regarding child care. This final-form rulemaking may result in increased costs to parents due to the increased costs incurred by child care operators to satisfy the expanded professional development requirements as well as the new requirements relating to monitoring and supervision and 24-hour care in family child care homes.

Additionally, the local emergency management coordinator in local municipalities will receive copies of the emergency plans from child care operators. This information furthers the health and safety interests of children in care because local agencies are often the first to respond to an emergency, and so providing the emergency plans will increase awareness and enable planning by the local agencies.

Finally, this final-form rulemaking impacts the Early Learning Council (ELC), which serves as the Commonwealth's official State advisory council. The ELC represents child care operators, advocates, policy representatives and parents throughout the child care community, and it provides feedback to the Department. The purpose of the ELC is to plan for the expansion of effective early learning and development services for young children and their families and to make recommendations to ensure the plans are implemented successfully. The ELC assisted with the review and analysis of the proposed rulemaking. After the implementation of this final-form rulemaking, the Department will engage in ongoing consultation with the ELC regarding the impact of this final-form rule-

making on children receiving child care services. The ELC will be working with child care providers on the implementation and application of these regulatory changes and providing feedback to the Department on the same.

Accomplishments and Benefits

The Department last amended these child care facility regulations in September 2008. Since 2008, there have been many changes in the field of early care and education that impact on the health and safety of children receiving care. Also, the CCDBG has imposed requirements that states provide specific professional development and conduct annual, unannounced inspections for all certified child care facilities (42 U.S.C.A. § 9858c(c)(2)(G) and (K)(i)(II)(bb)) to ensure that the prescribed health and safety standards are being met. This final-form rulemaking complies with and reflects the updated requirements of the CCDBG.

In addition, the Department has implemented many quality initiatives for child care operators to help them improve the quality of service delivery to children. The quality initiatives include increased professional development opportunities for child care staff working for those operators that choose to participate in the quality initiatives.

Section 16 of the act of December 28, 2015 (P.L. 500, No. 92) repealed Article X(c) of the act (62 P.S. §§ 1070—1080) that set forth registration provisions in the act. As such, the Department removed the registration provisions for family child care homes from Chapter 3290. This final-form rulemaking now requires all family child care homes to be certified. Since 2016, the Department has been certifying all family child care homes in this Commonwealth not previously subject to the certification process. Before that time, family child care home operators declared or “self-certified” that they met the health and safety regulations. The Department did not previously inspect family child care homes on an annual basis under the registration process, but is doing so under the certification process, as is required by the CCDBG. Under this final-form rulemaking, the certification process for family child care homes aligns with the certification processes for child care centers and group child care homes.

Since the Department began certifying family child care homes, it recognized that it needs to clarify and strengthen the supervision requirements. To that end, the Department has addressed these needs through changes to the supervision requirements in this final-form rulemaking for family child care homes.

Under section 1016(c) of the act a statutory requirement for child care facilities to maintain operable fire detection systems was created. As such the Department will reference the statutory changes in this final-form rulemaking.

Paperwork Requirements

This final-form rulemaking requires additional record-keeping by child care facilities, but there is no reasonable alternative to this increased recordkeeping. The Department requires that child care operators verify attendance at the required professional development and that the operators maintain documentation of the attendance by means of an electronic system or a written format. The Department will review the documentation verifying completion of the professional development when conducting inspections to determine the operator’s compliance with the requirement. All child care operators and staff may use the Department’s professional development reg-

istry, which the operators can use to maintain data about staff members and the status of the required professional development. There is no charge to access the Department’s professional development registry.

Finally, this final-form rulemaking reflects the requirements under section 1016(c) of the act, which requires child care facilities to maintain an operable fire detection system, test the system every 30 days and maintain written documentation of the testing of fire detection systems in the facility’s fire drill logs. This final-form rulemaking also adds the requirement that all certified child care facilities must complete fire drills at least once every 60 days, which is required by existing regulations for group child care homes and child care centers. See 55 Pa. Code §§ 3270.94 and 3280.94 (relating to fire drills).

Fiscal Impact

The impact of this final-form rulemaking will result in added costs for child care operators and staff to meet the professional development requirements for all child care facilities. In addition, this final-form rulemaking, as it concerns monitoring means and the provision of 24-hour care, will impact the family child care home community.

Following the Department’s notice of proposed rulemaking and the ensuing public comment period, the Independent Regulatory Review Commission (IRRC) and several commentators suggested the Department re-evaluate the fiscal impact of the added requirements concerning professional development topics and professional development hours prior to publishing this final-form rulemaking. They also suggested that the Department re-evaluate the fiscal impact of the added family child care home requirements relating to monitoring means and 24-hour care prior to submission of this final-form rulemaking.

The Department concurred and reached out to the ELC as well as the family child care community. The Department revised its methods to calculate the costs for increased professional development and for increased supervision in family child care homes. The ELC agreed with the Department’s revised calculation methods. In addition, the family child care community responded to a survey about the monitoring means it would use for increased supervision, which allowed the Department to revise the cost estimates.

Following feedback from IRRC that the wage data used in the proposed rulemaking may be inaccurate, the Department conducted a review of the wage data. Following that review, the Department utilized data in this final-form rulemaking from the updated occupational wage chart available from the Department of Labor and Industry Center for Workforce Information and Analysis. The Department, therefore, has revised the fiscal cost estimates for this final-form rulemaking. Finally, the Department understands that operators are likely to request assistance with added costs to help satisfy some of the requirements in this final-form rulemaking as discussed as follows. Operators that wish to provide higher quality child care through the Commonwealth’s quality rating and improvement system, Keystone STARS (STARS), may be eligible for assistance with some of the added costs.

A summary of the fiscal impact is as follows:

Professional Development

CCDBG requirements now prescribe ten specific professional development topics that operators must complete

before being granted a certificate of compliance to open and operate a certified child care facility. In addition, all staff working at certified child care facilities must have completed the professional development in the ten prescribed topics within 180 days following the effective date of this final-form rulemaking. There will be added costs to child care operators to obtain substitute staff for the approximately 5% of current child care staff who have not yet completed the professional development prescribed by the CCDBG (42 U.S.C.A. § 9858c(c)(2)(G)).

Effective September 30, 2016, the Department began to offer free professional development available online and on a face-to-face basis to allow current child care staff to take the required professional development. As a result, an estimated 95% of all child care staff in currently-certified child care facilities have already taken the available professional development and have met the Federally-prescribed CCDBG requirement. The Department continues to offer this ten-topic professional development online, and it is available to all operators and their staff who have not completed the professional development to meet the requirement. The estimated staff cost for operators to ensure the remaining 5% of current staff completes any outstanding professional development in the CCDBG training topics is \$250,910 Statewide. The source of the wage data in formulating the estimate is the Department of Labor and Industry (DLI) Center for Workforce Information & Analysis, found on its web site at <http://www.workstats.dli.pa.gov/Products/Occupational%20Wages/Pages/default.aspx#.Vz8JtvkrLRA>.

Increased Annual Professional Development Hours

In addition to the topics prescribed by the CCDBG, the Department is increasing the annual clock-hours requirement from 6 hours annually to 12 hours annually for all child care staff working at certified child care facilities across this Commonwealth. This increase aligns the Commonwealth's annual clock-hours requirement with five of the six contiguous states and better safeguards the health and safety of all the children in care. This is described in more detail in response to the following comments. There will be an ongoing cost for all child care staff to obtain the additional 6 clock hours of professional development annually as prescribed in this final-form rulemaking in §§ 3270.31(e), 3280.31(e) and 3290.31(f) (relating to age and training).

Current child care operators will incur added costs for the additional professional development course fees, obtaining substitute child care staff when regular staff takes professional development during hours the facility is open, staff who take the professional development during nights and weekends and who work 40 hours or less per week. Additionally, current child care operators will incur costs for paying overtime wages to staff who take the professional development during nights or weekends and who work more than 40 hours per week as prescribed by the Fair Labor Standards Act (FLSA) of 1938 (29 U.S.C.A. §§ 201—219).

With respect to the increased annual professional development clock hours requirements, the total cost Statewide for child care centers is estimated to be \$4,158,936.

For group child care homes, the total cost Statewide is estimated to be \$180,639, an amount that accounts for the same cost calculations as for child care centers. For family child care homes, the total cost Statewide is estimated to be \$117,040, an amount that accounts for the costs of the professional development course fees as

well as for the costs for obtaining a substitute staff person while the operator takes the professional development.

The Department has determined that the costs to operators to satisfy the increased professional development clock hours requirement strikes an appropriate balance between the added costs and the importance of staff professional development to safeguard the health and safety of all children in care. Furthermore, the proposed increase in the annual requirement for the number of professional development clock hours ensures that the Commonwealth is creating and sustaining a common floor for minimum professional educator qualifications to support the physical and behavioral health and safety of all children enrolled in child care throughout this Commonwealth.

Monitoring Means in Family Child Care Homes

This final-form rulemaking permits family child care operators to utilize a monitoring means to ensure the supervision of children in care for the time required by the operator to either take a restroom break or prepare snacks and meals for the children in care. Following feedback from IRRC, the Department issued a survey to family child care home operators to assess the types of devices or methods each would use to supervise children when they are not physically present in the same space with the children. According to the poll results, 76% of those that responded would utilize a device. Of that number, 43% of family child care home operators indicated they would use a baby monitor, 28% would use a video camera and 5% would use a mirror. The remaining 24% who responded indicated that they would use other methods to meet the monitoring means. Of that 24%, 12% indicated that they already have a second caregiver at all times. The remaining 12% indicated that they would use "other" methods to meet the monitoring means but did not specify those methods.

The Department estimates that the cost of one video camera is \$125, that the cost of one baby monitor is \$50 and that the cost of one mirror is \$25. The Department estimates that the cost to family child care homes that choose to purchase a device to implement a monitoring means will be \$88,900 to satisfy the requirement. The Department determines that the cost to purchase a device, if needed, strikes an appropriate balance between the added cost to the operator to purchase the device and the additional health and safety protections afforded to children by using the device to ensure the continuous, real-time supervision of all children at all times.

24-hour Child Care

IRRC and several commentators suggested the Department re-evaluate the fiscal impact of this final-form rulemaking for family child care homes that provide 24-hour child care because the proposed rulemaking did not include estimated costs to secure an additional designated staff person. When a family child care home offers 24-hour care, determining the time period that the family child care home offers the 24-hour care is contingent on the number of parents who opt for 24-hour care on a daily basis and the number of days the facility is closed due to holidays or vacation. Family child care homes that offer 24-hour child care provide it an average of 180 days per year.

The Department is requiring that family child care home operators that provide child care for a 24-hour period may not provide care alone for more than 16 hours of that 24-hour period and shall employ an additional

staff member for the remaining hours. In those instances, an additional staff member may be required for up to 8 of the remaining 24 hours. Currently, approximately 20% (or 312) of the family child care homes in this Commonwealth offer 24-hour care, although fewer may actually provide 24-hour care because there is not always a constant demand for 24-hour care, or the operator may not offer it consistently. Therefore, the fiscal analysis the Department performed in this regard reflects the estimated costs for all operators that offer the 24-hour care, not those that actually provide 24-hour care, which means the actual cost could actually be less than estimated. These costs include the estimated costs to secure an additional staff person for the remaining 8 hours.

The Statewide daily cost for all family child care home operators that offer 24-hour care to provide 24-hour care is an estimated maximum of \$27,456. Since family child care homes may not offer the care daily throughout the year because of holidays and other scheduling arrangements, the Department determines that, on average, family child care homes offer the care 180 days annually. The Statewide annual cost is, therefore, estimated to be a maximum of \$4,942,080. The Department determines that this final-form rulemaking provides essential protections to the health and safety of children in care by ensuring that family child care home operators and staff who are providing 24-hour care are always alert and sufficiently rested. The Department determines that this benefit to children outweighs the added costs to family child care home operators who provide 24-hour care.

Contact Person

Questions regarding this final-form rulemaking should be directed to Tamula Ferguson, Bureau of Certification Services, Office of Child Development and Early Learning, Department of Human Services, 333 Market Street, 6th Floor, Harrisburg, PA 17105, by e-mail RA-PWCCRegChanges@pa.gov or by fax (717) 787-1529.

Persons with a disability who require an auxiliary aid or service may use the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Discussion of Comments and Changes

The Department proposed changes to § 20.2 (relating to applicability), which ensure that family child care homes, like group child care homes and child care centers, are certified and not registered, and subject to an announced inspection prior to certification and annual inspections, which is a CCDBG requirement, and section 16 of the act of December 28, 2015 (P.L. 500, No. 92), which repealed Article X(c) of the act (62 P.S. §§ 1070—1080) that set forth registration provisions in the act. The Department reiterates the comments supporting the certification process for family child care homes. The Department is maintaining the language from the proposed regulation in this final-form rulemaking. This final-form rulemaking ensures that family child care homes, like group child care homes and child care centers, are certified and not registered, as required by the CCDBG and current State statute.

Prior to the effective date of section 16 of the act of December 28, 2015 (P.L. 500, No. 92) that set forth registration provisions, family child care homes were registered, not certified, under Article X(c) of the act. Registered family child care homes were not regularly inspected, but instead self-certified compliance with regulations, and received 2-year registration certificates. Family child care homes are now certified like other child care

providers. The Department is, therefore, removing the previous differences in the certification process between family child care homes and other certified child care facilities to conform to section 16 of the act of December 28, 2015 (P.L. 500, No. 92).

Next, the Department adds §§ 3270.15(b), 3280.15(b) and 3290.14(b) (relating to building codes) regarding maintaining the requirements for fire safety after the initial inspection and adds §§ 3270.95, 3280.95 and 3290.95 (relating to fire detection) to this final-form rulemaking to ensure that the Department assesses compliance with fire safety standards at all certified child care facilities across the Commonwealth, as required under section 1016(c) of the act.

The Department clarifies CCDBG requirements in this final-form regulation by adding language to all three chapters in §§ 3270.31(e), 3280.31(e) and 3290.31(e) that clarifies a staff person maintain ongoing professional development in the topics outlined by the CCDBG under 45 CFR 98.41(a)(1)(i)—(x) and 98.44(a)(5) (relating to health and safety requirements; and training and professional development). The changes to this final-form regulation assure alignment with the Commonwealth's most recent Child Care Development Fund Plan, which is dependent on the Department meeting the CCDBG requirements.

Following the publication of the proposed rulemaking, the Department received 62 comments during the 30-day public comment period and 9 comments within 30 days after the close of the public comment period. The comments received during the public comment period came from 37 child care operators, 20 advocacy organizations, 4 consumers and the City of Philadelphia. The comments that came after the close of the 30-day comment period included four operators, four advocacy organizations and one consumer. The Department responded to all comments.

The following is a summary of the comments received and the Department's response to those comments. Also included is a summary of IRRC's comments and the Department's responses to those comments. In addition, the Department also made changes to the regulation, including correcting typographical errors, reformatting to enhance readability and revising language to enhance clarity or conform to changes made in response to comments.

Notably, the overwhelming majority of comments were with respect to regulations that are shared commonly across the three chapters. There were, however, several comments specific to the family child care home regulations in Chapter 3290. Because of the differences between the family child care regulations and the other two chapters, the summary as follows exists in two parts. The first part is the summary for comments received for all three chapters as well as comments received for the child care center regulations, the group child care home regulations, or both. The second part is the summary for comments received for the family child care home regulations only.

Finally, the Department proposed several provisions for deleting §§ 3270.232, 3270.233, 3280.212, 3280.215, 3290.211 and 3290.212. The Department did not receive any comments about these obsolete provisions. The Department deletes these sections in this final-form rulemaking.

General comment

Several commentators suggested that the Department add requirements that were not part of the proposed rulemaking. One commentator requested that changes be made to the requirements for outlets with reference to § 3270.65 (relating to protective electrical covers). Another commentator proposed revisions to lower the qualifications and responsibilities requirements in §§ 3270.36 and 3270.37 (relating to assistant group supervisor qualifications and responsibilities; and aide qualifications and responsibilities). The comments proposed an exemption option from the Department facility person lifeguard requirement and proposed that a process be implemented to permit children to attend an unlicensed outdoor summer camp program and still receive Child Care Works (CCW) funding. The commentator also requested the Department provide an administrative guide providing clarity as to the meaning of the requirements. Another commentator requested changes to add e-cigarettes to § 3270.68 (relating to smoking), and to add a prohibition to § 3270.118 (relating to pets) for pets if children have allergies or asthma triggered by pets. This commentator also requested clarifications on whether the ratio requirements in § 3270.55 (relating to ratios while children are napping) apply to the nap room itself or only for when children are sleeping; and on whether the Department can create policies for release of children to a family member who is intoxicated. Finally, another commentator requested changes to the staff:child ratio requirements in § 3270.51 (relating to similar age level) because they do not permit appropriate supervision.

