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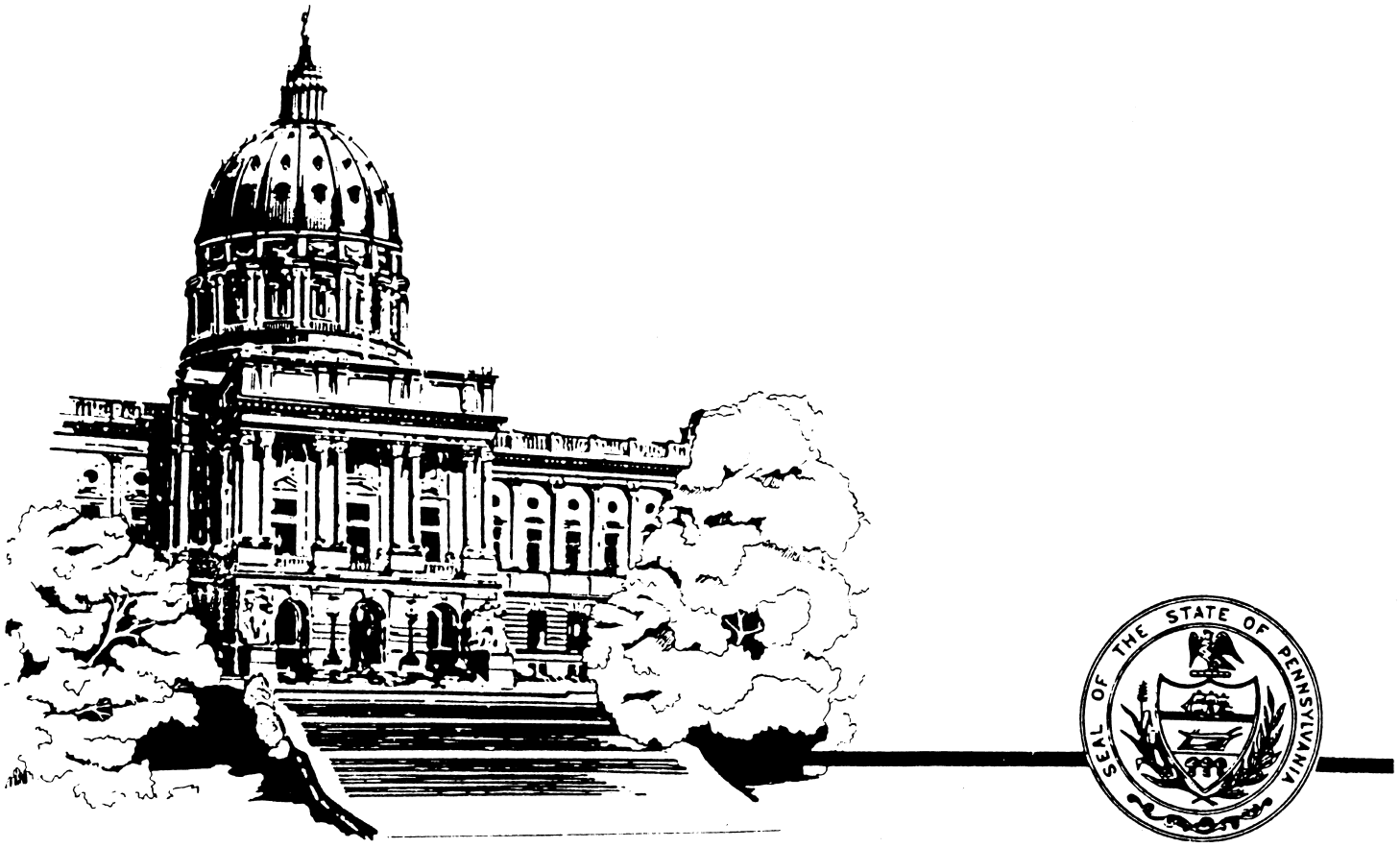
Part II

This part contains
the Rules and Regulations
and the Proposed Rulemakings



RULES AND REGULATIONS

Title 55—HUMAN SERVICES

DEPARTMENT OF HUMAN SERVICES

[55 PA. CODE CHS. 3041 AND 3042]

Subsidized Child Care Eligibility

The Department of Human Services (Department) deletes Chapter 3041 and adds Chapter 3042 (relating to subsidized child care eligibility) to ensure ongoing compliance with the requirements under the Federal Child Care and Development Block Grant of 2014 (CCDBG), (42 U.S.C. §§ 9857—9858r, as reauthorized by Pub.L. No. 113—186) as set forth in Annex A.

Effective Date

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

Contact Persons

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Statutory Authority

This final-form rulemaking is authorized under sections 201(2), 403(b) and 403.1 of the Human Services Code (62 P.S. §§ 201(2), 403(b) and 403.1), which grants the Department the authority to adopt rules and regulations relating to subsidized child care eligibility. Notice of proposed rulemaking was published at 50 Pa.B. 6361 (November 14, 2020).

Background and Purpose

The purpose of this final-form rulemaking is to update the Department's requirements for the Child Care Works (CCW) program, which is the Department's subsidized child care program. This final-form rulemaking will ensure the Commonwealth's continued compliance with the requirements under the CCDBG and allow the Commonwealth to continue to receive Child Care and Development Funds (CCDF). The CCDBG, along with section 418 of the Social Security Act (42 U.S.C. § 618), authorizes the CCDF. The CCDF is the primary Federal funding source devoted to assisting low-income families that are working or participating in education or training activities with paying for child care and improving the quality of child care for all children. Subsidized child care is a benefit made available through limited Federal and State funds. This final-form rulemaking provides the eligibility criteria a parent or caretaker must satisfy to obtain and maintain assistance with child care costs through the CCW program. This final-form rulemaking also sets forth the procedures the eligibility agency shall follow in administering the CCW program.

The Department last amended the subsidized child care eligibility regulations in 2012. Since that time, the CCDBG was updated, and now several of the Department's codified regulations, including the minimum eligibility periods, no longer mirror the CCDBG requirements. Because of the many changes under the reauthorized CCDBG, the Department is replacing its previous regulatory chapter, Chapter 3041, with Chapter 3042. This final-form rulemaking is, therefore, needed to satisfy the updated requirements as set forth in the CCDBG, which includes minimum 12-month eligibility periods, continuous eligibility irrespective of increases in earnings (within the Federal eligibility limit of 85% of the State Median Income (SMI)), and temporary changes in work, education or training during the 12-month eligibility period.

Additional changes consistent with CCDBG requirements also include establishing periods of presumptive continued eligibility at redetermination for a parent or caretaker who will be starting the parent or caretaker's job within 92 days of the redetermination date; prohibiting subsidy enrollments at a provider for whom the Department has revoked or refused to renew a certificate of compliance; allowing a parent or caretaker receiving subsidized child care services the same option as private-pay parents or caretakers to elect to hold their child back from attending kindergarten for 1 additional year; and increasing the total number of paid absences per year. This final-form rulemaking is therefore consistent with all CCDBG requirements.

This final-form regulatory package was originally submitted to the Independent Regulatory Review Commission (IRRC) on March 23, 2023. In response to comments the Department received, from both early learning advocates and providers, the Department requested IRRC to disapprove the final-form regulatory package at the public meeting on May 18, 2023, in order for the Department to revise the final-form regulation package. On June 20, 2023, the Department received IRRC's disapproval order which cited concerns regarding reasonableness and economic and fiscal impacts of the regulation due to the removal of the provision relating to provider charges. The Department revised the final-form regulatory package based on the IRRC disapproval order and comments from the regulated community and subsequently resubmitted the revised regulatory package.

Public Comment

Following the publication of the proposed rulemaking, the Department received comments from 18 commentators during the 30-day public comment period and two letters from commentators after the close of the public comment period. The comments came from 9 child care operators and 11 advocacy organizations. The Department notes that one commentator, the Pennsylvania Child Care Association, provided a comment that was received twice, and so they were duplicates. The majority of comments voiced general approval for the Department's rulemaking. There were several comments that noted disagreement in specific areas or that stated suggestions for specific changes as further discussed as follows and in the Department's comment and response document.

During the public comment period, the Department received extensive comments from the Community Justice Project (CJP) about several areas of the rulemaking. After close of the public comment period, the Department also received comments from IRRC, some of which echoed the comments received from CJP as well as other commentators. Also following public comment, the Department met by means of video-conference with CJP on four occasions to discuss their feedback. Specifically, the Department

met with CJP on March 9, March 18, March 30 and April 6, 2021, during which times the Department and CJP jointly reviewed and discussed all of CJP's written comments.

The major comments received on the proposed rulemaking are summarized as follows. In addition, to specifically address all comments received during the public comment process, the Department created a separate comment and response document, which is available on the Department's web site at https://www.dhs.pa.gov/Services/Children/Pages/Child-Care-Works-Program.aspx. The Department also filed the separate comment and response document with IRRC, the legislative committees, the Legislative Reference Bureau and the commentators along with this final-form rulemaking.

Discussion of Comments and Major Changes

The Department revised this final-form rulemaking in response to and in consideration of the comments received from commentators and IRRC. The Department finds that IRRC summarized the major comments noted by commentators. As a result, the Department will use IRRC's comments as a blueprint for discussion of the major comments received. The following provides a summary of the major changes from the proposed rulemaking to this final-form rulemaking, followed by a section-by-section description of the final-form provisions.

1. *General Provisions; Definitions*

IRRC provided feedback on the definitions of "family," "fraud," "homelessness," "maternity or family leave," "period of presumptive eligibility," "prospective work, education or training," "self-declaration" and "training."

For "family," IRRC requested for that definition to be revised to include all types of training. The Department revised the definition as requested to include adult basic education, English as a second language course work, a high school or a GED program, an HSE degree, an internship, clinical placement, apprenticeship, lab work or field work required by a training institution, or a postsecondary program leading to a degree, diploma or certificate.

For "fraud," citing to a commentator's question asking if a parent or caretaker commits fraud when income exceeding 85% of the SMI is not reported during the eligibility period and a child continues to receive subsidized care, IRRC requested for the Department to explain whether that is fraud and to clarify, if necessary, the definition of "fraud."

Fraud is not committed when income exceeding 85% of the SMI is not reported during the eligibility period. Further, the language "at the time of application or redetermination" limits the definition of "fraud" to those specific instances, which more clearly involve affirmative representations of income. Instead, situations involving a parent or caretaker whose income exceeds 85% of the SMI during the eligibility period while continuing to receive subsidized care are treated as an overpayment. See §§ 3042.172 and 3042.176 (relating to eligibility agency responsibilities regarding overpayment; and collection). As such, the Department declines to make the suggested changes.

For "homelessness," IRRC recommended revisions to include the child's parent or caretaker. In response, the Department made the requested revision, and noted that inclusion of parents and caretakers in the definition is consistent with the CCDF's usage of homelessness because the CCDF references homeless families, which includes the child and the child's parent or caretaker. See 45 CFR 98.51 (relating to services for children experiencing homelessness).

For "maternity or family leave," the Department deleted the term from this final-form rulemaking because the term was deleted from all but one instance of usage following changes made in §§ 3042.19 and 3042.147 (relating to subsidy continuation; and presumptive continued eligibility at redetermination). See § 3042.68(3) (relating to verification of circumstances relating to a decrease in copayment). After review of that provision in § 3042.68(3), the Department determined the plain usage of the wording clearly prescribes the requirement. Similarly, the Department deleted the term "owner or operator of a child care facility" because the term was not used as such in the previous chapter's requirements, the proposed rulemaking or this final-form rulemaking.

For "period of presumptive eligibility," IRRC requested that the substantive language be deleted from the proposed definition and placed into the body of the regulations. In response, the substantive timing provisions from the proposed definition of "period of presumptive eligibility" are amended in the final-form definition and are added to § 3042.147(a) to clarify that a period of presumptive eligibility is temporary and shall not exceed 92 calendar days from the date of the redetermination. Notably, IRRC's comment for "period of presumptive eligibility" also applies to the time frames in the proposed definitions of "prospective work, education and training" and "self-declaration." As such, the Department makes changes to clarify that prospective work, education and training refers to future employment, education or training that has a begin date and is verified by the employer, school official or training official. Further, the Department makes changes to § 3042.34(a)(1) (relating to prospective work, education and training) so that the 30-day time limit is stated with reference to the date the parent or caretaker signs and dates the application for subsidized child care, as well as changes to § 3042.34(a)(2) to ensure consistency with the definition of "prospective work, education or training," which must be verified by the employer, school official or training official. Similarly, the Department makes changes to the definition of "self-declaration" to delete the time frame from the definition and to clarify that it refers to a written statement that is signed and dated and provided by the parent or caretaker for the purpose of establishing financial or nonfinancial eligibility pending verification as described under § 3042.64 (relating to self-declaration).

For "training," IRRC requested for the definition to be clarified to include additional types of adult education and postsecondary study and asked if it was necessary to specify the length of time for a postsecondary degree program. IRRC cited to a commentator who observed the definition did not include the two most common forms of adult education—GED and HSE programs. In response, the Department makes changes to delete the time frame for the postsecondary degree program and add GED and HSE to the final-form definition. Similarly, and in response to a public comment, the Department makes changes to the definition of "education" to include GED and HSE programs. The Department notes that the acronyms "CRNP," GED," "HSE" are added on final-form because the acronyms are used in more than one section of this final-form rulemaking.

In addition, the term "personal interview" is added on final-form following feedback from several commentators about the importance of removing barriers for parents or

caretakers who struggle to participate in the face-to-face meetings and allowing telephone contact to satisfy the face-to-face requirement. The Department notes especially that telephone contact may satisfy the requirement, and so the requirement does not require in-person meetings. As such, the term "face-to-face" is outdated and misleading because a face-to-face meeting implies an in-person meeting. The Department makes changes to clarify the terminology and better state the requirements in response to public comments about removing barriers for parents or caretakers. Specifically, the Department defines the term "personal interview" in § 3042.3 (relating to definitions), which refers to an informational meeting held between the eligibility agency and the parent or caretaker, which can take place either in person, by telephone or by other means approved by the Department. The added term, and its definition, is consistent with terminology used elsewhere in the Department's regulations. See §§ 123.22 and 133.23 (relating to definitions; and requirements). These changes will improve access for parents and caretakers by ensuring that personal interviews are conducted within 30 calendar days in a manner and format best suited to the parent or caretaker's needs, availability and personal circumstances. The Department amends all references to "face-to-face meeting" in this final-form rulemaking with the term "personal interview" to clarify that a meeting can take place in person, by telephone or by other means approved by the Department. The changes in terminology are made in §§ 3042.56, 3042.63, 3042.114, 3042.115 and 3042.117. These changes remove barriers for parents and caretakers by clearly stating there are multiple methods to complete a personal interview, including flexibilities to benefit parents and caretakers that may not be available for a face-to-face meeting as previously required.

As a result of the change in terminology to "personal interview," the Department determines that proposed § 3042.56(e) (relating to personal interview) is no longer necessary. This subsection is deleted from this final-form rulemaking, and the provisions are reordered accordingly. Because subsection (e) is deleted, proposed § 3042.56(f) is changed to § 3042.56(e). Similarly, the Department updates the headings for § 3042.56 and § 3042.114 (relating to personal interview requirements for former TANF families) to reflect the clarified personal interview requirements.

2. *Parent Choice and Payment of Provider Charges*

IRRC inquired how does the Department ensure that relatives who are providing child care meet the Department's standards. Further, IRRC inquired how does the Department implement the goals of quality of care under § 3042.12 (relating to parent choice) and how do the procedures ensure the protection of the public health, safety and welfare. As provided under § 3042.12(a), a family may choose child care from a provider that agrees to comply with the Department's standards for provider participation. As part of this agreement, all relative providers must enter into and follow the terms of the Department's Relative Provider Agreement (Agreement) to receive payment from CCDF funds. The Agreement requires that relative providers meet State Child Abuse, National Sex Offender Registry Check, and Federal and State Criminal History Requirements prior to approval and every 60 months thereafter, which aligns with requirements for providers at regulated child care facilities and the CCDBG. Relatives must obtain Federal criminal clearances at their own expense, which is approximately $23, and the costs of the other required clearances are addressed in the Agreement. The Department notes that costs relating to criminal history clearances are not new and are outside this final-form rulemaking. Under the Agreement, the relative provider must give the eligibility agency written notice no later than 72 hours after their or anyone in the household's arrest, conviction or notification of being listed as a perpetrator of child abuse in the Central Register.

The Agreement also requires compliance with health and safety practices relating to handwashing, diapering, toileting, and the preparation and handling of food. Additionally, all relative providers must complete 3 hours of approved mandated reporter training prior to approval, and that this training must be completed every 5 years. The relative provider must submit the certificate of completion along with the results of the Federal criminal history clearance to the eligibility agency at the personal interview. Also, the Agreement requires that the relative provider's home have a working smoke detector on each level in which child care is provided, and that conditions in the home not pose a threat to the health and safety of children in care. The requirement is consistent with the requirements of section 1016 of the Human Services Code (62 P.S. § 1016). The Agreement further requires that cleaning and toxic materials shall be stored in their original labeled containers or in a container that specifies the contents; kept in a locked area or in an area where children cannot reach them; and kept separate from food, the areas where food is prepared or stored and the areas where child care takes place. Also, any weapon or firearm must be kept in a locked cabinet; any ammunition must be kept in a separate, locked area; and the relative provider must tell the child's parent or caretaker that weapons, firearms or ammunition are in the provider's home. The Agreement requires that the relative provider not use any form of punishment, including spanking; and that the parent or caretaker be allowed to see their child at any time the provider is providing care. The requirements in the Agreement satisfy CCDF requirements, and they are consistent with several of the prescribed requirements for child care providers at regulated facilities. These requirements all ensure that children receiving subsidized child care services from a relative provider receive at least the same quality of care as children enrolled at regulated child care facilities.

The Department notes that the Agreement for relative providers has been in use for over 15 years, and that the terms ensure the protection of the public health, safety and welfare of children receiving subsidized child care services both initially and on an ongoing basis by ensuring substantially the same standards for quality of care as are provided for at regulated child care facilities. Finally, these provisions under § 3042.12 are consistent with the deleted provisions under Chapter 3041.

Next, for § 3042.14 (relating to payment of provider charges), IRRC noted that the proposed rulemaking prohibited new subsidy enrollments but that the Department would continue paying for current enrollments at providers who are not meeting basic health and safety requirements. IRRC asked for an explanation of the reasonableness of the requirement, noting that:

> ". . .this section does not allow new enrollments 'when the Department determines the provider is not meeting health and safety requirements, and revokes or refuses to renew the provider's certificate of compliance.' The Department goes on to say that to 'provide continued stability and support already established staff and child relationships, the Department will continue to pay for children who are currently en-

rolled at the time of the sanction.' We ask the Department to explain in the Preamble to the final-form regulation the reasonableness of this subsection and how it protects the public health, safety and welfare of children currently receiving care at these facilities. We will review the Department's answer when determining if this regulation is in the public interest."

After careful consideration, the Department makes changes to §§ 3042.12 and 3042.14(h) to ensure subsidy dollars are not paid to providers whose certificate of compliance has been revoked or refused to renew by the Department's Bureau of Certification Services, which is responsible for enforcing the Department's health and safety standards. Specifically, the Department adds a subsection under § 3042.12 and deletes the word "new" from § 3042.14(h) to ensure that limited public funds are not being paid to providers who cannot meet baseline health and safety standards. The added subsection under § 3042.12 clarifies that the Department may suspend the subsidy and will not terminate the subsidy, and so there is no impact to a family's eligibility, which will continue for the balance of the 12-month period. This change strikes the appropriate balance between ensuring parent choice and ensuring that scarce public dollars are not being paid to facilities that do not satisfy baseline health and safety requirements. Also, parents are free to choose child care services at another provider who is meeting baseline health and safety requirements. The Department will assist these families with locating another provider to ensure continuity of care. Currently, the Department already assists families with locating another provider in cases where an emergency revocation to a facility is issued because circumstances at the facility justify immediate closure and removal of the children from care.

As for the numbers of families these changes will impact, the Department conducted a review of the instances of revocations and refusals to renew for State Fiscal Year (SFY) 2021-2022, and after review, the Department noted there were approximately 31 revocations or refusals to renew that impacted on 447 enrollments. Notably, not all certified child care providers participate in the CCW program. For SFY 2021-2022, the numbers of facilities issued revocations or refusals to renew were 20 child care centers, 3 group child care homes and 8 family child care homes. The Department notes the bulk of the enrollments, 428, were located in child care centers, and the noted facilities were located in various regions throughout this Commonwealth. The Department also notes that it upholds health and safety protections for children in care throughout this Commonwealth irrespective of the provider type, the provider's regional location and whether a provider participates in the CCW program. The fiscal impact to providers and the impacts on parent choice for families are outweighed by ensuring that public funds are directed to providers meeting basic health and safety requirements to ensure the protection of the health and safety of this Commonwealth's most vulnerable and disadvantaged children, as consistent with the CCDF. The Department reiterates that it will assist impacted families with locating another provider to ensure continuity of care and parent choice. Further, only providers whose certificate of compliance has been revoked or refused to renew by the Department's Bureau of Certification Services will be impacted because the Department will no longer pay for CCW program enrollments at these providers. The Department notes these providers can still provide services to private-pay families should the provider choose to appeal the Department's revocation or nonrenewal determination. The Department reiterates the statements from the preamble of the Federal regulation, that "we cannot in good conscience continue to use any Federal taxpayer dollars to support sub-standard child care for our nation's most vulnerable and disadvantaged children." The change is also consistent with the methods of administration of funds by the Department under the American Rescue Plan Act of 2021 (Public Law 117-2) (ARPA) because subsidy funds are public dollars that should not be paid to providers who are not meeting baseline health and safety requirements. The Department notes that an eligible provider refers to a provider that is certified and that "meets applicable State and local health and safety requirements." See the definition of "eligible child care provider," section 2202 of the ARPA. Further regarding any lost enrollments, the Department is clarifying that the cost is speculative and varies depending on the provider type as well as the numbers of enrolled children who are receiving subsidized child care services. In addition, any fiscal impact due to lost enrollments are the result of the facility's failure to comply with the Department's licensure regulations and not this final-form rulemaking.

The Department also received feedback from four commentators who suggested that the Department temporarily prohibit subsidy enrollments at the Department's discretion in cases where there is a complaint investigation involving the serious physical injury of a child, the sexual assault of a child, the death of a child and any other egregious acts that put the safety of children into question. Specifically, the commentators stated that "we would support the Department having the authority to temporarily prohibit subsidy enrollments at their discretion in consideration of current complaint investigations involving the serious physical injury of a child, sexual assault of a child, death of a child, etc." The Department thanks the commentator for this comment. The Department's Bureau of Certification Services immediately initiates complaint investigations involving all allegations impacting on health and safety, and further, the Bureau of Certification Services will always issue an emergency revocation sanction upon investigation as legally warranted by the facts and circumstances. Notably, an investigation is not by itself a determination of noncompliance or wrongdoing. After careful consideration, the Department declines the suggested prohibition because of potential due process concerns during the investigatory phase.

Further regarding provider charges under § 3042.14(d), in response to the proposed rulemaking, two commentators disagreed with the provider being permitted to charge the difference between the provider's published rate and the CCW payment rate. One of the commentators noted that paying the difference between the CCW payment rate and the private rate "is a problem that should be addressed through tiered reimbursement along with regular and adequate upgrades to DHS's provider payment rate" and not made up for by billing low-income parents or caretakers to make up the difference. The commentator continued, noting the provision as it exists "also undermines parent choice of providers, arguably in violation of DHS and federal policy establishing the rights of parents to entrust the care of their children to the child care provider of their choice."

In addition, the Department received comments on this final-form rulemaking regarding the ability of providers to charge the difference between the CCW payment rate and the provider's private rate. Specifically, following submission of this final-form rulemaking, and prior to the IRRC public meeting, the Department received four com-

ments from two commentators; after the public meeting, the Department received an additional comment from one of these commentators to provide suggestion for modification of the provision. In response to feedback following submission of the final-form rulemaking, the Department requested IRRC to disapprove the final-form regulatory package at the public meeting on May 18, 2023, for the Department to revise the final-form regulation package. On June 20, 2023, the Department received IRRC's disapproval order which cited concerns regarding reasonableness and economic and fiscal impacts of the regulations.

Due to the complexity and financial impact regarding this provision, the Department has determined to maintain the status quo and preserve this provision at this time. Specifically, the Department edited this language to exactly mirror the language of § 3041.15(c). To further examine this issue and obtain additional data regarding access and affordability, the Department intends to hold additional stakeholder meetings with both providers and early learning advocates and families to discuss the extent to which these additional charges are being required.

The Department acknowledges and thanks the stakeholders and advocates who have provided suggestions on how the Department should resolve the provision. Once additional data has been collected and examined, with a further review of the potential for increased reimbursement rates, the Department will determine next steps. If the data collected indicates concerns over Federal compliance, the Department will continue discussions with all parties to consider changes to the provision to ensure ongoing Federal compliance. To clarify, this additional data is currently being collected, and after the data is collected and analyzed, informational meetings will be scheduled with providers and advocates to find a balance that ensures affordability and equal access for CCDF families and improved financial solvency for providers. Restoring the provision to the status quo at this time ensures there are no economic or fiscal impacts to the regulated community, of which 70% are small businesses.

As to the maximum copayment amount, the Department is codifying the existing copayment limitation and there is no resulting fiscal impact under this final-form rulemaking. Further, the Department pledges to continue to work toward ensuring the CCW payment rate provides equal access to child care for low-income families. See 63 FR 39936, 39959 (July 24, 1998). As well, the Department notes that providers who wish to provide higher quality child care through the Keystone STARS program may be eligible for assistance with costs. This codified limit continues to benefit families who will no longer be faced with paying a greater share of their income on child care than reflects the National average. The Department is further emphasizing that there have been rate increases three times during the time of preparing this final-form rulemaking that have been made possible through funds from the ARPA. Finally, the Department notes that the Commonwealth was awarded $452 million in discretionary funding from the ARPA, and that the Administration for Children and Families, Office of Child Care provided to the Department recommendations on the use of those funds. Consistent with the recommendations, a total of $121.9 million is being used over 4 fiscal years to support the codified reduced family copayments for the CCW program. This funding is projected for allocation for Fiscal Years 2021—2024. Similarly, the increased subsidy base rates are funded through the same ARPA program.

3. *Subsidy Limitations, Suspension, and Financial Eligibility*

IRRC first requested explanation for how the Department will implement the limitation for operators under § 3042.15(c) (relating to subsidy limitations), and for how the Department determines whether space is available to enroll the child of a parent or caretaker who is the operator of a child care facility, citing to a commentator who expressed concern with the requirement, noting an employee who was denied subsidized child care. IRRC requested explanation as well for how a facility will be economically impacted and the reasonableness of the requirement.

In response to the comments received, the Department amends § 3042.15(c) to clarify that a child who is receiving care in a child care facility that is owned by the child's parent or caretaker is not eligible for subsidized child care services. The amendments delete references to the availability of space because the concern is only whether a parent or caretaker is being paid to care for their own child, which runs contrary to the definition of "child care." As defined in this final-form rulemaking under § 3042.3, "child care" is "care instead of parental care for part of a 24-hour day." To avoid confusion and better clarify this requirement, the Department deletes the term "owner or operator of a child care facility" from § 3042.3 because the term is not used in this final-form rulemaking.

In response to the inquiry regarding economic impact and implementation of this amended provision, the final-form subsection is narrowly tailored such that it pertains only to situations where a parent or caretaker is the owner of a certified child care facility. To the extent there is such an impact, the Department determines that the cost is outweighed by the fact that subsidy dollars are scarce, public funds, and so this final-form subsection prohibits only situations in which the owners of certified child care facilities are paid subsidy dollars to care for their own children. Operators may still receive subsidy funding for children in care who are not their own children. Further, the final-form language expands eligibility because the subsidy limitation only relates to a child receiving care in a facility owned by an eligible child's parent or caretaker. If otherwise eligible, subsidized child care may be received at a different facility.

Second, regarding final-form § 3042.15(d) and § 3042.57(c) (relating to waiting list), which are substantively the same, IRRC requested clarification. Specifically, IRRC asked first, why the 30-day requirement is reasonable; second, how parental choice is accommodated; and third about implementation procedures for granting exceptions. IRRC also cited to commentators who expressed concerns over parent choice and requested changes to ensure that a child maintains eligibility when circumstances beyond a parent or caretaker's control prevent enrollment in child care.

Thirty days is a reasonable time frame to enroll a child with a child care provider because a parent or caretaker is working or is enrolled in training or education and is in need of child care. In many instances, a family already has a provider that they are using and they only need assistance paying for the case. In other situations, the family knows what provider they want to enroll the child with, but again, has not been able to do so because of financial circumstances. Families are eligible for subsidized child care because they are working or enrolled in education or training and need child care. If the family needs assistance with finding a provider, the eligibility

agency will assist the family with resource and referral. Second, parent choice is maintained. As stated previously, in many instances a family already has a provider or knows what provider the family wants to use. The only remaining issue is the family's financial circumstance and the need to submit an application for child care subsidy. In response to comments received, the Department clarifies this section to provide that a child is ineligible for failure to enroll within 30 days unless the eligibility agency determines that enrollment has been delayed because of circumstances outside of a parent's or caretaker's control. The Department also clarifies that if a parent or caretaker fails to provide a circumstance outside the parent's or caretaker's control, the child is ineligible. And further, if a circumstance outside of a parent's or caretaker's control is provided, the child will remain eligible. See §§ 3042.15(d) and 3042.57(c). As explained as follows and in the Department's comment and response document, the Department makes congruent changes to §§ 3042.15(d) and 3042.57(c) to ensure that a child maintains eligibility when circumstances beyond a parent or caretaker's control prevent enrollment in child care. The 30-day requirement strikes a balance between offering parental choice and efficiently administering the program. Simply put, families are on the wait list who also need subsidized child care, and spots cannot be held open in perpetuity if care is not needed or the parent or caretaker is not sure when it might be needed. The Department reiterates that families are eligible for subsidized child care because they are working or enrolled in education or training and need child care.

Next, IRRC requested explanation over implementation of proposed § 3042.20(c) (relating to subsidy suspension) and for the Department to clarify the number of days considered to be excessive to establish a standard that is predictable and enforceable. After careful consideration, the Department made changes to delete subsection (c) from § 3042.20 and created § 3042.22 (relating to subsidy termination). Under this section, an eligibility agency is required to terminate subsidy prior to the next redetermination in any of the following circumstances: (1) the child has been absent for 60 consecutive days of unexplained non-attendance in care, and the eligibility agency has attempted at least three times to contact the parent or caretaker regarding the child's absences; (2) the child no longer resides in this Commonwealth; (3) a parent or caretaker committed substantiated fraud or an intentional program violation; or (4) a parent or caretaker voluntarily requests discontinuance of the subsidy. This section also clarifies that if the eligibility agency moves to terminate the subsidy in any of the stated circumstances, then notice will be sent to the family as required under § 3042.155 (relating to notice of adverse action). In addition, implementation of this provision is also discussed as follows and in the Department's comment and response document.

For financial eligibility under § 3042.31 (relating to financial eligibility), IRRC asked for the Department to address a commentator's concerns over the income ranges stated for redetermination in subsection (c). In addition, IRRC requested explanation over implementation of these income limits and why it is necessary to state the requirement with reference to both the Federal Poverty Income Guidelines (FPIG) and the SMI. Lastly, IRRC noted the comment applies as well to § 3042.97 (relating to use of the Federal Poverty Income Guidelines and State Median Income).

After review and consideration of these comments, the Department amends § 3042.31(c) to add the language "whichever is less" to clarify the requirement. The CCDBG prescribes the income limits in terms of the SMI. Meanwhile, as permitted by the CCDBG, the Department utilized a graduated phase-out approach that satisfies all CCDBG requirements, with the second tier set at an amount lower than 85% of the SMI for a family of the same size, but above the initial eligibility threshold. This approach comports with all Federal requirements as stated in 45 CFR 98.21(b) (relating to eligibility determination processes).