Response

The Department acknowledges the request concerning electrical covers; the request to lower the requirements for assistant group supervisors and aides; and the requested exemption regarding water safety training. However, these requests do not relate to the CCDBG requirements, changes in State statute or the scope of the proposed rulemaking. The scope of this final-form rulemaking relates to fire safety, emergency plans, frequency of inspections, professional development requirements and the certification of family child care homes. As such, these comments are outside the scope of this final-form rulemaking and the Department declines to add them here. However, the Department appreciates the commentator's comments and will take them under consideration.

The Department further acknowledges the concerns with respect to CCW funding, which are part of the CCDBG requirements. These concerns will be addressed in a separate rulemaking which is currently under way. The Department clarifies that no administrative guide regarding the requirements is needed because the requirements are specific to particular sections of the regulations. Next, the Department declines making any changes to the staff:child ratios prescribed in § 3270.51 at this time because the current staff:child ratios allow for appropriate supervision and are appropriately balanced to account for costs to child care providers in hiring additional staff.

To the extent there are remaining questions with implementation of this final-form rulemaking, the Department will address any remaining difficulties with following the regulations through outreach to the child care community.

§ 3041.13—General requirements

IRRC requests clarification on why “day” isn't proposed to be deleted in § 3041.13(a)(1) and (2) (relating to parent choice) as it is in § 3041.13(a)(3).

Response

The Department's Office of Child Development and Early Learning, Bureau of Policy and Professional Development plans to revise the entire Chapter 3041, including § 3041.13, as a separate rulemaking. The Department's Office of Child Development and Early Learning, Bureau of Certification Services will, therefore, limit this final-form rulemaking to Chapters 20, 3270, 3280 and 3290 and not amend the provisions of § 3041.13.

Chapters 3270, 3280 and 3290—General comments

Twenty commentators responded with general comments, with 16 offering general support of the proposed changes, 3 not in support of the proposed changes, and 1 commentator requesting clarification about why there are three separate chapters of regulations and about whether “day care” will be changed to “child care” throughout all the chapters. One commentator did not agree with the proposed changes because of the difficulty operators face with following the regulations; another cited an executive order signed by the President of the United States concerning new regulations; and another cited concerns about the administration of the Keystone STARS program. Among the 16 commentators who offered general support of the regulations, several recommended additional changes to regulations concerning exclusion of children with symptoms of disease and designated health advocates, neither of which areas were included in the scope of the proposed rulemaking. Several also suggested changes to the Department of Health's regulations. Some commentators requested additional time for the effective date beyond the publication in final-form so that operators have the opportunity to understand the updated requirements.

Response

The Department made changes throughout all three chapters as noted here and as follows. The Department first notes that the three different chapters are largely similar, although there is still a need for the three separate chapters of regulations because each chapter relates to a different type of regulated child care facility: child care center; group child care homes; and family child care homes. There are important differences that impact the health and safety of children such that there is regulatory justification for different requirements among the three chapters. The differences in the types of buildings, the numbers of children who can be cared for in each different type of facility and the qualifications of staff working at the different types of facilities all demonstrate justification for different regulatory requirements.

Next, the Department changed the term “day care” to “child care” throughout all three chapters of this final-form rulemaking except for instances referencing another agency, program office, title or other outside entity.

In addition, this final-form rulemaking strikes the appropriate balance between protecting the health and safety of children in care and addressing the concerns and challenges of the operators. To the extent there are remaining questions with implementation, the Department will address any remaining difficulties with following the regulations through outreach to the child care community upon implementation of this final-form rulemaking. Next, Executive Order 13777, signed by the President of the United States and published at 82 FR 12285 (March 1, 2017), concerns Federal regulatory reform and does not apply to these State regulations. Also,

this final-form rulemaking establishes improved licensure requirements for all certified child care facilities to better protect the health and safety of all children and does not address the Keystone STARS program.

The Department will continue to confer with the child care community about concerns regarding: the exclusion of children with symptoms of disease from attending child care; the suggestion from a commentator that child care facilities designate a staff member to work as a health advocate; and the Department of Health's regulation that excludes children from care who display symptoms of disease.

While the Department has received no comments on this issue, the Department recognizes the critical nature of the novel coronavirus (COVID-19) pandemic. To that end, the Department continues to work closely with the Department of Health regarding guidance and any updated regulation changes the Department of Health issues for child care providers who may be serving children with symptoms of COVID-19. Based on the Department of Health and Centers for Disease Control guidance, the Department has issued 6 announcements to child care providers regarding the additional steps providers may have to take to keep children in care safe, which include screening and quarantine procedures for children who show symptoms of COVID-19.

In addition, the Department needs additional input and research regarding any changes it would make to the Department's current regulations as it pertains to child care providers' responsibilities serving children with symptoms of disease. This rulemaking is primarily aimed to align the Department's requirements with the CCDBG, a funding source which benefits child care providers and children in this Commonwealth. Further, the scope of this rulemaking relates to fire safety, emergency plans, frequency of inspections, professional development requirements and the certification of family child care homes. As such, these comments are outside the scope of this final-form rulemaking.

For these reasons, the Department will not make any changes in this final-form rulemaking related to designating a health advocate. The Department will continue to work with the Department of Health regarding guidance to child care facilities for COVID-19 and other health topics raised by the commentators. The Department will further address the suggestions through training, technical assistance or a future regulatory update. The Department further notes that it is without the statutory authority to modify a Department of Health regulatory requirement.

As for the request to extend additional time for the effective date of this final-form rulemaking, after review, the Department declines the request and notes that it did not include the 60-day implementation period in the proposed regulations because the intent is and remains, that this final-form rulemaking be effective upon publication.

IRRC—General comments

IRRC had two general comments. IRRC first requests an explanation of the extent to which the Department sought input from stakeholders before publishing this final-form rulemaking about the impact of the regulations on the regulated community and how the Department will engage those affected by this final-form rulemaking. Second, to the extent the Department intends to include the additional requirements articulated by the Department of Health, the Pennsylvania Chapter of the Ameri-

can Academy of Pediatrics, pediatricians, the Pennsylvania Breastfeeding Coalition, and child care health and safety consultants, IRRC suggests an Advanced Notice of Final Rulemaking to engage the regulated community.

Response

In response to IRRC's inquiry regarding public input, the Department reached out to ELC, an advisory group for the Office of Child Development and Early Learning, regarding the comments the Department received during the public comment period. The Department reviewed, considered and adopted the suggestions of the ELC regarding computing costs for the additional professional development requirements and for monitoring means in family child care homes. These suggestions are included for implementation of this final-form rulemaking and are reflected in the revised cost estimates for this final-form rulemaking in the Regulatory Analysis Form (RAF). The Department further advised the ELC that suggestions relating to costs and requests for assistance will also be addressed upon implementation through training or technical assistance.

For additional public input, the Department reached out to certified family child care home operators and conducted a survey to determine the monitoring means they would use to ensure that children are supervised at all times. The results of the responses are further detailed in the RAF as well as the fiscal impact section and the comment section for § 3290.113(f) (relating to supervision of children) in this document.

The Department of Health specifically requested that the Department consider obesity prevention because of the growing pervasiveness of obesity in children Nationwide. The Pennsylvania Chapter of the American Academy of Pediatrics and pediatricians requested that the Department consider additional specificity regarding providers' responsibilities in caring for children and excluding children with symptoms of disease. The Pennsylvania Breastfeeding Coalition and other commentators suggested that the Department include a requirement that all staff be trained in breastfeeding, as well as employing child care health and safety consultants. The Department thanks the commentators for their comments and will consider these comments in a future rulemaking. Additional research and outreach to the child care community as well as the commentators is needed before the Department can propose changes to the regulations in these areas. At this time, this final-form rulemaking is focused on the implementation of CCDBG compliance, conformity with State statutory amendments, expanding the duration of training requirements and the certification of family child care homes. Specifically, the scope of this rulemaking relates to fire safety, emergency plans, frequency of inspections, professional development requirements and the certification of family child care homes. As such, these comments are outside the scope of this final-form rulemaking. This final-form rulemaking updates the current regulations to parallel the requirements of the CCDBG and to implement these improved health and safety standards. The Department will address these broader suggestions and concerns by encouraging certain suggestions through training or technical assistance and will continue to examine the suggestions for a future rulemaking.

§ 3280.4—Definitions—"Group Child Care Home"

IRRC commented on the proposed wording of the definition of "group child care home" because of its use of the word "premise" and suggested that it be changed to "other premises."

Response

The Department concurs with the IRRC's comment and is changing the terms in the definition of "group child care home" from "another premises" to "other premises" in this final-form rulemaking.

§§ 3270.4/3280.4/3290.4—*Terminology—"staff:child ratio"*

IRRC requested clarification on the difference in terminology between "regulatory ratio" and "staff:child ratio" and the use of the same term throughout this final-form rulemaking as it appears in the definition of "staff person" and "volunteer."

Response

The terms "regulatory ratio" and "staff:child ratio" are the same. As such, the Department is removing references to "regulatory ratio" and replacing them with "staff:child ratio" in the definitions of "staff person" and "volunteer" in this final-form rulemaking across all three chapters.

§§ 3270.4/3280.4/3290.4—*Definitions—"Parent"*

Five commentators agreed to the change in the definition of "parent." However, some commentators suggested changing "parent" to "family" throughout this final-form rulemaking to include children not living with parents but being cared for by family.

Response

After careful consideration, the Department is not changing this definition. The legal guardian of the child is included in the definition of "parent" and may, therefore, be considered a parent for purposes of this final-form rulemaking. Because a family member may serve as a legal guardian, and because the final-form definition of "parent" includes legal guardianship, changing terminology from "parent" to "family" is not needed.

§§ 3270.4/3280.4/3290.4—*Definitions—"Volunteer"*

Seven commentators responded to the change in definition for "volunteer." Some commentators responded with general support for all the definition changes. Most commentators disagreed with the definition change for "volunteer" because the operator would still be required to supervise any individuals 14 years of age or older in addition to the other children in care.

IRRC is requesting clarification on the definition of "volunteer" and on the fiscal impact to a facility for training student volunteers.

Response

As provided previously, the Department is changing the definition of "volunteer" across all three chapters to add the term "staff:child ratio" and remove the term "regulatory ratio" to ensure consistency of terminology throughout this final-form rulemaking. Further, after careful consideration, the Department is removing the proposed amendment to include a student 14 years of age but under 16 years of age in the definition of "volunteer." Because the Department is no longer amending the substantive definition of "volunteer," there is no fiscal impact. Finally, because the definition of "volunteer" is not substantively changing, the proposed changes to §§ 3270.31(a), 3280.31(a) and 3290.31(c) are not being made. The Department, however, is clarifying in §§ 3270.31(a) and 3280.31(a) that supervision of volunteers must be by a staff person, which aligns with the requirement for family child care homes in § 3290.31(c).

§§ 3270.11/3280.11/3290.11—*Application for and issuance of a certificate of compliance*

Four commentators agreed with the proposed clarification and outline of the certification process for all child care facilities.

IRRC, however, is requesting clarification about the different terminology used for training hours when describing the requirements that an applicant must meet at the time of application and certification.

Response

The Department concurs with IRRC and is changing the terminology to "clock hours" throughout all three chapters of this final-form rulemaking.

§§ 3270.11(b)/3280.11(b)/3290.11(b)—*Application for and issuance of a certificate of compliance*

One commentator disagreed with the requirement that a child care operator or legal entity must re-take the orientation training if moving to a new location.

In addition, IRRC is requesting clarification regarding the orientation training, whether it is a new provision and how it applies to the increase in required annual clock hours of professional development.

Response

The requirement for orientation training for new locations is not a new requirement and is required under current regulations. The Department issues certificates of compliance to a legal entity for a facility at a specific location. The certificate of compliance is void, however, if there is a change in location of the facility. See § 20.57(b)(3). Because certificates of compliance are not transferable to a new location, any legal entity that wishes to change locations must re-apply for a new certificate of compliance. As a new applicant, the legal entity must follow all of the requirements for the application process.

As currently required, an applicant must complete orientation training and provide documentation of its completion as a part of the application process in order to receive a certificate of compliance. Because completing and documenting the orientation training is a prerequisite to becoming certified, taking the orientation training does not count toward the yearly professional development requirement of 12 clock hours. The annual professional development requirement only applies to certified child care operators.

§§ 3270.11(c) and (d)/3280.11(c) and (d)/3290.11(e) and (f)—*Application for and issuance of a certificate of compliance; and §§ 3270.31(f),(g) and (h)/3280.31(f), (g) and (h)/3290.31(g), (h) and (j)—Age and training.*

The regulatory requirements in these sections are similar as were the comments. The similar requirements are: 1) the required training topics for health and safety professional development as required by CCDBG; and 2) documentation of the completion of the professional development.

The differences in the requirements are: 1) §§ 3270.11, 3280.11, and 3290.11 (relating to application for and issuance of a certificate of compliance) refer to the requirements for a legal entity who is applying for a certificate of compliance; and 2) §§ 3270.31, 3280.31 and 3290.31 refer to the requirements for new and current staff.

IRRC suggested that the Department consider changing the definition of "legal entity" to mirror the definition of

“person” in 1 Pa.C.S. Chapter 19 (relating to rules of construction). IRRC and several commentators requested that the Department clarify whether pre-certification professional development is a one-time requirement. In addition, IRRC asks that the Department explain its rationale for the 2-year time period in the Preamble to the final-form regulation and suggests that the Department revise the subsection to permit applicants and staff persons to count professional development that was obtained prior to the adoption of this rulemaking towards the professional development requirements. Also, IRRC seeks clarification about why the language in the proposed rulemaking for professional development does not mirror the specific Federal CCDBG requirements.

IRRC also requests clarification on how the Department will implement the effective date for the completion of CCDBG-required professional development for current staff. IRRC next notes incongruity between provisions of the three chapters relating to current staff persons who must complete the required professional development. The verbiage only appears in § 3290.31(i), and IRRC observes that parallel language does not exist in § 3270.31 or § 3280.31. IRRC requested the Department revise the language in Chapters 3270 and 3280 to be consistent with the language in § 3290.31(i).

Thirty-seven commentators commented on these two sections of this final-form rulemaking. Most agreed with the proposed amendments for both sections. Several commentators requested clarification about whether 2 years would be the time frame for accepting the required completed professional development, and whether the time frame for accepting credits for the required professional development could be expanded to 3 to 5 years. Other commentators suggested that language be added into this final-form rulemaking that specifically requires that courses completed within 2 years prior to the date of publication of this final-form rulemaking count toward satisfaction of the required professional development. Several commentators also suggested adding language to the regulation to make clear the required professional development is a one-time requirement. Several commentators suggested adding additional training topics to this final-form rulemaking on basic child development, positive communications practices and positive discipline, breast feeding and obesity prevention.

A commentator requested clarification on whether the course “Reporting Child Abuse” is mandatory. One commentator disagreed with the requirement that new staff be certified within 90 days of employment because it is impractical and suggested a longer time for some staff and a requirement that, at a minimum, half the staff be certified. The commentator was also concerned about the availability of pediatric first aid and pediatric cardiopulmonary resuscitation (CPR) training because of the length of time it takes and suggested the Department provide an Excel spreadsheet to operators for ease of tracking staff’s progress in taking the required professional development. Other commentators also expressed concern that the time frames are not long enough.

Some commentators suggested that the Department consider permitting a waiver to obtain the training for up to 1 year. Another commentator suggested the Department consider ways to help family child care operators with the costs of obtaining the professional development because family child care operators are essential when there is already a lack of high-quality programs. A commentator suggested there were conflicts and inaccura-

cies between the online training offered by the Penn State Cooperative Extension Better Kid Care training and the Department’s regulations.

Response

In response to IRRC’s comment regarding the definition of “legal entity,” the Department is not making changes because the definition of “legal entity” is the same as under the Department’s general licensing chapter in § 20.4, which authorizes the Department to issue certificates of compliance to all types of facilities supervised or licensed by the Department.

Regarding implementation of the professional development for current staff, the Department is clarifying that current staff who have not yet taken the CCDBG-required professional development will have 180 days from the effective date of this final-form rulemaking to complete the prescribed professional development requirements.

The Department acknowledges and concurs with IRRC’s comment observing incongruity across the three chapters of this final-form rulemaking for the CCDBG-required professional development for current staff. Therefore, the Department is adding provisions to §§ 3270.31(h) and 3280.31(h) to reflect language that is consistent with § 3290.31(i) and to clarify that all staff persons must complete the CCDBG-required professional development in §§ 3270.31(f), 3280.31(f) and 3290.31(g).

The Department agrees with IRRC’s observation that the CCDBG-prescribed professional development requirements are identical for applicants as well as current staff persons across the three chapters. Because the requirements are identical, the Department is removing the term “pre-certification” from § 3290.31(i) to avoid confusion thereby making it clear that the requirements apply to all staff persons as well as applicants for a certificate of compliance, and that the requirements are identical across the three chapters.

Regarding the IRRC comment that specific provisions citing the CCDBG language were not included in the proposed regulation, the Department reviewed the CCDBG language and is adding the specific language from the CCDBG into this final-form rulemaking in §§ 3270.11(c), 3280.11(c) and 3290.11(e)). The Department also added identical provisions into §§ 3270.31(f), 3280.31(f) and 3290.31(g) to ensure continued consistency.

The Department has also reviewed and considered the concerns expressed by commentators and IRRC about whether professional development is a one-time requirement. The Department is clarifying in this final-form rulemaking under §§ 3270.31(j), 3280.31(j) and 3290.31(k) that the staff persons in certified child care facilities must engage in professional development that maintains and updates the required CCDBG professional development requirements. The Department is also clarifying in this final-form rulemaking under §§ 3270.31(e)(4)(i), 3280.31(e)(4)(i) and 3290.31(f)(4)(i) that the requirement for first aid training is replaced by the requirement for up-to-date pediatric first aid and pediatric CPR certification.

The Department appreciates the suggestion of additional professional development topics. However, at this time, the Department declines adding these additional topics because this final-form rulemaking parallels requirements from the CCDBG and the Department needs to conduct additional research and seek input from providers and stakeholders regarding how to best implement additional topics. The Department will consider these suggestions for future rulemakings.

The Department acknowledges the suggestions from IRRRC and commentators that previously-completed professional development should be counted towards satisfying the professional development requirements. In response, the Department is modifying this final-form rulemaking to specify that the Department will accept professional development completed from September 30, 2016, and forward, in satisfaction of the professional development requirement. The changed time frame to accept professional development appears in the added requirements across all three chapters and is added to §§ 3270.11(d), 3280.11(d) and 3290.11(f) and to §§ 3270.31(g), 3280.31(g) and 3290.31(h) in this final-form rulemaking. Also, the Department considered the time frame and whether it should accept completed professional development prior to 2016. After consideration, the Department will not accept professional development completed prior to September 30, 2016, because professional development must adapt over time to reflect current best practices supported by research. In addition, the Department is clarifying in §§ 3270.31(h) and (i), 3280.31(h) and (i) and 3290.31(j) that a staff person may count the completion of the CCDBG health and safety topics once towards the requirement for the annual clock hours.

The “Reporting Child Abuse” course is mandatory because the existing regulations require compliance with the Child Protective Services Law (CPSL). See §§ 3270.32, 3280.32 and 3290.32 (relating to suitability of persons in the facility). The CPSL, 23 Pa.C.S. § 6383(c) (relating to education and training), requires mandated reporter training for individuals working or seeking to work in child care. However, neither the existing regulations nor this final-form rulemaking mandates specific courses by name, and so the requirement may be satisfied by taking one of the approved courses listed on the Department’s Keep Kids Safe web site at <http://www.keepkidssafe.pa.gov/>.

The Department contends that there is sufficient time to complete the CCDBG-required professional development within 90 days of hire for new staff as stated in §§ 3270.31(f), 3280.31(f) and 3290.31(g) because the courses are available online, thereby allowing all new staff to complete this requirement during an orientation period after hire. It is important for new staff to receive professional development because new staff may not have the health and safety background covered in the CCDBG-required topics of professional development. The Department, therefore, declines the request to require only half of the new staff complete the CCDBG-required professional development within 90 days of hire for the same reasons. As previously stated, current or new individuals working in child care staff positions who have not yet satisfied the professional development requirements will not have to pay a fee for the professional development that is required by the CCDBG. The Department reiterates that child care facility operators may incur costs relating to obtaining substitutes or paying for overtime to staff persons who use work time to take the required professional development.

Regarding the concern that the pediatric first aid and pediatric CPR training takes too long, it is estimated to take approximately 4 hours for the initial training, which the Department does not perceive as burdensome. In addition, part of the training may be taken online. Furthermore, child care staff cannot adequately safeguard the health and safety of children in care without completing training in pediatric first aid and pediatric CPR. The Department observes there are critical differences be-

tween adult first aid and adult CPR, versus pediatric first aid and pediatric CPR. These differences are with respect to physiology, musculature, bone density, and strength of the child versus an adult. Because these differences impact on the techniques used when administering CPR to children, the time commitment to complete the training is outweighed by the importance of the trainings themselves.

The request for the Department to provide an Excel spreadsheet to operators for ease of tracking staff’s progress in taking the required professional development, the Department may address the concerns through training or technical assistance so that providers can create forms that best meet their needs and preferences.

The Department also acknowledges the request for assistance with costs and notes that operators that wish to provide higher quality child care through the Keystone STARS program may be eligible for assistance with costs.

The Department reviewed the online training offered by Penn State Cooperative Extension Better Kid Care and has determined there are no conflicts with the Department’s regulations.

§§ 3280.11(e)/3290.11(h)—Application for and issuance of a certificate of compliance

Commentators submitted comments regarding this provision, and they agreed with the requirement that household members in family child care homes and group child care homes be required to submit clearances. Other commentators suggested adding requirements that prospective staff provide out-of-State clearances if they have not lived in this Commonwealth for the last 5 years as well as either a returned Pennsylvania State Police or FBI clearance required by the Department before being permitted to work in child care. Another commentator requested that the Department accept the Department of Education FBI Clearance instead of the Department’s FBI clearance.

Response

An operator’s responsibility to satisfy all the requirements of the CPSL are already included in the current regulations under §§ 3270.32, 3280.32 and 3290.32. The CPSL, 23 Pa.C.S. §§ 6301—6386 (relating to Child Protective Services Law), governs the requirements for child abuse clearances and criminal history checks for child care employees. The Department is not able to modify these requirements through the Department’s regulations.

§§ 3270.11(g), (h) and (i)/3280.11(h), (i) and (j)/3290.11(i), (k) and (l)—Application for and issuance of a certificate of compliance, and §§ 3270.24(d)/3280.23(d)/3290.21(d)—Departmental access

Similar to the previous comments and responses, the Department is combining the comments and responses for the two areas of the two sections of this final-form rulemaking as stated previously. The regulatory requirements in the two areas are similar, as were the comments.

Eighteen commentators commented on the requirement for announced and unannounced inspections. Most commentators supported the changes, and two commentators noted the importance of meeting all CCDBG requirements. Some commentators disagreed generally. One commentator disagreed with unannounced inspections while expressing concerns that all child care programs are being forced to participate in the Keystone STARS program. Another commentator disagreed with the proposed requirement because it would not give operators the

ability to ensure adequate staff are working at the time of inspection. One commentator requested clarification about whether the second unannounced inspection for technical assistance and STARS outreach was a full inspection or a brief pop-in visit. Some commentators suggested language be added requiring the Department provide technical assistance and information about quality initiatives during an inspection, and another commentator suggested that operators receive a 10-day window for inspection. One of the commentators suggested that all family child care home operators carry liability insurance or disclose if they have none.

Response

The Department acknowledges and agrees with the comments regarding the importance of adhering to all CCDBG requirements. Following feedback from the child care community, the Department reviewed all provisions of its regulatory requirements between Chapter 20 and Chapters 3270, 3280 and 3290 and noted a conflict between § 20.32 (relating to announced inspections) and the CCDBG requirement that all annual inspections of all child care facilities be unannounced. To resolve the conflict, and to ensure the satisfaction of the Federal CCDBG requirements, the Department is adding provisions to §§ 3270.11(i), 3280.11(j) and 3290.11(l) to clarify that annual inspections of child care facilities conducted by the Department will be unannounced. The Department is also aligning and clarifying for all three chapters at §§ 3270.11(g), 3280.11(h) and 3290.11(k) that an agent of the Department annually will conduct at least one onsite unannounced inspection.

The Department acknowledges and declines the suggestions to add to or modify the requirements because this final-form regulation parallels the requirements of the CCDBG, which includes that annual inspections must be unannounced. Further, the suggested requirements that the Department provide technical assistance and information about quality initiatives are not CCDBG requirements. As well, the allowance of a 10-day inspection window would conflict with the CCDBG requirement that the annual inspection be unannounced. The rationale for unannounced inspections is for the Department to ensure that operators are consistently and independently meeting the regulatory requirements to ensure the health and safety of the children in care. The Department declines to add a requirement that all family child care home operators be required to carry liability insurance or disclose if they have none. The requirement was not a part of the proposed rulemaking. While the Department appreciates this suggestion, the Department will not require liability insurance for family child care homes because family child care home providers and other advocates have stressed that coverage for this type of liability insurance is extremely costly and difficult to obtain.

Next, the Department will provide information about quality initiatives so that operators are aware of the opportunities available to increase quality. Also, participation in the Keystone STARS program at a level that exceeds the basic health and safety requirements is voluntary, and the Department may offer information about quality initiatives available to operators during its inspections. This final-form rulemaking addresses certification for all child care operators and not the voluntary Keystone STARS program, which is a program regarding the quality of child care facilities. Finally, even though the Department will conduct at least one unannounced inspection every 12 months, the Department is clarifying

that its agents will conduct additional unannounced inspections. The Department's agents will conduct additional unannounced inspections to assess ongoing regulatory compliance, to respond to a complaint alleging regulatory non-compliance, or in follow-up to verify correction of instances of previous regulatory non-compliance.

§§ 3270.19/3280.18/3290.16—Child abuse reporting

Five commentators commented on this provision and they all agreed with the proposed changes clarifying the requirements for mandatory child abuse reporting. IRRC requested clarification about why the omission of the ChildLine telephone number in the proposed regulation is in the public interest and protects the health, safety and welfare of children in child care facilities. IRRC also requested clarification about whether the reporting requirement for family child care homes applies to all facility persons and whether the wording should be changed from "staff person" to "facility person" in § 3290.16.

Response

The Department is including the ChildLine telephone number in this final-form rulemaking so that the reporting requirement is clear from the language without need for outside reference. In addition, the Department agrees with the comment to change the terminology from "staff person" to "facility person" in all three chapters of this final-form rulemaking to ensure consistency.

§§ 3270.24(f)/3280.23(f)/3290.21(f)—Departmental access

To improve clarity, IRRC suggested that the Department move the photo identification requirements to the sections addressing inspection.

Response

The Department concurs with IRRC's comment and is moving the identification requirements from §§ 3270.34, 3280.34 and 3290.31 to the access provisions under §§ 3270.24(f), 3280.23(f) and 3290.21(f).

§§ 3270.25(a)/3280.24(a)/3290.22(b)—Availability of certificate of compliance and applicable regulations

Four commentators commented on this provision and they all agreed with the proposed requirement that operators provide information to parents on how to access the regulations electronically. One commentator suggested the Department add a sign-off to the Emergency Contact Form as required by §§ 3270.124, 3280.124 and 3290.124 (relating to emergency contact information) indicating parents received electronic copies of the regulations.

IRRC inquired why the Department is no longer requiring that operators post hard copies of the regulations in a conspicuous location. Further, IRRC commented that the Department explain its rationale for removing this requirement and questioned how this removal is in the public interest.

Response

After careful consideration, the Department is deleting the requirement that operators must post a hard copy of the regulations because the Department no longer distributes hard copies of the regulations to operators or the general public. Full copies of all regulations are available online on the Department's web site at <https://www.dhs.pa.gov/providers/Child-Care/Pages/Child-Care-Regulations.aspx> and on the *Pennsylvania Code's* web site at https://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/055/articleVDI_toc.html&d=. Using the Department's web site, operators and the general public

can access the regulations from any location that has an Internet connection, be it at home, at the office or in a public location such as a public library or public school. The Department uses the Internet as the only means to communicate with operators and the public about regulatory requirements and other operating procedures. Furthermore, this final-form rulemaking will create a cost-savings for operators because they will no longer be required to print and post a copy of the regulations along with the certificate of compliance. Although no longer required to do so, operators still may choose to print and post hard copies of the regulations.

Lastly, the Department acknowledges and declines the suggestion to add a sign-off to the required Emergency Contact Form indicating that parents received electronic copies of the regulations. The Department, however, may address the suggestion during training or technical assistance by advising child care providers that they must emphasize the parents' responsibility to review the regulations and how to access them electronically.

§§ 3270.27/3280.26/3290.24—*Emergency plan*

Several commentators commented on this provision and most agreed with the proposed requirements for specific accommodations in emergency plans for infants, toddlers, children with chronic medical conditions and children with disabilities because their needs can be drastically different. Most commentators suggested that procedures for a lock-down be added because it is a CCDBG requirement. A commentator also suggested that operators be given additional support to become familiar with the procedures. Another commentator advised that, often, fire drills are conducted with the children, who are evacuated outside and to a safe location. This commentator suggested that children should not have to be included in some emergency drills because the drills themselves may be traumatic to young children. Another commentator advised that it performs monthly fire drills and lock-down drills within the confines of the school property and that they are also subject to a School Safety Plan. This commentator also expressed concern over whether children need to be present in an emergency drill. In addition, there was a request for clarification about what the accommodations would entail, whether operators would incur additional expenses on a daily basis and whether the Department would provide grant money to assist operators with obtaining accommodations, bags or boxes. A commentator also requested that the Department clarify how the regulation impacts transportation, supplies and medications.

Most commentators agreed with the proposed requirement for annual emergency drills, two disagreed, and one requested clarification about whether annual emergency drills would only be shelter-in-place because a practice drill requiring travel to the evacuation facility, if required, may not be safe unless it was an actual emergency. The commentators who disagreed with the annual requirement limited their disagreement to those drills in which the children participate. One commentator noted the importance of emergency plans and fire drills due to the lack of any annual fire safety inspection.

IRRC asks whether the emergency drills include children or are staff only, and notes concerns about the consistency of terminology for "emergency plan drills" versus "emergency drills" and also noted the missing CCDBG requirement for lock down. IRRC also directs the Department to provide more specificity in the final-form regulation or to explain how it plans to address the regulated community's concerns regarding these require-

ments. Also, IRRC notes that in the preamble of the proposed regulation the Department states that "all child care staff are aware of the components of the plan" and points out that the proposed regulation language does not include this requirement.

Response

The different types of accommodations required to evacuate infants, toddlers, children with disabilities, and children with chronic medical conditions during an emergency or fire drill may vary because the situations for an emergency differ based on factors such as, but not limited to, the type of emergency, children needs, and specific operator circumstances. The Department, however, will offer technical assistance about existing resources available to operators that are in the process of developing their emergency plans and accommodations. Existing additional resources include Pennsylvania Emergency Management Agency and other health and safety consultants such as Better Kid Care, which can provide suggestions for the various components of the emergency plans.

As the providers implement the accommodations based on their children's specific needs, the Department will address the availability of resources needed to meet the costs incurred. The Department will also offer support and consultation to providers as they plan for the accommodations that may result in increased costs for transportation, supplies and medications. Also, the language in this final-form rulemaking pertaining to accommodations for infants, toddlers, children with disabilities and children with chronic medical conditions, parallels the requirements of the CCDBG. As such, the Department is not changing this provision.

The Department concurs with the suggestions regarding lock-downs and is adding the requirements for a lock-down in this final-form rulemaking in §§ 3270.27(a), 3280.26(a) and 3290.24(a) to satisfy a CCDBG requirement that was received after publication of the proposed rulemaking. The Department will offer support through training and technical assistance upon implementation.

After careful consideration, the Department is also replacing the term "emergency plan drills" with the term "emergency drills" throughout this final-form rulemaking. The CCDBG does not prescribe the types of drills required or specifically require that children be present during the drills. The Department agrees with the commentators that it is not prudent, in all instances, to require that children be present during the drills because the types of emergencies vary and it could be unnecessarily disruptive for the children. The operator must elect and implement the type of drill that best safeguards the health and safety of the children in care.

Staff training about the content of the emergency plan is already a requirement in §§ 3270.27(c), 3280.26(c) and 3290.24(c). The Department will address concerns about the requirements for emergency plans during training and technical assistance sessions.