With respect to implementation, income is assessed initially that it cannot exceed 200% of the FPIG. If determined eligible, subsidy will be provided, if funds are available, and will continue for the entirety of the eligibility period of 12 months until the redetermination date, so long as neither the family's income exceeds 85% of the SMI, nor the provisions regarding early termination under § 3042.22 apply. Subsequently, at redetermination, under this final-form rulemaking, the family's income may not exceed 235% of the FPIG or 85% of the SMI, whichever is less. Currently, as part of the 2022-2023 Budget Implementation, families may maintain financial eligibility at up to 300% of the FPIG. See section 1730-F.1(16) of the Fiscal Code (72 P.S. § 1730-F.1(16)). This final-form rulemaking, however, does not reflect this additional income limit increase because the increase is not permanent at the time of drafting this final-form rulemaking and is only provided for the current fiscal year. To the extent additional funding is maintained in future fiscal years, the Department will re-examine updating its regulations as needed. It is necessary to include requirements stated with reference to both the FPIG and the SMI because agencies that establish family income eligibility at a level less than 85% of SMI are Federally required to provide a graduated phase-out by implementing a two-tiered eligibility threshold with the second tier set at 85% of SMI or an amount lower than 85% SMI, but is above the initial threshold for eligibility. Providing initial eligibility requirements with reference to the FPIG is consistent with the requirements under Chapter 3041. The Department notes that the initial income limit of 200% of the FPIG is lower than 85% SMI, as is 235% of the FPIG for most families, and so the final-form requirements are consistent with the Federal requirements.

In addition, an eligibility agency will collect only the verification that is necessary to make an eligibility determination. To comply with the CCDF regulation under 45 CFR 98.20(a)(2)(i) (relating to a child's eligibility for child care services), a parent or caretaker is required to submit notification of an income increase during the family's 12-month eligibility period only when the family's annual income exceeds 85% of the SMI. Parents and caretakers may also notify the eligibility agency at any time when circumstances change that might lower the family's copayment or increase the family's subsidy. Upon notification of a change in circumstances, under § 3042.86 (relating to change reporting and processing), the eligibility agency is required to review the change and reduce the family's copayment. This final-form rulemaking, therefore, simplifies the regulatory requirements as they relate to application, verification and the reporting of changes; all of which are consistent with CCDBG requirements.

4. *Immunization*

After noting inconsistencies with the requirements under § 3042.35 (relating to immunization) and the child care facilities regulations under §§ 3270.131, 3280.131 and 3290.131 (relating to health information), IRRC

requested amendments to align the requirements in § 3042.35 with the child care facilities regulations or to explain why it is unnecessary to do so.

The Department agrees. In response, the Department makes amendments to align the section's requirements as requested by IRRC and to ensure compliance with the CCDF to ensure a grace period is extended to families experiencing homelessness and families with foster children. Specifically, changes are made to correct typographical errors by deleting the hyphens after the words "up" and "to" in the phrase "up to date" and to delete the reference to the American Academy of Pediatrics and replace it with reference to the Advisory Committee on Immunization Practices (ACIP). Changes are also made to align the exemption as well as the timing requirements with the child care facilities regulations and the requirements of the CCDBG. Specifically, the language is changed to clarify that subsidy will be authorized for up to 60 days from the date of enrollment, or, if the child is experiencing homelessness or is a foster child, then the subsidy is authorized for up to 90 calendar days to obtain up-to-date immunizations or provide documentation of exemption. These changes ensure consistency with the child care facilities regulations, as well as compliance with the CCDF, and that a grace period is extended to families experiencing homelessness and foster children in recognition that these populations of children may struggle with providing timely documentation. The Department also notes this requirement is not new and that Chapter 3041 provided for authorization for up to 90 calendar days. The Department also notes that families have up to 30 days to enroll in child care, and so the authorization of eligibility for subsidized child care is consistent with health and safety requirements because children may not be enrolled in care upon authorization. Lastly, once children are authorized and enroll in care, the 60-day period begins, and documentation of immunizations or exemption, as applicable, must be provided to satisfy the requirement. For children who are experiencing homelessness or are in foster care, consistent with CCDF requirements, the Department's eligibility agency authorizes subsidy for an extra 30 days (or 90 days total) to ensure that this vulnerable population of children maintains eligibility while awaiting enrollment.

As stated previously, this provision is amended in response to feedback from IRRC and commentators recommending revision to cite to the ACIP and to state the exemption requirements in subsection (a)(1) and (2) consistently with the child care facilities regulations in §§ 3270.131, 3280.131 and 3290.131. The added provisions clarify the statements must be signed, dated and kept in the child's record.

5. *Disability and Self-Certification*

Regarding disability under § 3042.37 (relating to eligibility of households including a parent or caretaker with a disability), IRRC asked whether individuals enrolled in treatment programs, such as mental health services and drug and alcohol treatment, qualify for subsidized child care services, and asked for added standards for families with two parents or caretakers with disabilities, or to explain why doing so is unnecessary. IRRC further asked whether the Department intends for a court order or safety plan to be a condition of eligibility. A commentator also noted disagreement, stating that requiring parents to verify that their disability precludes employment to continue to receive subsidy between redeterminations places a significant burden on them that is distinguishable from the requirements for parents who lose employment for other reasons, thereby raising a potential issue of unlawful discrimination.

After careful consideration, the requirements of this section are revised and reorganized for consistency with 12-month eligibility. The Department notes that treatment for a disability includes treatment for mental health services and drug and alcohol treatment. Further, the Department makes changes to § 3042.37 to state the requirements for single parent or caretaker households and two-parent or two-caretaker households, as requested by IRRC. The Department notes that families in circumstances where the parents or caretakers are disabled and not meeting the work, education or training requirements at application and redetermination may still be eligible for care through Head Start or Pre-K Counts. The Department also notes that a parent or caretaker must provide verification of a disability with medical documentation, unless the parent or caretaker is meeting the work, education and training requirements. If a medical professional states a parent or caretaker is unable to work or care for the children, then they are exempt from work requirements in a two-parent household. Further, § 3042.37(e)(3) applies to situations where a parent or caretaker has a need to attend treatment for a disability and is unable to care for the child. The CCW program is intended to empower working parents to make their own decisions regarding the child care services that best suits their family's needs, and so satisfaction of the work requirements is required unless otherwise specified. Lastly, as part of the revisions to this section, the Department reorganizes the provisions regarding court orders and safety plans as an eligibility requirement. As revised, a two-parent or two-caretaker family may be eligible for subsidized child care when one person is satisfying the work requirement and other person is prohibited from caring for the child due to a court order or a safety plan.

IRRC also requested the requirements of § 3042.70 (relating to verification of inability to work due to a disability) be clarified without reference to the size of the family. The Department agrees and notes that this section is amended to restate the requirements, as requested, following changes made to § 3042.37 as discussed previously and in the Department's comment and response document.

After noting that § 3042.63(b)(4) (relating to self-certification) permits a parent or caretaker to self-certify a child's immunization status, IRRC again noted incongruity with the child care facility regulations under §§ 3270.131, 3280.131 and 3290.131, and requested either the Department make changes to § 3042.63 to align with the requirements under the child care facilities regulations or the Department provide an explanation for why it is not necessary to do so.

The Department appreciates this comment; however, there are distinctions between the licensure requirements under Chapters 3270, 3280 and 3290 (relating to child care centers; group child care homes; and family child care homes) and the self-certification provisions under this chapter. Specifically, this final-form rulemaking concerns only eligibility requirements for subsidized child care, and so it concerns the Department's eligibility agencies, the parents and children who are eligible for and receive subsidized child care services, and the child care providers providing subsidized child care services. In contrast, compliance with Chapters 3270, 3280 and 3290 is measured by the Department's Bureau of Certification

staff, and it concerns regulated providers and the health and safety requirements at regulated child care facilities.

Significantly, § 3042.63 is distinguishable because it uses self-certification to the eligibility agency for purposes of qualifying for subsidized child care only, and not for use for any health and safety licensure requirements subject to the oversight of the Department's Bureau of Certification. This section ensures that the timely provision of documentation does not act as a barrier to eligibility for subsidized child care, as discussed further in the Department's comment and response document. Further, to the extent a child attends a certified facility, any requirements under Chapters 3270, 3280 and 3290 would have to be met. As such, the Department declines to make this change.

6. *Waiting List*

As discussed previously regarding subsidy limitations, IRRC inquired regarding the 30-day requirement, parental choice and implementation of exceptions. As explained previously regarding subsidy limitations, 30 days is a reasonable time frame to enroll a child with a child care provider because a parent or caretaker is working or is enrolled in training or education and is in need of child care. This requirement strikes a balance between offering parental choice and efficiently administering the program. As previously provided, the Department makes congruent changes to §§ 3042.15(d) and 3042.57(c) to ensure that a child maintains eligibility when circumstances beyond a parent or caretaker's control prevent enrollment in child care.

Regarding the waiting list requirements under § 3042.57 and § 3042.132 (relating to eligibility determination for Head Start), as explained further as follows and in the Department's comment and response document, the Department amends this final-form rulemaking to clarify that the Department will post its methods for priority on its web site. An order of priority may include foster children; children who are enrolled in PA Pre-K Counts, Head Start or Early Head Start who need wrap-around child care at the beginning or end of the program day; newborn siblings of children who are already enrolled; children experiencing homelessness; and teen parents. Otherwise, children are placed on the waiting list on a first-come, first-serve basis with respect to the date for requesting care for a child based on available funding.

7. *Reporting Changes*

IRRC asked for explanation of implementation procedures for when changes in income are reported, and also suggested the Department amend § 3042.86 to better clarify how increases in income will be assessed, particularly for instances when income may have increased in excess of 85% of the SMI.

In response to the comments received, the Department amends the language of this section for clarity. Under this final-form rulemaking, once a parent or caretaker reports a change in income that would result in the family becoming ineligible, the eligibility agency is required to assess the reported change to determine whether the reported change is an irregular fluctuation or a temporary increase. If the reported change is either an irregular fluctuation or a temporary increase, the eligibility agency will determine there is no change, and eligibility will continue for the remainder of the minimum 12-month eligibility period. If the change, however, is determined to not be an irregular fluctuation or temporary increase, the eligibility agency is required to terminate the subsidy by issuing an adverse action notice, which states the information specified in § 3042.152 (relating to notice of right to appeal), including the date the family will become ineligible, which would be 13 days from the date the notice was issued. Further, families may appeal notice of adverse action. See §§ 3042.164 and 3042.165 (relating to parent or caretaker rights and responsibilities regarding appeal; and eligibility agency responsibilities regarding appeal). As noted previously, the Department amends § 3042.86 as requested to state more clearly the procedures for assessment and for when the eligibility agency is prohibited from acting on reported information. The comments, responses and changes are more fully discussed as follows and in the Department's comment and response document.

8. *Waivers, Presumptive Eligibility and Appeals*

Following feedback received noting confusion and clarity issues regarding the differences between waivers and presumptive eligibility, the Department reorganizes §§ 3042.141—3042.147 to improve clarity by stating all of the substantive waiver requirements first, and then listing the requirements for presumptive eligibility. Specifically, proposed §§ 3042.144—3042.147 are the final-form §§ 3042.141—3042.144, respectively. Similarly, proposed §§ 3042.141—3042.143 are the final-form §§ 3042.145—3042.147. The Department notes that Chapter 3041 permitted waivers for domestic violence only, and this final-form rulemaking extends waivers to also apply for families experiencing homelessness. As such, under this final-form rulemaking, waivers apply only to families experiencing domestic violence or homelessness.

For final-form § 3042.145 (relating to domestic and other violence), after noting the section does not address the redetermination process, IRRC requested clarification for how the domestic violence waiver is implemented. As discussed in more detail in the Department's comment and response document, the Department also received feedback from a commentator requesting changes. Regarding implementation, the Department reiterates that granting a waiver excuses the parent or caretaker from meeting certain requirements for up to 92 days, and that the waiver is subject to the requirements specified under §§ 3042.141—3042.144. Specifically, the eligibility agency must act on waiver requests within 15 calendar days after the date of the request. If the waiver is granted, the eligibility agency will send a notice that includes the basis for granting the waiver, and a statement that the eligibility agency will review the waiver circumstances at redetermination. The Department notes that a waiver when granted excuses the parent or caretaker from meeting certain requirements for up to 92 days.

Once the waiver period expires, the parent or caretaker must provide the verification that was waived or must begin paying the copayment, or both. If these requirements are met, eligibility and payment will continue for the rest of the 12-month eligibility period. If one or more of the waived requirements are not met, or if the individual is determined ineligible, subsidy will be terminated, and a notice of adverse action will be sent as specified under § 3042.155. The family may satisfy the waived requirements at any time before the subsidy is terminated, and once satisfied, the subsidy will continue for the remainder of the eligibility period. If a waiver is denied, the eligibility agency will send a notice explaining the basis for the denial, the right to appeal, the verification that is required to be submitted to grant the waiver and the associated time frames for meeting the verification requirements, and notification of the evidence or information needed to substantiate the waiver request

and the associated time frames for providing the information. If denied, the family is not eligible for subsidized child care, and the eligibility agency will generate an ineligible notice as specified under § 3042.144 (relating to general notification requirements for waivers). If granted, the eligibility agency will review the circumstances at redetermination to determine whether a new domestic violence waiver or a waiver for homelessness is warranted. Further, if a domestic violence waiver is not requested to be renewed, the parent or caretaker may apply for a period of presumptive continued eligibility at redetermination as specified under this final-form rulemaking.

For final-form § 3042.147, IRRC requested explanation from the Department for how the requirement as proposed is consistent with the proposed definition of "period of presumptive eligibility" and clarification as needed.

The Department agrees that further clarification is needed. First, there are two types of presumptive eligibility. The first type is specifically only for families experiencing homelessness, and that is why the requirement is stated differently than the requirement for domestic and other violence. For families struggling with homelessness, the CCDBG requires the Department to establish procedures to ensure the initial eligibility of children experiencing homelessness while required documentation is obtained. This final-form rulemaking establishes periods of presumptive eligibility for children experiencing homelessness to ensure the satisfaction of this CCDBG requirement. See 45 CFR 98.51. For clarity, the definition of "period of presumptive eligibility" is amended to provide that it relates specifically to a temporary period of eligibility established at application for families experiencing homelessness. In addition, the Department adds the term and definition for "presumptive continued eligibility at redetermination" to better describe eligibility requirements at the time of redetermination and to prevent families from needlessly cycling on and off from services. Presumptive continued eligibility under this final-form rulemaking is available to any family who satisfies the requirements at redetermination. Specifically, any family who is not meeting the work hours requirement but has a job to return to within 92 days can be determined presumptively eligible and maintain services. In this scenario, the redetermination is completed on day 92 and if the parent or caretaker is satisfying the work hours requirements, then eligibility will continue for the remainder of the 12-month eligibility period. If the parent or caretaker is not meeting the work hours requirements, then the eligibility agency will take the necessary steps to terminate the temporary eligibility with proper notification to the family as required under § 3042.155. The changes are also discussed in the Department's comment and response document.

For § 3042.163(a)(1) (relating to subsidy continuation during the appeal process), IRRC inquired about the "postmarked and received" language and requested clarification of the language to establish a procedure the parent or caretaker is able to comply with.

In response to this comment, the Department replaces the word "received" with "delivered" to clarify that the appeal must be either postmarked by the date when sent by mail or delivered by the date when sent by other methods, such as hand-delivery, facsimile or electronically. Additionally, the Department makes the same change in § 3042.166(b) (relating to hearing procedures) and § 3042.163(a)(1).

9. *Self-declaration*

IRRC also suggested the time frames from the definition of "self-declaration" be removed. The Department agrees and amends the definition of "self-declaration" in this final-form rulemaking to delete the timing provisions and to clarify that the statement must be signed and dated. Following changes made in § 3042.64 to ensure consistency with minimum 12-month eligibility periods, the Department further modifies the definition to clarify that self-declaration can be used for purposes of establishing financial or nonfinancial eligibility pending verification as described under § 3042.64. Further, the Department notes that changes are made to delete proposed § 3042.67(6) (relating to verification of work, education and training) because self-declaration requires follow-up documentation within 30 days, and meanwhile, under this final-form rulemaking, once eligibility has been determined, the eligibility period lasts a minimum of 12 months, as consistent with the CCDF.

For § 3042.64, subsection (d) is amended to clarify the requirement following the Department's review. Specifically, the word "verification" is deleted, and the language is modified to clarify that the provision applies if a parent or caretaker uses self-declaration to establish eligibility as described in subsection (a). This amendment is made following changes made to the definition of "self-declaration."

On final-form, § 3042.64(e) establishes that for a parent or caretaker using self-declaration, eligibility is pending verification until another form of acceptable verification is returned to the eligibility agency as required under this section. The addition came about following the Department's review to ensure consistency with the required minimum 12-month eligibility period. The Department reiterates that although self-declaration requires follow-up documentation within 30 days, once eligibility has been determined, the eligibility must last a minimum of 12 months. The added requirement makes clear that the eligibility is pending receipt of the verification required under this section.

On final-form, § 3042.64(f) establishes that if the eligibility agency does not receive the verifications as required, or if the family is determined ineligible, the eligibility agency shall take the necessary steps to terminate the eligibility pending verification with proper notification to the family as specified in § 3042.155. This addition is added for clarity to provide for instances when verifications are not provided, or for when the family is determined ineligible.

10. *Payment Rates and Barriers to Eligibility*

Some commentators requested a major rate increase to provider reimbursement. In response, payment rates were increased effective March 1, 2021, again on January 1, 2022, and again on March 1, 2023, prior to this final-form rulemaking. Specifically, the rates were aligned on a regional basis, and then increased to promote and better address concerns over equal access, as is consistent with requirements of the CCDBG. See 45 CFR 98.45 (relating to equal access).

To further address existing barriers to eligibility, the Department amends §§ 3042.68, 3042.70, 3042.71, 3042.72 and 3042.73 to ensure the requirements are consistent and are not an unnecessary barrier to eligibility. Specifically, the Department notes that required medical documentation may be verified and provided by a physician, a physician's assistant, a CRNP or a psychologist, and further, that the proposed terminology is more restrictive

than the terminology found in similar provisions in the child care facilities regulations. As such, the Department makes changes as described in the section-by-section discussion as follows, and as discussed in the Department's comment and response document.

Also, in furtherance of removing existing barriers to eligibility, the Department deletes instances requiring a "face-to-face" meeting as discussed previously. After review, the Department determined the term was outdated and misleading because a face-to-face meeting implies an in-person meeting. To improve clarity, the Department replaces "face-to-face" with the added term "personal interview" throughout the chapter in this final-form rulemaking. The added term is consistent with terminology used elsewhere in the Department's regulations. See §§ 123.22 and 133.23. The Department notes that "personal interview" refers to an informational meeting held between the eligibility agency and the parent or caretaker, which can take place either in person, by telephone or by other means approved by the Department. This updated terminology will improve access for parents and caretakers by ensuring that personal interviews are conducted within 30 calendar days in a manner and format best suited to the parent or caretaker's needs, availability and personal circumstances. These changes remove barriers for parents and caretakers by clearly stating there are multiple methods to complete a personal interview, including flexibilities to benefit parents and caretakers that may not be available for a face-to-face meeting as previously required.

11. *Citations*

IRRC noted seven miscellaneous issues involving citation errors in need of correction. The issues identified were in §§ 3042.3, 3042.21(2), 3042.72, 3042.98(a)(2), 3042.112(a)(3), 3042.131(a) and 3042.161(1). In response, the Department corrects all of the identified citation issues.

The following is a section-by-section description of the requirements of this final-form regulation:

General Provisions

§ 3042.1. Purpose

This section establishes the purpose of the Subsidized Child Care Eligibility program.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.2. Scope

This section establishes the scope of the Subsidized Child Care Eligibility program.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.3. Definitions

This section establishes definitions for the following terms: "adjusted family income," "annual income," "appeal," "application," "CAO," "caretaker," "child care," "collateral contact," "copayment," "Department," "disability," "disqualification," "domestic and other violence (domestic violence)," "education," "eligibility agency," "eligibility determination," "eligibility redetermination," "employment," "FPIG," "family," "fraud," "Head Start," "homelessness," "income," "maternity or family leave," "maximum child care allowance," "overpayment," "owner or operator of a child care facility," "parent," "period of presumptive eligibility," "period of presumptive continued eligibility," "prospective work, education or training," "provider," "published rate," "recoupment," "SMI," "self-certification," "self-declaration," "self-employment," "subsidized child care," "subsidy suspension," "TANF," "tiered-reimbursement," "training," "verification," "waiting list" and "work." These defined terms are used in the substantive provisions of Chapter 3042.

This section is amended in this final-form rulemaking to improve clarity by adding the acronym "CRNP" and a definition for the acronym following changes made in §§ 3042.68, 3042.70, 3042.71, 3042.72 and 3042.73 because the acronym is used in more than one section of this final-form rulemaking.

The Department modifies the definition of "education" following feedback during the public comment period to include the common acronyms "GED" and "HSE degree", and for consistency with changes made to the definition of "training." The Department notes that "GED" and "HSE" are terms relating to educational credentials as well as training requirements because the programs may be considered training for purposes of the work requirement. The Department also adds the definitions of the acronyms "GED" and "HSE" because the acronyms are used in more than one section of this final-form rulemaking.

Following feedback from IRRC requesting clarifications to incorporate all types of training, the Department modifies subparagraph (v) of the definition of "family" so that it includes all types of education, training and instruction, including an internship, clinical placement, apprenticeship, lab work or field work required by a training institution.

The Department modifies the definition of "homelessness" as requested by IRRC by adding language and subparagraph (v) to ensure the child's parent or caretaker is included in the definition, and to correct subparagraph (iv) to replace the word "subtitle" with the word "chapter." Notably, the inclusion of parents and caretakers in the definition is consistent with the CCDF's usage of homelessness because the CCDF references homeless families, which includes the child and the child's parent or caretaker. See 45 CFR 98.51.

The Department deletes the term "maternity or family leave" because the term no longer served a purpose in this final-form rulemaking following changes to §§ 3042.19(c) and 3042.147(a). Similarly, the Department deletes the term "owner or operator of a child care facility" because the term was not used in the duly promulgated regulations in Chapter 3041, the proposed rulemaking or this final-form rulemaking.

The Department amends the proposed definition of "period of presumptive eligibility" to delete all the substantive provisions and to clarify the definition in accordance with feedback from IRRC requesting the provisions be moved to the body of the regulations. The Department restates the definition to clarify that a period of presumptive eligibility is a temporary period of eligibility established at application for families struggling with homelessness lasting no longer than 92 calendar days as specified in § 3042.146 (relating to homelessness). The Department notes that the timing provision is not substantive but is necessary to ensure clarity that periods of presumptive eligibility may last no longer than 92 calendar days.

The Department adds the term "period of presumptive continued eligibility" in this final-form rulemaking following amendments made in § 3042.147 that clarify that presumptive continued eligibility at redetermination is a temporary period of eligibility established at redetermina-

tion as specified in § 3042.147. This change better ensures that families do not needlessly cycle on and off services.

The Department also adds the term "personal interview" following changes made in §§ 3042.56, 3042.114, 3042.115 and 3042.117 because the term better states the requirement, which need not take place face-to-face but instead can take place in person, by telephone or by other means approved by the Department. Further, the added term is consistent with the term used by the Office of Income Maintenance. See §§ 123.22 and 133.23.

The Department also amends the definition of "prospective work, education or training" to delete the substantive provisions and add them to the final-form requirements under § 3042.34(a)(1) and to better clarify that the definition concerns future employment, education or training that has a begin date and is verified by the employer, school official or training official.

The Department modifies the definition of "self-declaration" to delete the timing provisions and to clarify that the statement must be signed and dated. Following changes made in § 3042.64 on final-form to ensure consistency with minimum 12-month eligibility periods, the Department further modifies the definition to clarify that self-declaration can be used for purposes of establishing financial or nonfinancial eligibility pending verification as described under § 3042.64.

Finally, the Department amends the definition of "training" in subparagraph (ii) to remove the time frames for the postsecondary degree program and to include the two most common forms of adult education in the definition—GED and HSE programs. The addition is in response to feedback from IRRC as well as during the public comment period noting that the Department considers them to be training programs for purposes of the work requirement. The Department notes the amendments under § 3042.3 provide added clarity to the regulated community and increase access for parents and caretakers by being more specific about these terms. The Department additionally notes that the added specificity better clarifies the requirements for eligibility and helps to remove barriers to eligibility for parents and caretakers who need subsidized child care services, as requested by commentators in general comments. The Department also notes that defining acronyms will help to ensure consistency between the regulated community and the eligibility agencies, as well as prospective participants, which will further remove barriers to eligibility for parents and caretakers who need subsidized child care services.

§ 3042.4. Nondiscrimination

This section establishes the requirement that eligibility agencies shall offer child care subsidy within the provisions of all applicable civil rights laws and regulations.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

General Benefits

§ 3042.11. Provision of subsidized child care

Subsection (a) establishes that subsidized child care is provided for a child whose family meets financial and nonfinancial eligibility requirements.

Subsection (b) establishes that subsidized child care is available to an otherwise eligible child who is under 13 years of age.

Subsection (c) establishes that subsidized child care will continue until the eligibility agency completes the family's next scheduled annual redetermination when a child turns 13 years of age between redeterminations.

There are no changes made to subsections (a)—(c) from the proposed rulemaking to this final-form rulemaking.

Subsection (d) is amended in this final-form rulemaking to clarify that subsidized child care services are available to children who are physically or mentally incapable of self-care. This amendment is based on a comment received recommending the change for clarity.

Subsection (e) establishes that a former Temporary Assistance for Needy Families (TANF) family is eligible for a child care subsidy as specified under this chapter.

Subsection (e) is amended in preparation of this final-form rulemaking to conform to citation standards.

Subsection (f) establishes that the Department, through the Department's contract with the eligibility agency, will direct funding for various populations, including individuals who formerly received TANF benefits and foster children.

There is no change made to subsection (f) from the proposed rulemaking to this final-form rulemaking.

§ 3042.12. Parent choice

This section establishes that a family that is eligible for subsidized child care shall have the right to choose care from a provider that agrees to comply with the Department's standards for provider participation. This section lists the entities that are eligible to provide subsidized child care services.

This section is amended in this final-form rulemaking to restate the requirements in three subsections.

Subsection (a) establishes that a family that is eligible for subsidized child care will have the right to choose care from a provider that agrees to comply with the Department's standards for provider participation, subject to subsections (b) and (c). This subsection is amended to clarify the requirement is subject to the requirements of subsections (b) and (c).

Subsection (b) establishes that the Department may suspend the subsidy benefit when a parent or caretaker uses a provider who has received a Departmental notice to revoke or refuse to renew the provider's certificate of compliance. Subsection (b) is added in this final-form rulemaking in response to feedback received from IRRC regarding § 3042.14, as discussed previously and in the Department's comment and response document.

Subsection (c) establishes the entities that are eligible to provide subsidized child care services. The provision is amended in this final-form rulemaking to correct the names of the cited regulatory chapters in paragraphs (1)—(3) following the Department's review.

§ 3042.13. Subsidy benefits

This section establishes when subsidy-eligible families may receive subsidized child care services.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.14. Payment of provider charges

Subsection (a) establishes that a provider participating in the subsidized child care program is eligible to receive payment from the eligibility agency for services provided to a subsidy-eligible child.

Subsection (b) establishes that the eligibility agency may not pay child care costs that exceed the maximum child care allowance minus the family copayment for the type of care the child received from the provider, except when the Department provides tiered reimbursement to providers that are eligible based on their participation in the Department's Quality Rating and Improvement System.

Subsection (c) establishes that the Department may provide tiered reimbursement based on the availability of funding.

Subsection (d) establishes that if a parent or caretaker selects a provider whose published rate exceeds the Department's payment rate, the provider may charge the parent or caretaker the difference between these two amounts. For clarity, the Department amends this language to exactly mirror the language of § 3041.15(c).

Subsection (e) establishes that a change in a parent's or caretaker's need for child care and the resulting adjustment in the amount of payment to the provider shall begin on the date the parent or caretaker reports the change or on the date the change begins, whichever is later.

Subsection (f) establishes that when additional funding becomes available, the Department may direct any additional funding to providers that offer child care services during non-traditional hours.

Subsection (g) establishes that the eligibility agency will not make retroactive payments for child care costs incurred more than 30 days prior to the issuance of an enrollment authorization, with the exception of a former TANF family as specified in § 3042.119 (relating to retroactive payment for former TANF families).

Subsection (h) establishes that the Department will not permit subsidy enrollments at a provider for whom the Department has issued a revocation or refusal to renew.

Subsection (h) is amended in this final-form rulemaking to delete the word "new" in response to feedback from IRRC, as discussed more fully previously and in the Department's comment and response document. There were no changes to subsections (a)—(c) and (e)—(g).

§ 3042.15. Subsidy limitations

Subsection (a) establishes that a parent or caretaker who is receiving funds from the TANF cash assistance program is not eligible for subsidized child care under this chapter.

Subsection (a) is unchanged from the proposed rulemaking to this final-form rulemaking.

Subsection (b) establishes that subsidized child care may not be used as a substitute for a publicly-funded education program or specialized treatment program, except that parents or caretakers can request for their kindergarten-age child to be permitted 1 additional school year to be enrolled in kindergarten.

Subsection (b) is unchanged from the proposed rulemaking to this final-form rulemaking.

Subsection (c) establishes that if a parent or caretaker owns a child care facility, then the parent or caretaker is not eligible for subsidized child care for their own child if the child will be cared for in the same facility.

Subsection (c) is amended in this final-form rulemaking. The amendment is made in response to feedback during the public comment period and from IRRC, as discussed previously and in the Department's comment and response document.

Subsection (d) is deleted from this final-form rulemaking. On proposed, this subsection established that if a parent or caretaker is the operator of a home that is exempt from certification under section 1001 of the Human Services Code (62 P.S. § 1001), the child is not eligible for subsidized child care if space is available at the facility. The provision was inoperative and obsolete because all regulated child care providers are required to be certified. Proposed subsection (e) is changed to subsection (d) in this final-form rulemaking, and the rest of the provisions are reordered accordingly.

Subsection (d) establishes that a child is ineligible for subsidized child care if the child is not enrolled within 30 calendar days following the date the eligibility agency notifies the parent or caretaker that funding is available, unless the eligibility agency determines that enrollment has been delayed because of circumstances outside of a parent's or caretaker's control.

Subsection (d) is amended in this final-form rulemaking following feedback from IRRC, as discussed more fully previously and in the Department's comment and response document.

§ 3042.16. Prohibition of additional conditions and charges

This section establishes that eligibility agencies may not impose additional requirements for eligibility beyond those prescribed in this final-form rulemaking or require the selection of a particular provider as a condition of eligibility.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.17. Attendance

This section establishes the requirement that the enrollment schedule shall be specified in writing, and that the child must attend child care pursuant to the schedule.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.18. Absence

This section establishes the maximum number of paid absences per year, and it delineates requirements relating to suspension.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.19. Subsidy continuation

Subsection (a) establishes that eligibility will be continuous for the 12-month eligibility period despite any loss of work, education or training.

Subsection (b) establishes that the eligibility period is continuous for 12 months even when there is a change in the child's primary parent or caretaker provided the substitute caretaker satisfies the requirement that the family's annual income does not exceed 85% of the SMI.

Subsections (a) and (b) are unchanged from the proposed rulemaking to this final-form rulemaking.

Subsection (c) establishes that subsidized child care will continue at the same level until the family's next scheduled redetermination in specified circumstances.

Subsection (c) is amended to reorganize and restate the requirement in response to feedback received during the public comment period, as discussed more fully in the Department's comment and response document.

Amendments to subsection (c) are made based on feedback from a public commentator recommending the changes so that the requirements are consistent with the Federal requirements and are completely stated. The commentator also requested provisions regarding subsidy termination, which the Department is clarifying in § 3042.22.

§ 3042.20. Subsidy suspension

Subsection (a) establishes that the eligibility agency shall suspend subsidy if the child is absent from care for more than 5 consecutive days.