The Department, however, is retaining the requirement for annual emergency drills in paragraph (6). Regarding the comment about the importance of emergency plans and fire drills due to the lack of any annual fire safety inspection, the Department notes that an annual fire safety inspection is required under section 1016(c)(1) of the act, which increases fire and safety requirements for all child care facilities. This regulatory provision is in conformity with recently-enacted State law.

§§ 3270.27(f)/3280.26(f)/3290.24(g)—*Emergency plan*

Five commentators commented on this provision. Most agreed with the Department's proposed changes. One commentator disagreed with the requirement to send copies of the emergency plan to local municipalities because Philadelphia cannot enforce a State requirement and because Philadelphia does not have the capacity to receive or monitor these plans.

Response

The Department is maintaining the wording in this final-form rulemaking. The Department will require that operators submit their plans to the local Emergency Management Coordinator (EMC) who is designated at a municipality level. The EMC is not required to monitor or enforce the plan, but must be aware, should an emergency arise, that the operator's plan exists.

§§ 3270.31(e)/3280.31(e)/3290.31(f)—*Age and training*

Twenty-three commentators commented on the increased training hours. Most commentators agreed with the general requirement to increase the required professional development hours from 6 to 12 clock hours annually, although some expressed concern over the rise in costs to operators. Some commentators disagreed because the increase would present a financial burden to operators. One commentator disagreed because the added hours do not mirror the Keystone STARS program requirements. Another commentator who disagreed did so over concerns that standards on what is acceptable are unclear and because first aid training and child abuse reporting are not required credited hours. One other commentator disagreed with the increased requirement and expressed that the Commonwealth should reimburse these extra costs by at least 50%. Among the commentators who agreed with the requirement, several expressed concerns that the added requirements were a financial burden, with one commentator noting that the subsidy rate had not risen accordingly for reimbursement. Another commentator suggested the Department assist operators with support in budgeting to help with the added costs and that the Department review opportunities to reduce paperwork requirements with the Professional Development Registry in order to further assist operators. One commentator noted concern that all staff at all facilities should be mandated reporters no matter who is in the facility.

Several commentators noted that the Department underestimated the cost to operators to comply with the requirement because the Department's fiscal projections in the proposed rulemaking for costs to operators to meet the professional development requirements included calculations at a flat hourly rate and not time-and-a-half or double time. Next, five commentators who agreed suggested that this final-form rulemaking include clear language that professional development, as required by the CCDBG, can and does count toward the annual 12 clock hours of professional development that new staff need in the first year of employment.

IRRC also requested the Department review its calculations for determining the costs of the increased professional development requirements. IRRC referenced the public comments regarding the underestimation of the cost to providers to comply with the increase in training hours.

Response

The Department is maintaining the increased clock hours of professional development from the proposed

regulation in this final-form rulemaking. This final-form rulemaking strikes the appropriate balance between the added protection to the health and safety of children in care and the added costs of the additional 6 clock hours annually for professional development required by staff. Importantly, the increase in hours required is consistent with professional development requirements in 5 of the 6 contiguous states of Delaware (15 hours per year), West Virginia (13.5 hours per year), New York (15 hours per year), Maryland (12 hours per year) and Ohio (15 hours per year).

The Commonwealth's current requirement of 6 clock hours of annual professional development falls significantly behind its contiguous states. The increase in the required professional development clock hours ensures that every child participating in a certified child care program receives developmentally-appropriate care that supports optimal child development and growth. The heightened requirement will ensure that child care operators and staff remain at the forefront of delivering quality child care services.

In addition to the Federal CCDBG requirements at 45 CFR 98.41 and 98.44(b)(2)(i) requires states to maintain and update health and safety training standards as found in 45 CFR 98.41(a)(1)(i)—(x), which are the CCDBG training requirements prescribed in §§ 3270.31(f), 3280.31(f) and 3290.31(g). The Department recognizes that to maintain compliance with the Federal requirement regarding updating information under the ten health and safety topics referred to in 45 CFR 98.41, it must increase the annual professional development requirements from 6 to 12 hours annually.

As noted previously, the Keystone STARS Program is a voluntary program. The STARS professional development requirements represent standards that exceed the annual professional development requirements of this final-form rulemaking, which itself represents the minimum requirements to safeguard the health and safety of children in care. The concern that the subsidy reimbursement rate may not rise to cover the additional costs for meeting the increased professional development requirement is outside the scope of this final-form rulemaking, but the Department's program for child care operators that receive a subsidy to serve low-income children will address subsidy reimbursement rates at a separate time, as stated previously in this Preamble.

Next, the topics described in §§ 3270.31(f), 3280.31(f) and 3290.31(g) are clear, acceptable and sufficiently broad to encompass a broad array of topics related to health and safety, as well as early childhood development. Training for child abuse reporting and first aid training are separate requirements from the topics listed for the 12-hour annual professional development requirement. Further, child abuse reporting training is mandated by the CPSL and is not an annual requirement under either the CPSL or these regulations. All facility persons at all child care facilities are mandated reporters.

The Department acknowledges the request for assistance with the added costs to meet the annual professional development requirements. Operators that wish to provide higher-quality child care through the Keystone STARS program may be eligible for assistance with costs. Further, the Professional Development Registry, which houses online professional development data for current staff, is active and available for operators to use to manage the professional development requirements for

staff. The Department will make technical assistance available on the use of the Professional Development Registry.

The source of the wage data in formulating the estimate for the salaries used in the calculations for the professional development costs is the Department of Labor and Industry Center for Workforce Information & Analysis at <http://www.workstats.dli.pa.gov/Products/Occupational%20Wages/Pages/default.aspx#.Vz8JtvkrLRa>.

The Department concurs with the observations of the IRRC and other commentators regarding the calculation of professional development costs in the proposed rulemaking. Following feedback from IRRC and the commentators, the Department reviewed the wage data utilized in the proposed rulemaking. As provided previously, after review, the Department has revised the wage data figures being used in this final-form rulemaking.

The Department reviewed and revised its calculations for the costs of the annual professional development clock hours for all certified operators in its final-form RAF. The Department used the requirements in the FLSA to calculate the overtime costs for certain child care staff. The Department understands that the increase in required annual professional development clock hours will result in added costs to operators. The 6-hour annual professional development requirement was first implemented in 1992, over 27 years ago, and has not been revised since.

Over the last 25 years, industry standards in health and safety have evolved Nationwide. The Department is placing additional emphasis on increased professional development for child care staff as a means to improve quality at child care facilities to better ensure the health and safety of the children in care. As such, this final-form rulemaking updates and strengthens the minimum standards for the professional development of all child care staff Statewide.

As for the suggestion to add language that the required CCDBG professional development can and should count towards the new staff hours in the first year of employment, the Department concurs and is adding these provisions at §§ 3270.31(i), 3280.31(i) and 3290.31(j) to reflect that completion of professional development by staff in the first year of employment counts toward the 12-hour requirement.

At this time, the Department recognizes that child care providers are experiencing operational and financial hardships during the COVID-19 pandemic. As such, under the authority under the Emergency Management Services Code and the Disaster Emergency Declaration, the current regulatory requirement of 6 hours of annual professional development for staff persons is suspended during the disaster emergency. Because the COVID-19 pandemic continues, the Department will begin measuring compliance with this final-form regulation requiring 12 hours of annual professional development at the time of each certified child care facility's next annual inspection following the expiration of the disaster emergency.

§§ 3270.33(d)/3280.33(c)/3290.32(d)—*General requirements for facility persons*

Seven commentators commented on the proposed changes regarding pediatric first aid and pediatric CPR. One commentator disagreed with the use of the term “competent” instead of “currently-certified” for the requirement that one or more facility persons competent in pediatric first aid and CPR techniques always be present while children are in care. Others disagreed with the required minimum number of facility persons competent

in first aid who must be present while children are in care. Those commentators have concerns with potential ratio issues because the required minimum staff number is one, and they suggest the minimum number be increased to two or one not-in-ratio.

Response

The Department is maintaining the terminology related to competency because the Department's existing regulations at §§ 3270.31(e)(4)(i), 3280.31(e)(4)(i) and 3290.31(f)(4)(i) make clear that competence results from completion of the courses. Following review of the provisions, however, the Department observes slight incongruity between § 3290.32(d) with the other two chapters. The Department is, therefore, amending the wording to be consistent with §§ 3270.33(d) and 3280.33(c).

Further, this final-form rulemaking requires that a minimum number of facility persons are competent in pediatric first aid and pediatric CPR. The Department acknowledges the suggestion that the staff:child ratio be increased. However, the Department declines making changes because the current staff:child ratio appears to be adequate based on the Department's experience. The Department will need to study the suggestion and the corollary fiscal impact further before making changes to the number of minimum staff required when children are in care. The Department will consider this suggestion in a future rulemaking.

§§ 3270.34(c)/3280.34(a)/3290.31(a)(3)—*Qualifications and responsibilities*

Five commentators commented on this provision and they all agreed with the requirement that facility persons show identification at the time of inspection to prevent falsification of identity.

IRRC submitted a statement that requests clarification on the meaning of the term “designated responsible person.”

Response

The Department is removing the term “designated responsible person” and is replacing it with “designated staff person who is responsible for compliance” in this final-form rulemaking.

§§ 3270.131(a)/3280.131(a)/3290.131(a)—*Health assessment*

Eighteen commentators commented on the proposed changes to this provision. Nearly all of the commentators disagreed because of the practical difficulties in securing a doctor's appointment to satisfy the requirement. One of the commentators requested a change in regulation to permit a one-week or two-week window to obtain updated child health assessments.

IRRC also inquired regarding the rationale for changing the timing requirements for the receipt of initial health reports from 60 days to 30 days.

Response

The Department declines the request for a one-week or two-week window to obtain updated child health assessments because it is not a requirement of the CCDBG. After careful consideration, the Department concurs with the commentators and IRRC. The proposed regulation was to change the 60-day requirement in the current regulation to 30 days, but, following feedback from the child care community, the Department is maintaining the current requirement of 60 days in this final-form rulemaking.

§§ 3270.166(7)/3280.166(7)/3290.166(7)—*Health assessment*

Fourteen commentators commented and agreed with the proposed changes prohibiting the heating of formula or milk in a microwave oven. Two of the commentators suggested requiring staff training regarding the handling of breast milk, and one suggested that the changes encompass disposable nurser bottles, bottle materials and bottle labeling. Another commentator suggests extending the prohibition to infant food and suggests the use of child care health consultants.

Response

The Department thanks the commentators for their very specific suggestions regarding the safety of meals for infants. The Department needs to do additional research and outreach about the additional requirements suggested by the commentators. Because of the need for additional study on these topics, the Department declines the suggestions to add new requirements, establish additional training requirements, expand the list of items banned or require the use of health consultants. The suggestions were neither a part of the proposed rulemaking nor are they CCDBG requirements, and so the Department will not add them here. The Department plans to seek additional public input on a variety of topics when it considers any changes to the regulatory requirements. In the meantime, the Department may address the suggestions through training or technical assistance. At the same time, the Department is under time constraints by the Federal Administration of Children and Families (ACF) to implement the changes as prescribed by the CCDBG. If the Department does not implement these changes immediately, it could incur a fiscal penalty from ACF.

For these reasons, the Department will not adopt them in this final-form rulemaking.

Chapter 3290—Family Child Care Homes

General comments

One commentator responded in general agreement with the proposed rulemaking.

Response

The Department appreciates the support to more closely align the three chapters of regulations.

§ 3290.2—*Purpose*

Several commentators commented on this provision. Some commentators agreed with the change because it offers better protection of health and safety for the children in care. Other commentators agreed with aligning the family child care home requirements with the group child care home and child care center requirements so that all facilities throughout this Commonwealth are subject to the same regulatory requirements and are certified.

Response

The Department acknowledges the support to align the requirements for applicants who wish to operate certified family child care homes with those who wish to operate certified child care centers and certified group child care homes. Further, in support of aligning the family child care home requirements with the group child care home and child care center requirements so that all child care facilities operate from the same standards, the Department is removing the waiver for age and training requirements under § 3290.25(c) (relating to waivers). After review and careful consideration of the comments sup-

porting alignment of the chapters, the Department determined there is no regulatory justification for permitting waivers for age and training requirements at family child care homes and not at any other type of certified child care facility. Therefore, the Department is not permitting a waiver of age and training requirements for family child care home facility persons to maintain consistency, as such waivers are not permitted for age and training requirements at child care centers and group child care homes.

In further support of alignment of the three chapters, the Department is also replacing the current requirements relating to fire drills for family child care homes with provisions that align with the requirements for group child care homes and child care centers. The Department is making changes to § 3290.94 that prescribe the frequency of required fire drills at family child care homes, which is at least every 60 days, and that the facility must maintain a written record of the fire drills.

§ 3290.3—*Applicability*

Five commentators responded to the proposed change aligning the family child care home requirements with the requirements for child care centers and group child care homes. Some commentators agreed with the change because it offers better protection of health and safety for the children in care. Other commentators agreed with aligning the family child care home requirements with the group child care home and child care center requirements so that all facilities throughout this Commonwealth operate from the same standards and are certified.

Response

The Department appreciates the support to more closely align the three chapters of regulations.

§ 3290.4—*Definitions—“Operator”*

One commentator disagreed with the proposed definition of “operator” because it would negatively impact the maximum number of children in care and result in financial hardship to the staff and operators to find child care for their own children and grandchildren. The commentator also noted that such staff and operators with their own children and grandchildren are ineligible for participation in the Department’s subsidized child care program.

Response

The Department is maintaining these provisions because the change in definition aligns with the definition of “operator” in the other two chapters for certified facilities in §§ 3270.4 and 3280.4 (relating to definitions). Operators’ children and grandchildren are considered related for purposes of determining whether the operator is providing care for too many children at any one time. Additionally, the family child care home operators’ related children and grandchildren are not included in the count of four, five or six unrelated children. Finally, as previously provided, the requirements under the subsidized child care regulations are not a part of this final-form rulemaking. As such, the suggestion is outside the scope of this final-form rulemaking.

§ 3290.4—*Definitions—“Relative”*

Four commentators commented on the expanded definition of “relative” in the proposed rulemaking. Two commentators disagreed with the revised definition because of the lack of a maximum number of “related” children that can be cared for by a family child care operator and the lack of ratio requirements. They suggested the De-

partment adopt the same staff:child ratios and space requirements for family child care homes as exist for group child care homes for unrelated and related children.

Other commentators agreed and suggested the Department consider requiring staff:child ratios and space requirements to apply to related and unrelated children because there is no limit on the maximum number of related children in care.

Response

The definition of “relative” in this final-form rulemaking is the same definition as codified in statute under section 1001 of the act (62 P.S. § 1001). As such, the Department is not changing the definition. The Department also notes that staff:child ratio requirements in a family child care home are limited to one caregiver to a maximum of six unrelated children. Because of the statutory limits on the numbers of unrelated children allowed in care at any one time in family child care homes, and because of the Department’s experience in monitoring compliance at family child care homes, the current staff:child ratio is sufficient to safeguard the health and safety of children in care. The Department may address these concerns through training or technical assistance on a case-by-case basis, or through a future regulatory update.

§ 3290.11—*Application for and issuance of a certificate of compliance*

IRRC commented that the proposed regulation describes family child care homes as facilities providing care for “up to six unrelated children” and is requesting clarification on why the language does not align with the definition of “family child care home.”

Response

The Department concurs with IRRC’s comment and is changing the terminology in this final-form rulemaking to reflect consistency with the definition of “family child care home” as care for “four, five or six children unrelated to the operator” under subsection (c). Similarly, to further align requirements, even though the Department will conduct one unannounced inspection every 12 months, the Department is clarifying in § 3290.11(p), which aligns with the provisions of the other two chapters in §§ 3270.11(k) and 3280.11(l), that it will conduct additional unannounced inspections whenever the Department receives complaints of alleged regulatory non-compliance made against operators.

Also, the Department is changing all references to a certificate of registration to certificate of compliance in this final-form rulemaking to clarify that the requirements are aligned with the requirements for child care centers and group child care homes.

§ 3290.13—*Appeals*

One commentator noted agreement with the changes in language for appeals for family child care homes.

Response

The Department appreciates the support to more closely align the three chapters of regulations by including appeals requirements for family child care home operators that align with the same requirements for child care centers and group child care homes.

§ 3290.31(a)(2)—*Age and training*

Three commentators disagreed with the proposed requirement to have a high school diploma or general

educational development (GED) certificate because the requirement is a burden to operators and families and the requirement should only apply to new operators. The commentators suggested that the Department should grandfather in current operators.

In addition, IRRC requests clarification of the time the operator or staff will have to produce documentation of a high school diploma or general education development certificate (GED) to meet the requirement.

Response

The Department is adding language in this final-form rulemaking to clarify that the requirement is that a family child care home operator must provide documentation of a high school diploma or GED no later than the second renewal of the certificate of compliance, which is sufficient time to obtain such documentation. The Department is deleting the term “initial application,” which was included in the proposed rulemaking, to provide the operator a longer time frame to obtain the GED or high school diploma.

Operators without a GED or high school diploma who were permanently grandfathered in under the 2008 regulatory revisions will continue to be grandfathered in under § 3290.213 if they are still providing child care services. The Department will not consider grandfathering in any operators that began operating after the effective date of the 2008 regulatory revisions. Requiring an operator to obtain a GED or high school diploma reflects a minimum level of literacy sufficient to comply with the regulations and operate a small business, which furthers the health and safety interests of all the children in care.

§ 3290.51—*Maximum number of children*

Two commentators disagreed with the limitation of the number of children in care. The first commentator disagreed the limitation in the proposed rulemaking because it would negatively impact the maximum number of allowed children in care and result in financial hardship to the staff and operators to find child care for their own children and grandchildren. The commentator also noted that such staff and operators with their own children and grandchildren are ineligible for participation in the Department’s subsidized child care program. The second commentator disagreed because two or more operators in a family child care home would provide enough supervision for all the children, whether related or unrelated.

Response

The Department is maintaining the language from the proposed regulation in this final-form rulemaking. An operator’s children and grandchildren are considered related for purposes of determining whether the operator is providing care for too many children at any one time. The family child care home operators’ related children and grandchildren are not included in the count of four, five or six unrelated children. As stated previously, the subsidized child care regulations are not a part of this rulemaking. As such, the comment related to subsidized child care is outside the scope of this rulemaking. The Department may address remaining concerns through training or technical assistance on a case-by-case basis, or through a future regulatory amendment that restricts the number of children irrespective of relationship.

§ 3290.52—*Ratio requirements*

One commentator requested clarification about whether it was permitted for family child care homes that had six of their own children to watch six unrelated children as well.

Response

The arrangement is permissible under Article X of the act as well as the current regulation.

§ 3290.113(f)—*Supervision of children*

Fifteen commentators commented regarding the requirement for a monitoring device, with several noting agreement. A few commentators disagreed with the requirement, with most expressing concern over costs. Several commentators suggested the Department assist operators with finding resources to help pay for the equipment. One commentator who disagreed with the monitoring requirement stated the standards were unclear. Another commentator disagreed with the requirement because the children are always in sight. Another commentator requested clarification about where the children should be located in the home when monitoring devices are in use. That same commentator suggested adding a provision to require the use of photo tags. One commentator who agreed with the use of monitoring suggested the requirement should apply to all facilities and not only family child care homes.

IRRC also commented on this provision, much of which echoed the concerns of the commentators. IRRC requested clarification about whether any alternative regulatory provisions were considered and rejected and whether alternate, less costly technologies such as a mirror satisfy the requirement. IRRC further commented that the terminology “sight technological device” is unclear and suggested it be clarified.

IRRC also inquired whether other states’ policies regarding video monitors were considered. IRRC also inquired regarding the Department’s statutory authority to require video monitoring in family child care homes. In addition, IRRC requests clarification on whether a video monitor is required and whether it must also have audio capabilities. IRRC also inquired on how an operator will be able to determine the appropriate number of devices needed to comply with the requirement. Finally, IRRC inquired how the Department will implement this provision and inform the regulated community.

Response

The Department is making significant changes to this section to address the concerns of the commentators and the IRRC. With respect to the several requests for the Department to assist operators with finding resources to help pay for any needed equipment, the Department understands that this requirement may increase costs but notes that this final-form rulemaking strikes an appropriate balance between the added protection to the health and safety of children in care and any added costs to purchase a monitoring device or secure an additional staff person to ensure supervision. The Department will provide support and consultation relating to a business plan involving implementation.

The Department acknowledges and declines the suggestion to require the use of photo tags because it was not a part of the proposed rulemaking and the Department will not add it here. The Department, however, will address the suggestion through training, technical assistance and when advising on best practices.

The Department is also not adopting the suggestion to extend this monitoring requirement to all certified child care facilities. The rationale of this final-form rulemaking is to permit family child care operators the option to utilize a monitoring means to address potential lapses in supervision inherent to family child care homes. Some

family child care home operators may not have any need to purchase and use a monitoring means due to the presence of additional staff who can ensure supervision at all times.

Regarding regulatory alternatives, the Department considered the regulatory alternative of requiring the operator to have an additional staff person to ensure supervision. The Department rejected that alternative because it could cost a family child care home operator up to \$88 per day to employ a second staff person who is working an 8-hour shift. As noted above in the Fiscal Impact section, this final-form rulemaking clarifies that the use of a mirror may satisfy this monitoring requirement. Further, in response to IRRC’s comment, the Department also deleted the term “sight technological device” and made additional changes to this final-form rulemaking to clarify that the requirement concerns supervision and not mere sight.

Although the Department is not aware of any other states with an analogous regulatory requirement to ensure supervision through the use of monitoring devices, the Department embraces the requirements after certifying family child care homes since 2016, which have demonstrated how a lack of proper supervision in family child care homes can lead to injuries to the children in care.

As previously discussed, the Department reached out to the regulated community to ask about the types of monitoring devices operators intended to use to meet the requirement. Following review of their feedback, the Department estimates total Statewide one-time costs for all family child care homes that will purchase a monitoring device to be \$88,900. As mentioned previously, the Department understands that the requirement for a monitoring means may increase costs but notes that this final-form rulemaking strikes an appropriate balance between the added protection to the health and safety of children in care and any added costs to ensure supervision. As noted, the Department may address remaining concerns with costs upon implementation.

In addition, the Department’s statutory authority to establish the requirement to better protect the health and safety of children in care is under Article X of the act, which authorizes the Department to promulgate the regulations and establish and enforce health and safety standards. The requirement for a monitoring device does not implicate privacy concerns because the purposes and uses of such a device is for the purpose of assisting the caregiver with supervision only and not to record. The Department is assuring that staff persons in a family child care home meet the supervisory responsibilities under §§ 3290.4 and 3290.113(a).

The Department’s final-form rulemaking requires monitoring assistance when an operator cannot meet the supervision requirements in §§ 3290.4 and 3290.113(a), which includes the ability to see, hear, direct and assess the children at all times, because of restroom breaks or preparing meals or snacks. This final-form rulemaking allows for a monitoring means to be used to ensure continuous supervision of children through the use of an electronic monitor, camera, mirror or other device or method so that the operator can see, hear, direct and assess the children in real time at all times. The Department, however, is allowing the operator discretion in selecting the monitoring means because: (1) the technology changes so quickly; (2) the cost of implementing such means varies depending on the needs of the individual home; (3) of the length of time the device needs to be

utilized; and (4) of differences in the layout of the home. Further, the requirement to utilize a monitoring means pertains only to situations involving facilities with only one operator who is unable to properly supervise all the children in care during times the operator is performing tasks relating to child care, such as when preparing snacks or meals or when using the restroom. The revised language in this final-form rulemaking also reflects that the periods of time using the monitoring means are to last only for the time required to complete the tasks, that the operator must remain on the child care premises when utilizing the monitoring means and that the operator must describe how the monitoring means will be used to ensure supervision in its supervision polices, as required by § 3290.121(a) (relating to application). This final-form rulemaking also allows options for the operator to consider when requiring a monitoring means. The operator may not need a video monitor with audio capabilities depending on the layout of the home or if the operator is using another monitoring means.

Further, this final-form rulemaking allows options for the operator to consider when requiring a monitoring means. The number of devices that an operator may need may vary because it depends on several factors, including the layout of the home and the use of an alternate staff person. Some family child care home operators may not need to purchase and use a monitoring device due to the presence of additional staff who can supervise the children when the operator is taking a restroom break or preparing meals. Currently, an estimated 12% of family child care home operators responded to a survey that they employ a second staff person. If an additional staff person is not present, the operator must deploy a monitoring means to ensure that all supervision requirements are met. If an operator uses a video camera to see the children but can still hear, direct and assess the children, depending on how the rooms are configured, the operator may not need a video camera with audio capabilities. There are many similar scenarios involving the use of a monitoring means that could be viable depending upon the layout of the family child care home. Because of these differences of facility staffing and layout, the Department cannot prescribe required locations for all children in care at all child care facilities throughout the Commonwealth. The Department, however, will provide technical assistance and training upon implementation to assist operators with meeting the requirement.

Lastly, the Department will also conduct informational sessions with the regulated community. At these sessions, the Department will provide information on its web site; offer technical assistance on how to meet the regulatory requirements; offer information about resources available to assist with costs; and consider technical assistance suggestions about the use of photo tags or other means to assist with the supervision of children in family child care homes.

§ 3290.113(g)—*Supervision of children*

Thirteen commentators commented on the requirements related to the provision of 24-hour services. Most commentators agreed with the provision, although several commentators disagreed. The commentators noting disagreement primarily did so over financial concerns and concerns over the difficulty with securing additional staff. These responses were generally not in support of requiring a second caregiver. Another commentator requested that a regulation be added requiring napping infants to be checked every 15 to 20 minutes.

IRRC also requested clarification on whether the hours worked need to be consecutive. IRRC reiterates the commentator's concern that the costs to cover additional staff will be passed on to families and notes that it may force them to seek unrelated care. IRRC encourages the Department to reach out to the regulated community to address their concerns. IRRC also inquired whether the costs for an additional caregiver were considered and whether the costs for an additional caregiver can be included in the calculations for the cost of implementation of the regulation.

Response

The Department is not adding the term "consecutive" into this final-form rulemaking. The hours worked need not be consecutive because such language could frustrate the intent of this final-form rulemaking, which is to limit the number of hours one person may care for children in any given 24-hour period. The 16-hour limit is designed to prevent sleep deprivation from affecting the health and safety of children in care. As previously discussed, the Department also performed an updated fiscal analysis that includes a breakdown of the costs for securing a second staff person. The fiscal analysis is discussed previously and also included in the Department's RAF. Approximately 20% of the certified family child care homes Statewide offer 24-hour care. There is a cost to offering the care, but the cost only exists when the family child care home operator actually provides services to children in care overnight. Furthermore, some operators offering such care may not experience having children in care during those hours due to parent work schedules, holidays or other arrangements made by the parents. The Department notes that New York requires an additional staff person for 24-hour care in a family child care home. The Department acknowledges that providing care for more than 16 hours, regardless of whether those hours are consecutive, is a challenge for an operator. The Department further understands that family child care homes try to address the needs of families and that overnight care is one of those needs. The Department acknowledges that it is difficult to come up with a strategy to replace the operator or staff person because a person is needed to satisfy the supervisory requirement. In addition, when operators serve children and remain awake for these additional 8 hours, such practice endangers the health and safety of children in care. Research has shown that sleep deprivation diminishes attention and impairs one's ability to adapt to changing conditions. Operators that work 16 hours or more in a 24-hour period may also experience some of these effects, thereby diminishing the operator's ability to meet the regulatory requirements for supervision. The requirement, therefore, strikes an appropriate balance between limiting the hours an operator can work in a 24-hour period and the health and safety interests of children in care. The Department acknowledges that some families may choose unregulated care for 24-hour care because it may be less costly. Families must realize, however, that regardless of the setting in which the child receives overnight care, the caregiver or staff person must be awake at all times to properly supervise the child, even when the child is sleeping. The requirements for certified family child care homes under this final-form rulemaking help to ensure that children who are sleeping are properly supervised. The Department acknowledges the importance of infant sleep position and supervision and is clarifying that all children must be supervised at all times, including during

nap time. The Department declines the request to prescribe required periods for supervision because supervision is required at all times.

§ 3290.213—Age and Training

IRRC requested clarification of what a “permanently-qualified” operator is and whether it is subject to the same regulatory requirements.

Response

A “permanently qualified” operator refers to an operator who, under the 2008 regulatory update, was grandfathered in without a GED or high school diploma. If the operator is still providing care on the effective date of this final-form rulemaking, the operator is not required to obtain a GED or high school diploma. A “permanently qualified” operator; however, is still subject to all other regulatory requirements.

Regulatory Analysis Form (RAF)

IRRC commented that the Department’s response to Question # 25 of the RAF was nonresponse.

Response

The Department responded and further clarified its response to Question # 25 of the RAF in this final-form rulemaking. For this final-form rulemaking, there are no provisions specifically developed for minorities, elderly, small businesses or farmers. These regulations are licensure requirements for the health and safety for all children in licensed child care facilities. The Department considered various populations, including minorities, the elderly, small businesses and farmers, when it established the current regulations and developed this final-form rulemaking. Neither the existing regulations nor this final-form rulemaking differentiates between these specific populations because the underlying concern of the regulatory requirements is to better protect the health and safety of all children in care at all child care facilities throughout this Commonwealth.

Although small businesses are impacted by this final-form rulemaking, all child care facilities are impacted irrespective of the size of the business that owns or operates the facility. The current regulations and this final-form rulemaking prescribe different requirements only as between child care centers, group child care homes and family child care homes. These differences concern the number of children in care and not the size of the business, and such differences are codified by the three different chapters.

To date, the regulations have not resulted in any known disparity between the special populations for minorities, the elderly, small businesses and farmers. There are no changes being made in this final-form rulemaking to specifically address these groups because there are no known disparities amongst them. The Department will consider any concerns that arise with respect to these special populations or groups upon implementation of this final-form rulemaking, as well as through training and technical assistance.

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 14, 2020, the Department submitted a copy of the notice of proposed rulemaking, published at 48 Pa.B. 6564 to IRRC and the Chairpersons of the House Committee on Children and Youth and the Senate Committee on Health and Human Services for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on October 14, 2020, the final-form rulemaking was approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 15, 2020, and approved the final-form rulemaking.

Findings

The Department finds that:

(a) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), known as the Commonwealth Documents Law and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(b) The adoption of this final-form regulation in the manner provided by this order is necessary and appropriate for the administration and enforcement of the act.

Order

The Department, acting under Articles IX and X of the act, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapters 20, 3270, 3280 and 3290, are amended by adding §§ 3270.95, 3280.95, 3290.95; deleting §§ 3270.232, 3270.233, 3280.212—3280.215, 3290.12, 3290.211 and 3290.212; and amending §§ 20.2, 3270.1—3270.3, 3270.4, 3270.11, 3270.15, 3270.16, 3270.19, 3270.24, 3270.25, 3270.27, 3270.31, 3270.32—3270.34, 3270.61, 3270.79, 3270.94, 3270.115, 3270.161, 3270.166, 3270.171, 3270.184, 3270.221, 3270.231, 3270.241, 3280.1—3280.3, 3280.4, 3280.11, 3280.15, 3280.18, 3280.23, 3280.24, 3280.26, 3280.31, 3280.32—3280.34, 3280.94, 3280.115, 3280.166, 3280.171, 3280.184, 3280.221, 3290.1—3290.4, 3290.11, 3290.13, 3290.14, 3290.16, 3290.21, 3290.22, 3290.23, 3290.24, 3290.25, 3290.31, 3290.32, 3290.51, 3290.52, 3290.94, 3290.113, 3290.151, 3290.166, 3290.184 and 3290.213 to read as set forth in Annex A of this order.

(Editor’s Note: Proposed §§ 3041.13, 3270.131, 3280.131 and 3290.131 have been withdrawn and are not being amended in this final-form rulemaking.)

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of 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 final-form publication in the *Pennsylvania Bulletin*, except that current staff in child care facilities have 180 days from the effective date of this final-form rulemaking to meet the requirements in §§ 3270.31(f), 3280.31(f) and 3290.31(g).

TERESA D. MILLER,
Secretary

(Editor’s Note: See IRRC’s approval order at 50 Pa.B. 6096 (October 31, 2020).)

Fiscal Note: Fiscal Note 14-542 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 55. HUMAN SERVICES

PART I. DEPARTMENT OF HUMAN SERVICES

Subpart C. LICENSING/APPROVAL

CHAPTER 20. LICENSURE OR APPROVAL OF FACILITIES AND AGENCIES

GENERAL PROVISIONS

§ 20.2. Applicability.

(a) This chapter applies to facilities and agencies subject to licensure or approval under Articles IX and X of the Human Services Code (62 P.S. §§ 901—922 and 1001—1080).