Subsection (b) establishes that parents or caretakers can request for the eligibility agency to suspend the subsidy for a child who is expected to be absent from care for more than 5 consecutive days.

Subsection (c) as proposed is deleted from this final-form rulemaking because the provision concerned termination, as further discussed as follows under § 3042.22, as well as in the Department's comment and response document. The amendments are made following feedback received during the public comment period.

§ 3042.21. Subsidy disruption

This section establishes contingencies in the event that subsidy could be disrupted because of insufficient Federal or State funding.

This section is amended in this final-form rulemaking to correct paragraph (2) by replacing the word "subsection" with the word "section" following feedback from IRRC noting the error.

§ 3042.22. Subsidy termination

This section is added to this final-form rulemaking to better clarify the circumstances that may result in termination of the subsidy prior to the end of the 12-month eligibility period. The addition also addresses IRRC's request to clarify the requirement to state the specific number of days considered to be excessive to establish a standard that is predictable and enforceable. IRRC also asked the Department to explain implementation procedures for proposed § 3042.20(c). In response, the proposed requirement for terminating a subsidy due to unexplained absences was moved into this added section regarding subsidy termination. This section is added in this final-form rulemaking in response to feedback received during the public comment period and to clarify the circumstances that may result in termination of the subsidy prior to the end of the 12-month eligibility period.

Subsection (a) clarifies in four paragraphs the circumstances that may cause the eligibility agency to terminate subsidy prior to redetermination. Regarding the circumstances, paragraph (1) clarifies the number of unexplained absences that are excessive in response to IRRC's comment to clarify the number of days. Specifically, the subsection clarifies that the number of days is 60 consecutive days of unexplained nonattendance in care, provided the eligibility agency has attempted at least three times to contact the parent or caretaker regarding the child's absences. The Department also clarifies in paragraph (2) that one of the circumstances is if a child no longer resides in this Commonwealth, and the Department clarifies in paragraph (3) that one of the circumstances is if the parent or caretaker committed substantiated fraud or intentional program violations that invalidate prior determinations of eligibility. Paragraph (4) clarifies that the subsidy will be terminated if the parent or caretaker voluntarily requests discontinuance of the subsidy.

Subsection (b) clarifies that if the eligibility agency moves to terminate the subsidy as described in subsection (a), then notification to the family must be provided as required under § 3042.155.

To determine whether the absences are excessive, upon notification from the provider that a child has been absent more than 5 consecutive days, the eligibility agency will send to the parent or caretaker a notice confirming the suspension of the subsidy following the non-attendance in care. Importantly, suspension does not divert funds away from the family, but instead, the funds are preserved until such time as the child returns to care and the suspension ends. Upon suspension, payment to the provider is stopped until the child has returned to care. If the suspension continues for a period of 60 consecutive days of unexplained, nonattendance in care, the eligibility agency will proceed to terminate subsidy after ensuring the required outreach.

Eligibility Requirements

§ 3042.31. Financial eligibility

Subsection (a) establishes that the family's annual income cannot exceed 200% of the FPIG at initial application.

Subsection (b) establishes that, after an initial determination of eligibility, a family shall remain financially eligible so long as the family's annual income does not exceed 85% of the SMI.

Subsection (c) is amended in this final-form rulemaking to clarify that eligibility will continue at redetermination provided that the family's annual income does not exceed 235% of the FPIG or 85% of the SMI, whichever is less. This amendment is made in response to a public comment received recommending the addition to improve clarity and in response to IRRC's comment, as discussed previously and the Department's comment and response document.

Subsection (d) establishes that the eligibility agency shall inform the parent or caretaker of the amount that will exceed 235% of the FPIG or 85% of the SMI and will cause the family to be ineligible for subsidized child care.

Subsection (e) is amended to delete "and" and replace it with "or" following the Department's review of this final-form rulemaking to clarify that a family will be ineligible for subsidized child care when the family's assets exceed $1 million either at application or redetermination.

§ 3042.32. Residence

Subsection (a) establishes that family members must be residents of this Commonwealth.

Subsection (b) establishes that a parent or caretaker shall apply to the eligibility agency responsible for the geographic area that includes the zip code of the family's residence.

Subsection (c) establishes that a parent or caretaker experiencing domestic violence or homelessness may use an alternate address for receipt of mail or telephone number for receipt of telephone calls.

There are no changes made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.33. Work, education and training

Subsection (a) establishes that a parent or caretaker shall work at least 20 hours per week.

Subsection (b) establishes that the eligibility agency shall average a parent's or caretaker's work hours in cases where hours of work vary from week to week.

Subsection (c) establishes two circumstances under which the eligibility agency will consider a parent or caretaker as satisfying the work requirement under subsection (a).

Subsection (c)(1) is amended to clarify the requirement applies to GED or HSE diplomas.

There are no other changes made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.34. Prospective work, education and training

Subsection (a) establishes the requirements that must be satisfied for a parent or caretaker who has prospective work, education or training.

Subsection (a)(1) is amended following feedback from IRRC requesting removal of substantive language from the definition of "prospective work, education or training." The Department agrees and moves that substantive language from the proposed definition of the term and adds it to this section to clarify that work, education or training must begin no later than 30 calendar days following the date the parent or caretaker signs and dates the application for subsidized child care.

Subsection (a)(2) is unchanged from the proposed rulemaking to this final-form rulemaking.

Subsection (b) establishes that subsidized child care may not begin until the parent or caretaker begins work, education or training.

Subsection (c) establishes that a parent or caretaker shall notify the eligibility agency of the actual amount of income no later than 10 calendar days after receiving the first income for work.

Subsections (b) and (c) are unchanged from the proposed rulemaking to this final-form rulemaking.

§ 3042.35. Immunization

As amended, subsection (a) establishes that a child receiving subsidized child care shall be up to date with immunizations as recommended by ACIP, and that an eligibility agency shall, for purposes of establishing eligibility for subsidized child care, grant exemption from the immunization requirement if the child's parent or caretaker objects to immunization on religious grounds or strong personal objection equated to a religious belief must be documented by a written, signed and dated statement from the child's parent or guardian. The statement shall be kept in the child's record, or if a child's physician, physician's assistant or CRNP signs and dates a written statement indicating that a child's medical condition contraindicates immunization. The statement shall be kept in the child's record.

As amended, subsection (b) establishes that, for purposes of subsidized child care eligibility, the eligibility agency will authorize families for subsidy and give the parent or caretaker 60 days from the date of enrollment, or if the child is experiencing homelessness or is a foster child, then 90 calendar days to obtain up to date immunizations or provide documentation of exemption from the immunization requirement.

Subsections (a) and (b) are amended in this final-form rulemaking to correct typographical errors and to address feedback from IRRC, as discussed more fully previously and in the Department's comment and response document.

§ 3042.36. Citizenship

This section establishes that a child receiving subsidized child care must be a United States citizen or an alien lawfully admitted for permanent residence or otherwise lawfully and permanently residing in the United States.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.37. Eligibility of households including a parent or caretaker with a disability

This section is reorganized and restated following feedback from IRRC and from a public commentator requesting revisions, as described previously and in the Department's comment and response document. Under the reorganization, the subsections are reordered.

Subsection (a) establishes that at application or redetermination, a single parent or caretaker who is disabled is not eligible for subsidized child care services. The Department reiterates that the two-generation approach articulated in the CCDBG aims to support parents' work and the promotion of children's healthy development.

Subsection (b) establishes that following a determination of eligibility, a single parent or caretaker who experiences the onset of a disability will remain eligible until the family's next scheduled annual redetermination.

Subsection (b) is amended in this final-form rulemaking to restate the requirement so that it is clear that subsidy will continue until the next scheduled annual redetermination in the event the parent or caretaker is unable to meet the work, education and training requirements.

Subsection (c) establishes that at application or redetermination, a two-parent or caretaker family who are both disabled are not eligible for subsidized child care services. The Department reiterates that the two-generation approach articulated in the CCDBG aims to support parents' work and the promotion of children's healthy development.

Subsection (d) establishes that following a determination of eligibility, a two-parent or caretaker family where both parents are unable to meet the work, education and training requirements is excused from the work, education and training requirements until the family's next scheduled annual redetermination.

Subsection (e) establishes the requirements and conditions that a two-parent or two-caretaker family must satisfy in order to be eligible for subsidized child care services.

Subsection (e)(1) establishes that one parent or caretaker must be working at the time of application and at each redetermination.

Subsection (e)(1) is amended in this final-form rulemaking to clarify that one parent or caretaker must be satisfying the work requirement as specified under § 3042.33 (relating to work, education and training) at the time of application and at each subsequent redetermination.

Subsection (e)(2) establishes that the parent or caretaker who is not working must have a disability verified under § 3042.70 at the time of application and redetermination.

Subsection (e)(2) is amended in this final-form rulemaking to delete the language "or at the time the parent or caretaker becomes disabled" because the language is inconsistent with this final-form rulemaking and the CCDBG because eligibility is continuous for the 12-month period. The amendment was made in response to a public comment received suggesting the provision as proposed was not in sync with the Federal CCDBG requirements.

Subsection (e)(3) establishes that the parent or caretaker with the disability is unable to work or participate in education or training and is unable to care for the child for whom the family requested subsidy, or has a need to attend treatment for the disability and is unable to care for the child.

Subsection (e)(3) is unchanged from the proposed rulemaking to this final-form rulemaking.

Subsection (e)(4) is moved in this final-form rulemaking to subsection (f). The section is moved to clarify that a court order is not required in conjunction with the other listed requirements, but instead, it is a stand-alone option intended to widen the scope of available avenues for the receipt of child care subsidies. The amendment is made in response to feedback noting ambiguity and requesting clarification of the subsection.

Subsection (f) establishes that a two-parent or two-caretaker family may be eligible for subsidized child care if the other parent or caretaker is satisfying the work requirements and a court order or safety plan issued by a children and youth agency prohibits one parent or caretaker from caring for the child for whom the family requested subsidy.

Determining Family Size and Income

§ 3042.41. Family size

Subsection (a) establishes the individuals who count when determining the size of the family.

Subsection (b) establishes that a foster child may be counted as a family of one or may be included in a family as defined in this chapter.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.42. Income counted

This section establishes that the incomes to be counted when determining financial eligibility are the incomes of the parent or caretaker of the child for whom eligibility is sought, a parent's or caretaker's spouse, and children for whom the parent or caretaker receives unearned income.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.43. Income adjustment

This section establishes how the eligibility agency determines the total adjusted family income in eight subsections.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.44. Estimating income

Subsection (a) establishes that the eligibility agency shall use its best estimate of monthly income based upon circumstances at the time of application or redetermination as consistent with Appendix A, Part I (relating to income to be included, deducted and excluded in determining gross monthly income).

Subsection (b) establishes that for parents or caretakers who are working and have received pay at the time they apply for subsidized child care, the eligibility agency shall estimate income based upon verified, actual amounts already received by the family prior to application or redetermination.

Subsection (c) establishes that the eligibility agency shall adjust its estimate of monthly income to reflect recent or anticipated changes and unusual circumstances that are not expected to recur, such as overtime not likely to continue.

Subsection (d) establishes that when an applicant anticipates starting work within the next 30 days or has not yet received a first paycheck, income eligibility is established based on verified anticipated income.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

Eligibility Determination

§ 3042.51. Application

Subsection (a) establishes that the eligibility agency shall make applications for subsidized child care available to any person upon request.

Subsection (b) establishes that a parent or caretaker may file a signed application for subsidized child care under this chapter, including an electronically-signed, online application, on any day and at any time.

Subsection (c) establishes that a parent or caretaker may submit an application by mail, hand-delivery, facsimile or electronically.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.52. Initial determination of eligibility

Subsection (a) establishes that the eligibility agency shall stamp the date and time of receipt on the signed application on the same day the eligibility agency receives the application by mail, hand-delivery, facsimile or electronically.

Subsection (b) establishes that the eligibility agency shall determine a family's eligibility and authorize payment for subsidized child care no later than 10 calendar days following verification of all factors of eligibility, and that the eligibility agency may not delay a determination of eligibility beyond 30 calendar days following receipt of a signed application from the parent or caretaker.

Subsection (c) establishes that the eligibility agency shall determine a family eligible retroactive to the date the family submitted a signed application if the eligibility agency has received all information necessary to complete the application and the verification provided by the parent or caretaker establishes eligibility.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.53. Effective date of coverage

Subsection (a) establishes that if the eligibility agency determines a family eligible for subsidized child care and if funding is available, coverage of child care costs is retroactive to the date the family submitted a signed application.

Subsection (b) establishes that if the eligibility agency places a child on a waiting list following the determination of eligibility, coverage of child care costs must begin on the date funding is available.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.54. Notification of eligibility status and availability of funding

Subsection (a) establishes that the eligibility agency shall notify the parent or caretaker of the family's eligibility status within 30 calendar days of receiving a signed application.

Subsection (b) establishes that if the eligibility agency determines a family eligible for subsidized child care, the eligibility agency shall notify the family's child care provider when funding becomes available to enroll the child.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.55. Period of eligibility

This section establishes that a family receiving subsidy remains eligible until determined ineligible.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.56. Personal interview

As amended, subsection (a) establishes that if the eligibility agency determines a family eligible for subsidized child care and if funding is available, the parent or caretaker shall attend a personal interview with the eligibility agency no later than 30 calendar days following the date the eligibility agency notifies the family of eligibility for subsidized child care.

As amended, subsection (b) establishes that if the eligibility agency determines a family eligible for subsidized child care and if funding is not available, the parent or caretaker shall attend a personal interview with the eligibility agency no later than 30 calendar days following the date the first child from a family is enrolled in subsidized child care.

Subsection (c) establishes that the eligibility agency shall accommodate the parent's or caretaker's work hours in scheduling the personal interview.

Subsection (d) establishes that the eligibility agency may extend the 30-day time frame for the personal interview for up to an additional 30 days if the parent or caretaker claims hardship due to conflicts with the parent's or caretaker's working hours or illness.

Subsection (e) is deleted from this final-form rulemaking. In the proposed rulemaking, this subsection established that the eligibility agency could substitute a telephone contact for a face-to-face meeting if the face-to-face meeting cannot be rescheduled without the parent or caretaker experiencing a hardship. Because the terminology is changing from "face-to-face" meeting to "personal interview", and because a personal interview does not require a face-to-face meeting, the requirement is unnecessary so it is deleted. Proposed subsection (f) is changed to final-form subsection (e), and the rest of the provisions were reordered accordingly.

Subsection (e) establishes that the eligibility agency may waive the requirement for the personal interview if the parent or caretaker has completed a personal interview with the eligibility agency within the previous 12 months.

This section is amended in this final-form rulemaking to clarify the requirement and to delete an unnecessary barrier to eligibility as consistent with CCDBG purposes and goals. The Department reiterates that several commentators advocated for those who struggle to participate in the face-to-face meeting and suggested allowing telephone contact to satisfy the requirement. In response, the Department makes these changes to this section, as discussed previously and in the Department's comment and response document.

§ 3042.57. Waiting list

Subsection (a) establishes that the eligibility agency shall place an eligible child on a waiting list on a first come, first served basis if funds are not available to enroll the child following a determination of eligibility based on available funding.

Subsection (a) is amended in this final-form rulemaking in response to feedback from a commentator. Specifically, the section is amended to provide that the Department will post its method for priority on its web site. An order of priority may include: foster children; children who are enrolled in PA Pre-K Counts, Head Start or Early Head Start who need wrap-around child care at the beginning or end of the program day; newborn siblings of children who are already enrolled; children experiencing homelessness; and teen parents. Otherwise, children are placed on the waiting list on a first-come, first-serve basis with respect to the date for requesting care for a child based on available funding.

Subsection (b) establishes the requirement that following a determination of eligibility, if a parent or caretaker requests care for an additional child, the eligibility agency shall place the additional child on the waiting list according to the date and time that care was requested for the additional child based on available funding.

Subsection (b) is unchanged from the proposed rulemaking to this final-form rulemaking.

Subsection (c) establishes the requirement that a child will become ineligible if not enrolled with an eligible child care provider within 30 calendar days following the date of notification that funds are available to enroll the child, although exceptions may apply with Departmental approval. The requirement stated that the exceptions might include instances with circumstances beyond a family's control.

Subsection (c) is amended in this final-form rulemaking to make changes congruent with the changes made as discussed previously and in the Department's comment and response document.

Self-Certification and Verification

§ 3042.61. General verification requirements

Subsection (a) establishes that the parent or caretaker shall be the primary source of verification in establishing and maintaining eligibility for subsidized child care.

Subsection (b) establishes that the eligibility agency shall assist parents and caretakers in obtaining verification, including making a collateral contact.

Subsection (c) establishes that the eligibility agency may not impose requirements for verification beyond the requirements of this chapter.

Subsection (d) establishes that at the time of application for subsidized child care, the eligibility agency shall obtain consent from the parent or caretaker and the parent's or caretaker's spouse permitting the eligibility agency to obtain verification of eligibility information.

Subsection (e) establishes that the eligibility agency shall retain the signed consent in the family's file.

Subsection (f) establishes that the consent shall remain in effect for as long as the family receives subsidy.

Subsection (g) establishes that the eligibility agency may not deny or terminate subsidy to a family when the parent or caretaker has cooperated in the verification process and needed verification is pending or cannot be obtained due to circumstances beyond the parent's or caretaker's control.

Subsection (h) establishes that the eligibility agency may not require a parent or caretaker to re-verify information unless the eligibility agency has information that indicates the subsidy status of the family has changed.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.62. Collateral contact

Subsection (a) establishes that the eligibility agency shall make a collateral contact on behalf of the parent or caretaker.

Subsection (b) establishes that the eligibility agency shall obtain from the parent or caretaker a list of sources of reliable collateral contact information.

Subsection (c) establishes that the eligibility agency shall cooperate with a source who acts as a collateral contact.

Subsection (d) establishes the sources of reliable collateral contact information.

Subsection (e) establishes that the eligibility agency may not contact an alleged abuser or former abuser in a domestic violence situation.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.63. Self-certification

Subsection (a) establishes that the eligibility agency shall inform the parent or caretaker in writing that self-certification is made subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

There is no change made to subsection (a) from the proposed rulemaking to this final-form rulemaking.

Subsection (b) establishes the eligibility factors for which the eligibility agency will accept a statement of the parent or caretaker as sufficient proof. The factors include age, family composition, citizenship or immigration status, immunization status, day and hours care is needed, the status of an individual who formerly received TANF as specified under § 3042.115(1) (relating to reporting requirements for former TANF families), and personal interview time frame extension or telephone contact based on hardship.

Subsection (b) is amended in this final-form rulemaking to make changes to subsection (b)(7) to update the terminology and delete references to the term "face-to-face" and replace it with the term "personal interview," and to correct a citation and the title of a referenced section following changes made in § 3042.56. Otherwise, the Department noted that this section was required under Chapter 3041.

§ 3042.64. Self-declaration

Subsection (a) establishes the requirement that if verifying eligibility based on documentary evidence or collateral contract is unsuccessful, the eligibility agency shall proceed to determine eligibility based upon a self-certification as specified in § 3042.63 or by written self-declaration by the parent or caretaker.

Subsection (b) establishes the requirement that the eligibility agency shall instruct the parent or caretaker that a written self-declaration is made subject to 18 Pa.C.S. § 4904.

Subsection (c) establishes that the eligibility agency shall accept a parent's or caretaker's self-declaration statement, unless evidence contradicts the statement.

Subsections (a), (b) and (c) are unchanged from the proposed rulemaking to this final-form rulemaking.

Subsection (d) establishes that if a parent or caretaker uses self-declaration to establish eligibility, then the eligibility agency shall require the parent or caretaker to provide another form of acceptable verification no later than 30 calendar days following the date the written self-declaration is accepted by the eligibility agency, unless otherwise specified in this chapter.

Subsection (d) is amended in this final-form rulemaking following the Department's review to clarify the requirement following changes made on final-form to the definition of "self-declaration." Specifically, the word "verification" is deleted, and the language is modified to clarify that the provision applies if a parent or caretaker uses self-declaration to establish eligibility as described in subsection (a). For clarity, the eligibility agency sends written confirmation to the parent or caretaker that the self-declaration is accepted and states the date by which verification must be provided.

Subsection (e) establishes that for a parent or caretaker using self-declaration, eligibility is pending verification until another form of acceptable verification is returned to the eligibility agency as required under this section. The addition came about following the Department's review to ensure consistency with the required minimum 12-month eligibility period. The Department reiterates that although self-declaration requires follow-up documentation within 30 days, once eligibility has been determined, the eligibility must last a minimum of 12 months. The added requirement makes clear that the eligibility is pending receipt of the verification required under this section.

Subsection (f) establishes that if the eligibility agency does not receive the verifications as required under this section, or if the family is determined ineligible, the eligibility agency shall take the necessary steps to terminate the eligibility pending verification with proper notification to the family as specified in § 3042.155. The addition came about following the Department's review to state the requirement completely and for instances when verifications are not provided, or for when the family is determined ineligible.

§ 3042.65. Verification of income

Subsection (a) establishes the requirement for acceptable verification of earned income from employment.

Subsection (b) establishes the requirement for acceptable verification of income from self-employment.

Subsection (c) establishes the requirement for acceptable verification of unearned income.

Subsection (d) establishes the requirement for acceptable verification of the amount of support received or paid by the family.

There are no changes made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.66. Verification of residence

Subsection (a) establishes the requirement that the parent or caretaker shall submit verification of residence at the time of application.

Subsection (b) establishes requirements for acceptable certification of residence.

Subsection (c) establishes the requirement that the parent or caretaker shall submit verification of residence at the time of redetermination if the parent or caretaker reported a change of address.

There are no changes made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.67. Verification of work, education and training

This section establishes the acceptable means for parents or caretakers to verify the number of hours of work, education, training or enrollment in education or training.

Paragraph (6) is deleted in this final-form rulemaking following the Department's review because the provision conflicts with 12-month eligibility. The Department reiterates that although self-declaration requires follow-up documentation within 30 days, once eligibility has been determined, the eligibility must last a minimum of 12 months, and so permitting verification by self-declaration at all runs contrary to the requirement that work, education or training will begin no later than 30 days after signing and dating the application. There are no changes made to the remainder of the paragraphs from the proposed rulemaking to this final-form rulemaking.

§ 3042.68. Verification of circumstances relating to a decrease in copayment

This section establishes the acceptable means through which a parent or caretaker can verify that circumstances have changed so that the copayment should be decreased.

This section is amended in this final-form rulemaking for consistency of terminology to remove unnecessary barriers to eligibility as requested by commentators. Specifically, the Department observed incongruity in terminology in this section and in §§ 3042.70—3042.73. The Department determines that the proposed terminology is more restrictive than the terminology used in the other sections of this chapter and in the child care facilities regulations in Chapters 3270, 3280 and 3290, and that these differences served no regulatory purpose. The Department therefore makes amendments to this section to refer to a "licensed physician, physician's assistant, CRNP or psychologist."

§ 3042.69. Verification of identity

Subsection (a) establishes the requirement that the parent or caretaker shall submit verification of identity at the time of application.

Subsection (b) establishes requirements for the acceptable verification of identity.

Subsection (c) establishes the requirement that the parent or caretaker shall submit verification of identity at the time of redetermination if the eligibility agency becomes aware of an additional parent or caretaker residing in the household.

There are no changes made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.70. Verification of inability to work due to a disability

This section establishes the means through which an inability to work due to a disability may be documented.

This section is amended in this final-form rulemaking for consistency of terminology to remove unnecessary barriers to eligibility. Specifically, the Department observed incongruity in terminology in this section and in §§ 3042.68 and 3042.71—3042.73 (relating to verification of family size; verification of child's incapability of caring for himself; and verification of care and control). The Department determined, as explained previously in § 3042.68, that the proposed terminology was unnecessarily restrictive. The Department therefore makes amendments to this section to refer to a "licensed physician, physician's assistant, CRNP or psychologist." Finally, because of amendments made in § 3042.37, the Department makes amendments to this section to state the requirements without reference to the size of the family as requested by IRRC. This requirement applies only at the time of application or redetermination, and if the parent or caretaker becomes disabled during the eligibility period, the eligibility will continue for the balance of the 12-month eligibility period. The Department reiterates that once eligibility is determined, the eligibility period lasts for 12 months in all cases, except for when the requirements in § 3042.22 apply.

§ 3042.71. Verification of family size

This section establishes the means through which the family size can be verified.

This section is amended in this final-form rulemaking for consistency of terminology to delete unnecessary barriers to eligibility. Specifically, the Department observed incongruity in terminology in this section and in §§ 3042.68, 3042.70, 3042.72 and 3042.73. The Department determined, as explained previously under § 3042.68, that the proposed terminology was unnecessarily restrictive. The Department therefore makes amendments to this section to refer to a "licensed physician, physician's assistant, CRNP or psychologist."

§ 3042.72. Verification of a child's incapability of caring for himself

This section establishes the means through which a child's incapability of caring for himself can be verified.

This section is amended in this final-form rulemaking to correct the citation stated in the requirement following feedback received from IRRC noting the error. This section is further amended in this final-form rulemaking for consistency of terminology to delete unnecessary barriers to eligibility. Specifically, the Department observed incongruity in terminology in this section and in §§ 3042.68, 3042.70, 3042.71 and 3042.73. The Department determined, as explained previously under § 3042.68, that the proposed terminology was unnecessarily restrictive. The Department therefore makes amendments to this section to refer to a "licensed physician, physician's assistant, CRNP or psychologist."

§ 3042.73. Verification of care and control

This section establishes the means through which care and control may be verified.

This section is amended in this final-form rulemaking for consistency of terminology to delete unnecessary barriers to eligibility. Specifically, the Department observed incongruity in terminology in this section and in §§ 3042.68 and 3042.70—3042.72.

The Department determines, as explained previously under § 3042.68, that the proposed terminology was unnecessarily restrictive. The Department therefore makes amendments to paragraph (2) to refer to a "licensed physician, physician's assistant, CRNP or psy-

chologist." Next, paragraph (8) is amended in this final-form rulemaking to clarify that the requirement refers to a written statement from the parent or caretaker verifying that a relative has care and control of the child. The amendment clarifies the requirement to be consistent with current practices for when a relative who is not the parent or caretaker has care and control of the child.

§ 3042.74. Verification of foster child status

Subsection (a) establishes the requirement that acceptable verification of foster status includes a statement from a children and youth agency or a record from a government or social service agency.

Subsection (b) establishes the requirement that verification of foster child status must be verified at application, redetermination or upon adding the child to the family composition.

There are no changes made to this section from the proposed rulemaking to this final-form rulemaking.

Eligibility Agency Responsibilities

§ 3042.81. Eligibility agency

Subsection (a) establishes the requirement that the eligibility agency shall manage the subsidized child care program in part of a county, a single county or several counties.

Subsection (b) establishes the requirement that the eligibility agency may be either a prime contractor or a subcontractor designated in a prime contract.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.82. Eligibility determination

Subsection (a) establishes the requirement that the eligibility agency shall determine eligibility for subsidized child care as specified in this chapter.

Subsection (b) establishes the requirement that the eligibility agency may not impose eligibility conditions other than the conditions listed in this chapter.

Subsection (c) establishes the requirement that the eligibility agency may not require the parent or caretaker to select a particular provider or combination of providers as a condition of eligibility.

There are no changes made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.83. Confidentiality

Subsection (a) establishes that the eligibility agency and its employees must keep confidential the information in the family file and use that information only for purposes directly connected to the administration of their duties.

Subsection (b) establishes that agents of the United States, the Commonwealth and the Department who are responsible for eligibility review, evaluation or audit functions shall have access to, and the right to the use and disclosure of, information on applicants or recipients of subsidized child care. This use and disclosure are confined to the agent's responsibility to carry out review, evaluation or audit functions.

Subsection (c) establishes that disclosure of information beyond the scope of review, evaluation or audit functions performed by the agents requires the parent's or caretaker's informed and written consent.

Subsection (d) establishes that information in the family file may be disclosed to the local CAO when necessary to ensure that funds are authorized appropriately.

Subsection (e) establishes that the eligibility agency shall ensure the confidentiality of an individual who files an appeal or complaint about a family's receipt of subsidized child care for a child.

There are no changes made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.84. Family file

Subsection (a) establishes that an eligibility agency shall establish and maintain a separate file for the family of each parent or caretaker who applies for subsidized child care.

Subsection (b) establishes that the family file shall contain documents pertaining to eligibility determination, redetermination, subsidized child care authorization, copayment agreements and copies of written notices required by this chapter.

Subsection (c) establishes that a parent or caretaker or an authorized representative has a right to examine the family file.

There are no changes made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.85. Record retention

Subsection (a) establishes that an eligibility agency shall retain paper or electronic family files, completed application forms, written notices, books, records and other fiscal and administrative documents pertaining to subsidized child care.

Subsection (b) establishes that an eligibility agency shall maintain records for at least 6 years from the end of the fiscal year in which subsidized child care has been provided or until an audit or litigation is resolved.

Subsection (c) establishes that the fiscal year is a period of time beginning July 1 of any calendar year and ending June 30 of the following calendar year.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.86. Change reporting and processing

This section is amended in this final-form rulemaking to reorganize the provisions and to restate the requirements for improved clarity. Under the reorganization, several provisions are moved and renumbered.

Subsection (a) establishes that a parent or caretaker shall report income in excess of 85% of the SMI no later than the 10th day of the month following the month of the change in income.

Subsection (a) is amended in this final-form rulemaking to clarify that a parent or caretaker shall report income in excess of 85% of the SMI no later than the 10th day of the month following the month of the change in income. The amendment is made in response to comments received requesting allowance for parents to total their income for the entire month and determine whether the income has gone over the threshold required for reporting. The change is consistent with the periods of time permitted by the Department for other programs for reporting changes, including TANF, Supplemental Nutrition Assistance Program (SNAP) and Medical Assistance (MA). The change is consistent with the Department's process, which includes evaluating reports of increases in income above 85% of the SMI for whether the reported

increase is a fluctuation or a mere temporary increase, as required under 45 CFR 98.21(e).

Subsection (b) establishes that if a parent or caretaker reports a change that results in the family or a child in the family becoming ineligible for subsidy, the eligibility agency must assess the change and ensure that the reported change is assessed for whether the change is an irregular fluctuation or a temporary increase and shall ensure that the necessary steps are taken to terminate the subsidy following evaluation of the reported change.

Subsection (b) is amended in this final-form rulemaking to clarify and add requirements to clarify that the eligibility agency must ensure that a reported change is assessed for whether the change is an irregular fluctuation or a temporary increase and must ensure that the necessary steps are taken to terminate the subsidy following evaluation of the reported change. The amendment is made following feedback from IRRC asking whether the eligibility agency considers if the income is an irregular fluctuation, whether the eligibility agency begins processing the termination as soon as a change is reported and requesting revisions to clarify how increases in income are assessed. The requirements are stated in subsection (b)(1) and (2). As it regards the time for the eligibility agency to act, once a parent or caretaker reports a change in income that would result in the family becoming ineligible, the eligibility agency immediately assesses the reported change to determine whether the reported change is an irregular fluctuation or a temporary increase. If the reported change is either an irregular fluctuation or a temporary increase, the eligibility agency will determine there is no change, and eligibility will continue for the remainder of the minimum 12-month eligibility period. If the change is determined to not be an irregular fluctuation or temporary increase, the eligibility agency will immediately act to terminate the subsidy by issuing a notice of adverse action, which states the information specified in § 3042.152, including the date the family will become ineligible, which would be 13 days from the date the notice was issued. Families may appeal an Adverse Action notice. See §§ 3042.164 and 3042.165.

Subsection (c) establishes that a parent or caretaker may voluntarily report changes in income on an ongoing basis.

Subsection (c) is amended in this final-form rulemaking to clarify that the eligibility agency will act on information reported by the parent or caretaker if it would reduce the family copayment or increase the family subsidy and that the eligibility agency shall review the change and reduce the copayment as specified in § 3042.94 (relating to parent or caretaker copayment requirements), and to clarify that the eligibility agency is prohibited from acting on information reported by the family that would reduce the family's subsidy unless the information provided indicates the family's income exceeds 85% of the SMI for a family of the same size. The requirements are stated in the added subsection (c)(1) and (2).