(b) This chapter applies in addition to applicable program licensure or approval regulations.

PART V. CHILDREN, YOUTH AND FAMILIES MANUAL

Subpart D. NONRESIDENTIAL AGENCIES, FACILITIES AND SERVICES

ARTICLE I. Licensing/Approval

CHAPTER 3270. CHILD CARE CENTERS

GENERAL PROVISIONS

§ 3270.1. Introduction.

This chapter is promulgated to facilitate the safe and healthful care of a child in a child care center and to support families by providing care that promotes the emotional, cognitive, communicative, perceptual-motor, physical and social development of the child.

§ 3270.2. Purpose.

The purpose of this chapter is to provide standards to aid in protecting the health, safety and rights of children and to reduce risks to children in child care centers. This chapter identifies the minimum level of compliance necessary to obtain the Department's certificate of compliance.

§ 3270.3. Applicability.

* * * * *

(c) A legal entity seeking to operate a child care facility as defined in this chapter shall apply for an initial or renewal certificate of compliance in accordance with the requirements established in Chapter 20 (relating to licensure or approval of facilities and agencies).

* * * * *

§ 3270.4. Definitions.

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

ACIP—The Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, United States Department of Health and Human Services.

Act—The Human Services Code (62 P.S. §§ 101—1503).

* * * * *

Certificate of compliance—A document issued by the Department to a legal entity permitting the entity to operate a specific type of facility at a specific location for a specific period of time according to applicable Department regulations. A certificate of compliance approves the operation of a facility subject to Article IX of the act

(62 P.S. §§ 901—922) or licenses the operation of a facility subject to Article X of the act (62 P.S. §§ 1001—1088).

* * * * *

Child care center—The premises in which care is provided at any one time for seven or more children unrelated to the operator.

* * * * *

Facility—A child care center.

* * * * *

Parent—The biological or adoptive mother or father, legal guardian or foster mother or father of the child.

* * * * *

Public water system—A system for the provision to the public of water for human consumption that has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. The term includes:

(i) Collection, treatment, storage and distribution facilities under the control of the operator of the system and used in connection with the system.

(ii) Collection or pretreatment storage facilities not under control of the operator which are used in connection with the system.

(iii) A system which provides water for bottling or bulk hauling for human consumption.

Relative—A parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half brother, half sister, aunt, uncle, niece or nephew. As applied to facilities subject to approval under Article IX of the act, the term also includes a stepbrother, stepsister or first cousin.

School-age care—Supervised child care in a Departmentally certified facility during the hours when a child is not required to attend school.

* * * * *

Staff person—A person included in the staff:child ratio who is responsible for child care activities.

* * * * *

Volunteer—A person 16 years of age or older who is not included in the staff:child ratio and who assists in implementing daily program activities under the supervision of a staff person.

* * * * *

GENERAL REQUIREMENTS

§ 3270.11. Application for and issuance of a certificate of compliance.

* * * * *

(b) A legal entity or a representative of the legal entity shall participate in an orientation training provided by the Department within 12 months prior to commencing operation of the child care center. The orientation does not count toward the annual minimum of 12 clock hours of child care training required in § 3270.31(e) (relating to age and training).

(c) Prior to issuance of a certificate of compliance, the legal entity or representative of the legal entity shall complete professional development in each of the following topics:

(1) Prevention and control of infectious diseases (including immunization) and the establishment of a grace period that allows homeless children and children in foster care to receive services under this subchapter while their families (including foster families) are taking neces-

sary action to comply with immunization and other health and safety requirements.

(2) Prevention of Sudden Infant Death Syndrome and use of safe sleep practices.

(3) Administration of medication, consistent with standards for parental consent.

(4) Prevention of and response to emergencies due to food and allergic reactions.

(5) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic.

(6) Prevention of shaken baby syndrome and abusive head trauma.

(7) Emergency preparedness and response planning for emergencies resulting from a natural disaster or a man-caused event (such as violence at a child care facility) within the meaning of those terms under section 602(a)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C.A. § 5195a(a)(1)).

(8) Handling and storage of hazardous materials and appropriate disposal of biocontaminants.

(9) Precautions when transporting children.

(10) Pediatric first aid and pediatric cardiopulmonary resuscitation.

(d) Completion of professional development shall be documented by the signature and title of a representative of the professional development entity and include the date the professional development was completed. Documentation shall be included with the application when it is submitted to the regional office. Documentation of the completion of professional development under subsection (c) taken from September 30, 2016, forward satisfies this requirement.

(e) Application for a certificate of compliance shall be submitted to the appropriate regional child care office in accordance with Chapter 20 (relating to the licensure or approval of facilities and agencies).

(f) A certificate of compliance is issued in the manner described in Chapter 20, for a period not to exceed 12 months from the date of issue.

(g) An agent of the Department will annually conduct at least one onsite unannounced inspection of a child care facility.

(h) The facility is subject to announced and unannounced inspections in accordance with § 3270.24(b) (relating to Departmental access).

(i) Except for § 20.32 (relating to announced inspections), the requirements in Chapter 20 (relating to licensure or approval of facilities and agencies) apply to child care facilities.

(j) Sanctions relating to the status of a certificate of compliance are applied under the authority of applicable sections of the act, Chapter 20 and this chapter.

(k) A facility whose certificate of compliance is current as of December 19, 2020, will not be inspected under this chapter until the current certificate of compliance is due to be renewed or when a regulatory violation is alleged and the Department responds to the alleged violation with an inspection.

§ 3270.15. Building codes.

(a) A certificate of compliance will not be granted by the Department until the legal entity provides a certificate of occupancy as proof of compliance with the applicable requirements of the Department of Labor and Industry in 34 Pa. Code § 403.23 (relating to child day care facilities) and under section 1016(c) of the act (62 P.S. § 1016(c)).

(b) The legal entity shall maintain ongoing compliance with the applicable requirements prescribed by the Department of Labor and Industry in 34 Pa. Code § 403.23 and under section 1016(c) of the act at all times following issuance of any certificate of compliance issued by the Department under this chapter.

§ 3270.16. Dual licensure.

If a facility meets the definition of both a private academic school under the authority of the Department of Education and a child care center under the authority of the Department, the legal entity shall apply for approval to operate from both Departments. The facility shall comply with 22 Pa. Code Part II (relating to State Board of Private Academic Schools) and this chapter.

§ 3270.19. Child abuse reporting.

* * * * *

(b) A facility person who has reasonable cause to suspect that a child is a victim of child abuse shall immediately make a report of suspected child abuse to ChildLine through the hotline at 1 (800) 932-0313, online, or any other method as prescribed by the Department.

* * * * *

§ 3270.24. Departmental access.

* * * * *

(c) An agent of the Department will inspect for compliance with this chapter in all areas of the facility premises that are accessible to children.

(d) An agent of the Department will annually conduct at least one onsite unannounced inspection of a child care facility.

(e) An announced inspection will be conducted by the Department prior to the issuance of the initial certificate of compliance.

(f) A valid photo identification of the director or designated staff person who is responsible for compliance with this chapter shall be provided to the agent of the Department at the time of inspection.

§ 3270.25. Availability of certificate of compliance and applicable regulations.

(a) The facility's current certificate of compliance shall be posted in a conspicuous location used by parents. The operator shall provide the parent of each child enrolled with information on how to access the regulations in this chapter electronically and with instructions for contacting the appropriate regional child care office.

* * * * *

§ 3270.27. Emergency plan.

(a) The facility shall have an emergency plan that provides for:

(1) Shelter of children during an emergency including lock-down, shelter in place at the facility and shelter at locations away from the facility premises.

(2) Evacuation of children from the facility building and evacuation of children to a location away from the facility premises. The evacuation routes and evacuation

plans to exit the building may be the same as those required by § 3270.94 (relating to fire drills).

(3) A method for facility persons to contact parents as soon as reasonably possible when an emergency situation arises.

(4) A method for facility persons to inform parents that the emergency has ended and to provide instruction as to how parents can safely be reunited with their children.

(5) Accommodations for infants, toddlers, children with disabilities and children with chronic medical conditions.

(6) Emergency drills shall be conducted annually. Annual emergency drills shall be documented and on file at the facility.

(b) The operator shall review the emergency plan at least annually and update the plan as needed. Each review and update of the emergency plan shall be documented in writing and kept on file at the facility.

* * * * *

(f) The operator shall send a copy of the emergency plan and subsequent plan updates to the local municipality and to the county emergency management agency.

FACILITY PERSONS

§ 3270.31. Age and training.

(a) A volunteer shall be 16 years of age or older and shall be directly supervised at all times by a staff person.

(b) A staff person shall be 18 years of age or older.

(c) An individual 16 years of age or older who is enrolled in an approved training curriculum may be used as a staff person, if the following guidelines are met:

(1) The curriculum is conducted by an institution approved by the Department of Education and accredited by an accrediting agency recognized by the United States Department of Education or the Council on Postsecondary Education and acceptable to the Department of Education.

(2) The curriculum includes acceptable training topics referenced in subsection (e)(2).

(3) The curriculum includes a minimum total of 600 clock hours, distributed as follows:

(i) A minimum of 400 clock hours of classroom training.

(ii) A minimum of 200 clock hours of supervised training in a child care facility.

* * * * *

(e) A staff person shall obtain an annual minimum of 12 clock hours of child care training.

* * * * *

(4) Depending on the provisions of the appropriate regulation, training may be required for certain staff persons. The following constitutes competence in training areas:

(i) *Pediatric first-aid training and pediatric cardiopulmonary resuscitation (CPR)*. Competence is the completion of training by a professional in the field of first-aid and cardiopulmonary resuscitation (CPR). All staff persons shall renew their certification in pediatric first aid and pediatric CPR on or before the expiration of the most current certification.

* * * * *

(f) Staff persons shall complete professional development in the following topics within 90 days of hire:

(1) Prevention and control of infectious diseases (including immunization) and the establishment of a grace period that allows homeless children and children in foster care to receive services under this subchapter while their families (including foster families) are taking necessary action to comply with immunization and other health and safety requirements.

(2) Prevention of Sudden Infant Death Syndrome and use of safe sleep practices.

(3) Administration of medication, consistent with standards for parental consent.

(4) Prevention of and response to emergencies due to food and allergic reactions.

(5) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water and vehicular traffic.

(6) Prevention of shaken baby syndrome and abusive head trauma.

(7) Emergency preparedness and response planning for emergencies resulting from a natural disaster or a man-caused event (such as violence at a child care facility) within the meaning of those terms under section 602(a)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C.A. § 5195a(a)(1)).

(8) Handling and storage of hazardous materials and appropriate disposal of biocontaminants.

(9) Precautions when transporting children.

(10) Pediatric first aid and pediatric cardiopulmonary resuscitation.

(g) Completion of professional development shall be documented by the signature and title of a representative of the professional development entity and include the date professional development was completed. Documentation shall be retained in the facility person's file or maintained in an electronic system as designated by the Department. Documentation of the completion of the professional development under subsection (f) taken from September 30, 2016, forward satisfies this requirement.

(h) All staff persons shall complete the professional development under subsection (f).

(i) Professional development under subsection (f) may count towards the annual clock hours in subsection (e) on a one-time basis.

(j) Staff persons shall obtain available ongoing professional development relating to the health and safety topics as specified in subsection (f) prior to obtaining professional development in other topics as permitted in subsection (e)(2).

§ 3270.32. Suitability of persons in the facility.

* * * * *

(b) Questions relating to the requirements of the CPSL shall be directed to the appropriate regional child care office.

* * * * *

§ 3270.33. General requirements for facility persons.

* * * * *

(d) One or more facility persons competent in pediatric first aid and pediatric cardiopulmonary resuscitation techniques shall be at the facility when one or more children are in care.

§ 3270.34. Director qualifications and responsibilities.

(c) A director shall be employed by a facility and be present at the facility site a minimum of 30 hours per week.

PHYSICAL SITE

§ 3270.61. Measurement and use of indoor child care space.

(i) The total number of children receiving child care services at the facility at any one time may not exceed the facility's maximum capacity.

§ 3270.79. Firearms.

Weapons, firearms and ammunition are prohibited in a child care center.

FIRE SAFETY

§ 3270.94. Fire drills.

(a) The Director or designated staff person who is responsible for compliance with this chapter shall conduct fire drills and ensure that:

(1) Fire drills are conducted at least once every 60 days.

(2) Fire drills are conducted at different times of the day or night, or both, if applicable.

(3) Fire drills are conducted during various program activity times.

(4) The hypothetical locations of the fire are rotated around the facility for each drill such that the hypothetical location is never the same for consecutive drills.

(5) Evacuation routes are posted in a conspicuous location on each floor of the facility.

(6) Evacuation plans provide for the removal of all persons from the facility in a single trip.

(7) Facility persons and children in attendance participate in the fire drill.

(8) Facility persons and children exit the building, weather permitting.

(9) A written record is maintained on file at the facility indicating the specific time of day of the drill, the hypothetical location of the fire, the evacuation time, and the names of the facility persons and the number of children who participate in the fire drill.

§ 3270.95. Fire detection.

(a) Fire detection devices or systems must be in compliance with standards established under section 1016(c) of the act (62 P.S. § 1016(c)).

(b) The Director or designated staff person who is responsible for compliance with this chapter shall ensure the requirements under subsection (a) are met.

PROGRAM

§ 3270.115. Water activity.

(b) Wading.

(1) Staff persons shall supervise children in care using wading pools. Staff: child ratios in subsection (a) apply when children are wading.

NUTRITION

§ 3270.161. Food.

(b) Food handling practices shall conform to the requirements of the Department of Health or the Department of Environmental Resources or its delegate agency where the child care facility is located.

§ 3270.166. Meals for infants.

Meals for infants shall be provided in accordance with the following requirements:

(7) Neither bottled formula nor human milk may be heated in a microwave.

TRANSPORTATION

§ 3270.171. Pick-up and drop-off points.

(a) An operator shall notify local traffic safety authorities annually in writing of the location of the facility and the program's use of pedestrian and vehicular routes around the child care facility.

§ 3270.184. Release of information.

(a) The parent shall have access to the child's complete child care record.

HEAD START PROGRAMS

§ 3270.221. Certificate of compliance.

Child care programs that meet the requirements of this chapter are issued a certificate of compliance. When child care services are operated before or after the Head Start Program, that portion of the extended day which meets the definitions of this chapter shall receive a certificate of compliance.

SPECIAL EXCEPTIONS

§ 3270.231. Staff qualifications.

(a) Staff persons employed in a child care center prior to April 2, 1978, permanently qualify for their position, as long as the staff qualifications in effect as of September 1, 1977, are met.

§ 3270.232. Reserved.

§ 3270.233. Reserved.

SCHOOL-AGE PROGRAMS

§ 3270.241. Requirements specific to school-age programs.

(a) If a child is required to be enrolled in public or private school under the Public School Code of 1949 (24 P.S. §§ 1-101—27-2702) and if the child is not enrolled and if the child is not exempted from enrollment under the Public School Code, a child care facility may not admit the child for care during the hours when the child is required by law to attend public or private school.

CHAPTER 3280. GROUP CHILD CARE HOMES

GENERAL PROVISIONS

§ 3280.1. Introduction.

This chapter is promulgated to facilitate the safe and healthful care of a child in a group child care home and to support families by providing care that promotes the

emotional, cognitive, communicative, perceptual-motor, physical and social development of the child.

§ 3280.2. Purpose.

The purpose of this chapter is to provide standards to aid in protecting the health, safety and rights of children and to reduce risks to children in group child care homes. This chapter identifies the minimum level of compliance necessary to obtain the Department's certificate of compliance.

§ 3280.3. Applicability.

* * * * *

(c) A legal entity seeking to operate a child care facility as defined in this chapter shall apply for an initial or renewal certificate of compliance in accordance with the requirements established in Chapter 20 (relating to licensure or approval of facilities and agencies).

* * * * *

§ 3280.4. Definitions.

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

ACIP—The Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, United States Department of Health and Human Services.

Act—The Human Services Code (62 P.S. § § 101—1503).

* * * * *

Certificate of compliance—A document issued by the Department to a legal entity permitting the entity to operate a specific type of facility at a specific location for a specific period of time according to applicable Department regulations. A certificate of compliance approves the operation of a facility subject to Article IX of the act (62 P.S. §§ 901—922) or licenses the operation of a facility subject to Article X of the act (62 P.S. §§ 1001—1088).

* * * * *

Facility—A group child care home.

* * * * *

Group child care home—The premises in which care is provided at one time for more than 6 but fewer than 16 older school-age level children or more than 6 but fewer than 13 children of another age level who are unrelated to the operator. The term includes a facility located in a residence or other premises.

* * * * *

Parent—The biological or adoptive mother or father, legal guardian or foster mother or father of the child.

* * * * *

Potentially hazardous food—A food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish or other ingredients capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms.

Relative—A parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half brother, half sister, aunt, uncle, niece or nephew. As applied to facilities subject to approval under Article IX of the act, the term also includes a stepbrother, stepsister or first cousin.

School-age care—Supervised child care in a Departmentally certified facility during the hours when a child is not required to attend school.

* * * * *

Staff person—A person included in the staff:child ratio who is responsible for child care activities.

* * * * *

Volunteer—A person 16 years of age or older who is not included in the staff:child ratio and who assists in implementing daily program activities under the supervision of a staff person.

* * * * *

GENERAL REQUIREMENTS

§ 3280.11. Application for and issuance of a certificate of compliance.

* * * * *

(b) A legal entity or a representative of the legal entity shall participate in an orientation training provided by the Department within 12 months prior to commencing operation of the group child care home. The orientation does not count toward the annual minimum of 12 clock hours of child care training required in § 3280.31(e) (relating to age and training).

(c) Prior to issuance of a certificate of compliance, the legal entity or representative of the legal entity shall complete professional development in each of the following topics:

(1) Prevention and control of infectious diseases (including immunization) and the establishment of a grace period that allows homeless children and children in foster care to receive services under this subchapter while their families (including foster families) are taking necessary action to comply with immunization and other health and safety requirements.

(2) Prevention of Sudden Infant Death Syndrome and use of safe sleep practices.

(3) Administration of medication, consistent with standards for parental consent.

(4) Prevention of and response to emergencies due to food and allergic reactions.

(5) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic.

(6) Prevention of shaken baby syndrome and abusive head trauma.

(7) Emergency preparedness and response planning for emergencies resulting from a natural disaster or a man-caused event (such as violence at a child care facility) within the meaning of those terms under section 602(a)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C.A. § 5195a(a)(1)).

(8) Handling and storage of hazardous materials and appropriate disposal of biocontaminants.

(9) Precautions when transporting children.

(10) Pediatric first aid and pediatric cardiopulmonary resuscitation.

(d) Completion of professional development shall be documented by the signature and title of a representative of the professional development entity and include the date the professional development was completed. Documentation shall be included with the application when it is submitted to the regional office. Documentation of the

completion of professional development under subsection (c) taken from September 30, 2016, forward satisfies this requirement.

(e) Regarding child abuse and criminal history clearances related to the CPSL, the following apply:

(1) At initial application for a certificate of compliance, the legal entity shall submit clearances for the legal entity and for each individual 18 years of age or older who resides in the facility at least 30 days in a calendar year.

(2) At renewal, the legal entity shall submit clearances for each individual 18 years of age or older who resides in the facility at least 30 days in a calendar year if any of the following apply:

(i) The individual attained 18 years of age following the date of the previous application for a certificate of compliance.

(ii) The individual moved into the facility following the date of the previous application for a certificate of compliance.

(3) Clearances are required for the legal entity and for each individual 18 years of age or older who resides in the facility at least 30 days in a calendar year by the Department if an application for renewal is received following expiration of the current certificate of compliance.

(f) Application for a certificate of compliance shall be submitted to the appropriate regional child care office in accordance with Chapter 20 (relating to the licensure or approval of facilities and agencies).

(g) A certificate of compliance is issued in the manner described in Chapter 20, for a period not to exceed 12 months from the date of issue.

(h) An agent of the Department will annually conduct at least one onsite unannounced inspection of a child care facility.

(i) The facility is subject to announced and unannounced inspections in accordance with § 3280.23 (relating to Departmental access).

(j) Except for § 20.32 (relating to announced inspections), the requirements in Chapter 20 (relating to licensure or approval of facilities and agencies) apply to child care facilities.

(k) Sanctions relating to the status of a certificate of compliance are applied under the authority of applicable sections of the act, Chapter 20 and this chapter.

(l) A facility whose certificate of compliance is current as of December 19, 2020, will not be inspected under this chapter until the current certificate of compliance is due to be renewed or when a regulatory violation is alleged and the Department responds to the alleged violation with an inspection.

§ 3280.15. Building codes.

(a) A certificate of compliance will not be granted by the Department until the legal entity provides a certificate of occupancy as proof of compliance with the applicable requirements of the Department of Labor and Industry in 34 Pa. Code § 403.23 (relating to child day care facilities) and under section 1016(c) of the act (62 P.S. § 1016(c)).

(b) The legal entity shall maintain ongoing compliance with the applicable requirements prescribed by the Department of Labor and Industry in 34 Pa. Code § 403.23

and under section 1016(c) of the act at all times following issuance of any certificate of compliance granted by the Department under this chapter.

§ 3280.18. Child abuse reporting.

* * * * *

(b) A facility person who has reasonable cause to suspect that a child is a victim of child abuse shall immediately make a report of suspected child abuse to ChildLine through the hotline at 1 (800) 932-0313, online, or any other method as prescribed by the Department.

* * * * *

§ 3280.23. Departmental access.

* * * * *

(c) An agent of the Department will inspect compliance with this chapter in all areas of the facility premises that are accessible to children.

(d) An agent of the Department will annually conduct at least one onsite unannounced inspection of a child care facility.

(e) An announced inspection will be conducted by the Department prior to the issuance of the initial certificate of compliance.

(f) A valid photo identification of the primary staff person or designated staff person who is responsible for compliance with this chapter shall be provided to the agent of the Department at the time of inspection.

§ 3280.24. Availability of certificate of compliance and applicable regulations.

(a) The facility's current certificate of compliance shall be posted in a conspicuous location used by parents. The operator shall provide the parent of each child enrolled with information on how to access the regulations in this chapter electronically and with instructions for contacting the appropriate regional child care office.

* * * * *

§ 3280.26. Emergency plan.

(a) The facility shall have an emergency plan that provides for:

(1) Shelter of children during an emergency including lock-down, shelter in place at the facility and shelter at locations away from the facility premises.

(2) Evacuation of children from the facility building and evacuation of children to a location away from the facility premises. The evacuation routes and evacuation plans to exit the building may be the same as those required by § 3280.94 (relating to fire drills).

(3) A method for facility persons to contact parents as soon as reasonably possible when an emergency situation arises.

(4) A method for facility persons to inform parents that the emergency has ended and to provide instruction as to how parents can safely be reunited with their children.

(5) Accommodations for infants and toddlers, children with disabilities and children with chronic medical conditions.

(6) Emergency drills shall be conducted annually. Annual emergency drills shall be documented and on file at the facility.

(b) The operator shall review the emergency plan at least annually and update the plan as needed. Each

review and update of the emergency plan shall be documented in writing and kept on file at the facility.

* * * * *

(f) The operator shall send a copy of the emergency plan and subsequent plan updates to the local municipality and to the county emergency management agency.

FACILITY PERSONS

§ 3280.31. Age and training.

(a) A volunteer shall be 16 years of age or older and shall be directly supervised at all times by a staff person.

(b) A staff person shall be 18 years of age or older.

(c) An individual 16 years of age or older who is enrolled in an approved training curriculum may be used as a staff person, if the following guidelines are met:

(1) The curriculum is conducted by an institution approved by the Department of Education and accredited by an accrediting agency recognized by the United States Department of Education or the Council on Postsecondary Education and acceptable to the Department of Education.

(2) The curriculum includes acceptable training topics referenced in subsection (e)(2).

(3) The curriculum includes a minimum total of 600 clock hours, distributed as follows:

(i) A minimum of 400 clock hours of classroom training.

(ii) A minimum of 200 clock hours of supervised training in a child care facility.

* * * * *

(e) A staff person shall obtain an annual minimum of 12 clock hours of child care training.

* * * * *

(4) Depending on the provisions of the appropriate regulation, training may be required for certain staff persons. The following constitutes competence in training areas:

(i) *Pediatric first-aid training and pediatric cardiopulmonary resuscitation (CPR)*. Competence is the completion of training by a professional in the field of first-aid and CPR. All staff persons shall renew their certification in pediatric first aid and pediatric CPR on or before the expiration of the most current certification.

* * * * *

(f) Staff persons shall complete professional development in the following topics within 90 days of hire:

(1) Prevention and control of infectious diseases (including immunization) and the establishment of a grace period that allows homeless children and children in foster care to receive services under this subchapter while their families (including foster families) are taking necessary action to comply with immunization and other health and safety requirements.

(2) Prevention of Sudden Infant Death Syndrome and use of safe sleep practices.

(3) Administration of medication, consistent with standards for parental consent.

(4) Prevention of and response to emergencies due to food and allergic reactions.

(5) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic.

(6) Prevention of shaken baby syndrome and abusive head trauma.

(7) Emergency preparedness and response planning for emergencies resulting from a natural disaster or a man-caused event (such as violence at a child care facility) within the meaning of those terms under section 602(a)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C.A. § 5195a(a)(1)).

(8) Handling and storage of hazardous materials and appropriate disposal of biocontaminants.

(9) Precautions when transporting children.

(10) Pediatric first aid and pediatric cardiopulmonary resuscitation.

(g) Completion of professional development shall be documented by the signature and title of a representative of the professional development entity and include the date professional development was completed. Documentation shall be retained in the facility person's file or maintained in an electronic system as designated by the Department. Documentation of the completion of the professional development under subsection (f) taken from September 30, 2016, forward satisfies this requirement.

(h) All staff persons shall complete the professional development under subsection (f).

(i) Professional development under subsection (f) may count towards the annual clock hours in subsection (e) on a one-time basis.

(j) Staff persons shall obtain available ongoing professional development relating to the health and safety topics as specified in subsection (f) prior to obtaining professional development in other topics as permitted in subsection (e)(2).

§ 3280.32. Suitability of persons in the facility.

* * * * *

(b) Questions relating to the requirements of the CPSL shall be directed to the appropriate regional child care office.

* * * * *

§ 3280.33. General requirements for facility persons.

* * * * *

(c) One or more facility persons competent in pediatric first aid and pediatric cardiopulmonary resuscitation techniques shall be at the facility when one or more children are in care.

§ 3280.34. Primary staff person qualifications and responsibilities.

(a) A primary staff person is responsible for the supervision of children receiving care in the facility.

* * * * *

FIRE SAFETY

§ 3280.94. Fire drills.

(a) The primary staff person or designated staff person who is responsible for compliance with this chapter shall conduct fire drills and ensure that:

(1) Fire drills are conducted at least once every 60 days.

(2) Fire drills are conducted at different times of the day or night, or both, if applicable.

(3) Fire drills are conducted during various program activity times.

(4) The hypothetical locations of the fire are rotated around the facility for each drill such that the hypothetical location is never the same for consecutive drills.

(5) Evacuation routes are posted in a conspicuous location on each floor of the facility.

(6) Evacuation plans provide for the removal of all persons from the facility in a single trip.

(7) Facility persons and children in attendance participate in the fire drill.

(8) Facility persons and children exit the building, weather permitting.

(9) A written record is maintained on file at the facility indicating the specific time of day of the drill, the hypothetical location of the fire, the evacuation time, and the names of the facility persons and the number of children who participate in the fire drill.

§ 3280.95. Fire detection.

(a) Fire detection devices or systems must be in compliance with standards established under section 1016(c) of the act (62 P.S. § 1016(c)).

(b) The primary staff person or designated staff person who is responsible for compliance with this chapter shall ensure the requirements in subsection (a) are met.

* * * * *

PROGRAM

§ 3280.115. Water activity.

* * * * *

(b) *Wading.*

(1) Staff persons shall supervise children in care using wading pools. Staff: child ratios in subsection (a) apply when children are wading.

* * * * *

NUTRITION

§ 3280.166. Meals for infants.

Meals for infants shall be provided in accordance with the following requirements:

* * * * *

(7) Neither bottled formula nor human milk may be heated in a microwave.

TRANSPORTATION

§ 3280.171. Pick-up and drop-off points.

(a) The operator shall notify local traffic safety authorities in writing of the location of the facility and about the program's use of pedestrian and vehicular routes around the group child care facility.

* * * * *

CHILD RECORDS

§ 3280.184. Release of information.

(a) The parent shall have access to the child's complete child care record.

* * * * *

SPECIAL EXCEPTIONS

§ 3280.212. Reserved.

§ 3280.213. Reserved.

§ 3280.214. Reserved.

§ 3280.215. Reserved.

SCHOOL-AGE PROGRAMS

§ 3280.221. Requirements specific to school-age programs.

(a) If a child is required to be enrolled in public or private school under the Public School Code of 1949

(24 P.S. §§ 1-101—27-2702) and if the child is not enrolled and if the child is not exempted from enrollment under the Public School Code, a child care facility may not admit the child for care during the hours when the child is required by law to attend public or private school.

* * * * *

**CHAPTER 3290. FAMILY CHILD CARE HOMES
GENERAL PROVISIONS**

§ 3290.1. Introduction.

This chapter is promulgated to facilitate the safe and healthful care of a child in a family child care home and to support families by providing care that promotes the emotional, cognitive, communicative, perceptual-motor, physical and social development of the child.

§ 3290.2. Purpose.

The purpose of this chapter is to provide standards to aid in protecting the health, safety and rights of children and to reduce the risks to children in family child care homes. This chapter identifies the minimum level of compliance necessary to obtain the Department's certificate of compliance.

§ 3290.3. Applicability.

* * * * *

(c) In addition to the requirements in this chapter, the family child care home shall be in compliance with applicable provisions of Article X of the act (62 P.S. §§ 1001—1088).

(d) A legal entity seeking to operate a child care facility shall apply for an initial or renewal certificate of compliance in accordance with the requirements established in Chapter 20 (relating to licensure or approval of facilities and agencies).

§ 3290.4. Definitions.

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

ACIP—The Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, United States Department of Health and Human Services.

Act—The Human Services Code (62 P.S. §§ 101—1503).

* * * * *

Appeal—A written, signed and dated statement requesting reconsideration or modification of a Departmental decision that negatively affects the certificate of compliance of the facility. An appeal is made by the facility operator or by the facility's legal entity.

Applicant—A legal entity that applies to operate a certified family child care home.

* * * * *

Casual contact—The ordinary, routine and age-appropriate association of children, parents and facility persons in the course of daily assembly in a facility.

Certificate of compliance—A document issued by the Department to a legal entity permitting the entity to operate a specific type of facility at a specific location for a specific period of time according to applicable Department regulations. A certificate of compliance licenses the operation of a facility subject to Article X of the act (62 P.S. §§ 1001—1088).

Child—A person 15 years of age or younger.

* * * * *

Denial—The written refusal of the Department to issue a certificate of compliance to a new applicant.

* * * * *

Facility—A family child care home.

* * * * *

Family child care home—A home other than the child's own home, operated for profit or not-for-profit, in which child care is provided at any one time to four, five or six children unrelated to the operator.

* * * * *

Nonrenewal—The written refusal of the Department to issue a certificate of compliance to a legal entity previously granted a certificate of compliance at the same location.

Operator—The legal entity or a person designated by the legal entity to serve as the staff person.

Parent—The biological or adoptive mother or father, legal guardian or foster mother or father of the child.

* * * * *

Regional office of child care—Departmental offices responsible for certified child care facilities located in counties assigned to the regional office. A certificate of compliance is issued by a regional office to the legal entity responsible for the operation of a family child care home.

Relative—A parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece or nephew.

Revocation—The Department's written retraction of a certificate of compliance which occurs prior to expiration of the facility's certificate of compliance.

* * * * *

Staff person—A person included in the staff:child ratio who is responsible for child care activities.

* * * * *

Volunteer—A person 16 years of age or older who is not included in the staff:child ratio and who assists in implementing daily program activities under the supervision of a staff person.

GENERAL REQUIREMENTS

§ 3290.11. Application for and issuance of a certificate of compliance.

(a) An individual desiring information about the certification requirements for the operation of a family child care home shall contact the Department at the appropriate regional office.

(b) An applicant who may be interested in applying for a certificate of compliance shall participate in an orientation training provided by the Department within 12 months prior to issuance of a certificate of compliance. The orientation does not count toward the annual minimum of 12 clock hours of child care training required in § 3290.31(f) (relating to age and training).

(c) An applicant shall obtain a valid certificate of compliance to operate a family child care home to care for four, five or six unrelated children at a specific location. The certificate of compliance will be issued by the Department to the legal entity prior to commencement of operation at a specified location.