Subsection (d) establishes that if the parent or caretaker fails to report a change in the child's provider, the child remains eligible. This requirement also ensures that the eligibility agency does not make retroactive payment more than 30 calendar days prior to the date the parent or caretaker reported the change, except for a former TANF family as specified in § 3042.119.

Subsection (d) is unchanged from the proposed rulemaking to this final-form rulemaking.

Finally, because of the reorganization of this section, the title of this section is changed to "Change reporting and processing."

The previous amendments are made in response to feedback received during the public comment period and from IRRC suggesting that the proposed requirements were ambiguous and were not aligned with the Federal CCDBG requirements. These amendments are also discussed previously and in the Department's comment and response document.

§ 3042.87. Voluntary request to terminate subsidized child care

Subsection (a) establishes that a parent or caretaker may request the eligibility agency to terminate subsidy.

Subsection (b) establishes that upon receipt of a request to terminate subsidy, the eligibility agency shall take steps to terminate the family's eligibility.

Subsection (c) establishes that the eligibility agency shall notify the parent or caretaker as specified in § 3042.156 (relating to notice confirming voluntary withdrawal).

There are no changes made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.88. Child abuse reporting

This section establishes that eligibility agencies shall immediately report suspected child abuse in accordance with 23 Pa.C.S. Chapter 63 (relating to Child Protective Services Law) and Chapter 3490 (relating to protective services).

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

Copayment and Payment by the Department

§ 3042.91. General copayment requirements

Subsection (a) establishes that the eligibility agency shall determine the amount of the parent's or caretaker's copayment during the eligibility process based on the parent's or caretaker's actual or verified anticipated income and family size.

Subsection (b) establishes that the eligibility agency will set the copayment at an initial determination of eligibility for subsidized child care and reestablish it at each successive redetermination of eligibility.

Subsection (c) establishes that the copayment covers each child in the family who is receiving subsidized child care.

Subsection (d) establishes that the copayment includes each day of the week for which the family establishes a need for child care.

Subsection (e) establishes that the copayment is due on the first day of the service week and each week thereafter, regardless of the day the parent or caretaker enrolls the child.

There are no changes made to subsections (a)—(e) from the proposed rulemaking to this final-form rulemaking.

Subsection (f) establishes that copayments cannot increase during the eligibility period unless the provisions in § 3042.176 apply. This addition is in response to a public comment suggesting the additional subsection for clarity.

§ 3042.92. Department's payment

Subsection (a) establishes that the payment rate is the daily amount paid to a child care provider for services delivered to a child who is eligible for subsidized child care.

Subsection (b) establishes that if the copayment does not exceed the payment rate for care, the difference between the payment rate and the weekly copayment is the Department's payment for subsidized child care.

Subsection (c) establishes that if the Department's weekly payment to the provider is less than $5, the family is not eligible for subsidized child care with that provider.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.93. Adjusted copayment for prospective work

Subsection (a) establishes that upon notification by the parent or caretaker of receipt of payment for employment, the eligibility agency shall adjust the family copayment no later than 20 days following the date of the reported change and shall provide notice to the parent of the planned change in copayment.

Subsection (b) establishes that the parent or caretaker shall begin paying the adjusted copayment starting the first day of the service week following the date the written notice is postmarked or hand-delivered to the parent or caretaker by the eligibility agency.

Subsection (c) establishes that a single parent or caretaker who applies for subsidized child care and who reports prospective work is not required to pay a copayment until the parent or caretaker receives income from work.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.94. Parent or caretaker copayment requirements

Subsection (a) establishes that if the copayment is decreased as the result of a parent or caretaker voluntarily reporting a change or as the result of a redetermination, the parent or caretaker shall begin paying the reduced copayment on the first day of the service week following the date the parent or caretaker reported a change or the date the redetermination was completed.

Subsection (b) establishes that if the copayment is increased as the result of a redetermination, the parent or caretaker shall begin paying the increased copayment on the first service day of the week following the expiration of the notification period specified in § 3042.151(a) (relating to general notification requirements) advising the parent or caretaker of the copayment increase.

Subsection (c) establishes that if the copayment is due on the first day of the service week and each week thereafter, regardless of the day the parent or caretaker enrolls the child.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.95. Delinquent copayment

Subsection (a) establishes that a copayment is delinquent if it is not paid by the last day of the service week.

Subsection (b) establishes that on the day the provider reports the copayment is delinquent, the eligibility agency shall notify the parent or caretaker in writing that action will be taken to terminate subsidy for the child.

Subsection (c) establishes that if a copayment is delinquent, the eligibility agency will apply the first payment paid during a week to the current week's copayment. The eligibility agency will apply subsequent payments during a week to the delinquent copayment.

Subsection (d) establishes that to maintain eligibility for subsidized child care when a parent or caretaker incurs a copayment delinquency, the parent or caretaker shall pay all amounts owed prior to the expiration of the notification period.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.96. Eligibility agency responsibilities regarding copayment

Subsection (a) establishes that the eligibility agency shall generate notices based on delinquent copayments.

Subsection (b) establishes that the eligibility agency shall send the provider a copy of each notice issued to a parent or caretaker whose child is enrolled with the provider.

Subsection (c) establishes that when a copayment is reported to the eligibility agency as delinquent, the eligibility agency shall mail a notice to the parent or caretaker. The notice must state that service will be terminated on a date set forth on the notice, which is the first day after 10 calendar days following the date of the written notice, unless the delinquent copayment is paid by that date.

Subsection (d) establishes that a family whose subsidy is terminated for failure to make required copayments may not be reauthorized for subsidy until all outstanding copayments have been paid in full as specified in § 3042.95(d) (relating to delinquent copayment).

Subsection (e) establishes that the eligibility agency shall retain a copy of the termination notice.

Subsection (f) establishes that the eligibility agency shall distribute, to each parent or caretaker who applies for subsidized child care, a handbook of parent's rights and responsibilities in the subsidized child care program provided by the Department.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.97. Use of the Federal Poverty Income Guidelines and State Median Income

Subsection (a) establishes that the FPIG is used to determine the income limits and copayments for subsidized child care.

Subsection (b) establishes that the Department will publish an updated copayment chart in Appendix B (relating to copayment chart) through a notice in the *Pennsylvania Bulletin*.

Subsection (c) establishes that the eligibility agency shall inform each parent or caretaker of the dollar amount that is equivalent to 235% of FPIG or 85% of the SMI.

There are no changes made to subsections (a), (b) or (c) from the proposed rulemaking to this final-form rulemaking.

Subsection (d) establishes that the eligibility agency shall explain that 235% of FPIG and its specific dollar figure are the highest annual income amounts permitted at the time of redetermination.

Subsection (d) is amended to improve clarity by providing that the eligibility agency shall inform each parent or caretaker.

Subsection (e) establishes that the eligibility agency shall explain that 85% of the SMI and its specific dollar figure are the highest annual income amounts permitted between redeterminations.

Subsection (e) is amended to improve clarity and to add a requirement for the eligibility agency to inform each parent or caretaker that 85% of the SMI and the specific dollar amount that is the highest permitted between redeterminations. The amendment was in response to a public comment requesting that a requirement be added that mirrors subsection (d) and that advises of the specific dollar amount of income that will result in a loss of eligibility between redeterminations, as discussed in the Department's comment and response document.

Subsection (f) establishes that a family is ineligible at any time if its annual income exceeds 85% of the SMI. The provision is unchanged from proposed subsection (e).

§ 3042.98. Copayment determination

Subsection (a) establishes that the criteria the eligibility agency must use when determining the family copayment, which are family size and family income; a minimum copayment of at least $5, unless waived; the family copayment cannot exceed 11% of the family's annual income; and if the family's annual income is 100% of FPIG or less, the annual copayment cannot exceed 8% of the family's annual income.

Subsection (a)(1) is amended in this final-form rulemaking to correct a typographical error.

Subsection (a)(2) is amended in this final-form rulemaking to correct citation errors following feedback from IRRC and following numbering changes on final-form to the provisions regarding waivers.

Subsection (a)(3) is amended in this final-form rulemaking to replace "11%" with "7%" and to ensure consistency with subsection (a)(2).

Subsection (a)(4) is amended in this final-form rulemaking to replace "8%" with "5%."

As discussed previously and in the Department's comment and response document, the amendments to subsection (a)(3) and (4) are made in response to a comment received during the public comment period requesting changes to ensure that family copayments do not exceed 7% of family income to reflect the CCDF benchmark. The Department notes the Federal benchmark is and has been set to 7% since 2016, and that the rate is based on data from the United States Census Bureau indicating that on average, between 1997 and 2011, the percent of monthly income families spent on child care was constant at around 7%. Consistent with CCDBG provisions relating to equal access, the Federal benchmark states that as CCDF assistance is intended to offset the disproportionately high share of income that low-income families spend on child care to support parents in achieving economic stability, CCDF families should not be expected to pay a greater share of their income on child care than reflects the National average. As well, the Department notes that this Commonwealth's announced approach to lower copayments to 3%—7% is consistent with the Federal benchmark that copayments do not exceed 7%.

The section is amended in this final-form rulemaking to change subsection (a)(4) to replace 8% with 5%, so that families with an annual income of 100% of FPIG or less do not pay copayments that exceed 5% of the family's annual income. The change to 5% reflects a pro-rata adjustment for consistency with the change made in subsection (a)(3), and it is consistent with the Federal benchmark and all CCDBG provisions, including those relating to equal access. Finally, regarding the commentator who requested for eligibility agencies to maintain timely communications with child care providers about changes in the status of children and families enrolled in the program with respect to eligibility, suspension or redetermination, so as not to increase the financial burden on providers, the Department explained that eligibility agencies are already advised to maintain timely communications with child care providers.

Subsection (b) establishes that the eligibility agency shall determine the copayment by using the copayment chart in Appendix B.

There is no change made to subsection (b) from the proposed rulemaking to this final-form rulemaking.

§ 3042.99. Copayment exceeding monthly payment for care

Subsection (a) establishes that if the copayments for 1 month are equal to or exceed the monthly payment for care, the family is not eligible for subsidized child care with that provider. The family must enroll the child or children with another eligible provider as specified in § 3042.12.

Subsection (b) establishes that if the copayments for 1 month are equal to or exceed the monthly payment for care because other children in the family are currently on the waiting list, the family may choose to suspend the child's care with that provider until funding becomes available to enroll other children in the family in care.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

Eligibility Redetermination

§ 3042.101. Eligibility redetermination

Subsection (a) establishes that the eligibility agency shall complete a redetermination of eligibility no less than every 12 months and establish the family's next redetermination date.

Subsection (b) establishes requirements for the eligibility agency prior to redetermination.

There are no changes made to subsections (a) and (b) from the proposed rulemaking to this final-form rulemaking.

Subsection (c) establishes that the parent's or caretaker's annual income must meet the requirements set forth in § 3042.31(c).

Subsection (c) is amended in this final-form rulemaking to correct a typographical error, replacing "parent" with "parent's."

§ 3042.102. Procedures for redetermination

Subsection (a) establishes that no earlier than 6 weeks prior to redetermination, the eligibility agency shall send the family a form that lists the factors that will be reviewed for the redetermination of eligibility and explain the verification that will be needed to complete the redetermination.

Subsection (b) establishes that if the parent or caretaker submits only some of the required verification elements prior to the redetermination, the eligibility agency shall request in writing that the parent or care-

taker submit the additional verification no later than the family's redetermination date.

Subsection (c) establishes that the eligibility agency shall retain a copy of the notification in the family file.

Subsection (d) establishes that the eligibility agency shall send a written notice to the parent or caretaker regarding failure to provide required verification only after the family's redetermination date.

Subsection (e) establishes that the eligibility agency shall require the parent or caretaker to complete, sign and either mail, hand-deliver, fax or electronically submit the applicable form at each redetermination.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

Former TANF Families

§ 3042.111. General provisions for former TANF families

Subsection (a) establishes that a family that is no longer eligible for TANF cash assistance benefits or a family that voluntarily left the TANF program and meets the eligibility requirements specified in this chapter may qualify for subsidized child care.

Subsection (b) establishes that the eligibility agency shall review the information received from the CAO about a parent or caretaker who formerly received TANF benefits.

Subsection (c) establishes that the eligibility agency shall determine the date TANF benefits ended and establish the 183-day period after eligibility for TANF benefits ends, within which the parent or caretaker may receive child care benefits.

Subsection (d) establishes that eligibility for former TANF child care benefits shall begin the day following the date TANF benefits ended and shall continue for 183 consecutive days.

Subsection (e) establishes that the parent or caretaker may request child care benefits at any time during the 183-day period after eligibility for TANF ended.

Subsection (f) establishes that the eligibility agency may not place a child on a waiting list if a former TANF parent or caretaker requests subsidized child care for that child any time prior to 184 calendar days after TANF benefits ended.

Subsection (g) establishes that a family is not eligible for former TANF benefits if a parent or caretaker is currently disqualified from receiving TANF benefits as specified in §§ 255.1(c) and 275.51 (relating to restitution and disqualification policy; and imposing the disqualification).

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.112. General requirements for former TANF families

Subsection (a) establishes conditions a parent or caretaker must meet during the 183-day period after eligibility for TANF benefits ended or after a family voluntarily left the TANF program.

Subsection (b) establishes that a former TANF parent or caretaker who is transferred to the eligibility agency by the CAO or who applies for subsidized child care during the 183-day period after eligibility for TANF ended as specified in subsection (a) shall not be placed on a waiting list.

Subsection (c) establishes that the eligibility agency shall complete a redetermination of eligibility and establish the family's next redetermination date as specified in § 3042.101(a) (relating to eligibility redetermination).

Only subsection (a)(3) is amended in this final-form rulemaking to correct a citation following feedback received from IRRC noting the error. The rest of the provisions are unchanged from the proposed rulemaking to this final-form rulemaking.

§ 3042.113. Notification requirements for former TANF families

Subsection (a) establishes that if the eligibility agency determines that a parent or caretaker met the requirements in § 3042.112 (relating to general requirements for former TANF families) and was receiving child care on the date TANF benefits ended, the eligibility agency shall notify the parent or caretaker of the family's eligibility status and the date the 183-day former TANF period will expire.

Subsection (b) establishes the notification requirements for the eligibility agency to send to the parent or caretaker if the eligibility agency determines that a parent or caretaker was not receiving child care or cannot determine whether the parent or caretaker was receiving child care on the date TANF benefits ended.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.114. Personal interview requirements for former TANF families

As amended, subsection (a) establishes that when the parent or caretaker contacts the eligibility agency within 183 days after TANF benefits end, the eligibility agency must inform the parent or caretaker of the requirement to attend a personal interview with the eligibility agency. The personal interview shall occur no later than 30 calendar days following the date of the letter.

As amended, subsection (b) establishes that when the parent or caretaker contacts the eligibility agency in response to the letter specified in § 3042.113(b) (relating to notification requirements for former TANF families), the eligibility agency shall schedule a personal interview with the parent or caretaker.

Subsection (c) establishes that to maintain continuous child care payment from the day following the date TANF benefits ended, the parent or caretaker shall attend a personal interview with the eligibility agency as specified in § 3042.115.

As amended, subsection (d) establishes that the eligibility agency may waive the requirement for the personal interview if the parent or caretaker has completed a personal interview with the eligibility agency within the previous 12 months.

The subsections are amended in this final-form rulemaking to clarify the requirement and to ensure consistency of terminology with § 3042.56. Specifically, the terminology "face-to-face meeting" is deleted and replaced by "personal interview" in every subsection. The term "personal interview" is added to § 3042.3 to clarify that the interview is an informational meeting held between the parent or caretaker and the eligibility agency, and that it can take place in person, by telephone or by other means approved by the Department. Because of the changes in terminology, the Department also changes the title of this section from "Face-to-face requirements for former TANF families" to "Personal interview require-

ments for former TANF families." Finally, because "personal interview" permits flexibility in terms of how the meeting can occur, the Department deletes proposed language from subsections (a), (b) and (c) referencing hardships and telephone contact because the amended terminology referencing the personal interview ensures flexibility for satisfying the requirement. The changes are consistent with changes made in §§ 3042.56 and 3042.115 and § 3042.117 (relating to failure to contact the eligibility agency following the transfer).

§ 3042.115. Reporting requirements for former TANF families

This section establishes reporting requirements for former TANF families and requirements the eligibility agency must ensure, such as advising the parent or caretaker to report income in excess of 85% of the SMI, and circumstances for when the eligibility agency must require a parent or caretaker to complete a subsidized child care application.

This section is amended to ensure consistency of terminology in this final-form rulemaking. Specifically, the Department deletes language to ensure consistency, specifically "face-to-face meeting" and replaces it with "personal interview." This amendment is consistent with amendments made in §§ 3042.3, 3042.56, 3042.114 and 3042.117.

§ 3042.116. Verification of transfer of TANF benefits

This section establishes requirements relating to the verification of transfer of TANF benefits inside this Commonwealth or from another state.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.117. Failure to contact the eligibility agency following the transfer

Subsection (a) establishes that if a parent or caretaker who was receiving child care on the date TANF benefits ended fails to contact the eligibility agency in response to the letter specified in § 3042.113(a), the eligibility agency shall contact the parent or caretaker by telephone no later than 31 calendar days following the date of the letter.

As amended, subsection (b) establishes that when the eligibility agency contacts the parent or caretaker, the eligibility agency shall determine the family's choice to participate in the personal interview and the parent's continuing need for child care.

Subsection (c) establishes that if the eligibility agency determines that the parent or caretaker was not receiving child care or cannot determine whether the parent or caretaker was receiving child care on the date TANF benefits ended, the eligibility agency may not authorize payment for child care benefits until the date the parent or caretaker contacts the eligibility agency and requests benefits.

As amended, subsection (d) establishes that if a parent or caretaker who was receiving child care on the date TANF benefits ended does not attend a personal interview as specified in § 3042.114(a), the eligibility agency shall contact the parent or caretaker by telephone no later than the day following the date the parent or caretaker failed to attend the personal interview to determine the information specified in subsection (b).

This section is amended to ensure consistency of terminology in this final-form rulemaking. Specifically, the Department in subsections (b)(1) and (d) deletes references to "face-to-face meeting" and replaces the language with "personal interview." These amendments are consistent with amendments made in §§ 3042.56, 3042.114 and 3042.115.

§ 3042.118. Payment authorization for former TANF families

Subsection (a) establishes that the eligibility agency must review a request from a parent or caretaker to authorize child care payment at any time during the 183-day period after eligibility for TANF benefits ended.

Subsection (b) establishes that the eligibility agency must authorize child care payment at any time during the 183-day period after eligibility for TANF ended.

Subsection (c) establishes that the eligibility agency will not pay child care costs that exceed the maximum child care allowance minus the family copayment for the type of care the child received from the provider.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.119. Retroactive payment for former TANF families

Subsection (a) establishes that if the eligibility agency authorizes payment to an eligible provider that is currently participating in the subsidized child care program for a parent or caretaker who was receiving child care on the date TANF benefits ended, the authorization is retroactive to the day following the date TANF benefits ended.

Subsection (b) establishes that if the eligibility agency determines that the parent or caretaker was not receiving child care or cannot determine whether the parent or caretaker was receiving child care on the date TANF benefits ended, the eligibility agency shall require the parent or caretaker to submit verification of child care costs incurred during the 183-day period after eligibility for TANF ended.

Subsection (c) establishes that the eligibility agency shall authorize payment to an eligible provider that is currently participating in the subsidized child care program for the parent or caretaker specified in subsection (b) retroactive to the date the parent or caretaker first incurred child care expenses.

Subsection (d) establishes that if the eligibility agency determines that the parent or caretaker has selected an ineligible provider, it shall inform the parent or caretaker that the parent or caretaker shall contact the eligibility agency to discuss child care arrangements within 30 calendar days as specified in § 3042.12.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.120. Transfer from other states

Subsection (a) establishes the conditions for eligibility a parent or caretaker must satisfy if the parent or caretaker received TANF program benefits in another state and applies for subsidized child care.

Subsection (b) establishes that the eligibility agency must determine the date TANF benefits ended in the other state and establish eligibility for the 183-day period after eligibility for TANF ended as specified in § 3042.111 (relating to general provisions for former TANF families).

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.121. Expiration of TANF benefits

Subsection (a) establishes that a parent or caretaker who was receiving child care on the date TANF benefits ended and who has exhausted the 5-year limit on TANF benefits is eligible for up to 92 calendar days of subsidized child care to seek work.

Subsection (b) establishes that the eligibility agency must determine the date TANF benefits ended and establish the period of former TANF eligibility as specified in § 3042.111.

Subsection (c) establishes that the parent or caretaker may apply at any time during the 183-day period after eligibility for TANF ended.

Subsection (d) establishes that the maximum period of potential eligibility for former TANF child care benefits under this section is 183 days.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.122. Verification of expiration of TANF benefits

This section establishes what constitutes acceptable verification of expiration of TANF benefits.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

Head Start

§ 3042.131. General provisions for Head Start

Subsection (a) establishes that a child who is enrolled in a Head Start program, whose parent or caretaker needs extended hours or days of child care beyond the hours or days provided by the Head Start program to work, is eligible for subsidized child care under this section if the parent or caretaker meets the eligibility requirements for subsidized child care as specified under § 3042.132 each time a child in the family applies for Head Start special eligibility.

Subsection (a) is amended in this final-form rulemaking to correct a citation following feedback received from IRRC noting the error.

Subsection (b) establishes that the eligibility agency must verify with the Head Start program that the child is enrolled in a Head Start program that meets Federal and State Head Start standards.

Subsection (c) establishes that if a child in the family as specified in § 3042.41 (relating to family size) is enrolled in the Head Start program, the family copayment is based on family size and income. If additional children in the family are enrolled in subsidized child care, the family copayment is based on family size and income.

Subsection (d) establishes that if extended hours or days of care are provided beyond the Head Start program hours or days, a facility that has a certificate of compliance by the Department as a child care facility shall provide the extended hours and days of care.

Subsections (b), (c) and (d) are not amended from the proposed rulemaking to this final-form rulemaking.

§ 3042.132. Eligibility determination for Head Start

This section establishes six listings of criteria that parents and caretakers must satisfy to continue in the Head Start special eligibility program. The criteria include verifications of work hours, extended hours, income eligibility, compliance with the required waiting list conditions, payment of the copayment and the requirement to report within 10 days when a child is no longer enrolled in Head Start.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.133. Eligibility redetermination for Head Start

Subsection (a) establishes that the eligibility agency may not complete a redetermination prior to the expiration of the 12-month eligibility period as specified in § 3042.101(a) upon receiving notification that a child is no longer enrolled in a Head Start program.

Subsection (b) establishes that the eligibility agency shall conduct a redetermination when the child is no longer enrolled in the Head Start program, if the 12-month redetermination period has expired as specified in § 3042.101(a).

Subsection (c) establishes that the eligibility agency shall conduct a redetermination as specified in § 3042.101 if the family has additional children who are not enrolled in Head Start but receive subsidized child care. A family that includes a child enrolled in a Head Start program and a child who is not enrolled in a Head Start program is subject to redetermination requirements as specified in § 3042.101(a).

Subsection (d) establishes that eligibility for a child enrolled in a Head Start program is unrelated to the eligibility of other children in the family who are not enrolled in a Head Start program and receive subsidized child care. Eligibility for a child enrolled in a Head Start program shall continue as specified in this section.

Subsection (e) establishes that the eligibility agency shall conduct a redetermination between the time a child is no longer enrolled in Early Head Start and the time the child enters Head Start.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

Waivers and Periods of Presumptive Eligibility

As previously stated, following feedback received noting confusion and clarity issues on the differences between waivers and presumptive eligibility, the Department reorganizes §§ 3042.141—3042.147 to improve clarity by stating all of the substantive waiver requirements first, and then listing the requirements for presumptive eligibility. Specifically, proposed §§ 3042.144—3042.147 are final-form §§ 3042.141—3042.144, respectively. Similar, proposed §§ 3042.141—3042.143 are final-form §§ 3042.145—3042.147. The Department notes that Chapter 3041 permitted waivers for domestic violence only, and this final-form rulemaking extends waivers to also apply for families experiencing homelessness. As such, waivers only apply under this final-form rulemaking to families experiencing domestic violence or homelessness. Regarding implementation, granting a waiver excuses the parent or caretaker from meeting certain requirements for up to 92 days. As explained previously, the Department reiterates that once the waiver period expires, the parent or caretaker must provide the verification that was waived or must begin paying the copayment, or both. If these requirements are met, eligibility and payment will continue for the rest of the 12-month eligibility period. If one or more of the waived requirements are not met, or if the individual is determined ineligible, subsidy will be terminated, and an Adverse Action notice will be sent as specified under § 3042.155. The family may satisfy the waived requirements at any time before the subsidy is terminated, and once satisfied, the subsidy will continue

for the remainder of the eligibility period. If a waiver is denied, the eligibility agency will send a notice explaining the basis for the denial, the right to appeal, the verification that is required to be submitted to grant the waiver and the associated time frames for meeting the verification requirements, and notification of the evidence or information needed to substantiate the waiver request and the associated time frames for the providing the information. If denied, the family is not eligible for subsidized child care, and the eligibility agency will generate an ineligible notice as specified under § 3042.144. If granted, the eligibility agency will review the circumstances at redetermination to determine whether a new domestic violence waiver or a waiver for homelessness is warranted. Further, if a waiver is not requested to be renewed, the parent or caretaker may apply for a period of presumptive continued eligibility at redetermination as specified under this final-form rulemaking.

There are two types of presumptive eligibility. The first is specifically only for families experiencing homelessness, and that is why the requirement is stated differently than the requirement for domestic violence and other violence. This is because for families struggling with homelessness, the CCDBG requires the Department to establish procedures to ensure the initial eligibility of children experiencing homelessness while required documentation is obtained. This final-form rulemaking establishes periods of presumptive eligibility for children experiencing homelessness to ensure the satisfaction of this CCDBG requirement. See 45 CFR 98.51.

Next, the Department notes that presumptive continued eligibility under this final-form rulemaking is available to any family who satisfies the requirements at redetermination. Specifically, any family who is not meeting the work hours requirement but has a job to return to within 92 days can be determined presumptively eligible and maintain services. In this scenario, the redetermination is completed on day 92 and if the parent or caretaker is satisfying the work hours requirements, then eligibility will continue for the remainder of the 12-month eligibility period. If the parent or caretaker is not meeting the work hours requirements, then the eligibility agency will take the necessary steps to terminate the temporary eligibility with proper notification to the family as required under § 3042.155.

§ 3042.141. General waiver requirements

This section establishes and clarifies general waiver requirements, and that generally, eligibility agencies may grant waivers for a family experiencing domestic or other violence or for homelessness.

Aside from reordering, there is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.142. Time frame for waiver determinations

This section establishes that eligibility agencies must act on a waiver request no later than 15 calendar days after the date of the request.

Aside from reordering, there is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.143. General verification requirements for waivers

This section establishes that the Department's form can be used as acceptable verification of domestic violence or homelessness.

Aside from reordering, there is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.144. General notification requirements for waivers

This section establishes requirements for eligibility agencies to provide written notice to the parent or caretaker of its decision to grant or deny the waiver request.

Aside from reordering, there is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.145. Domestic and other violence

Subsection (a) establishes the reasons for when the eligibility agency will grant a waiver under this section.

Subsection (b) establishes that the eligibility agency may grant a waiver if compliance with a requirement of this chapter would either make it more difficult for a family or household member to escape domestic violence or place a family or household member at risk of domestic violence.

Subsection (b) is amended in this final-form rulemaking to clarify that the requirement applies except as otherwise provided under this chapter.

Subsection (c) establishes the list of six requirements that may not be waived.

Subsection (d) establishes that verification requirements and the amount of the copayment can be waived for a period not to exceed 92 days.

Subsection (d) is amended in this final-form rulemaking to state the requirement consistently with § 3042.146(f) so that it is clear that requirements may be waived for a temporary period not to exceed 92 days. Subsection (d)(1) is also amended in this final-form rulemaking to conform to citation standards.

Subsection (e) establishes that, except as specified in subsections (c) and (d), the eligibility agency will grant a domestic violence waiver for the balance of the 12-month eligibility period following verification being provided to the eligibility agency. This language is amended for consistency. The amendment ensures that domestic violence waivers, once granted, will permit eligibility for the balance of the eligibility period for these vulnerable, at-risk families. The Department notes that currently, a domestic violence waiver permits eligibility for the maximum eligibility period under the duly promulgated regulations in deleted Chapter 3041 of 6 months. Because the minimum eligibility period is increased to 12 months under this final-form rulemaking, the extension to the updated, minimum required period of 12 months ensures consistency with the CCDBG and ensures the continued protection of these vulnerable families.

Subsection (f) establishes that the eligibility agency shall utilize and accept the Department's form providing for verification by documentary evidence, third party statement or self-certification as acceptable verification of domestic violence. The addition came about following the Department's review to clarify the process for establishing eligibility under this section. Specifically, the requirements in paragraph (1) clarify that if verification under the Department's form is not provided prior to expiration of the 92-day period specified in subsection (d), or if the family is determined ineligible, the eligibility agency will take the necessary steps to terminate the temporary eligibility with proper notification to the family as specified in § 3042.155. Next, the requirements in paragraph (2) clarify that if a family is determined ineligible or fails to provide the required verifications, any services received during the 92-day period are not considered an error or

improper payment. The eligibility agency will pay any amount owed to a child care provider for services provided. The added requirements clarify the process for determinations under this section and the consequences for failing to provide the required verification. The added requirements are also consistent with the Department's current framework for waivers. The Department notes these changes are also responsive to feedback received during the public comment period asking for the Department to ensure that families experiencing domestic violence are no worse off under this final-form rulemaking than before. As such, these vulnerable individuals will receive 12 months of continuous eligibility following verification under this section. The Department notes the congruity of this requirement with the requirement under § 3042.146(g) for families who are experiencing homelessness. The added subsection is consistent with § 3042.143 (relating to general verification requirements for waivers) and is added to emphasize the verification requirement for families experiencing domestic or other violence and to state the requirements for eligibility for these families more completely.

Aside from the reordering and the citation correction, there are no changes to the remainder of this section. Regarding IRRC's inquiry regarding implementation of this waiver, the Department reiterates that granting a waiver excuses the parent or caretaker from meeting certain requirements for up to 92 days, and that the waiver is subject to the requirements specified under §§ 3042.141—3042.144. Specifically, the eligibility agency must act on waiver requests within 15 calendar days after the date of the request. Whether the waiver is granted or denied, the eligibility agency will send a notice as specified under § 3042.144.

§ 3042.146. Homelessness

Subsection (a) establishes that at the time of application, the eligibility agency may grant a period of presumptive eligibility to a parent or caretaker who is experiencing homelessness for a temporary period not to exceed 92 calendar days. This subsection restates proposed subsection (d).

Subsection (a) is amended in this final-form rulemaking to clarify that a period of presumptive eligibility is a temporary period not to exceed 92 calendar days.

Subsection (b) establishes that a parent or caretaker who is experiencing homelessness may be permitted to substitute job search activities to meet the work requirement specified in § 3042.33 for the duration of the period of presumptive eligibility for a temporary period not to exceed 92 calendar days. This subsection restates language that was proposed under the definition of "period of presumptive eligibility."

Subsection (c) establishes that a parent or caretaker may be permitted to self-certify their status as experiencing homelessness as specified under § 3042.63 to qualify for and be granted a period of presumptive eligibility for a temporary period not to exceed 92 calendar days. The addition clarifies that self-certification can be used to qualify for and be granted a period of presumptive eligibility for families who are experiencing homelessness.

Subsection (d) establishes that except as specified in subsections (e) and (f), the eligibility agency will grant a waiver to families who are experiencing homelessness for the balance of the 12-month eligibility period following verification being provided to the eligibility agency. The Department notes the congruity of this requirement with the requirement under § 3042.145(e) and that the added requirement is consistent with the minimum 12-month eligibility periods required under the CCDBG.

Subsection (e) establishes and lists the six requirements that cannot be waived. Specifically, these six requirements are the following: (1) age of the child; (2) income limits; (3) state residency; (4) citizenship; (5) the number of paid absences; and (6) the minimum number of hours of work, education or training as specified under § 3042.33, subject to the provisions in subsection (b). This subsection restates proposed subsection (b).

Subsection (e) is amended in this final-form rulemaking to add a paragraph clarifying that the work requirement is waived only during the initial period of presumptive eligibility. Because the minimum eligibility period is now 12-months, the change is necessary to clarify that the work requirement is not waived entirely, but only during the initial period of presumptive eligibility. The Department reiterates that presumptive eligibility is used to satisfy the CCDBG requirement for Lead Agencies to provide for a process to ensure that work requirements do not operate as a barrier to eligibility. See 45 CFR 98.51. The change clarifies that the work requirement during presumptive eligibility permits substitution of job search activities to satisfy the work requirement, as required by the CCDBG.

Subsection (f) establishes and lists the requirements that can be waived for a temporary period not to exceed 92 calendar days. Specifically, they are the amount of the copayment as well as the verification requirements specified under §§ 3042.61—3042.73. This subsection is based on proposed subsection (c).

Subsections (f) is amended so this final-form rulemaking conforms to citation standards. There are otherwise no changes made to this subsection from the proposed rulemaking to this final-form rulemaking.

Subsection (g) establishes that the eligibility agency will use and accept the Department's form providing for verification by documentary evidence, third party statement or self-certification as acceptable verification of homelessness. The addition clarifies the requirement for verification of homelessness and for the consequences for failing to provide the required verifications. The Department notes the congruity of this requirement with the requirement under § 3042.145(f) for families who are experiencing domestic violence or other violence. This subsection is consistent with § 3042.143 and is added here to emphasize the verification requirement for homelessness and to state the requirements for eligibility for families experiencing homelessness more completely.

Subsection (h) establishes that following expiration of the temporary 92-day period of presumptive eligibility, the eligibility agency may establish a new 12-month eligibility period and reset the redetermination due date. This subsection is based on proposed subsection (e).

Subsection (h) is amended in this final-form rulemaking to change the wording of the requirement to ensure accuracy and consistence with the Department's process, and to state the requirement more clearly. Specifically, the word "full" is deleted and the requirement is restated using permissive language to clarify the eligibility agency may establish a new period. If verifications are not provided or the family is determined ineligible, the eligibility agency will not do a redetermination or reset the due date but will instead end the eligibility following the required notice as specified under § 3042.155.

Regarding implementation, the Department reiterates this final-form rulemaking adds homelessness as a waiver

in addition to the waiver for domestic violence, which is already authorized under the duly promulgated regulations in deleted Chapter 3041, and so the waiver process is the same. The Department notes that provisions similar to subsections (a) and (b) are not under the waiver requirements for domestic violence because the provisions permit substitution of job search activities for the work requirements, consistent with the provisions of the CCDF under 45 CFR 98.51. The amendments to this subsection clarify that a period of presumptive eligibility permits substitution of job search activities to meet the work requirement for a temporary period not to exceed 92 calendar days, and that the period can be granted at application to a parent or caretaker who is experiencing homelessness. The Department notes that presumptive eligibility at application applies only to families experiencing homelessness, and at application, a parent or caretaker who is experiencing homelessness and who is not meeting the work requirement can be presumptively eligible for up to 92 days to do a job search, and if the parent or caretaker is not meeting the work requirement by the 92nd day, the family is no longer eligible following the eligibility agency's issuance of a notice of adverse action, as specified under § 3042.155. The Department notes the described procedures are now clarified in subsection (g).

Amendments to this section are made to improve clarity and ensure consistency, specifically the amendments made to the definition of "period of presumptive eligibility." This section is reorganized and reordered for clarity from the proposed rulemaking to this final-form rulemaking.

§ 3042.147. Presumptive continued eligibility at redetermination

As amended, subsection (a) establishes that the eligibility agency may grant a temporary period of presumptive continued eligibility to a parent or caretaker at redetermination for a period not to exceed 92 calendar days from the date of the redetermination.

Subsection (a) is amended in this final-form rulemaking to clarify that the eligibility agency may grant a temporary period of presumptive continued eligibility at redetermination for a period not to exceed 92 calendar days from the date of the redetermination. Further, the listed circumstances in subsection (a)(1)—(3) are deleted in this final-form rulemaking for clarity. The amendments are made in response to feedback from IRRC requesting explanation regarding a conflict with the proposed definition of "period of presumptive eligibility" and clarification of the requirements. The Department notes the timing provisions from the proposed definition of "period of presumptive eligibility" are also added in response to IRRC's request to delete the timing provisions from the definition into the body of the regulations to clarify that a period of presumptive eligibility is temporary and shall not exceed 92 calendar days from the date of the redetermination. The amended terminology to "period of presumptive continued eligibility" better describes the eligibility because this section concerns eligibility at the time of the redetermination, and so the parent or caretaker has already been determined eligible for the previous 12-month period and is currently receiving subsidized child care based on the prior eligibility determination. This section prevents families from needless cycling on and off from services, and the amended terminology better reflects the purpose of the requirement. The Department reiterates that "period of presumptive continued eligibility" is added to the definitions section under § 3042.3 to clarify that the term refers to a temporary period of eligibility that is established at redetermination as provided for in this section. The Department notes that a period of presumptive eligibility applies at the time of application, whereas a period of presumptive continued eligibility applies only at redetermination.

Subsection (b) establishes that for a parent or caretaker to be granted a period of presumptive continued eligibility at redetermination, the parent or caretaker shall submit verification of work, education or training that satisfies the work-hour requirement as specified in § 3042.33 that is set to begin prior to the expiration of the temporary 92-day period specified in subsection (a), unless the provisions in § 3042.146 apply. The addition clarifies how a parent or caretaker can be granted a period of presumptive continued eligibility at redetermination. The requirement is clear that verification that work, education or training that satisfies the work requirements is set to begin prior to the expiration of the temporary 92-day period specified in subsection (a), unless the provisions in § 3042.146 apply. This addition is in response to feedback from IRRC noting clarity and ambiguity concerns with the proposed section. The addition also states the requirement more completely.

Subsection (c) establishes that prior to the expiration of the temporary 92-day period of presumptive continued eligibility, the eligibility agency will verify the parent or caretaker has begun work, education or training and is compliant with the work-hours requirement specified in § 3042.33. This subsection is based on proposed subsection (b).

Subsection (c) is amended in this final-form rulemaking to restate the requirement to reference that the eligibility agency must verify prior to the expiration of the temporary period that the parent or caretaker has begun work, education or training and is in compliance with the work-hours requirement. The amendment is made to clarify and state the requirement more consistently with the Department's current process by changing the language to require verification prior to expiration of the temporary period of presumptive continued eligibility.

Subsection (d) establishes that if the parent or caretaker has not begun work, education or training as specified in subsection (b), or is otherwise determined ineligible prior to the expiration of the 92-day period, the eligibility agency shall take the necessary steps to terminate the temporary eligibility with proper notification to the family as specified in § 3042.155. The addition clarifies the requirements following feedback from IRRC. The added provision clarifies that the temporary eligibility will be terminated in cases where the parent or caretaker has not begun work, education or training prior to expiration of the temporary period.

Subsection (e) establishes that if a family is determined ineligible at any time during a temporary period of presumptive continued eligibility, any services received during the 92-day period are not considered an error or improper payment. The eligibility agency will pay any amount owed to a child care provider for services provided during the temporary period of presumptive continued eligibility. The addition is following feedback from IRRC noting ambiguity and clarity issues with this section. The added requirement is consistent with the provisions in §§ 3042.145(f)(2) and 3042.146(g)(2). Specifically, the provisions clarify that if a family is determined ineligible at any time during the period of presumptive eligibility, any services received during the 92-day period are not considered an error or improper payment. Fur-

ther, the added requirements clarify that the eligibility agency will pay any amount owed to a provider for services rendered during the temporary period of presumptive continued eligibility.

Subsection (f) establishes that at the end of a 92-day temporary period of presumptive continued eligibility, the eligibility agency will complete a redetermination to establish the 12-month eligibility period and reset the redetermination due date. This subsection is based on proposed subsection (c).

Subsection (f) is amended in this final-form rulemaking to clarify the 92-day period is with reference to the temporary period of presumptive continued eligibility. The provision deletes the word "full" from the requirement so that the requirement is clear that the eligibility agency will complete a redetermination to establish the 12-month eligibility period and reset the redetermination due date at the end of the 92-day period.

Finally, because this section is reorganized and because of clarity issues with this section, the title is amended to "Presumptive continued eligibility at redetermination."

The amendments for this section are made for clarity and consistency in response to feedback from IRRC and because of amendments made to the definition of "period of presumptive eligibility." Further, the Department reiterates that "period of presumptive continued eligibility" is added in this final-form rulemaking under § 3042.3 to clarify that at redetermination, a parent or caretaker can maintain eligibility using the specified period of presumptive eligibility provided they have work, education or training that will begin prior to expiration of the temporary period. The Department reiterates that this requirement will help to ensure that families do not needlessly cycle on and off services. Finally, this section is also reordered from the proposed rulemaking to this final-form rulemaking to improve clarity.

Notification and Right to Appeal

§ 3042.151. General notification requirements

Subsection (a) establishes that the eligibility office shall notify the parent or caretaker in writing no later than 10 calendar days prior to taking an action that affects the family's eligibility status for subsidized child care or a change in the amount of the family's subsidized child care benefit.

Subsection (a) is amended in this final-form rulemaking to delete the word "notify" and add language to clarify that the eligibility agency shall issue written notification to the parent or caretaker no later than 13 calendar days prior to taking an action that affects the family's eligibility status for subsidized child care or a change in the amount of the family's subsidized child care benefit. These amendments are made based on a comment received that the period between notice and action on the case should be expanded, similar to MA, SNAP and TANF, in recognition of significant mailing delays, as explained more fully in the Department's comment and response document. The Department carefully considered the commentator's request, and after follow-up discussions with the commentator, the commentator requested the regulations mirror and provide for the authorization that is programmed into the Department's system that is used for the subsidized child care program, Pennsylvania's Enterprise to Link Information for Children Across Networks. To further address these concerns, and to ensure the requirement is stated for consistency as requested by the commentator, the Department deletes the phrase "in writing" and adds the language "issue written notification" to ensure the requirement is clear and consistent with the Department's process for sending notifications.

Subsection (b) establishes requirements for sending the written notice described in subsection (a) to the parent or caretaker; for notifying the child care provider as soon as a family is determined eligible or ineligible; and for the child care provider to retain a copy of the notice in the family file.

There is no changes made to subsection (b) from the proposed rulemaking to this final-form rulemaking.

§ 3042.152. Notice of right to appeal

This section establishes and lists the information that must be included in a notice of the right to appeal.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.153. Notice of eligibility

This section establishes the listing of information that must be included on a written notice of eligibility on a form provided by the Department.

This section is amended in this final-form rulemaking in subsection (b)(3) of the requirement to correct the title of a cited section that is amended in this final-form rulemaking.

§ 3042.154. Notice of ineligibility

This section establishes and lists the information that must be included on a written notice of ineligibility on a form provided by the Department.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.155. Notice of adverse action

Subsection (a) establishes that the eligibility agency shall send a notice to a parent or caretaker currently receiving subsidy when the eligibility agency proposes to terminate subsidy payment.

Subsection (b) establishes that the eligibility agency shall prepare a notice of adverse action on a form provided by the Department.

Subsection (c) establishes and lists the information that must be included in a notice of adverse action.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.156. Notice confirming voluntary withdrawal

Subsection (a) establishes that the eligibility agency shall, by written notice to the parent or caretaker, confirm the parent's or caretaker's voluntary withdrawal of a child from subsidized child care.

Subsection (b) establishes that the notice confirming voluntary withdrawal must be on a form provided by the Department.

Subsection (c) establishes and lists the information that must be included in a written notice confirming voluntary withdrawal.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.157. Notice confirming a change in benefits

Subsection (a) establishes that the eligibility agency shall, by written notice to the parent or caretaker, confirm a change in the parent's or caretaker's subsidized child care benefits when the change does not affect the

family's eligibility. Changes in benefits include a change in the number of days or hours during which the child is enrolled, subsidy suspension and subsidy disruption.

Subsection (b) establishes that the notice confirming a change in benefits must be on a form provided by the Department.

Subsection (c) establishes and lists the information that must be included in a written notice confirming a change in benefits.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.158. Notice confirming a change in copayment

Subsection (a) establishes that the eligibility agency shall, by written notice to the parent or caretaker, confirm a change in the family copayment amount.

Subsection (b) establishes that the notice confirming a change in copayment must be on a form provided by the Department.

Subsection (c) establishes and lists the information that must be included in a written notice confirming a change in copayment.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.159. Notice of overpayment

This section establishes and lists the requirements for written notices that confirm an overpayment.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

Appeal and Hearing Procedures

§ 3042.161. Appealable actions

This section establishes in what cases the parent or caretaker has the right to appeal a determination of the Department.

This section is amended in this final-form rulemaking in paragraph (1) to correct a citation following feedback received from IRRC noting the citation error, and to correct the title of a cited section that is changed in this final-form rulemaking. Paragraph (4) is updated following amendments made to reorganize the requirements for waivers. Because of the addition of § 3042.22 in this final-form rulemaking, the Department adds paragraph (8) here to clarify that subsidy terminations under § 3042.22 may be appealed.

§ 3042.162. Discontinuation of subsidy during the appeal process

Subsection (a) establishes that subsidy is not continued pending a hearing decision if the parent or caretaker appeals the disruption of subsidy when the eligibility agency lacks funding to continue subsidy to a child.

Subsection (b) establishes that subsidy is suspended pending a hearing decision if the parent or caretaker fails to make timely payment of the copayment.

There are no changes made to subsections (a) and (b) from the proposed rulemaking to this final-form rulemaking.

Subsection (c) establishes that following a suspension under subsection (b), a subsidy will be reinstated pending the hearing decision if all copayments are brought up to date. The addition is in response to a public comment suggesting the requirements allow, following a suspension, for the reinstatement of subsidy pending a hearing decision if the parent catches up on copayments.

§ 3042.163. Subsidy continuation during the appeal process

Subsection (a) establishes the conditions for when subsidy will continue at the prior level until the Department hears the appeal and makes a final decision.

Subsection (a)(1) is amended in this final-form rulemaking in response to feedback from IRRC requesting clarification to establish a procedure with which the parent or caretaker will be able to comply. The word "received" is replaced by the word "delivered" to clarify that the appeal must either be postmarked by the date when sent by mail; or delivered by the date when sent by hand-delivery, facsimile or electronically. The same amendment is made in § 3042.166(b), and the amendments are consistent with the requirement under § 3042.165(b).

There are no other changes made to subsection (a) from the proposed rulemaking to this final-form rulemaking.

Subsection (b) establishes that if subsidy continues as specified in subsection (a), the parent or caretaker shall continue to make timely payment of the copayment that was in effect prior to issuance of the written notice until the Department makes a final decision as specified in § 3042.91 (relating to general copayment requirements).

There is no change made to subsection (b) from the proposed rulemaking to this final-form rulemaking.

Subsection (c) establishes that if subsidy continues during the appeal process and the hearing officer finds in favor of the eligibility agency or the Department, the parent or caretaker shall reimburse the Department for the amount of the subsidy or increase in subsidy paid for child care from the proposed effective date of the written notice until the date subsidy is terminated or decreased, based on the final administrative action order.

There is no change made to subsection (c) from the proposed rulemaking to this final-form rulemaking.

§ 3042.164. Parent or caretaker rights and responsibilities regarding appeal

Subsection (a) establishes that a parent or caretaker appealing a written notice shall submit a written request to the eligibility agency in accordance with Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings) within 30 calendar days following notification. The parent or caretaker shall specify the reason for the appeal and the current address and a telephone number, if possible, where the parent or caretaker can be reached during the day.

Subsection (b) establishes that a parent or caretaker may orally appeal. The eligibility agency shall document the date of the oral appeal in the case file. The parent or caretaker shall confirm the oral appeal in writing to the eligibility agency no later than 7 calendar days following the date the parent or caretaker orally requested an appeal.

Subsection (c) establishes that a parent or caretaker may authorize an adult to represent the parent or caretaker at the hearing.

Subsection (d) establishes that if the parent or caretaker wants subsidy to continue pending a hearing decision, subject to § 3042.163, the parent or caretaker shall submit a written appeal no later than 10 calendar days following the date the written notice is postmarked or hand-delivered to the parent or caretaker by the eligibility agency.

Subsection (e) establishes that if the parent or caretaker requests that subsidy continue pending a hearing decision, the parent or caretaker shall make timely payment of the copayment that was in effect prior to issuance of the written notice until the Department makes a final decision as specified in § 3042.91.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.165. Eligibility agency responsibilities regarding appeal

Subsection (a) establishes that if the parent or caretaker is unable to prepare a written appeal, the eligibility agency shall assist the parent or caretaker in preparing a written appeal. The parent or caretaker shall sign the appeal request.

Subsection (b) establishes that when the eligibility agency receives an appeal that is timely postmarked or delivered, the eligibility agency shall date-stamp the appeal, the envelope and the attachments with the date of receipt and retain copies of all original appeal information.

Subsection (c) establishes that the eligibility agency shall keep a copy and forward the original appeal along with the postmarked envelope to the Department's Bureau of Hearings and Appeals no later than 3 working days following the date the appeal is received by the eligibility agency.

There are no changes made to subsections (a)—(c) from the proposed rulemaking to this final-form rulemaking.

Subsection (d) establishes that the eligibility agency may not take the proposed adverse action until 13 calendar days following the date the written notice is postmarked or hand-delivered to the parent or caretaker and then only if the parent or caretaker has not filed an appeal. Subsidy may be continued at the prior level only if the parent or caretaker meets the requirements in § 3042.163.

Subsection (e) establishes that the eligibility agency may take the proposed adverse action before 13 calendar days following the date a provider closes for financial difficulties or loss of certification or if funding is not available to continue subsidized care to the child.

Subsections (d) and (e) are amended in this final-form rulemaking in response to a public comment received noting the period between notice and action on the case should be expanded as was done for MA, SNAP and TANF, in recognition of significant mailing delays. The time periods in subsections (d) and (e) are changed from 10 calendar days to 13 calendar days, as explained in the Department's comment and response document.

§ 3042.166. Hearing procedures

Subsection (a) establishes that Chapter 275 applies to hearings that are held under this chapter, except as specifically superseded by this chapter.

There is no change made to subsection (a) from the proposed rulemaking to this final-form rulemaking.

Subsection (b) establishes that the Department will dismiss an appeal postmarked or delivered after 30 calendar days from the date the written notice is postmarked or hand-delivered to the parent or caretaker unless one of the provisions allowing for appeals after 30 calendar days applies as specified in § 275.3(b)(2) and (3) (relating to requirements).

Subsection (b) is amended in this final-form rulemaking in response to feedback from IRRC requesting clarification to establish a procedure with which the parent or caretaker will be able to comply. Similar to § 3042.163, the word "received" is replaced by the word "delivered" to clarify the appeal must be either postmarked by the date when sent by mail; or delivered by the date when sent by other methods, such as hand-delivery, facsimile or electronically.

Subsection (c) establishes that the hearing may be conducted by a telephone conference call with the parties to the appeal, including the parent or caretaker, the authorized representative of the parent or caretaker, the eligibility agency, the Department and the hearing officer.

Subsection (d) establishes that the parent or caretaker has the right to request a face-to-face hearing instead of a telephone hearing. Face-to-face hearings will be held in locations specified by the Department.

Subsection (e) establishes that if a parent or caretaker does not withdraw an appeal, the eligibility agency, or the Department, if appropriate, will take part in the scheduled hearing to justify the action to which the parent or caretaker objects.

Subsection (f) establishes that if the eligibility agency or the Department fails to appear at the hearing and the parent or caretaker appears, the parent's or caretaker's appeal will be sustained.

Subsection (g) establishes that if the parent or caretaker fails to appear for the hearing, regardless of whether the eligibility agency or the Department appears, the appeal is considered abandoned and the decision of the eligibility agency or the Department will be sustained.

Subsection (h) establishes that the Department will notify the eligibility agency and the parent or caretaker, in writing, when disposition of the appeal is made.

Subsection (i) establishes that the eligibility agency shall implement the final administrative action within the time limit ordered by the Department or on the first day child care is needed in the week following receipt of the final administrative action order.

There are no changes made to subsections (c)—(i) from the proposed rulemaking to this final-form rulemaking.

Overpayment and Disqualification

§ 3042.171. Overpayment

This section establishes when a parent or caretaker can be required to repay an overpayment.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.172. Eligibility agency responsibilities regarding overpayment

Subsection (a) establishes that the eligibility agency shall inform a parent or caretaker who files an appeal and requests subsidy continuation pending appeal that, if the hearing decision is in favor of the eligibility agency or the Department, the parent or caretaker shall reimburse the amount of the overpayment unless the hearing officer determines a hardship.

Subsection (b) establishes that the eligibility agency shall pursue possible overpayments in active and closed cases, including those that were voluntarily closed.

Subsection (c) establishes the responsibilities of the eligibility agency when exploring possible overpayments.

Subsection (d) establishes that the eligibility agency shall refer all cases of suspected provider fraud to the Office of Inspector General.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.173. Delaying recoupment

Subsection (a) establishes that recoupment shall be delayed until after a hearing decision, if the family files an appeal of the overpayment decision no later than 10 calendar days after the date the written notice is postmarked or hand-delivered to the parent or caretaker by the eligibility agency.

Subsection (b) establishes that recoupment shall be delayed for cases referred to the Office of Inspector General for suspected fraud until the investigation is complete.

Subsection (c) establishes that the method of recoupment in cases of suspected fraud will be determined in conjunction with the Office of Inspector General.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.174. Notifying the Department

This section requires that the eligibility agency notify the Department when recoupment stops before the overpayment is fully recouped.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.175. Repayment

This section establishes the requirement that a parent or caretaker shall repay the full amount of the overpayment.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.176. Collection

Subsection (a) establishes that the eligibility agency shall collect the total amount of the overpayment from a family whose child continues to receive subsidized child care when the eligibility agency identifies an overpayment as specified in § 3042.172.

Subsection (b) establishes requirements for the eligibility agency in cases where the Department, eligibility agency or other entity identifies an overpayment unrelated to fraud, subject to repayment as specified in § 3042.171 (relating to overpayment), related to a family whose child continues to receive subsidized child care.

Subsection (c) establishes that when the Office of Inspector General has determined fraud in an active case, the eligibility agency shall determine collection methods in conjunction with the Office of Inspector General.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.177. Copayment increase related to overpayment

Subsection (a) establishes that a copayment increase for the purpose of collecting an overpayment may not exceed an amount greater than 5% of the family's gross monthly income. If the parent or caretaker indicates to the eligibility agency that an increase to 5% would cause hardship to the family, the family and the eligibility agency may agree to a lesser amount.

Subsection (b) establishes that a parent or caretaker may choose to increase the copayment beyond the amount specified in subsection (a) to repay an overpayment in a shorter period of time.

Subsection (c) establishes that the eligibility agency shall issue a written notice before implementation of an increase in the copayment for a new eligibility period.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.178. Collection for a family whose child is no longer in care

Subsection (a) establishes that the eligibility agency shall collect the total amount of the overpayment as specified in § 3042.172 from a family whose child is no longer receiving subsidized child care if the eligibility agency identifies an overpayment.

Subsection (b) establishes requirements for the eligibility agency in cases where the Department, eligibility agency or other entity identifies an overpayment unrelated to fraud, for a family whose child is no longer receiving subsidized child care.

Subsection (c) establishes that when the Office of Inspector General has determined fraud in a case when the child is no longer in care, the eligibility agency shall determine the collection methods in conjunction with the Office of Inspector General.

Subsection (d) establishes that the Department may institute civil legal proceedings when the parent or caretaker fails to respond to the second letter.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

§ 3042.179. Disqualification

Subsection (a) establishes criteria for when a parent or caretaker is disqualified from participating in the subsidized child care program.

Subsection (b) establishes and lists the penalties for disqualification from participation in the subsidized child care program.

Subsection (c) establishes that a parent or caretaker may not be granted a hearing on a court conviction or administrative disqualification hearing decision that led to the disqualification.

There is no change made to this section from the proposed rulemaking to this final-form rulemaking.

Accomplishments and Benefits

This final-form rulemaking ensures compliance with the Federal law and allows the Commonwealth to continue to receive CCDBG funds. This final-form rulemaking benefits parents and caretakers, the provider community and the eligibility agencies. Stable child care is critical to strengthening parents' and caretakers' ability to go to work, improving their prospects in the job market and increasing their earning potential. In addition, continuity in child care is important for creating the stable conditions children need for their healthy development and preparing for school.

This final-form rulemaking will benefit all low-income children and families that receive subsidy, families transitioning off TANF benefits, providers receiving subsidy payments, as well as the eligibility agencies. Safe, stable environments allow young children the opportunity to develop the relationships and trust necessary to comfortably explore and learn from their surroundings. Re-

search has demonstrated a relationship between child care stability and social competence, behavior outcomes, cognitive outcomes, language development, school adjustment and overall child well-being. Adams, G. and Rohacek, M. (2010). "Child Care Instability: Definitions, Context, and Policy Implications." The Urban Institute, page 6. Retrieved from https://www.urban.org/research/publication/child-care-instability-definitions-context-and-policy-implications.

Affected Individuals and Organizations

The Department notes that this final-form rulemaking will benefit at least 83,000 children from as many as 49,000 families who receive subsidized child care services at the more than 7,000 total providers (regulated and relative providers). If enrollments return to pre-pandemic levels, this final-form rulemaking may benefit as many as 105,000 children from as many as 61,000 families who may receive care from as many as 8,200 total providers, for no less than 12 months of subsidized child care before the family's eligibility for subsidized child care services is redetermined. Of the total number of providers, whether at the current level or at pre-pandemic levels, there are approximately 5,100 regulated providers, ranging from independently-owned family child care homes to corporations that employ thousands of individuals. Of the 5,100 regulated providers, approximately 3,600 are considered small businesses. There are also 19 Early Learning Resource Centers that serve as the eligibility agency that will benefit from this final-form rulemaking.

Children and their parents or caretakers are most directly affected by this final-form rulemaking as it relates to eligibility, the reporting of changes during the eligibility period and verification. The required minimum 12-month eligibility periods and the required changes to the reporting requirements will provide families with stable and continuous access to subsidized child care services regardless of temporary changes in circumstances of the parent or caretaker during the eligibility period as families work toward economic security. Consistent with the CCDBG, this final-form rulemaking expands the minimum eligibility period from 6 months to 12 months during which time eligible families have continuous access to subsidized child care assistance irrespective of temporary changes in circumstances of the parent or caretaker during the eligibility period. Unemployment and job loss are disruptive to any family, but either occurrence can be especially detrimental to low-income families and their children because none are likely to have well-defined support systems. The providers that serve families receiving subsidized child care will benefit when families maintain eligibility for no less than 12 months because their enrollments will remain stable. Child care providers will also be better able to plan for staffing issues and may experience greater financial stability with more predictable income. Notable, employers that depend on working parents from these families will benefit because their employees will have more stable care for their children for at least 12 months, and so they will be able to get to work reliably and are likely to be more productive. Under this final-form rulemaking, the Department notes that staff working at child care facilities will be able to qualify for subsidized child care. With the minimum eligibility period being doubled under this final-form rulemaking to 12 months rather than the 6 months that were authorized under the duly promulgated regulations in deleted Chapter 3041, the Department notes that the workloads of the eligibility agencies may decrease.

This final-form rulemaking will stabilize families' access to child care subsidy, which in turn, will help stabilize their employment, education or training, and their child's healthy development. The Department reiterates this improved stability may also stabilize the revenues of child care providers that receive subsidy payments, as they experience more predictable, reliable and timely payments for services. While families in the long term may have to wait longer to receive help paying for child care, once the funding is available, these families will remain eligible for longer periods of time, and so their children will have a more stable child care experience, which increases the chances for success in that these children will enjoy better outcomes and improved levels of school readiness. The Department noted that continuity and stability of child care contribute to improved job stability and are important to a family's financial health, and furthermore, that family stability is undermined by policies that result in unnecessary disruptions and limitations on access to subsidized child care. This is primarily why the Department declined the option under the CCDBG to discontinue eligibility early due to job loss after first providing for a 3-month period of eligibility. The Department studied the optional requirement and determined it would have applied to only 1% of families, and that the level of effort needed to track work history, job-search activity and establish the necessary system changes is outweighed by the de minimis fiscal savings, if any. The Department therefore determined that a requirement establishing early termination requirements in this regard would be contrary to the stated purposes and goals of the CCDBG.

As such, parents and caretakers will not need to report a loss of work or a decrease in work hours during the eligibility period. Also, parents and caretakers need only report changes in income in excess of 85% of the SMI, or when circumstances change that otherwise impact on the family's eligibility status or the Department's ability to contact the family or pay providers. This final-form rulemaking also ensures that the family's copayment cannot increase during the eligibility period. These changes all support both family financial stability and the relationship between children and their child care providers, and they are requirements of the CCDBG. These changes represent a dramatic simplification in terms of reporting requirements for parents and caretakers. These changes will allow more families to be eligible for longer periods before having to provide verification to establish continued eligibility, thereby promoting the continuity and stability of care.

This final-form rulemaking also benefits low-income parents or caretakers who are employed, searching for employment or attending a training program, by reducing unnecessary verifications that operate as barriers to access. Low-income parents and caretakers benefit by ensuring copayments do not exceed 7% of the family's income, which is consistent with the Federal benchmark since 2016 and ensures the Department's ability to satisfy CCDF requirements relating to affordability and equal access. See 45 CFR 98.45.

Next, this final-form rulemaking establishes periods of presumptive eligibility for children experiencing homelessness. The CCDBG requires the Department establish procedures to ensure the initial eligibility of children experiencing homelessness while required documentation is obtained. This final-form rulemaking therefore establishes periods of presumptive eligibility for children experiencing homelessness to ensure the satisfaction of this CCDBG requirement.

Similarly, this final-form rulemaking establishes presumptive continued eligibility at redetermination for parents and caretakers who have a job to return to that is verified to begin prior to the expiration of the presumptive period of eligibility. This requirement is consistent with the CCDBG. The Department reiterated that historically, families have cycled in and out of the CCW program. Parents or caretakers would find jobs, lose jobs, and then lose their eligibility and subsidy. Children would leave their early care and education program only to need services again in a few months, by which time they might be placed on a waiting list until funds became available. This cycling in and out is disruptive to a child's ability to learn and to a parent's or caretaker's ability to work and is not an effective use of taxpayer dollars. Presumptive eligibility may also help to further stabilize enrollments for providers and families, better promote continuity of care for the children, and otherwise help parents achieve financial stability, which may help break the cycle of poverty. This final-form rulemaking therefore satisfies and is consistent with all requirements, purposes and goals of the CCDBG.

Child care providers are also benefited by potentially ensuring a more stable and predictable income stream from the CCW program because of the longer 12-month eligibility periods required by the CCDBG. In recognition of the challenges that providers have faced since the beginning of the COVID-19 pandemic, the Department reiterates that since the time of proposed rulemaking, the CCW payment rates have been increased—once on March 1, 2021, again on January 1, 2022 and again on March 1, 2023. The Department acknowledges the difficulties faced by the regulated community, and notes that the Commonwealth was awarded $452 million in discretionary funding from the ARPA, and that the Administration for Children and Families, Office of Child Care provided to the Department recommendations on the use of those funds. Consistent with the recommendations, the Department is making clear that a total of $213.7 million is being used to support an increase to the subsidy base rates effective January 1, 2022, and that the initiative includes increases to the 60th percentile for subsidy base rates paid to regulated providers, as well as an increase of $1 per day for relative providers. Rates were again increased effective March 1, 2023, to remain at the 60th percentile. The Department is making clear that funds have been allocated to address these costs and fiscal impacts. Strengthening the stability of providers who provide child care services is critical because provider instability can lead to instability in a parent's or caretaker's employment, which is an outcome that undercuts the core principles of the CCDBG, especially relating to continuity of care and equal access. Providers are further impacted because of the changes to the eligibility conditions for families currently provided services or that may be provided services in the future. In addition, children will remain eligible for a full 12-month eligibility period, so child care providers may experience stability in the monthly child care payment received from the Department for subsidized child care services. Providers that receive CCDF funds may also experience more predictable and reliable payments for services.