(d) An applicant desiring to apply for a certificate of compliance shall submit application documents, on forms prescribed by the Department, to the appropriate regional office.

(e) Prior to issuance of a certificate of compliance, the applicant or representative of the applicant shall complete professional development in each of the following topics:

(1) Prevention and control of infectious diseases (including immunization) and the establishment of a grace period that allows homeless children and children in foster care to receive services under this subchapter while their families (including foster families) are taking necessary action to comply with immunization and other health and safety requirements.

(2) Prevention of Sudden Infant Death Syndrome and use of safe sleep practices.

(3) Administration of medication, consistent with standards for parental consent.

(4) Prevention of and response to emergencies due to food and allergic reactions.

(5) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic.

(6) Prevention of shaken baby syndrome and abusive head trauma.

(7) Emergency preparedness and response planning for emergencies resulting from a natural disaster or a man-caused event (such as violence at a child care facility) within the meaning of those terms under section 602(a)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C.A. § 5195a(a)(1)).

(8) Handling and storage of hazardous materials and appropriate disposal of biocontaminants.

(9) Precautions when transporting children.

(10) Pediatric first aid and pediatric cardiopulmonary resuscitation.

(f) Completion of professional development shall be documented by the signature and title of a representative of the professional development entity and include the date the professional development was completed. Documentation shall be included with the application when it is submitted to the regional office. Documentation of the completion of the professional development under subsection (e) taken from September 30, 2016, forward satisfies this requirement.

(g) Family child care home providers that operate under a certificate of compliance prior to December 19, 2020 shall complete the professional development under subsection (e).

(h) Regarding child abuse and criminal history clearances related to the CPSL, the following apply:

(1) At initial application for a certificate of compliance, the applicant shall submit clearances for the applicant and for each individual 18 years of age or older who resides in the child care facility at least 30 days in a calendar year.

(2) At renewal, the legal entity shall submit clearances for each individual 18 years of age or older who resides in the child care facility at least 30 days in a calendar year if any of the following apply:

(i) The individual attained 18 years of age following the date of the previous application for a certificate of compliance.

(ii) The individual moved into the child care facility following the date of the previous application for a certificate of compliance.

(3) Clearances are required for the legal entity and for each individual 18 years of age or older who resides in the facility at least 30 days in a calendar year by the Department if an application for renewal is received following expiration of the current certificate of compliance.

(i) Prior to making a decision about the issuance of a certificate of compliance, the Department's agent shall conduct an announced pre-certification inspection at the location where the family child care home will operate.

(j) A certificate of compliance is issued in the manner described in Chapter 20 (relating to licensure or approval of facilities and agencies) for a period not to exceed 12 months from the date of issue.

(1) A certificate of compliance is issued to a specific legal entity at a specific location. A certificate of compliance is not transferrable.

(2) A certificate of compliance is void without notice if there is a change in the legal entity or the location of the child care facility.

(k) An agent of the Department will annually conduct at least one onsite unannounced inspection of a child care facility.

(l) Except for § 20.32 (relating to announced inspections), the requirements in Chapter 20 (relating to licensure or approval of facilities and agencies) apply to child care facilities.

(m) A facility is subject to announced and unannounced inspections in accordance with § 3290.21 (relating to Departmental access).

(n) The facility is subject to inspections as follows:

(1) An announced pre-certification inspection.

(2) An unannounced inspection, not less than annually.

(3) In response to a complaint on an unannounced basis.

(o) A legal entity desiring to renew a certificate of compliance shall submit a correct, completed application and other required materials to the appropriate regional office of the Department prior to the expiration of the current certificate of compliance.

(p) A legal entity whose facility's certificate of compliance is current as of December 19, 2020, will not be inspected under this chapter until the current certificate of compliance is due to be renewed or when a regulatory violation is alleged and the Department responds to the alleged violation with an inspection.

(q) Sanctions relating to the status of a certificate of compliance under the authority of section 1026 of the act (62 P.S. § 1026) regarding refusal to issue license; revocation; notice, § 20.54 (relating to provisional certificate of compliance), § 20.71 (relating to conditions for denial, nonrenewal or revocation) and this chapter apply to a family child care home.

§ 3290.12. Reserved.

§ 3290.13. Appeals.

(a) Appeals related to the Department's licensure decisions shall be made under 2 Pa.C.S. §§ 501—508 and

701—704 (relating to Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

* * * * *

(c) A facility's operator may appeal a Departmental decision relating to the status of the facility's certificate of compliance.

(d) The Department will include information relative to appeal procedures when notifying operators of one or more of the following decisions:

(1) Denial of a certificate of compliance.

(2) Failure to renew a certificate of compliance.

(3) Revocation of a certificate of compliance.

* * * * *

§ 3290.14. Building codes.

(a) A certificate of compliance will not be granted by the Department until the legal entity provides a certificate of occupancy as proof of compliance with the applicable requirements in 34 Pa. Code § 403.23 (relating to child day care facilities) and under section 1016(c) of the act (62 P.S. § 1016(c)).

(b) The legal entity shall maintain ongoing compliance with the applicable requirements prescribed by the Department of Labor and Industry in 34 Pa. Code § 403.23 and under section 1016(c) of the act at all times following issuance of any certificate of compliance granted by the Department under this chapter.

§ 3290.16. Child abuse reporting.

* * * * *

(b) A facility person who has reasonable cause to suspect that a child is a victim of child abuse shall immediately make a report of suspected child abuse to ChildLine through the hotline at 1 (800) 932-0313, online or any other method as prescribed by the Department.

* * * * *

§ 3290.21. Departmental access.

* * * * *

(c) An agent of the Department will inspect for compliance with this chapter in all areas of the facility premises that are accessible to children.

(d) An agent of the Department will annually conduct at least one onsite unannounced inspection of a child care facility.

(e) An announced inspection will be conducted by the Department prior to the issuance of the initial certificate of compliance.

(f) A valid photo identification of the operator or designated staff person who is responsible for compliance with this chapter shall be provided to the agent of the Department at the time of inspection.

§ 3290.22. Availability of certificate of compliance and applicable regulations.

(a) The facility's current certificate of compliance shall be posted in a conspicuous location used by parents, with instructions for contacting the appropriate regional child care office posted at the same location.

(b) The operator shall provide the parent of each child enrolled in the facility with information on how to access the regulations in this chapter electronically and with instructions for contacting the appropriate regional child care office.

(c) The operator shall post a copy of each inspection summary issued by the Department next to the facility's certificate of compliance in a conspicuous location used by parents. The inspection summary must remain posted until an agent of the Department verifies that each noncompliance item noted on the inspection summary has been corrected.

§ 3290.23. Compliance with nondiscrimination requirements.

* * * * *

(b) A certificate of compliance will not be granted by the Department to a legal entity unless compliance with civil rights laws and applicable regulations has been met. The applicable laws as identified on the certificate of compliance application are:

- (1) The Pennsylvania Human Relations Act (43 P.S. §§ 951—962.2).
(2) The Age Discrimination Act of 1975 (42 U.S.C.A. §§ 6101—6107).
(3) Title VI of the Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000d—2000d-4a).
(4) Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e—2000e-5).
(5) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. § 794).
(6) The Americans with Disabilities Act of 1990 (42 U.S.C.A. §§ 12101—12514).

(c) The appropriate forms to establish compliance shall be included with the application for certification.

§ 3290.24. Emergency plan.

(a) The facility shall have an emergency plan that provides for:

- (1) Shelter of children during an emergency including lock-down, shelter in place at the facility and shelter at locations away from the facility premises.
(2) Evacuation of children from the facility building and evacuation of children to a location away from the facility premises. The evacuation routes and evacuation plans to exit the building may be the same as those required by § 3290.94 (relating to fire drills).

* * * * *

(4) A method for facility persons to inform parents that the emergency has ended and to provide instruction as to how parents can safely be reunited with their children.

(5) Accommodations of infants and toddlers, children with disabilities and children with chronic medical conditions.

(b) The operator shall review the emergency plan at least annually and update the plan as needed. Each review and update of the emergency plan shall be documented in writing and kept on file at the facility.

* * * * *

(d) Emergency drills shall be conducted annually. Annual emergency drills shall be documented and on file at the facility.

(e) The emergency plan shall be posted in the facility at a conspicuous location.

(f) The operator shall provide to the parent of each enrolled child a letter explaining the emergency procedures described in subsection (a). The operator shall also provide to the parent of each enrolled child a letter explaining any subsequent update to the plan.

(g) The operator shall send a copy of the emergency plan and subsequent plan updates to the local municipality and to the county emergency management agency.

§ 3290.25. Waivers.

(a) A waiver excuses an operator from meeting a regulatory standard and substitutes another standard which the operator shall meet. The substituted standard has the same legal effect as the regulatory standard.

(b) The operator shall submit the request for waiver to the regional office before the facility is inspected for issuance or renewal of a certificate of compliance.

(c) An operator may request a waiver of only the regulatory standards in the following sections:

- (1) Physical site requirements in §§ 3290.61—3290.78 (relating to physical site).
(2) Equipment requirements in §§ 3290.101—3290.107 (relating to equipment).

(d) The Department will grant a waiver only if the following conditions are met:

- (1) The waiver is not requested as a substitute for correcting a Departmental citation of noncompliance.
(2) The request for waiver does not alter the applicability or purpose of a regulation.
(3) The request shows evidence that the operator has a plan to achieve the objective of the regulation.
(4) The request certifies that the operator will meet regulatory standards related to the health, safety and rights of children.
(5) The request for waiver does not violate or condone noncompliance with another Federal or State law or regulation.

(6) The request for waiver may not jeopardize Federal or State funding.

FACILITY PERSONS

§ 3290.31. Age and training.

(a) The operator shall have the following qualifications:

- (1) Be 18 years of age or older.
(2) Have a high school diploma or a general educational development certificate and submit proof to the appropriate regional office of the Department no later than the submission of the second renewal application.

(b) Staff persons shall be 18 years of age or older.

(c) A volunteer shall be 16 years of age or older. A volunteer shall be directly supervised at all times by a staff person.

(d) An individual 16 years of age or older who is enrolled in an approved training curriculum may be used as a staff person if the following guidelines are met:

* * * * *

(3) The curriculum includes a minimum total of 600 clock hours, distributed as follows:

* * * * *

(ii) A minimum of 200 clock hours of supervised training in a child care facility.

* * * * *

(f) A staff person shall obtain an annual minimum of 12 clock hours of child care training.

* * * * *

(4) Depending on the provisions of the appropriate regulation, training may be required for certain staff persons. The following constitutes competence in training areas:

* * * * *

(i) *Pediatric first-aid training and pediatric cardiopulmonary resuscitation (CPR)*. Competence is the completion of training by a professional in the field of first-aid and CPR. All staff persons shall renew their certification in pediatric first aid and pediatric CPR on or before the expiration of the most current certification.

* * * * *

(g) Staff persons shall complete professional development in the following topics within 90 days of the date of hire:

(1) Prevention and control of infectious diseases (including immunization) and the establishment of a grace period that allows homeless children and children in foster care to receive services under this subchapter while their families (including foster families) are taking necessary action to comply with immunization and other health and safety requirements.

(2) Prevention of Sudden Infant Death Syndrome and use of safe sleep practices.

(3) Administration of medication, consistent with standards for parental consent.

(4) Prevention of and response to emergencies due to food and allergic reactions.

(5) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water and vehicular traffic.

(6) Prevention of shaken baby syndrome and abusive head trauma.

(7) Emergency preparedness and response planning for emergencies resulting from a natural disaster or a man-caused event (such as violence at a child care facility) within the meaning of those terms under section 602(a)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C.A. § 5195a(a)(1)).

(8) Handling and storage of hazardous materials and appropriate disposal of biocontaminants.

(9) Precautions when transporting children.

(10) Pediatric first aid and pediatric cardiopulmonary resuscitation.

(h) Completion of professional development shall be documented by the signature and title of a representative of the professional development entity and include the date the professional development was completed. Documentation of the completion of the professional development under subsection (g) taken from September 30, 2016, forward satisfies this requirement.

(i) All staff persons shall complete the professional development under subsection (g). Documentation of the completion of training shall be kept in the facility person's file or maintained in an electronic system as designated by the Department.

(j) Professional development under subsection (g) may count towards the annual clock hours under subsection (f) on a one-time basis.

(k) Staff persons shall obtain available ongoing professional development relating to the health and safety

topics as specified in subsection (g) prior to obtaining professional development in other topics as permitted in subsection (f)(2).

§ 3290.32. Suitability of persons in the facility.

* * * * *

(b) Questions relating to the requirements of the CPSL shall be directed to the appropriate regional child care office.

* * * * *

(d) One or more facility persons competent in pediatric first-aid and pediatric cardiopulmonary resuscitation techniques shall be at the facility when one or more children are in care.

STAFF-CHILD RATIO

§ 3290.51. Maximum number of children.

The number of children in care may not exceed six children at any one time who are unrelated to either the legal entity or the staff person. At any one time, the related children of either the legal entity or the staff person, but not both, may be excluded in determining compliance with this section.

§ 3290.52. Ratio requirements.

The operator may provide care to no more than five related and unrelated infants and toddlers at any one time. No more than two related and unrelated infants may receive care at any one time. The following numbers of infants and toddlers are permitted in a family child care home:

* * * * *

§ 3290.94. Fire drills.

(a) The operator or designated staff person who is responsible for compliance with this chapter shall conduct fire drills and ensure that:

(1) Fire drills are conducted at least once every 60 days.

(2) Fire drills are conducted at different times of the day or night, or both, if applicable.

(3) Fire drills are conducted during various program activity times.

(4) The hypothetical locations of the fire are rotated around the facility for each drill such that the hypothetical location is never the same for consecutive drills.

(5) Evacuation routes are posted in a conspicuous location on each floor of the facility.

(6) Evacuation plans provide for the removal of all persons from the facility in a single trip.

(7) Facility persons and children in attendance participate in the fire drill.

(8) Facility persons and children exit the building, weather permitting.

(9) A written record is maintained on file at the facility indicating the specific time of day of the drill, the hypothetical location of the fire, the evacuation time, and the names of the facility persons and the number of children who participate in the fire drill.

§ 3290.95. Fire detection.

(a) Fire detection devices or systems must be in compliance with standards established under section 1016(c) of the act (62 P.S. § 1016(c)).

(b) The operator or designated staff person who is responsible for compliance with this chapter shall ensure the requirements in subsection (a) are met.

* * * * *

PROGRAM

§ 3290.113. Supervision of children.

* * * * *

(e) A facility person may not restrain a child by using bonds, ties or straps to restrict a child’s movement or by enclosing the child in a confined space, closet or locked room. The prohibition against restraining a child does not apply to the use of adaptive equipment prescribed for a child with special needs.

(f) When there is only one operator present in the family child care home and the operator is unable to be physically present with the children because the operator is preparing snacks or meals for children in care or the operator is using the restroom, the operator may comply with the supervision requirement in subsection (a) through the use of an electronic monitor, camera, mirror, or other device or method so the operator can see, hear, direct and assess the children in real time at all times.

(1) Supervision by a device or method under subsection (f) is permitted only for a reasonable period of time necessary for the operator to perform the specific task.

(2) The operator shall remain on the family child care home premises while supervising children by a device or method under subsection (f).

(3) A family child care home operator that provides supervision under this subsection shall include it in its supervision policies under § 3290.121(a) (relating to application).

(g) When a family child care home operator provides services for 24 hours per day, the operator may not work for a period of more than 16 hours in a 24-hour time period. The operator must secure a designated staff person to ensure that there is appropriate supervision as required in subsection (a).

ADULT HEALTH

§ 3290.151. Health assessment.

(a) A facility person providing direct care who comes into contact with the children or who works with food preparation shall have a health assessment on file at the facility.

(1) The operator shall submit a health assessment to the Department prior to issuance of an initial or renewal certificate of compliance.

* * * * *

NUTRITION

§ 3290.166. Meals for infants.

Meals for infants shall be provided in accordance with the following requirements:

* * * * *

(7) Neither bottled formula nor human milk may be heated in a microwave oven.

CHILD RECORDS

§ 3290.184. Release of information.

(a) The parent shall have access to the child’s complete child care record.

* * * * *

SPECIAL EXCEPTIONS

§ 3290.211. Reserved.

§ 3290.212. Reserved.

§ 3290.213. Age and training.

The operator of a facility who is lawfully operating a family child care home registered by the Department as of September 22, 2008, is permanently qualified as an operator of a family child care home.

[Pa.B. Doc. No. 20-1772. Filed for public inspection December 19, 2020, 9:00 a.m.]