Also, this final-form rulemaking prohibits enrollments and payments to providers for whom the Department has revoked or refused to renew a certificate of compliance, as specified under §§ 3042.12(b) and 3042.14(h). As for the numbers of families these changes will impact, the Department reiterates its previous explanation that during SFY 2021-2022 there were approximately 31 revocations or refusals to renew that impacted on 447 enrollments for a total of approximately $250,000 of potentially lost revenue for providers. Notably, not all certified child care providers participate in the CCW program. The fiscal impact to providers and the impacts on parent choice for families are, therefore, minimal and are outweighed by ensuring that public funds are directed to providers meeting basic health and safety requirements to ensure the protection of the health and safety of this Commonwealth's most vulnerable and disadvantaged children, as consistent with the CCDF. Specifically, only providers whose certificate of compliance has been revoked or refused to renew by the Department's Bureau of Certification Services will be impacted because the Department will no longer pay for subsidized child care enrollments at these providers. The Department notes these providers can still provide services to private-pay families should the provider choose to appeal the determination of the Department's Bureau of Certification Services. The Department reiterates the statements from the preamble of the Federal regulation, that "we cannot in good conscience continue to use any federal taxpayer dollars to support sub-standard child care for our nation's most vulnerable and disadvantaged children." The change is also consistent with the methods of administration of funds by the Department under the ARPA because subsidy funds are public dollars that should not be paid to providers who are not meeting baseline health and safety requirements.

With respect to any lost enrollments, the Department is clarifying that the enrollments themselves may be at a certified family child care home, group child care home or child care center. In any case, however, the health and safety interests are the same, and Federal taxpayer dollars should not be used at any of a family child care home, group child care home or child care center that is not meeting baseline health and safety standards. Further, the costs vary depending on the numbers of enrolled children who are receiving subsidized child care services. Finally, the Department is clarifying that the fiscal impact due to lost enrollments are the result of the facility's failure to comply with the Department's licensure regulations and not this final-form rulemaking. The Department reiterates that its eligibility agencies will assist families to locate another provider to ensure continuity of care, and that currently, the Department already assists families with locating another provider in cases where an emergency revocation to a facility is issued because circumstances at the facility justify immediate closure and removal of the children from care.

This final-form rulemaking may decrease the workload of the eligibility agencies, allowing more time for eligibility agencies to assist families to find child care and provide information about a parent's or caretaker's options regarding quality child care, which is consistent with CCDBG purposes and requirements. Eligibility agencies will also be able to refer families to services that encompass the total family's needs, such as providing referrals to other public programs including but not limited to Medical Assistance; the Children's Health Insurance Program; the Women, Infants and Children Program; and Early Intervention Services. Coordination efforts regarding these services also furthers the purposes of the CCDBG.

Fiscal Impact

The Department does not anticipate additional costs to local governments, the parents and caretakers receiving subsidized child care, or the eligibility agencies.

With reference to the codified copayment limitations under § 3042.98(a) (relating to copayment determination), the estimated annualized cost to the Commonwealth so that copayments do not exceed 7% of the family's annual income is $44.3 million. This estimate was calculated by comparing the copayments paid by families enrolled in subsidized child care using the previous methodology, which included 40 income brackets with copayments ranging from 3% to 11% of income, to the copayments that would be paid by those families using the now-implemented reduced copayment methodology, which includes 40 income brackets with copayments ranging from 3% to 7% of income. The difference was annualized and projected to reflect anticipated increased enrollments in subsidized child care to 98,200 children. The increase in cost is substantially outweighed by the benefits enjoyed by families who will no longer pay a disproportionately higher share of income on child care costs than reflects the National average. Further, the funding has been requested for Fiscal Year 2023-2024. ARPA Discretionary Funds will cover the full cost of the change in SFY 2023-2024 and partially cover the cost in SFY 2024-2025, after which time CCDF funds or Commonwealth funds, or both, will cover the full cost. The Department reiterates that the Commonwealth's announced approach to lower copayments to 3%—7% is consistent with the Federal benchmark that copayments do not exceed 7%. Furthermore, § 3042.98(a) is amended following the Department's review at final-form to ensure consistency of the final-form provisions.

This final-form rulemaking ensures that families receiving subsidized child care services are provided uninterrupted services that support parental education, training, employment and continuity of care that minimizes disruptions to children's learning and development. See 45 CFR 98.1 (relating to purposes).

Next, the Department reiterates that, under § 3042.15(c), it will not allow a parent or caretaker who owns a certified child care facility to be paid subsidy dollars to care for their own child, with reference to the definition of "child care." Subsection (c) is narrowly tailored so that it pertains only to situations where a parent or caretaker is the owner of a certified child care facility. To the extent there is such an impact, the Department determines that the cost is outweighed by the fact that subsidy dollars are scarce, public funds and this subsection prohibits only situations in which the owners of certified child care facilities are paid subsidy dollars to care for their own children, in direct contravention of the definition of "child care."

Further, the Department will suspend the subsidy and cease payments to providers whose certificate of compliance is revoked or refused to renew by the Department's Bureau of Certification Services. Providers can still take private-pay families for situations involving appeals, but the Department reiterates the statements from the preamble of the Federal regulation, that "we cannot in good conscience continue to use any federal taxpayer dollars to support sub-standard child care for our nation's most vulnerable and disadvantaged children." Consistent with the stated standard, the Department makes amendments to ensure that scarce, public funds are not paid to providers who cannot satisfy baseline health and safety requirements. The Department reiterates that the amendments in §§ 3042.12(b) and 3042.14(h) impact 447 enrollments, or less than 1% of eligible children based on data from SFY 2021-2022.

There are valuable returns on investments with the new regulation that outweigh any potential costs. According to the Economic Report of the President (March 2014), investments in early childhood development will reap economic benefits now and in the future. Immediate benefits include increased parental earnings and employment. Future benefits come when children who experience high-quality early care and education opportunities are prepared for success in school and go on to earn higher wages as adults. This final-form rulemaking further benefits parents or caretakers who may wish to enroll in school or a training program to establish or maintain eligibility for subsidized child care services.

Finally, research has also demonstrated the relationship between child care subsidies and the maternal labor force participation rate. Burgess, K., Chien, N., and Enchautegui, M. (2016). "The Effects of Child Care Subsidies on Maternal Labor Force Participation in the United States." The Department of Health and Human Services. Retrieved from https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//171051/EffectsCCSubsidiesMaternalLFPBrief.pdf. The study recommends, among other things, that "as states work to implement new requirements in the reauthorized CCDBG Act, which governs CCDF funding, policymakers may want to consider the employment benefits of expanding access to child care subsidies to more low-income working families. Such an investment would likely improve labor force participation and employment rates among mothers. In addition, these improved employment outcomes are likely to have immediate economic benefits for families, which improve child development. Improved employment outcomes also help society through increased tax revenues in addition to the long-term human capital benefits of investments in young children." Consistent with this recommendation, the Department determines that this final-form rulemaking expands access, improves the quality of care these families receive, better ensures health and safety, and particularly expands access for families dealing with homelessness and families seeking to enroll in education or training to better improve their long-term prospects for employment, which by extension will improve on their income prospects, the healthy development of their children, and increased tax revenues to better ensure the availability of these services in the future for those who are struggling and are most at risk in society.

Paperwork requirements

This final-form rulemaking will result in reduced paperwork and recordkeeping for a parent or caretaker and the eligibility agency. A parent or caretaker will only be required to complete an eligibility redetermination every 12 months and not every 6 months. Consistent with CCDBG requirements, this final-form rulemaking also reduces reporting requirements for a parent or caretaker during the family's 12-month eligibility period; therefore, the need for a parent or caretaker to provide verification to the eligibility agency may also decrease.

Reduced reporting and paperwork requirements will remove unnecessary tracking of a parent's or caretaker's status by the eligibility agency. The reduction in paperwork and tracking may allow for more funding for direct services and will provide stability and continuity in the program. Policies that result in unnecessary disruptions to receipt of a subsidy, or other administrative processes that make it difficult for parents to maintain their eligibility and thus fully benefit from the support it offers, undermine family economic stability and are contrary to the CCDBG.

Regulatory Review Act

Under section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on March 23, 2023, the Department

originally submitted a copy of this final-form rulemaking to IRRC and to the chairperson of the Health and Human Services Committee of the Senate and the chairperson of the Children and Youth Committee of the House of Representatives. In compliance with the Regulatory Review Act (71 P.S. §§ 745.1—745.14), the Department also provided the Health and Human Services Committee of the Senate and the Children and Youth Committee of the House of Representatives and IRRC with copies of all public comments received, as well as other documentation. In preparing this final-form regulation, the Department reviewed and considered all comments received from IRRC and the public. IRRC met on May 18, 2023, and in response to the Department's request, the regulation was disapproved. IRRC issued its disapproval order on June 20, 2023.

Under section 7(c) of the Regulatory Review Act (71 P.S. § 745.7(c)), on July 27, 2023, the Department delivered to IRRC and the Health and Human Services Committee of the Senate and the Children and Youth Committee of the House of Representatives a revised final-form rulemaking and report in response to IRRC's disapproval order. Under section 7(c.1) of the Regulatory Review Act, IRRC met on September 21, 2023, and approved the final-form rulemaking. Under section 7(d) of the Regulatory Review Act, the final-form rulemaking was deemed approved by the committees on May 17, 2023.

In addition to submitting the final-form rulemaking, the Department has provided IRRC and the Health and Human Services Committee of the Senate and the Children and Youth Committee of the House of Representatives with a copy of a Regulatory Analysis Form prepared by the Department and the Department's comment and response document. A copy of this material is available to the public upon request.

Findings

The Department finds:

(a) The public notice of intention to amend the administrative regulation by this Order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(b) A public comment period was provided as required by law, and all comments were considered in drafting this final-form rulemaking.

(c) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 50 Pa.B. 6361.

(d) That the adoption of this regulation in the manner provided by this Order is necessary and appropriate for the administration and enforcement of the Human Services Code.

Order

The Department, acting under the authority of sections 201(2), 403(b) and 403.1 of the Human Services Code, orders:

(a) The regulations of the Department, 55 Pa. Code Chapters 3041 and 3042, are amended by deleting §§ 3041.1—3041.3, 3041.11—3041.22, 3041.31—3041.34, 3041.41—3041.48, 3041.51, 3041.52, 3041.61—3041.78, 3041.81—3041.86, 3041.91—3041.94, 3041.101—3041.109, 3041.121—3041.133, 3041.141—3041.150, 3041.161—3041.167, 3041.171—3041.176 and 3041.181—3041.189, and adding §§ 3042.1—3042.4, 3042.11—3042.22, 3042.31—3042.37, 3042.41—3041.44, 3042.51—3042.57, 3042.61—3042.74, 3042.81—3042.88, 3042.91—3042.99, 3042.101, 3042.102, 3042.111—3042.122, 3042.131—3042.133, 3042.141—3042.147, 3042.151—3042.159, 3042.161—3042.166 and 3042.171—3042.179 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this final-form rulemaking to the Offices of General Counsel and Attorney General for approval as to legality and form as required by law.

(c) The Secretary of the Department shall submit this final-form rulemaking to IRRC and the Chairpersons of the Health and Human Services Committee of the Senate and the Children and Youth Committee of the House of Representatives as required by the Regulatory Review Act.

(c) The Secretary of the Department shall certify and deposit this final-form rulemaking with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin* as final-form or on July 1, 2023, whichever is later.

VALERIE A. ARKOOSH,
Secretary

(*Editor's Note*: See 53 Pa.B. 6319 (October 7, 2023) for IRRC's approval.)

Fiscal Note: 14-545. Under section 612 of The Administrative Code of 1929 (71 P.S. § 232), (1) General Fund;

(7) Child Care Services; (2) Implementing Year 2023-24 is $0; (3) 1st Succeeding Year 2024-25 is $24,900,000; 2nd Succeeding Year 2025-26 through 5th Succeeding Year 2028-29 are $33,225,000; (4) 2022-23 Program—$181,482,000; 2021-22 Program—$156,482,000; 2020-21 Program—$156,482,000;

(7) Child Care Assistance; (2) Implementing Year 2023-24 is $0; (3) 1st Succeeding Year 2024-25 is $8,300,000; 2nd Succeeding Year 2025-26 through 5th Succeeding Year 2028-29 are $11,075,000; (4) 2022-23 Program—$109,885,000; 2021-22 Program—$109,885,000; 2020-21 Program—$109,885,000;

(8) recommends adoption. Funds have been included in the budget to cover this increase.

Annex A

TITLE 55. HUMAN SERVICES

PART V. CHILDREN, YOUTH AND FAMILIES MANUAL

Subpart B. ELIGIBILITY FOR SERVICES

CHAPTER 3041. [RESERVED]

Sec.
3041.1—3041.3. [Reserved].
3041.11—3041.22. [Reserved].
3041.31—3041.34. [Reserved].
3041.41—3041.48. [Reserved].
3041.51. [Reserved].
3041.52. [Reserved].
3041.61—3041.78. [Reserved].
3041.81—3041.86. [Reserved].
3041.91—3041.94. [Reserved].
3041.101—3041.109. [Reserved].
3041.121—3041.133. [Reserved].
3041.141—3041.150. [Reserved].
3041.161—3041.167. [Reserved].
3041.171—3041.176. [Reserved].
3041.181—3041.189. [Reserved].

CHAPTER 3042. SUBSIDIZED CHILD CARE ELIGIBILITY

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GENERAL PROVISIONS

§ 3042.1. Purpose.

This chapter establishes the requirements for a family to receive subsidized child care. Subsidized child care is a nonentitlement benefit made available through limited Federal and State funds.

§ 3042.2. Scope.

This chapter applies to child care eligibility agencies, child care providers, and parents and caretakers requesting or receiving subsidized child care.

§ 3042.3. Definitions.

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

Adjusted family income—Gross countable family income, minus allowable deductions.

Annual income—The family's adjusted monthly income, multiplied by 12 months.

Appeal—A written or oral request by a parent, caretaker or individual acting on behalf of a parent or caretaker for a hearing under Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings), indicating disagreement with a Departmental or eligibility agency action or failure to act that affects the family's eligibility for subsidized child care.

Application—A signed, dated request by a parent, caretaker or individual acting on behalf of a parent or caretaker for subsidized child care.

CAO—County Assistance Office—The local office of the Department responsible for the determination of eligibility and service delivery in the Cash Assistance, Medical Assistance and Supplemental Nutrition Assistance Programs.

CRNP—Certified registered nurse practitioner.

Caretaker—An individual who has legal custody of the child or any one of the following individuals who lives with and exercises care and control of the child:

(i) A foster parent.

(ii) A grandparent.

(iii) A great-grandparent.

(iv) An aunt.

(v) An uncle.

(vi) A sibling who is 18 years of age or older.

Child care—Care instead of parental care for part of a 24-hour day.

Collateral contact—A form of verification in which the eligibility agency obtains information from a third party.

Copayment—The weekly amount the family pays for subsidized child care.

Department—The Department of Human Services of the Commonwealth.

Disability—A physical or mental impairment that precludes a parent or caretaker from participating in work, education or training.

Disqualification—The prohibition against receipt of subsidized child care that results from fraud or an intentional program violation.

Domestic and other violence (domestic violence)—Includes one of the following:

(i) A physical act that results in, or threatens to result in, physical injury to the individual.

(ii) Mental abuse, including stalking, threats to kidnap, kill or otherwise harm people or property, threats to commit suicide, repeated use of degrading or coercive language, controlling access to food or sleep, and controlling or withholding access to economic and social resources.

(iii) Sexual abuse.

(iv) Sexual activity involving a dependent child.

(v) Being forced as the caretaker or relative of a dependent child to engage in nonconsensual sexual acts or activities.

(vi) A threat of, or attempt at, physical or sexual abuse.

(vii) Neglect or deprivation of medical care.

Education—An elementary school, middle school, junior high or high school program including a GED program, an HSE degree, charter school, cyber school and any other program approved by the school district or the Department of Education.

Eligibility agency—The entity designated by the Department with authority to purchase subsidized child care and determine a family's eligibility and copayment.

Eligibility determination—A decision regarding whether a family qualifies for the subsidized child care program and a determination of the copayment.

Eligibility redetermination—An annual review by the eligibility agency to determine if a family continues to qualify for subsidized child care, including a review of the copayment.

Employment—Working for another individual or entity for income.

FPIG—Federal Poverty Income Guidelines—The income levels published annually in the *Federal Register* by the United States Department of Health and Human Services.

Family—The child or children for whom subsidized child care is requested and the following individuals who live with that child or children in the same household:

(i) A parent of the child.

(ii) A caretaker and a caretaker's spouse.

(iii) A biological, adoptive or foster child or stepchild of the parent or caretaker who is under 18 years of age and not emancipated by marriage or by the court.

(iv) An unrelated child under the care and control of the parent or caretaker, who is under 18 years of age and not emancipated by marriage or by the court.

(v) A child who is 18 years of age or older but under 22 years of age who meets both of the following:

(A) Is enrolled in at least one of the following:

(I) Adult basic education.

(II) English as a second language course work.

(III) A high school or a GED program.

(IV) An HSE degree.

(V) An internship, clinical placement, apprenticeship, lab work or field work required by a training institution.

(VI) A post-secondary program leading to a degree, diploma or certificate.

(B) Is wholly or partially dependent upon the income of the parent or caretaker or spouse of the parent or caretaker.

Fraud—The intentional act of a parent or caretaker, at the time of application or redetermination, that results in

obtaining, continuing or increasing child care subsidy for which the family is not eligible and that involves any of the following:

(i) A false or misleading statement.

(ii) The failure to disclose information.

GED—A general educational development program approved by a school district or the Department of Education.

HSE—A high school equivalency degree approved by the school district or the Department of Education.

Head Start—Refers to Early Head Start or Head Start as follows:

(i) *Early Head Start*—A program that serves families with at-risk children from birth to 3 years of age.

(ii) *Head Start*—A program designed to prepare at-risk children, 3 years of age or older but under 5 years of age, for school success.

Homelessness—Refers to a child who lacks a fixed, regular and adequate nighttime residence as specified in section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(2)), or the child's parent or caretaker. The term includes:

(i) Children and youth who are sharing the housing of other persons due to loss of housing, economic hardship or a similar reason; are living in motels or hotels due to the lack of alternative accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals.

(ii) Children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.

(iii) Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings.

(iv) Migratory children who qualify as homeless for the purposes of this chapter because the children are living in circumstances described in subparagraphs (i)—(iii).

(v) Parents and caretakers of children who are living in circumstances described in subparagraphs (i)—(iv).

Income—Includes the following:

(i) Earned income, including gross wages from work, cash and income from self-employment.

(ii) Unearned income or benefits, including cash and contributions received by an individual for which the individual does not provide a service.

Maximum child care allowance—The highest amount the Department will pay for child care services provided to families eligible for subsidized child care.

Overpayment—The receipt of subsidy for a child for which the family is not or was not eligible or an amount in excess of the amount for which the family was eligible.

Parent—The biological or adoptive mother or father, or stepmother or stepfather, who exercises care and control of the child for whom subsidy is requested.

Period of presumptive continued eligibility—A temporary period of eligibility established at redetermination as specified in § 3042.147 (relating to presumptive continued eligibility at redetermination).

Period of presumptive eligibility—A temporary period of eligibility established at application for families experiencing homelessness as specified in § 3042.146 (relating to homelessness).

Personal interview—Refers to an informational meeting or discussion between the eligibility agency and the parent or caretaker, which takes place in person, by telephone or by other means approved by the Department.

Prospective work, education or training—Future employment, education or training that has a begin date and is verified by the employer, school official or training official.

Provider—An organization or individual that directly delivers child care services.

Published rate—A provider's daily charge for a child who does not receive subsidized child care.

Recoupment—Recovery of an overpayment by increasing the copayment or other payment arrangement.

SMI—State Median Income—An income figure that represents the midpoint in the range of State household income.

Self-certification—A written statement provided by a parent or caretaker for the purpose of establishing selected factors of nonfinancial eligibility.

Self-declaration—A written statement that is signed, dated and provided by the parent or caretaker for the purpose of establishing financial or nonfinancial eligibility pending verification as described in § 3042.64 (relating to self-declaration).

Self-employment—Operating one's own business, trade or profession for profit.

Subsidized child care—Child care service paid for in part with Federal or State funds.

Subsidy suspension—A temporary lapse of subsidized child care that does not affect the family's eligibility status.

TANF—Temporary Assistance for Needy Families Program—As follows:

(i) A Federal nonentitlement program under sections 401—419 of the Social Security Act (42 U.S.C. §§ 601—619) that provides cash assistance to families including dependent children and an adult.

(ii) The term includes extended TANF benefits that are received beyond the 5-year TANF period.

Tiered-reimbursement—An amount the Department sets and adds to a provider's payment rate if the provider meets additional quality standards, based on the level of quality the provider maintains and the amount of time the child receives care from the provider in a day.

Training—As follows:

(i) Instruction that provides the skills or qualifications necessary for a specific vocation or field of employment.

(ii) The term includes adult basic education, English as a second language, a GED program, an HSE degree, a postsecondary program leading to a degree, diploma or certificate, an internship, clinical placement, apprenticeship, lab work and field work required by the training institution.

Verification—As follows:

(i) The process of confirming information needed to determine eligibility for subsidized child care.

(ii) The term includes documentary evidence or information obtained through collateral contacts, self-certification and self-declaration.

Waiting list—A record maintained by the eligibility agency of the names of families and their children determined eligible to receive subsidized child care, but for whom funding is not currently available.

Work—Employment or self-employment.

§ 3042.4. Nondiscrimination.

(a) An eligibility agency may not discriminate against applicants for or recipients of Federal or State subsidized funds on the basis of age, race, sex, color, religious creed, national or ethnic origin, ancestry, sexual orientation, gender identity, or physical or mental disability.

(b) An eligibility agency shall offer child care subsidy within the provisions of applicable civil rights laws and regulations, including all of the following:

(1) The Pennsylvania Human Relations Act (43 P.S. §§ 951—963).

(2) The Age Discrimination Act of 1975 (42 U.S.C. §§ 6101—6107).

(3) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d—2000d-7).

(4) Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e—2000e-17).

(5) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794).

(6) The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101—12213).

GENERAL BENEFITS

§ 3042.11. Provision of subsidized child care.

(a) Subsidized child care is provided for a child whose family meets financial and nonfinancial eligibility requirements.

(b) Subsidized child care is available to an otherwise eligible child who is under 13 years of age.

(c) Subsidized child care will continue until the eligibility agency completes the family's next scheduled annual redetermination when a child turns 13 years of age between redeterminations.

(d) Subsidized child care is available to an otherwise eligible child who is 13 years of age or older but under 19 years of age and who is physically or mentally incapable of self-care.

(e) A former TANF family is eligible for a child care subsidy under this chapter as specified in §§ 3042.111—3042.122 (relating to former TANF families).

(f) The Department, through the Department's contract with the eligibility agency, will direct funding for various populations, including individuals who formerly received TANF benefits and foster children.

§ 3042.12. Parent choice.

(a) A family that is eligible for subsidized child care shall have the right to choose care from a provider that agrees to comply with the Department's standards for provider participation, subject to subsections (b) and (c).

(b) The Department may suspend a subsidy benefit when a parent or caretaker uses a provider who has received a Departmental notice to revoke or refuse to renew the provider's certificate of compliance.

(c) Providers eligible to participate include:

(1) A child care center certified under Chapter 3270 (relating to child care centers).

(2) A group child care home certified under Chapter 3280 (relating to group child care homes).

(3) A family child care home certified under Chapter 3290 (relating to family child care homes).

(4) A grandparent, great-grandparent, aunt, uncle or sibling of the child who is 18 years of age or older and does not reside within the same household as the child.

§ 3042.13. Subsidy benefits.

A subsidy-eligible family may receive child care during the hours that the child needs care if the parent or caretaker:

(1) Works or attends education or training, including travel between the parent's or caretaker's work, education or training and the child care facility.

(2) Requires uninterrupted sleep time following the completion of an overnight work shift.

§ 3042.14. Payment of provider charges.

(a) A provider participating in the subsidized child care program is eligible to receive payment from the eligibility agency for services provided to a subsidy-eligible child.

(b) The eligibility agency may not pay child care costs that exceed the maximum child care allowance minus the family copayment for the type of care the child received from the provider, except when the Department provides tiered-reimbursement to providers that are eligible based on their participation in the Department's Quality Rating and Improvement System.

(c) The Department may provide tiered-reimbursement based on the availability of funding.

(d) If a parent or caretaker selects a provider whose published rate exceeds the Department's payment rate, the provider may charge the parent or caretaker the difference between these two amounts.

(e) A change in a parent's or caretaker's need for child care and the resulting adjustment in the amount of payment to the provider shall begin on the date the parent or caretaker reports the change or on the date the change begins, whichever is later.

(f) When additional funding becomes available, the Department may direct any additional funding to providers that offer child care services during non-traditional hours.

(g) The eligibility agency will not make retroactive payments for child care costs incurred more than 30 days prior to the issuance of an enrollment authorization, with the exception of a former TANF family as specified in § 3042.119 (relating to retroactive payment for former TANF families).

(h) The Department will not permit subsidy enrollments at a provider for whom the Department has issued a revocation or refusal to renew.

§ 3042.15. Subsidy limitations.

(a) A family in which a parent or caretaker is receiving funds from the TANF cash assistance program is not eligible for subsidized child care under this chapter.

(b) Subsidized child care may not be used as a substitute for a publicly funded educational program, such as kindergarten or a specialized treatment program. At the parent's or caretaker's request, a subsidy-eligible, kindergarten-age child is permitted 1 additional school year to be enrolled in kindergarten.

(c) A child receiving care in a child care facility that is owned by the child's parent or caretaker is not eligible for subsidized child care.

(d) A child is ineligible for subsidized child care if not enrolled with an eligible child care provider within 30 calendar days following the date the eligibility agency notifies the parent or caretaker that funding is available to enroll the child unless the eligibility agency determines that enrollment has been delayed because of circumstances outside of a parent's or caretaker's control. The following apply:

(1) If a parent or caretaker fails to provide a circumstance outside the parent's or caretaker's control, the child is ineligible.

(2) If a parent or caretaker provides a circumstance outside of a parent's or caretaker's control, the child will remain eligible.

§ 3042.16. Prohibition of additional conditions and charges.

The eligibility agency may not:

(1) Impose eligibility conditions other than conditions listed in this chapter.

(2) Require the parent or caretaker to select a particular provider or combination of providers as a condition of eligibility.

§ 3042.17. Attendance.

(a) When the parent or caretaker enrolls a child in subsidized child care, the parent or caretaker shall specify, in writing to the eligibility agency, the days for which the parent or caretaker requested child care.

(b) A child must attend child care at the provider on all days for which the parent or caretaker requested child care as specified in § 3042.13 (relating to subsidy benefits), unless the provisions specified in § 3042.20 (relating to subsidy suspension) apply.

§ 3042.18. Absence.

(a) Upon notification from the provider that a child has been absent more than 5 consecutive days for which the child is scheduled to attend child care, the eligibility agency shall send the parent or caretaker a notice confirming the suspension of the child's enrollment and payment to the provider.

(b) Upon notification from a parent or caretaker that a child has been or will be absent more than 5 consecutive days for which the child is scheduled to attend child care, the eligibility agency shall send the parent or caretaker a notice confirming the suspension of the child's enrollment and payment to the provider.

(c) The notice shall inform the parent or caretaker of all of the following:

(1) The responsibility of the parent or caretaker to report to the eligibility agency the date of the child's return to care.

(2) Payment shall resume on the date the child returns to care.

(d) If a child's absences exceed 40 total enrollment days in the State's fiscal year, the parent or caretaker is responsible to pay to the provider the provider's verified published daily rate for each day of absence starting with the 41st day of absence. A child is considered absent only once during an enrollment day. Suspended days of service as specified in § 3042.20 (relating to subsidy suspension) are not considered days of absence.

§ 3042.19. Subsidy continuation.

(a) A family's eligibility and payment for subsidized child care continues during a break in or following the loss of work, education or training for the remainder of the child's current 12-month eligibility period.

(b) A child's eligibility and payment for subsidized child care continues for the remainder of the child's current 12-month eligibility period when there is a change in the child's primary parent or caretaker. The substitute caretaker must meet only the requirement that the family's annual income does not exceed 85% of the SMI.

(c) Subsidized child care will continue at the same level until the family's next scheduled annual redetermination, unless one of the following situations occurs:

(1) The family's income exceeds 85% of the SMI.

(2) The provisions specified in § 3042.22 (relating to subsidy termination) apply.

(3) The provisions specified in § 3042.86 (relating to change reporting and processing) apply.

§ 3042.20. Subsidy suspension.

(a) The eligibility agency shall suspend subsidy if a child is unable to attend child care for more than 5 consecutive days for which the child is scheduled to attend.

(b) At the parent's or caretaker's request, the eligibility agency shall suspend subsidy for a child who is expected to be absent more than 5 consecutive days.

§ 3042.21. Subsidy disruption.

Subsidy to a child may be disrupted if the eligibility agency cannot continue to subsidize the number of children enrolled in subsidized child care due to insufficient Federal or State funding. The following apply:

(1) Subsidy for children whose family's income is at the highest percentage of the FPIG is disrupted first.

(2) A child whose subsidy is disrupted under this section is placed on the waiting list according to the date of the initial eligibility for subsidized child care.

§ 3042.22. Subsidy termination.

(a) Notwithstanding § 3042.19 (relating to subsidy continuation), the eligibility agency shall terminate subsidy to a child prior to the next redetermination in any of the following circumstances:

(1) The child has been absent for 60 consecutive days of unexplained non-attendance in care, provided the eligibility agency has attempted at least three times to contact the parent or caretaker regarding the child's absences.

(2) The child no longer resides in this Commonwealth.

(3) The parent or caretaker committed substantiated fraud or an intentional program violation that invalidates a prior determination of eligibility.

(4) The parent or caretaker voluntarily requests discontinuance of the subsidy.

(b) If the eligibility agency moves to terminate the subsidy as described in subsection (a), the eligibility agency shall send notification to the family as provided under § 3042.155 (relating to notice of adverse action).

ELIGIBILITY REQUIREMENTS

§ 3042.31. Financial eligibility.

(a) At initial application, annual family income may not exceed 200% of the FPIG.

(b) Following an initial determination of eligibility, a family shall remain financially eligible for subsidized child care as long as the family's annual income does not exceed 85% of the SMI.

(c) At redetermination, the family's annual income may not exceed 235% of the FPIG or 85% of the SMI, whichever is less.

(d) The eligibility agency shall inform the parent or caretaker of the annual family income that will exceed 235% of the FPIG or 85% of the SMI and will cause the family to be ineligible for subsidized child care.

(e) A family is ineligible for subsidized child care when the family's assets exceed $1 million at application or redetermination.

§ 3042.32. Residence.

(a) Family members shall be residents of this Commonwealth.

(b) The parent or caretaker shall apply to the eligibility agency that is responsible for the geographic area that includes the zip code of the family's residence.

(c) A parent or caretaker experiencing domestic violence or homelessness may use an alternate address for receipt of mail or telephone number for receipt of telephone calls.

§ 3042.33. Work, education and training.

(a) The parent or caretaker shall work at least 20 hours per week.

(b) The eligibility agency shall average a parent's or caretaker's work hours in cases where hours of work vary from week to week.

(c) The eligibility agency shall consider a parent or caretaker as meeting the work-hour requirement specified in subsection (a), under any one of the following circumstances:

(1) A parent or caretaker is under 22 years of age and does not have a high school, GED or HSE diploma, but is enrolled in and attending education on a full-time basis.

(2) A parent or caretaker attends training and works at least 10 hours per week. The time spent in training counts toward the 20-hour per week work requirement.

§ 3042.34. Prospective work, education and training.

(a) A family in which a parent or caretaker has prospective work, education or training may be eligible for subsidized child care if all of the following requirements are met:

(1) The work, education or training will begin no later than 30 calendar days following the date the parent or caretaker signs and dates the application for subsidized child care.

(2) Verification of prospective work, education or training is provided as specified in § 3042.67 (relating to verification of work, education and training).

(b) Subsidized child care may not begin until the parent or caretaker begins work, education or training.

(c) The parent or caretaker shall notify the eligibility agency of the actual amount of income no later than 10 calendar days after receiving the first income for work.

§ 3042.35. Immunization.

(a) A child receiving subsidized child care shall be up to date with immunizations as recommended by the Advisory Committee on Immunization Practices. For facilities subject to certification by the Department, immunizations shall be provided as specified in §§ 3270.131, 3280.131 and 3290.131 (relating to health information). The eligibility agency shall grant exemption from the immunization requirement under one of the following circumstances:

(1) A child's parent or caretaker objects to immunizations on religious grounds or strong personal objection equated to a religious belief must be documented by a written, signed and dated statement from the child's parent or guardian. The statement shall be kept in the child's record.

(2) A child's physician, physician's assistant or CRNP signs and dates a written statement indicating that a child's medical condition contraindicates immunization. The statement shall be kept in the child's record.

(b) If an otherwise eligible child is not up to date with immunizations and not exempt from immunization, the eligibility agency shall authorize the family for subsidy and give the parent or caretaker 60 days from the date of enrollment, or if the child is experiencing homelessness or is a foster child, then 90 calendar days from the date of enrollment to obtain up to date immunizations or provide documentation of exemption from the immunization requirement.

§ 3042.36. Citizenship.

A child receiving subsidized child care shall be a United States citizen or an alien lawfully admitted for permanent residence or otherwise lawfully and permanently residing in the United States.

§ 3042.37. Eligibility of households including a parent or caretaker with a disability.

(a) At application or redetermination, a single parent or caretaker who is unable to meet the work, education and training requirements due to a disability is not eligible for subsidized child care services.

(b) Following the determination of eligibility for subsidized child care, a single parent or caretaker who is unable to meet the work, education and training requirements is excused from the work, education and training requirements until the family's next scheduled annual redetermination.

(c) At application or redetermination, a two-parent or two-caretaker family who are both unable to meet the work, education and training requirements due to a disability are not eligible for subsidized child care services.

(d) Following the determination of eligibility for subsidized child care, a two-parent or two-caretaker family where both parents are unable to meet the work, education and training requirements is excused from the work, education and training requirements until the family's next scheduled annual redetermination.

(e) A two-parent or two-caretaker family may be eligible for subsidized child care if all of the following conditions are met:

(1) One parent or caretaker is satisfying the work requirement as specified in § 3042.33 (relating to work, education and training) at the time of application and at each subsequent redetermination.

(2) The parent or caretaker that is not working has a disability that is verified as specified in § 3042.70 (relating to verification of inability to work due to a disability) at the time of application and at each subsequent redetermination.

(3) The parent or caretaker with the disability is unable to work or participate in education or training and is unable to care for the child for whom the family requested subsidy, or has a need to attend treatment for the disability and is unable to care for the child.

(f) A two-parent or two-caretaker family may be eligible for subsidized child care if both of the following conditions are met:

(1) One parent or caretaker is satisfying the work requirement as specified in § 3042.33.

(2) A court order or safety plan issued by a children and youth agency prohibits the other parent or caretaker from caring for the child for whom the family requested subsidy.

DETERMINING FAMILY SIZE AND INCOME

§ 3042.41. Family size.

(a) Individuals included in the definition of family as specified in § 3042.3 (relating to definitions) shall be counted when determining family size.

(b) A foster child may be counted as a family of one or may be included in a family as defined in this chapter.

§ 3042.42. Income counted.

The eligibility agency shall include the income of the following family members when determining financial eligibility:

(1) The parent or caretaker of the child for whom subsidy is sought, excluding a teenage parent's earned income.

(2) A parent's or caretaker's spouse.

(3) Children for whom the parent or caretaker receives unearned income.

§ 3042.43. Income adjustment.

To determine adjusted family income, the eligibility agency shall:

(1) Determine gross income as specified in Appendix A, Part I (relating to income to be included, deducted and excluded in determining gross monthly income) for each family member listed in § 3042.42 (relating to income counted).

(2) Estimate monthly income from each income source in accordance with § 3042.44 (relating to estimating income).

(3) Convert weekly, biweekly, semimonthly and other pay periods to gross monthly amounts using the Conversion Table in Appendix A, Part I.

(4) Calculate the total gross monthly income.

(5) Determine the stepparent deduction as specified in Appendix C (relating to stepparent deduction chart).

(6) Determine other allowable deductions listed in Appendix A, Part II (relating to income to be included, deducted and excluded in determining gross monthly income) for each source of income.

(7) Determine adjusted family income by subtracting the total monthly deductions specified in paragraphs (5) and (6) from the total gross monthly income specified in paragraph (4).

(8) Multiply adjusted family income by 12 to determine annual family income.

§ 3042.44. Estimating income.

(a) The eligibility agency shall use its best estimate of monthly income based upon circumstances at the time of application or redetermination as specified in Appendix A, Part I (relating to income to be included, deducted and excluded in determining gross monthly income) for the table used to convert weekly, biweekly, semimonthly and other pay periods to monthly amounts.

(b) For parents or caretakers who are working and have received pay at the time they apply for subsidized child care, the eligibility agency shall estimate income based upon verified, actual amounts already received by the family prior to application or redetermination.

(c) The eligibility agency shall adjust its estimate of monthly income to reflect recent or anticipated changes and unusual circumstances that are not expected to recur, such as overtime not likely to continue.

(d) When an applicant anticipates starting work within the next 30 days or has not yet received a first paycheck, income eligibility is established based on verified anticipated income.

ELIGIBILITY DETERMINATION

§ 3042.51. Application.

(a) The eligibility agency shall make applications for subsidized child care available to any person upon request.

(b) A parent or caretaker may file a signed application for subsidized child care under this chapter, including an electronically signed online application, on any day and at any time.

(c) A parent or caretaker may submit an application by mail, hand-delivery, facsimile or electronically.

§ 3042.52. Initial determination of eligibility.

(a) The eligibility agency shall stamp the date and time of receipt on the signed application on the same day the eligibility agency receives the application by mail, hand-delivery, facsimile or electronically.

(b) The eligibility agency shall determine a family's eligibility and authorize payment for subsidized child care no later than 10 calendar days following verification of all factors of eligibility. The eligibility agency may not delay a determination of eligibility beyond 30 calendar days following receipt of a signed application from the parent or caretaker.

(c) The eligibility agency shall determine a family eligible retroactive to the date the family submitted a signed application if the eligibility agency has received all information necessary to complete the application and the verification provided by the parent or caretaker establishes eligibility.

§ 3042.53. Effective date of coverage.

(a) If the eligibility agency determines a family eligible for subsidized child care and if funding is available, coverage of child care costs is retroactive to the date the family submitted a signed application.

(b) If the eligibility agency places a child on a waiting list following the determination of eligibility, coverage of child care costs must begin on the date funding is available.

§ 3042.54. Notification of eligibility status and availability of funding.

(a) The eligibility agency shall notify the parent or caretaker of the family's eligibility status within 30 calendar days of receiving a signed application.

(b) If the eligibility agency determines a family eligible for subsidized child care, the eligibility agency shall notify the family's child care provider when funding becomes available to enroll the child.

§ 3042.55. Period of eligibility.

A family receiving subsidy remains eligible until determined ineligible.

§ 3042.56. Personal interview.

(a) If the eligibility agency determines a family eligible for subsidized child care and if funding is available, the parent or caretaker shall attend a personal interview with the eligibility agency no later than 30 calendar days following the date the eligibility agency notifies the family of eligibility for subsidized child care.

(b) If the eligibility agency determines a family eligible for subsidized child care and if funding is not available, the parent or caretaker shall attend a personal interview with the eligibility agency no later than 30 calendar days following the date the first child from a family is enrolled in subsidized child care.

(c) The eligibility agency shall accommodate the parent's or caretaker's work hours in scheduling the personal interview.

(d) The eligibility agency may extend the 30-day time frame for the personal interview if, on or before the 30th calendar day, the parent or caretaker claims hardship due to conflicts with the parent's or caretaker's working hours, or illness of the parent or caretaker or another family member. When the parent or caretaker claims hardship, the eligibility agency may grant an additional 30 days from the date the hardship is claimed for the meeting.

(e) The eligibility agency may waive the requirement for the personal interview if the parent or caretaker has completed a personal interview with the eligibility agency within the previous 12 months.

§ 3042.57. Waiting list.

(a) If funds are not available to enroll a child following determination of the family's eligibility for subsidy, the eligibility agency shall place an eligible child on a waiting list based on priority and a first-come, first-served basis. The Department will post its method for priority on its web site. An order of priority may include foster children, children enrolled in PA Pre-K Counts, Head Start, Early Head Start or other program, newborn siblings, children of teen parents, children experiencing homelessness, or other circumstances or vulnerable populations as identified by the Department.

(b) If a parent or caretaker requests subsidized child care for an additional child following the date the family was initially determined eligible for subsidized child care, the eligibility agency shall place the additional child on the waiting list according to the date and time that the parent or caretaker requests care for the additional child.

(c) A child is ineligible for subsidized child care if not enrolled with an eligible child care provider within 30 calendar days following the date the eligibility agency notifies the parent or caretaker that funding is available to enroll the child unless the eligibility agency determines that enrollment has been delayed because of circumstances outside of a parent's or caretaker's control. The following apply:

(1) If a parent or caretaker fails to provide a circumstance outside the parent's or caretaker's control, the child is ineligible.

(2) If a parent or caretaker provides a circumstance outside of a parent's or caretaker's control, the child will remain eligible.

SELF-CERTIFICATION AND VERIFICATION

§ 3042.61. General verification requirements.

(a) The parent or caretaker shall be the primary source of verification in establishing and maintaining eligibility for subsidized child care.

(b) The eligibility agency shall assist parents and caretakers in obtaining verification, including making a collateral contact.

(c) The eligibility agency may not impose requirements for verification beyond the requirements of this chapter.

(d) At the time of application for subsidized child care, the eligibility agency shall obtain consent from the parent or caretaker and the parent's or caretaker's spouse permitting the eligibility agency to obtain verification of eligibility information.

(e) The eligibility agency shall retain the signed consent in the family's file.

(f) The consent shall remain in effect for as long as the family receives subsidy.

(g) The eligibility agency may not deny or terminate subsidy to a family when the parent or caretaker has cooperated in the verification process and needed verification is pending or cannot be obtained due to circumstances beyond the parent's or caretaker's control.

(h) The eligibility agency may not require a parent or caretaker to reverify information unless the eligibility agency has information that indicates the subsidy status of the family has changed.

§ 3042.62. Collateral contact.

(a) The eligibility agency shall make a collateral contact on behalf of the parent or caretaker.

(b) The eligibility agency shall obtain from the parent or caretaker a list of sources of reliable collateral contact information.

(c) The eligibility agency shall cooperate with a source who acts as a collateral contact.

(d) Sources of reliable collateral contact information may include the following:

(1) Public records, such as domestic relations or other courthouse records.

(2) A school teacher or principal.

(3) A regulated child care provider.

(4) A health care professional.

(5) A social service worker or counselor.

(6) A religious professional.

(7) An attorney.

(8) Any other third party with knowledge about a fact or circumstance bearing on eligibility.

(e) The eligibility agency may not contact an alleged abuser or former abuser in a domestic violence situation.

§ 3042.63. Self-certification.

(a) The eligibility agency shall inform the parent or caretaker in writing that self-certification is made subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(b) The eligibility agency shall accept the statement of the parent or caretaker as sufficient proof of the following eligibility factors:

(1) Age of the child.

(2) Inclusion in the family composition of a child who is 18 years of age or older but under 22 years of age and meets the definition of family set forth in § 3042.3 (relating to definitions).

(3) Citizenship or immigration status.

(4) Immunization status or exemption from the immunization requirement.

(5) Days and hours for which the child needs care.

(6) Status of an individual who formerly received TANF as specified in § 3042.115(1) (relating to reporting requirements for former TANF families).

(7) Personal interview time frame extension or telephone contact based on hardship as specified in § 3042.56(d) and (e) (relating to personal interview).

§ 3042.64. Self-declaration.

(a) If attempts to verify eligibility by documentary evidence or collateral contact are unsuccessful, the eligibility agency shall proceed without delay to determine the family's eligibility based upon a self-certification as specified in § 3042.63 (relating to self-certification) or by written self-declaration by the parent or caretaker.

(b) The eligibility agency shall instruct the parent or caretaker that a written self-declaration is made subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(c) The eligibility agency shall accept a parent's or caretaker's self-declaration statement, unless evidence contradicts the statement.

(d) If a parent or caretaker uses self-declaration to establish eligibility as described in subsection (a), the eligibility agency shall require the parent or caretaker to provide another form of acceptable verification no later than 30 calendar days following the date the written self-declaration is accepted by the eligibility agency, unless otherwise specified in this chapter.

(e) For a parent or caretaker using self-declaration, eligibility is pending verification until another form of acceptable verification is returned to the eligibility agency as required under this section.

(f) If the eligibility agency does not receive the verifications as required under this section, or if the family is determined ineligible, the eligibility agency shall take the necessary steps to terminate the eligibility pending verification with proper notification to the family as specified in § 3042.155 (relating to notice of adverse action).

§ 3042.65. Verification of income.

(a) Acceptable verification of earned income from employment includes one of the following:

(1) Pay stubs reflecting earnings for 4 weeks in the most recent 6-week period, the Department's employment verification form reflecting actual or anticipated earnings, the Internal Revenue Service form used for reporting tips, an employer statement of anticipated earnings and hours, or other document that establishes the parent's or caretaker's earnings or anticipated earnings from employment.

(2) Another document that establishes income from work.

(3) The Department's cash verification form.

(4) A collateral contact as specified in § 3042.62 (relating to collateral contact).

(5) A written self-declaration by the parent or caretaker as specified in § 3042.64 (relating to self-declaration).

(b) Acceptable verification of income from self-employment includes:

(1) Tax returns, including schedules related to self-employment, filed for the preceding Federal tax year and which document profit for that year.

(2) The Department's self-employment verification form that includes a statement of gross earnings, minus allowable cost of doing business, and that shows a profit.

(c) Acceptable verification of unearned income includes one of the following:

(1) A copy of a current benefit check, an award letter that designates the amount of a grant or benefit, such as a letter from the Social Security Administration stating the amount of the Social Security benefit, a bank statement, a court order, or other document or database report that establishes the amount of unearned income.

(2) A collateral contact as specified in § 3042.62.

(3) A written self-declaration by the parent or caretaker as specified in § 3042.64.

(d) Acceptable verification of the amount of support received or paid by the family includes one of the following:

(1) Information from the Pennsylvania Child Support Enforcement System.

(2) Information from a domestic relations office.

(3) Court order.

(4) Pay stub.

(5) Written statement by the noncustodial parent or the noncustodial parent's legal representative.

(6) A copy of a current benefit check that designates the amount of support.

(7) Collateral contact as specified in § 3042.62.

(8) A written self-declaration by the parent or caretaker as specified in § 3042.64.

§ 3042.66. Verification of residence.

(a) The parent or caretaker shall submit verification of residence at the time of application.

(b) Acceptable verification of residence includes any of the following:

(1) Mail received by the parent or caretaker or a copy of a lease, utility bill, deed, driver's license, rental agreement or other document establishing residence.

(2) A collateral contact as specified in § 3042.62 (relating to collateral contact).

(3) A written self-declaration by the parent or caretaker as specified in § 3042.64 (relating to self-declaration).

(c) The parent or caretaker shall submit verification of residence at the time of redetermination if the parent or caretaker reported a change of address.

§ 3042.67. Verification of work, education or training.

Acceptable verification of the number of hours of work, education, training or enrollment in education or training includes one of the following:

(1) A document provided by the parent or caretaker as verification of earned or anticipated earned income, if this verification indicates or can be used to compute the number of hours the parent or caretaker worked, is normally scheduled to work or, in cases when hours vary, the average number of hours worked.

(2) A copy of a work schedule signed by the employer.

(3) A copy of the class or training schedule from an education or training representative.

(4) Another document that establishes the number of hours of work or anticipated hours of work, education or training.

(5) A collateral contact as specified in § 3042.62 (relating to collateral contact).

§ 3042.68. Verification of circumstances relating to a decrease in copayment.

Acceptable verification of circumstances relating to a decrease in copayment includes any of the following:

(1) Verification of a decrease in income as specified in § 3042.65 (relating to verification of income).

(2) Verification of a change in family size and composition as specified in § 3042.71 (relating to verification of family size).

(3) Verification of maternity and family leave as indicated by one of the following:

(i) A birth certificate.

(ii) The Department's medical assessment form.

(iii) A medical record or a written statement from a licensed physician, physician's assistant, CRNP or psychologist.

(iv) A written statement or other documentation completed by a licensed physician, physician's assistant, CRNP or psychologist that describes the inability to work or participate in education or training and includes a date of anticipated return to work.

(v) A written statement from the employer or an education or training representative.

(vi) A collateral contact as specified in § 3042.62 (relating to collateral contact).

(vii) A written self-declaration by the parent or caretaker as specified in § 3042.64 (relating to self-declaration).

(4) Verification relating to inability to work due to a disability as specified in § 3042.70 (relating to verification of inability to work due to a disability).

§ 3042.69. Verification of identity.

(a) The parent or caretaker shall submit verification of identity at the time of application.

(b) Acceptable verification of identity includes any of the following:

(1) Employer identification card.

(2) Military photo-identification card.

(3) Passport.

(4) Other verifiable photo-identification.

(5) Driver's license with or without a photograph.

(6) State-issued birth certificate.

(7) Certificate of naturalization.

(8) Certificate of United States citizenship.

(9) Alien registration receipt card or permanent resident card.

(10) Valid or expired State driver's learner's permit.

(11) Social Security card.

(12) Marriage license, divorce decree or court order for a name change.

(13) Marriage record that contains the date of birth.

(14) Voter registration card.

(15) A collateral contact as specified in § 3042.62 (relating to collateral contact).

(16) A written self-declaration by the parent or caretaker as specified in § 3042.64 (relating to self-declaration).

(c) The parent or caretaker shall submit verification of identity at the time of redetermination if the eligibility agency becomes aware of an additional parent or caretaker residing in the household.

§ 3042.70. Verification of inability to work due to a disability.

Acceptable verification of inability to work due to a disability at the time of application or redetermination includes:

(1) An assessment by a licensed physician, physician's assistant, CRNP or psychologist that states the following:

(i) The condition causing the inability to work or to participate in education or training.

(ii) The manner in which the condition causing the disability prevents the parent or caretaker from providing care for the child.

(iii) The date the parent or caretaker is expected to return to work or resume participation in education or training or the date the parent or caretaker will be able to care for the child.

(2) If the parent or caretaker with a disability submits written verification of disability payments from Social Security, Supplemental Security Income, Worker's Compensation, 100% of Veterans Disability or 100% of another type of work-related disability, that verification shall serve as permanent verification of the parent's or caretaker's inability to work.

§ 3042.71. Verification of family size.

Acceptable verification of family size includes one of the following:

(1) A birth certificate.

(2) A custody order.

(3) A medical record or a written statement from a licensed physician, physician's assistant, CRNP or psychologist.

(4) A written statement from the parent indicating that the caretaker has care and control of the child for whom subsidized child care is requested.

(5) A school record.

(6) A government or social service agency record.

(7) A collateral contact as specified in § 3042.62 (relating to collateral contact).

(8) A written self-declaration by the parent or caretaker as specified in § 3042.64 (relating to self-declaration).

§ 3042.72. Verification of child's incapability of caring for himself.

Acceptable verification of a child's incapability of caring for himself as specified in § 3042.11(d) (relating to provision of subsidized child care) is documentation by a licensed physician, physician's assistant, CRNP or psychologist.

§ 3042.73. Verification of care and control.

Acceptable verification of care and control includes one of the following:

(1) A school record.

(2) A medical record or a written statement from a licensed physician, physician's assistant, CRNP or psychologist.

(3) A social service record.

(4) A religious record.

(5) A domestic relations office support order.

(6) A court order.

(7) A rental or lease agreement.

(8) A written statement from the parent or caretaker verifying that a relative has care and control of the child.

(9) A collateral contact as specified in § 3042.62 (relating to collateral contact).

(10) A written self-declaration by the parent or caretaker as specified in § 3042.64 (relating to self-declaration).

§ 3042.74. Verification of foster child status.

(a) Acceptable verification of foster child status includes one of the following:

(1) A statement from a children and youth agency.

(2) A record from a government or social service agency.

(b) Verification of foster child status must be verified at application, redetermination or upon adding the child to the family composition.

ELIGIBILITY AGENCY RESPONSIBILITIES

§ 3042.81. Eligibility agency.

(a) The eligibility agency shall manage the subsidized child care program in part of a county, a single county or several counties.

(b) The eligibility agency may be either a prime contractor or a subcontractor designated in a prime contract.

§ 3042.82. Eligibility determination.

(a) The eligibility agency shall determine eligibility for subsidized child care as specified in this chapter.

(b) The eligibility agency may not impose eligibility conditions other than the conditions listed in this chapter.

(c) The eligibility agency may not require the parent or caretaker to select a particular provider or combination of providers as a condition of eligibility.

§ 3042.83. Confidentiality.

(a) The eligibility agency and its employees shall keep confidential the information in the family file and use that information only for purposes directly connected to the administration of their duties.

(b) Agents of the United States, the Commonwealth and the Department who are responsible for eligibility review, evaluation or audit functions shall have access to, and the right to the use and disclosure of, information on applicants or recipients of subsidized child care. This use and disclosure is confined to the agent's responsibility to carry out review, evaluation or audit functions.

(c) Disclosure of information beyond the scope of review, evaluation or audit functions performed by the agents requires the parent's or caretaker's informed and written consent.

(d) Information in the family file may be disclosed to the local CAO when necessary to ensure that funds are authorized appropriately.

(e) The eligibility agency shall ensure the confidentiality of an individual who files an appeal or complaint about a family's receipt of subsidized child care for a child.

§ 3042.84. Family file.

(a) An eligibility agency shall establish and maintain a separate file for the family of each parent or caretaker who applies for subsidized child care.

(b) The family file shall contain documents pertaining to eligibility determination, redetermination, subsidized child care authorization, copayment agreements and copies of written notices required by this chapter.

(c) A parent or caretaker or an authorized representative has a right to examine the family file.

§ 3042.85. Record retention.

(a) An eligibility agency shall retain paper or electronic family files, completed application forms, written notices, books, records and other fiscal and administrative documents pertaining to subsidized child care.

(b) An eligibility agency shall maintain records for at least 6 years from the end of the fiscal year in which subsidized child care has been provided or until an audit or litigation is resolved.

(c) The fiscal year is a period of time beginning July 1 of any calendar year and ending June 30 of the following calendar year.

§ 3042.86. Change reporting and processing.

(a) A parent or caretaker shall report income in excess of 85% of the SMI no later than the 10th day of the month following the month of the change in income.

(b) If the parent or caretaker reports a change that results in the family or a child in the family becoming ineligible for subsidy, the eligibility agency shall evaluate the reported change as follows:

(1) First, the eligibility agency shall assess whether the reported change in income is an irregular fluctuation or a temporary increase. Irregular fluctuations and temporary increases will not impact eligibility.

(2) Second, for a change in income that is not an irregular fluctuation or a temporary increase in income, the eligibility agency shall take the necessary steps to terminate the subsidy with proper notification to the family as specified in § 3042.155 (relating to notice of adverse action).

(c) Parents and caretakers may voluntarily report changes on an ongoing basis.

(1) The eligibility agency shall act on information reported by the parent or caretaker if it would reduce the family copayment or increase the family subsidy. The eligibility agency shall review the change and reduce the copayment as specified in § 3042.94 (relating to parent or caretaker copayment requirements).

(2) The eligibility agency is prohibited from acting on information reported by the family that would reduce the family's subsidy unless the information provided indicates the family's income exceeds 85% of the SMI for a family of the same size.

(d) If the parent or caretaker fails to report a change in the child's provider, the child remains eligible. The eligibility agency may not make retroactive payment more than 30 calendar days prior to the date the parent or caretaker reported the change, except for a former TANF family as specified in § 3042.119 (relating to retroactive payment for former TANF families).

§ 3042.87. Voluntary request to terminate subsidized child care.

(a) A parent or caretaker may request the eligibility agency to terminate subsidy.

(b) Upon receipt of a request to terminate subsidy, the eligibility agency shall take steps to terminate the family's eligibility.

(c) The eligibility agency shall notify the parent or caretaker as specified in § 3042.156 (relating to notice confirming voluntary withdrawal).

§ 3042.88. Child abuse reporting.

The eligibility agency shall immediately report suspected child abuse in accordance with the 23 Pa.C.S. Chapter 63 (relating to Child Protective Services Law) and Chapter 3490 (relating to protective services).

COPAYMENT AND PAYMENT BY THE DEPARTMENT

§ 3042.91. General copayment requirements.

(a) The eligibility agency shall determine the amount of the parent's or caretaker's copayment during the eligibility process based on the parent's or caretaker's actual or verified anticipated income and family size.

(b) The eligibility agency will set the copayment at an initial determination of eligibility for subsidized child care and reestablish it at each successive redetermination of eligibility.

(c) The copayment covers each child in the family who is receiving subsidized child care.

(d) The copayment includes each day of the week for which the family establishes a need for child care.

(e) The copayment is due on the first day of the service week and each week thereafter, regardless of the day the parent or caretaker enrolls the child.

(f) The eligibility agency may not increase the amount of the copayment during the eligibility period, unless the provisions specified in § 3042.176 (relating to collection) apply.

§ 3042.92. Department's payment.

(a) The payment rate is the daily amount paid to a child care provider for services delivered to a child who is eligible for subsidized child care.

(b) If the copayment does not exceed the payment rate for care, the difference between the payment rate and the weekly copayment is the Department's payment for subsidized child care.

(c) If the Department's weekly payment to the provider is less than $5, the family is not eligible for subsidized child care with that provider.

§ 3042.93. Adjusted copayment for prospective work.

(a) Upon notification by the parent or caretaker of receipt of payment for employment, the eligibility agency shall:

(1) Adjust the family copayment, if applicable, no later than 20 calendar days following the date the parent or caretaker reports the receipt of payment from employment.

(2) Provide notice to the parent or caretaker of the planned change in the copayment.

(b) The parent or caretaker shall begin paying the adjusted copayment starting the first day of the service week following the date the written notice is postmarked or hand-delivered to the parent or caretaker by the eligibility agency.

(c) A single parent or caretaker who applies for subsidized child care and who reports prospective work is not required to pay a copayment until the parent or caretaker receives income from work.

§ 3042.94. Parent or caretaker copayment requirements.

(a) If the copayment is decreased as the result of a parent or caretaker voluntarily reporting a change or as the result of a redetermination, the parent or caretaker shall begin paying the reduced copayment on the first day of the service week following the date the parent or caretaker reported a change or the date the redetermination was completed.

(b) If the copayment is increased as the result of a redetermination, the parent or caretaker shall begin paying the increased copayment on the first service day of the week following the expiration of the notification period specified in § 3042.151(a) (relating to general notification requirements) advising the parent or caretaker of the copayment increase.

(c) The copayment is due on the first day of the service week and each week thereafter, regardless of the day the parent or caretaker enrolls the child.

§ 3042.95. Delinquent copayment.

(a) A copayment is delinquent if it is not paid by the last day of the service week.

(b) On the day the provider reports the copayment is delinquent, the eligibility agency shall notify the parent

or caretaker in writing that action will be taken to terminate subsidy for the child.

(c) If a copayment is delinquent, the eligibility agency will apply the first payment paid during a week to the current week's copayment. The eligibility agency will apply subsequent payments during a week to the delinquent copayment.

(d) To maintain eligibility for subsidized child care when a parent or caretaker incurs a copayment delinquency, the parent or caretaker shall pay all of the following prior to the expiration of the notification period:

(1) The current weekly copayment.

(2) The delinquent copayment.

(3) The amount of any additional delinquencies accumulated during the notification period.

§ 3042.96. Eligibility agency responsibilities regarding copayment.

(a) The eligibility agency shall generate notices based on delinquent copayments.

(b) The eligibility agency shall send the provider a copy of each notice issued to a parent or caretaker whose child is enrolled with the provider.

(c) When a copayment is reported to the eligibility agency as delinquent, the eligibility agency shall mail a notice to the parent or caretaker. The notice must state that service will be terminated on a date set forth on the notice, which is the first day after 10 calendar days following the date of the written notice, unless the delinquent copayment is paid by that date.

(d) A family whose subsidy is terminated for failure to make required copayments may not be reauthorized for subsidy until all outstanding copayments have been paid in full as specified in § 3042.95(d) (relating to delinquent copayment).

(e) The eligibility agency shall retain a copy of the termination notice.

(f) The eligibility agency shall distribute, to each parent or caretaker who applies for subsidized child care, a handbook of parent's rights and responsibilities in the subsidized child care program provided by the Department.

§ 3042.97. Use of the Federal Poverty Income Guidelines and State Median Income.

(a) The FPIG are used to determine the income limits and copayments for subsidized child care.

(b) Following annual publication of the FPIG, the Department will publish an updated copayment chart in Appendix B (relating to copayment chart) through a notice in the *Pennsylvania Bulletin*.

(c) The eligibility agency shall inform each parent or caretaker of the dollar amount that is equivalent to 235% of FPIG or 85% of the SMI.

(d) The eligibility agency shall inform each parent or caretaker that 235% of FPIG and its specific dollar figure are the highest annual income amounts permitted at the time of redetermination.

(e) The eligibility agency shall inform each parent or caretaker that 85% of the SMI and its specific dollar figure are the highest annual income amounts permitted between redeterminations.

(f) A family is ineligible at any time its annual income exceeds 85% of the SMI.

§ 3042.98. Copayment determination.

(a) The eligibility agency shall determine the family copayment based on the following:

(1) The family size and family income as specified in §§ 3042.41—3042.44 (relating to determining family size and income).

(2) A copayment shall be at least $5, unless waived as specified in §§ 3042.145(d)(2) and 3042.146(c)(2) (relating to domestic and other violence; and homelessness).

(3) Except as provided under paragraph (2), the family's annual copayment may not exceed 7% of the family's annual income.

(4) If the family's annual income is 100% of FPIG or less, the annual copayment may not exceed 5% of the family's annual income.

(b) The eligibility agency shall determine the copayment by using the copayment chart in Appendix B (relating to copayment chart).

§ 3042.99. Copayment exceeding monthly payment for care.

(a) If the copayments for 1 month are equal to or exceed the monthly payment for care, the family is not eligible for subsidized child care with that provider. The family must enroll the child or children with another eligible provider as specified in § 3042.12 (relating to parent choice).

(b) If the copayments for 1 month are equal to or exceed the monthly payment for care because other children in the family are currently on the waiting list, the family may choose to suspend the child's care with that provider until funding becomes available to enroll other children in the family in care.

ELIGIBILITY REDETERMINATION

§ 3042.101. Eligibility redetermination.

(a) The eligibility agency shall complete a redetermination of eligibility no less than every 12 months and establish the family's next redetermination date.

(b) Prior to the redetermination, the eligibility agency shall do the following:

(1) Provide the parent or caretaker with the Department's form listing the following information last reported for each parent or caretaker or child in the family:

(i) Earned income.

(ii) Unearned income.

(iii) Hours of work, education or training.

(iv) Family composition.

(v) Address.

(2) Request that the parent or caretaker verify the family's current income.

(3) Verify the following factors only if the parent or caretaker reports a change:

(i) Work, education or training.

(ii) The number of hours of work, education or training.

(iii) Family composition.

(iv) Address.

(c) The parent's or caretaker's annual income must meet the requirements set forth in § 3042.31(c) (relating to financial eligibility).

§ 3042.102. Procedures for redetermination.

(a) No earlier than 6 weeks prior to redetermination, the eligibility agency shall send the family a form that lists the factors that will be reviewed for the redetermination of eligibility and explain the verification that will be needed to complete the redetermination.

(b) If the parent or caretaker submits only some of the required verification elements prior to the redetermination, the eligibility agency shall request in writing that the parent or caretaker submit the additional verification no later than the family's redetermination date.

(c) The eligibility agency shall retain a copy of the notification in the family file.

(d) The eligibility agency shall send a written notice to the parent or caretaker regarding failure to provide required verification only after the family's redetermination date.

(e) The eligibility agency shall require the parent or caretaker to complete, sign, and either mail, hand-deliver, fax or electronically submit the applicable form at each redetermination.

FORMER TANF FAMILIES

§ 3042.111. General provisions for former TANF families.

(a) A family that is no longer eligible for TANF cash assistance benefits or a family that voluntarily left the TANF program and meets the eligibility requirements specified in this chapter may qualify for subsidized child care.

(b) The eligibility agency shall review the information received from the CAO about a parent or caretaker who formerly received TANF benefits.

(c) The eligibility agency shall determine the date TANF benefits ended and establish the 183-day period after eligibility for TANF benefits ends, within which the parent or caretaker may receive child care benefits.

(d) Eligibility for former TANF child care benefits shall begin the day following the date TANF benefits ended and shall continue for 183 consecutive days.

(e) The parent or caretaker may request child care benefits at any time during the 183-day period after eligibility for TANF ended.

(f) The eligibility agency may not place a child on a waiting list if a former TANF parent or caretaker requests subsidized child care for that child any time prior to 184 calendar days after TANF benefits ended.

(g) A family is not eligible for former TANF benefits if a parent or caretaker is currently disqualified from receiving TANF benefits as specified in §§ 255.1(c) and 275.51 (relating to restitution and disqualification policy; and imposing the disqualification).

§ 3042.112. General requirements for former TANF families.

(a) During the 183-day period after eligibility for TANF benefits ended or after a family voluntarily left the TANF program, a parent or caretaker shall meet the following conditions:

(1) A former TANF parent or caretaker who is not transferred to the eligibility agency by the CAO or who applies for subsidized child care during the 183-day period after eligibility for TANF ended shall meet the work requirement as specified in § 3042.33 (relating to work, education and training).

(2) The family's annual income may not exceed 85% of the SMI.

(3) The parent or caretaker shall select an eligible child care provider as specified in § 3042.12 (relating to parent choice).

(4) The parent or caretaker shall make timely payment of the copayment as specified in § 3042.91 (relating to general copayment requirements).

(b) A former TANF parent or caretaker who is transferred to the eligibility agency by the CAO or who applies for subsidized child care during the 183-day period after eligibility for TANF ended as specified in subsection (a) shall not be placed on a waiting list.

(c) The eligibility agency shall complete a redetermination of eligibility and establish the family's next redetermination date as specified in § 3042.101(a) (relating to eligibility redetermination).

§ 3042.113. Notification requirements for former TANF families.

(a) If the eligibility agency determines that a parent or caretaker met the requirements in § 3042.112 (relating to general requirements for former TANF families) and was receiving child care on the date TANF benefits ended, the eligibility agency shall notify the parent or caretaker of the family's eligibility status and the date the 183-day former TANF period will expire.

(b) If the eligibility agency determines that a parent or caretaker was not receiving child care or cannot determine whether the parent or caretaker was receiving child care on the date TANF benefits ended, the eligibility agency shall notify the parent or caretaker by letter of the following:

(1) The parent or caretaker may be eligible for child care benefits.

(2) The parent or caretaker may contact the eligibility agency if child care is needed during the 183-day period after TANF benefits ended.

(3) Eligibility for subsidized child care is assured if the minimum requirements specified in § 3042.112(a) are met.

§ 3042.114. Personal interview requirements for former TANF families.

(a) When the parent or caretaker contacts the eligibility agency within 183 days after TANF benefits end, the eligibility agency shall inform the parent or caretaker of the requirement to attend a personal interview with the eligibility agency. The personal interview shall occur no later than 30 calendar days following the date of the letter.

(b) When the parent or caretaker contacts the eligibility agency in response to the letter specified in § 3042.113(b) (relating to notification requirements for former TANF families), the eligibility agency shall schedule a personal interview with the parent or caretaker.

(c) To maintain continuous child care payment from the day following the date TANF benefits ended, the parent or caretaker shall attend a personal interview with the eligibility agency as specified in § 3042.115 (relating to reporting requirements for former TANF families).

(d) The eligibility agency may waive the requirement for the personal interview if the parent or caretaker has completed a personal interview with the eligibility agency within the previous 12 months.

§ 3042.115. Reporting requirements for former TANF families.

At the time of parent's or caretaker's personal interview with the eligibility agency and within the 183-day period after TANF benefits ended, the eligibility agency shall:

(1) Require the parent or caretaker who contacts the eligibility agency within 60 calendar days following the date TANF benefits ended to self-certify the following information that was electronically transferred by the CAO:

(i) The need for child care to work or attend education or training and the days and hours for which the child needs care.

(ii) The name of the employer, education or training.

(iii) The hours the parent or caretaker works or attends education or training.

(iv) The accuracy of the facts in the TANF transfer information regarding family address, size and income.

(v) Financial eligibility as specified in § 3042.112(a) (relating to general requirements for former TANF families).

(2) Require the parent or caretaker whose information was unavailable or has changed since the time of the electronic transfer to self-declare the information that was unavailable or has changed.

(3) Require the parent or caretaker who does not contact the eligibility agency within 60 calendar days following the date TANF benefits ended to self-declare the following:

(i) The need for child care to work or attend education or training and the days and hours for which the child needs care.

(ii) The name of the employer, education or training.

(iii) The hours the parent or caretaker works or attends education or training.

(iv) The accuracy of the facts in the TANF transfer information regarding family address, size and income.

(v) Financial eligibility as specified in § 3042.112(a).

(4) Advise the parent or caretaker to report income in excess of 85% of the SMI.

(5) The eligibility agency shall require a parent or caretaker to complete a subsidized child care application under the following circumstances:

(i) The parent or caretaker received TANF benefits in another state.

(ii) The CAO did not have sufficient information to electronically transfer to establish a case file.

(6) Advise the parent or caretaker that the eligibility agency shall complete an eligibility determination or redetermination.

(7) Collect information regarding the parent's or caretaker's choice of provider or help the parent or caretaker to locate an eligible provider.

§ 3042.116. Verification of transfer of TANF benefits.

Documentation by the eligibility agency that indicates the date TANF benefits ended within the State or in another state, as specified in § 3042.120(b) (relating to transfer from other states), is acceptable verification of transfer of TANF benefits within the State or from another state.

§ 3042.117. Failure to contact the eligibility agency following the transfer.

(a) If a parent or caretaker who was receiving child care on the date TANF benefits ended fails to contact the eligibility agency in response to the letter specified in § 3042.113(a) (relating to notification requirements for former TANF families), the eligibility agency shall contact the parent or caretaker by telephone no later than 31 calendar days following the date of the letter.

(b) When the eligibility agency contacts the parent or caretaker as specified in subsection (a), the eligibility agency shall determine the following:

(1) The parent's or caretaker's choice to participate in the personal interview.

(2) The parent's or caretaker's continuing need for child care.

(c) If the eligibility agency determines that the parent or caretaker was not receiving child care or cannot determine whether the parent or caretaker was receiving child care on the date TANF benefits ended, the eligibility agency may not authorize payment for child care benefits until the date the parent or caretaker contacts the eligibility agency and requests benefits.

(d) If a parent or caretaker who was receiving child care on the date TANF benefits ended does not attend a personal interview as specified in § 3042.114(a) (relating to personal interview requirements for former TANF families), the eligibility agency shall contact the parent or caretaker by telephone no later than the day following the date the parent or caretaker failed to attend the personal interview to determine the information specified in subsection (b).

§ 3042.118. Payment authorization for former TANF families.

(a) The eligibility agency shall review a request from a parent or caretaker to authorize child care payment at any time during the 183-day period after eligibility for TANF benefits ended.

(b) The eligibility agency shall authorize child care payment at any time during the 183-day period after eligibility for TANF ended.

(c) The eligibility agency may not pay child care costs that exceed the maximum child care allowance minus the family copayment for the type of care the child received from the provider.

§ 3042.119. Retroactive payment for former TANF families.

(a) If the eligibility agency authorizes payment to an eligible provider that is currently participating in the subsidized child care program for a parent or caretaker who was receiving child care on the date TANF benefits ended, the authorization is retroactive to the day following the date TANF benefits ended.

(b) If the eligibility agency determines that the parent or caretaker was not receiving child care or cannot determine whether the parent or caretaker was receiving child care on the date TANF benefits ended, the eligibility agency shall require the parent or caretaker to submit verification of child care costs incurred during the 183-day period after eligibility for TANF ended.

(c) The eligibility agency shall authorize payment to an eligible provider that is currently participating in the subsidized child care program for the parent or caretaker

specified in subsection (b) retroactive to the date the parent or caretaker first incurred child care expenses.

(d) If the eligibility agency determines that the parent or caretaker has selected an ineligible provider, it shall inform the parent or caretaker that the parent or caretaker shall contact the eligibility agency to discuss child care arrangements within 30 calendar days as specified in § 3042.12 (relating to parent choice).

§ 3042.120. Transfer from other states.

(a) A parent or caretaker who received TANF program benefits in another state and applies for subsidized child care is eligible if the parent or caretaker meets the following conditions:

(1) The parent or caretaker applies within 183 days after TANF benefits ended.

(2) The parent or caretaker meets the requirements specified in § 3042.112 (relating to general requirements for former TANF families).

(b) The eligibility agency shall determine the date TANF benefits ended in the other state and establish eligibility for the 183-day period after eligibility for TANF ended as specified in § 3042.111 (relating to general provisions for former TANF families).

§ 3042.121. Expiration of TANF benefits.

(a) A parent or caretaker who was receiving child care on the date TANF benefits ended and who has exhausted the 5-year limit on TANF benefits is eligible for up to 92 calendar days of subsidized child care to seek work.

(b) The eligibility agency shall determine the date TANF benefits ended and establish the period of former TANF eligibility as specified in § 3042.111 (relating to general provisions for former TANF families).

(c) The parent or caretaker may apply at any time during the 183-day period after eligibility for TANF ended.

(d) The maximum period of potential eligibility for former TANF child care benefits under this section is 183 days.

§ 3042.122. Verification of expiration of TANF benefits.

Documentation by the eligibility agency that indicates the date TANF benefits expired within the State or in another state, as specified in § 3042.121(b) (relating to expiration of TANF benefits), is acceptable verification of expiration of TANF benefits.

HEAD START

§ 3042.131. General provisions for Head Start.

(a) A child who is enrolled in a Head Start program, whose parent or caretaker needs extended hours or days of child care beyond the hours or days provided by the Head Start program to work, is eligible for subsidized child care under this section if the parent or caretaker meets the eligibility requirements for subsidized child care as specified in § 3042.132 (relating to eligibility determination for Head Start) each time a child in the family applies for Head Start special eligibility.

(b) The eligibility agency shall verify with the Head Start program that the child is enrolled in a Head Start program that meets Federal and State Head Start standards.

(c) If a child in the family as specified in § 3042.41 (relating to family size) is enrolled in the Head Start program, the family copayment is based on family size and income. If additional children in the family are enrolled in subsidized child care, the family copayment is based on family size and income.

(d) If extended hours or days of care are provided beyond the Head Start program hours or days, a facility that has a certificate of compliance by the Department as a child care facility shall provide the extended hours and days of care.

§ 3042.132. Eligibility determination for Head Start.

Upon program entry and continuation in the Head Start special eligibility program, a parent or caretaker shall meet the following conditions:

(1) Verification of a minimum of 20 hours of work per week as specified in § 3042.33 (relating to work, education and training) each time a parent or caretaker applies for a child in the family for the Head Start special eligibility program.

(2) Verification that extended hours and days of child care are needed to work as specified in § 3042.131(a) (relating to general provisions for Head Start).

(3) Verification of income eligibility for subsidized child care as specified in § 3042.31 (relating to financial eligibility) each time a parent or caretaker applies for a child in the family for the Head Start program.

(4) Compliance with the waiting list conditions specified in § 3042.57 (relating to waiting list).

(5) Payment of the copayment as specified in § 3042.91 (relating to general copayment requirements).

(6) Report when a child is no longer enrolled in Head Start within 10 calendar days following the date the Head Start enrollment ended.

§ 3042.133. Eligibility redetermination for Head Start.

(a) The eligibility agency may not complete a redetermination prior to the expiration of the 12-month eligibility period as specified in § 3042.101(a) (relating to eligibility redetermination) upon receiving notification that a child is no longer enrolled in a Head Start program.

(b) The eligibility agency shall conduct a redetermination when the child is no longer enrolled in the Head Start program, if the 12-month redetermination period has expired as specified in § 3042.101(a).

(c) The eligibility agency shall conduct a redetermination as specified in § 3042.101 if the family has additional children who are not enrolled in Head Start but receive subsidized child care. A family that includes a child enrolled in a Head Start program and a child who is not enrolled in a Head Start program is subject to redetermination requirements as specified in § 3042.101(a).

(d) Eligibility for a child enrolled in a Head Start program is unrelated to the eligibility of other children in the family who are not enrolled in a Head Start program and receive subsidized child care. Eligibility for a child enrolled in a Head Start program shall continue as specified in this section.

(e) The eligibility agency shall conduct a redetermination between the time a child is no longer enrolled in Early Head Start and the time the child enters Head Start, with the exception of the requirement set forth in subsection (a).

WAIVERS AND PERIODS OF PRESUMPTIVE ELIGIBILITY

§ 3042.141. General waiver requirements.

The eligibility agency may grant a waiver to a family experiencing domestic violence or homelessness upon the request of the parent or caretaker as specified in §§ 3042.145 and 3042.146 (relating to domestic and other violence; and homelessness).

§ 3042.142. Time frame for waiver determinations.

The eligibility agency shall act on a parent's or caretaker's waiver request no later than 15 calendar days following the date the parent or caretaker requests the waiver.

§ 3042.143. General verification requirements for waivers.

The Department's form that provides for verification by documentary evidence, third party statement or self-certification is acceptable verification of domestic violence or homelessness.

§ 3042.144. General notification requirements for waivers.

(a) The eligibility agency shall provide written notice to the parent or caretaker regarding the eligibility agency's determination to grant or deny a waiver request. At the request of the parent or caretaker, the eligibility agency shall mail the notice to an alternate address or hand-deliver it to the parent or caretaker.

(b) If the eligibility agency grants the waiver, the notice must include the basis for granting the waiver.

(c) If the eligibility agency denies the waiver, the notice must include all of the following:

(1) The basis for the denial.

(2) The right to appeal the decision and how to appeal as specified in §§ 3042.152 and 3042.161 (relating to notice of right to appeal; and appealable actions).

(3) The verification the parent or caretaker shall submit for the eligibility agency to grant the waiver and the time frames in which the parent or caretaker shall submit the verification.

(4) The evidence or information needed to substantiate the waiver request and the time frames in which the parent or caretaker shall provide the information.

§ 3042.145. Domestic and other violence.

(a) The eligibility agency may grant a waiver to a parent or caretaker for any of the following reasons:

(1) A family member is the victim of past or present domestic or other violence.

(2) A family member is the victim of a threat of past or present domestic or other violence.

(b) Except as otherwise provided under this chapter, the eligibility agency may grant a waiver if compliance with a requirement of this chapter would either make it more difficult for a family or household member to escape domestic violence or place a family or household member at risk of domestic violence.

(c) The following requirements of this chapter may not be waived:

(1) Age of the child as specified in § 3042.11(b) and (c) (relating to provision of subsidized child care).

(2) Income limits as specified in § 3042.31 (relating to financial eligibility).

(3) State residency as specified in § 3042.32 (relating to residence).

(4) The minimum number of hours of work, education or training as specified in § 3042.33 (relating to work, education and training).

(5) Citizenship as specified in § 3042.36 (relating to citizenship).

(6) The number of paid absences as specified in § 3042.18 (relating to absence).

(d) The following may be waived for a temporary period not to exceed 92 calendar days:

(1) Verification requirements as specified in §§ 3042.61—3042.74 (relating to self-certification and verification).

(2) The amount of copayment as specified in § 3042.98 (relating to copayment determination).

(e) Except as specified in subsections (c) and (d), the eligibility agency will grant a domestic violence waiver for the balance of the 12-month eligibility period following verification being provided to the eligibility agency.

(f) The eligibility agency shall utilize and accept the Department's form providing for verification by documentary evidence, third party statement or self-certification as acceptable verification of domestic violence. The following apply:

(1) If the eligibility agency does not receive the required verifications before expiration of the 92-day period specified in subsection (d), or if the family is otherwise determined to be ineligible, the eligibility agency shall take the necessary steps to terminate the temporary eligibility with proper notification to the family as specified in § 3042.155 (relating to notice of adverse action).

(2) If a family is determined ineligible or fails to provide the required verifications, services received during the 92-day period are not considered an error or improper payment. The eligibility agency will pay the amount owed to a child care provider for services provided.

§ 3042.146. Homelessness.

(a) At the time of application, the eligibility agency may grant a period of presumptive eligibility to a parent or caretaker who is experiencing homelessness as defined in § 3042.3 (relating to definitions) for a temporary period not to exceed 92 calendar days.

(b) A parent or caretaker who is experiencing homelessness may be permitted to substitute job search activities to meet the work requirement specified in § 3042.33 (relating to work, education and training) for the duration of the period of presumptive eligibility for a temporary period not to exceed 92 calendar days.

(c) A parent or caretaker may be permitted to self-certify their status as experiencing homelessness as specified in § 3042.63 (relating to self-certification) to qualify for and be granted a period of presumptive eligibility for a temporary period not to exceed 92 calendar days.

(d) Except as specified in subsections (e) and (f), the eligibility agency will grant a waiver to families who are experiencing homelessness the balance of the 12-month eligibility period following verification being provided to the eligibility agency.

(e) The following requirements of this chapter may not be waived:

(1) Age of the child as specified in § 3042.11(b) and (c) (relating to provision of subsidized child care).

(2) Income limits as specified in § 3042.31 (relating to financial eligibility).

(3) State residency as specified in § 3042.32 (relating to residence).

(4) The minimum number of hours of work, education or training as specified in § 3042.33 (relating to work, education and training), subject to the provisions in subsection (b).

(5) Citizenship as specified in § 3042.36 (relating to citizenship).

(6) The number of paid absences as specified in § 3042.18 (relating to absence).

(f) The following requirements of this chapter may be waived for a temporary period not to exceed 92 calendar days:

(1) Verification requirements as specified in §§ 3042.61—3042.74 (relating to self-certification and verification).

(2) The amount of the copayment as specified in § 3042.98 (relating to copayment determination).

(g) The eligibility agency shall utilize and accept the Department's form providing for verification by documentary evidence, third party statement or self-certification as acceptable verification of homelessness. The following apply:

(1) If the eligibility agency does not receive the required verifications before expiration of the 92-day period specified in subsection (f), or if the family is determined ineligible, the eligibility agency shall take the necessary steps to terminate the temporary eligibility with proper notification to the family as specified in § 3042.155 (relating to notice of adverse action).

(2) If a family is determined ineligible at any time during a temporary period of presumptive eligibility, services received during the 92-day period are not considered an error or improper payment. The eligibility agency will pay the amount owed to a child care provider for services provided during the temporary period of presumptive eligibility.

(h) At the end of a 92-day temporary period of presumptive eligibility, the eligibility agency may establish a new 12-month eligibility period and reset the redetermination due date.

§ 3042.147. Presumptive continued eligibility at redetermination.

(a) The eligibility agency may grant a temporary period of presumptive continued eligibility to a parent or caretaker at redetermination for a period not to exceed 92 calendar days from the date of the redetermination.

(b) For a parent or caretaker to be granted a period of presumptive continued eligibility at redetermination, the parent or caretaker shall submit verification of work, education or training that satisfies the work-hour requirement as specified in § 3042.33 (relating to work, education and training) that is set to begin prior to the expiration of the temporary 92-day period specified in subsection (a), unless the provisions in § 3042.146 (relating to homelessness) apply.

(c) Prior to the expiration of the temporary 92-day period of presumptive continued eligibility, the eligibility agency will verify the parent or caretaker has begun work, education or training and is in compliance with the work-hour requirement specified in § 3042.33.

(d) If the parent or caretaker has not begun work, education or training as specified in subsection (b), or is otherwise determined ineligible prior to the expiration of the 92-day period, the eligibility agency shall take the necessary steps to terminate the temporary eligibility with proper notification to the family as specified in § 3042.155 (relating to notice of adverse action).

(e) If a family is determined ineligible at any time during a temporary period of presumptive continued eligibility, services received during the 92-day period are not considered an error or improper payment. The eligibility agency will pay the amount owed to a child care provider for services provided during the temporary period of presumptive continued eligibility.

(f) At the end of a 92-day temporary period of presumptive continued eligibility, the eligibility agency will complete a redetermination to establish the 12-month eligibility period and reset the redetermination due date.

NOTIFICATION AND RIGHT TO APPEAL

§ 3042.151. General notification requirements.

(a) The eligibility agency shall issue written notification to the parent or caretaker no later than 13 calendar days prior to taking an action that affects the family's eligibility status for subsidized child care or a change in the amount of the family's subsidized child care benefit.

(b) Following the preparation of a written notice, the eligibility agency shall:

(1) Mail or hand-deliver, within 1 working day of preparation, the original and one copy of the notice to the parent or caretaker.

(2) Notify the family's child care provider as soon as the family is determined eligible or ineligible for subsidized child care.

(3) Retain a copy of the notice in the family file as specified in § 3042.84 (relating to family file).

§ 3042.152. Notice of right to appeal.

The following information must be included in the notice of the right to appeal:

(1) The statement regarding the parent's or caretaker's right to appeal.

(2) The time frame associated with filing a timely appeal as specified in §§ 3042.164(d) and 3042.166(b) (relating to parent or caretaker rights and responsibilities regarding appeal; and hearing procedures).

(3) The time frame associated with subsidy continuation as specified in § 3042.163 (relating to subsidy continuation during the appeal process).

(4) The consequence of filing an untimely appeal.

(5) The responsibility to repay if subsidy continues and the parent or caretaker does not win the appeal.

(6) Instructions regarding how to appeal.

§ 3042.153. Notice of eligibility.

(a) The notice of eligibility must be on a form provided by the Department.

(b) If the eligibility agency determines a family eligible for subsidy upon initial application, at the time of redetermination or at a review of a reported change, the written notification must include all of the following:

(1) The amount of the copayment.

(2) The parent's or caretaker's responsibility to pay the copayment as specified in § 3042.91(e) (relating to general copayment requirements).

(3) The parent's or caretaker's responsibility to report changes as specified in § 3042.86 (relating to change reporting and processing).

(4) The name, address and telephone number of the local legal services office where the parent or caretaker may obtain free legal representation.

(5) The right of the parent or caretaker to appeal the decision and how to appeal as specified in §§ 3042.152 and 3042.161 (relating to notice of right to appeal; and appealable actions).

§ 3042.154. Notice of ineligibility.

(a) The notice of ineligibility must be on a form provided by the Department.

(b) If the eligibility agency determines a family ineligible for subsidy, the written notification must include all of the following:

(1) The decision.

(2) The reason for the decision.

(3) A citation, and brief explanation in simple, nontechnical language, of the applicable section of this chapter or other applicable law that was the basis for the decision.

(4) The name, address and telephone number of the local legal services office where the parent or caretaker may obtain free legal representation.

(5) The right of the parent or caretaker to appeal the decision and how to appeal as specified in §§ 3042.152 and 3042.161 (relating to notice of right to appeal; and appealable actions).

§ 3042.155. Notice of adverse action.

(a) The eligibility agency shall send a notice to a parent or caretaker currently receiving subsidy when the eligibility agency proposes to terminate subsidy payment.

(b) The eligibility agency shall prepare a notice of adverse action on a form provided by the Department.

(c) The notice of adverse action must include all of the following:

(1) The decision or proposed action.

(2) The date the action will occur.

(3) The reason for the decision or proposed action and information about how to become eligible.

(4) A citation, and brief explanation in simple, nontechnical language, of the applicable section of this chapter or other applicable law that is the basis for the decision or proposed action.

(5) The name, address and telephone number of the local legal services office where the parent or caretaker may obtain free legal representation.

(6) The right of the parent or caretaker to appeal the decision and how to appeal as specified in §§ 3042.152 and 3042.161 (relating to notice of right to appeal; and appealable actions).

§ 3042.156. Notice confirming voluntary withdrawal.

(a) The eligibility agency shall, by written notice to the parent or caretaker, confirm the parent's or caretaker's voluntary withdrawal of a child from subsidized child care.

(b) The notice confirming voluntary withdrawal must be on a form provided by the Department.

(c) The written notice confirming voluntary withdrawal must include all of the following:

(1) The decision.

(2) The reason for the decision.

(3) A citation, and brief explanation in simple, nontechnical language, of the applicable section of this chapter or other applicable law that was the basis for the decision.

(4) The name, address and telephone number of the local legal services office where the parent or caretaker may obtain free legal representation.

(5) The right of the parent or caretaker to appeal the decision and how to appeal as specified in §§ 3042.152 and 3042.161 (relating to notice of right to appeal; and appealable actions).

§ 3042.157. Notice confirming a change in benefits.

(a) The eligibility agency shall, by written notice to the parent or caretaker, confirm a change in the parent's or caretaker's subsidized child care benefits when the change does not affect the family's eligibility. Changes in benefits include a change in the number of days or hours during which the child is enrolled, subsidy suspension and subsidy disruption.

(b) The notice confirming a change in benefits must be on a form provided by the Department.

(c) The written notice confirming a change in benefits must include all of the following:

(1) The decision.

(2) The reason for the decision.

(3) A citation, and brief explanation in simple, nontechnical language, of the applicable section of this chapter or other applicable law that was the basis for the decision.

(4) The name, address and telephone number of the local legal services office where the parent or caretaker may obtain free legal representation.

(5) The right of the parent or caretaker to appeal the decision and how to appeal as specified in §§ 3042.152 and 3042.161 (relating to notice of right to appeal; and appealable actions).

§ 3042.158. Notice confirming a change in copayment.

(a) The eligibility agency shall, by written notice to the parent or caretaker, confirm a change in the family copayment amount.

(b) The notice confirming a change in copayment must be on a form provided by the Department.

(c) The written notice confirming a change in copayment must include all of the following:

(1) The decision.

(2) The reason for the decision.

(3) A citation, and brief explanation in simple, nontechnical language, of the applicable section of this chapter or other applicable law that was the basis for the decision.

(4) The amount of the copayment and the date the change in copayment will become effective.

(5) The name, address and telephone number of the local legal services office where the parent or caretaker may obtain free legal representation.

(6) The right of the parent or caretaker to appeal the decision and how to appeal as specified in §§ 3042.152 and 3042.161 (relating to notice of right to appeal; and appealable actions).

§ 3042.159. Notice of overpayment.

(a) The eligibility agency shall notify the parent or caretaker in writing of an overpayment.

(b) The notice of overpayment must include all of the following:

(1) The reason for the overpayment as specified in § 3042.171 (relating to overpayment).

(2) The period of the overpayment.

(3) The amount of the overpayment.

(4) An explanation of how the overpayment was calculated.

(5) The repayment methods as specified in § 3042.176 (relating to collection), except in cases of suspected fraud.

(6) The name, address and telephone number of the local legal services office where the parent or caretaker may obtain free legal representation.

(7) The right of the parent or caretaker to appeal the decision on the overpayment and how to appeal as specified in §§ 3042.152 and 3042.161 (relating to notice of right to appeal; and appealable actions).

APPEAL AND HEARING PROCEDURES

§ 3042.161. Appealable actions.

A parent or caretaker has the right to appeal a Departmental or eligibility agency action or failure to act, including the following:

(1) Denial of subsidy, including a period of presumptive eligibility as specified in §§ 3042.146 and 3042.147 (relating to homelessness; and presumptive continued eligibility at redetermination).

(2) Termination of subsidy.

(3) Computation of the copayment.

(4) Denial of a request for waiver of a requirement of this chapter based on domestic violence or homelessness as specified in § 3042.145 (relating to domestic and other violence) and § 3042.146.

(5) Failure of the eligibility agency to act upon a request for subsidy within the time limits specified in this chapter.

(6) Subsidy suspension as specified in §§ 3042.18 and 3042.20 (relating to absence; and subsidy suspension).

(7) Subsidy disruption as specified in § 3042.21 (relating to subsidy disruption).

(8) Subsidy termination as specified in § 3042.22 (relating to subsidy termination).

§ 3042.162. Discontinuation of subsidy during the appeal process.

(a) Subsidy is not continued pending a hearing decision if the parent or caretaker appeals the disruption of subsidy when the eligibility agency lacks funding to continue subsidy to a child as specified in § 3042.21 (relating to subsidy disruption).

(b) Subsidy is suspended pending a hearing decision if the parent or caretaker fails to make timely payment of the copayment.

(c) Following a suspension under subsection (b), a subsidy will be reinstated pending the hearing decision if all copayments are brought up to date.

§ 3042.163. Subsidy continuation during the appeal process.

(a) Subsidy continues at the prior level until the Department hears the appeal and makes a final decision, if the parent or caretaker does any of the following:

(1) Files an appeal that is postmarked or delivered no later than 10 calendar days after the date of the written notice.

(2) Appeals for a reason other than disruption of subsidy or a lack of funding.

(b) If subsidy continues as specified in subsection (a), the parent or caretaker shall continue to make timely payment of the copayment that was in effect prior to issuance of the written notice until the Department makes a final decision as specified in § 3042.91 (relating to general copayment requirements).

(c) If subsidy continues during the appeal process and the hearing officer finds in favor of the eligibility agency or the Department, the parent or caretaker shall reimburse the Department for the amount of the subsidy or increase in subsidy paid for child care from the proposed effective date of the written notice until the date subsidy is terminated or decreased, based on the final administrative action order.

§ 3042.164. Parent or caretaker rights and responsibilities regarding appeal.

(a) A parent or caretaker appealing a written notice shall submit a written request to the eligibility agency in accordance with Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings) within 30 calendar days following notification. The parent or caretaker shall specify the reason for the appeal and the current address and a telephone number, if possible, where the parent or caretaker can be reached during the day.

(b) A parent or caretaker may orally appeal. The eligibility agency shall document the date of the oral appeal in the case file. The parent or caretaker shall confirm the oral appeal in writing to the eligibility agency no later than 7 calendar days following the date the parent or caretaker orally requested an appeal.

(c) A parent or caretaker may authorize an adult to represent the parent or caretaker at the hearing.

(d) If the parent or caretaker wants subsidy to continue pending a hearing decision, subject to § 3042.163 (relating to subsidy continuation during the appeal process), the parent or caretaker shall submit a written appeal no later than 10 calendar days following the date the written notice is postmarked or hand-delivered to the parent or caretaker by the eligibility agency.

(e) If the parent or caretaker requests that subsidy continue pending a hearing decision, the parent or caretaker shall make timely payment of the copayment that was in effect prior to issuance of the written notice until the Department makes a final decision as specified in § 3042.91 (relating to general copayment requirements).

§ 3042.165. Eligibility agency responsibilities regarding appeal.

(a) If the parent or caretaker is unable to prepare a written appeal, the eligibility agency shall assist the

parent or caretaker in preparing a written appeal. The parent or caretaker shall sign the appeal request.

(b) When the eligibility agency receives an appeal that is timely postmarked or delivered, the eligibility agency shall date-stamp the appeal, the envelope and the attachments with the date of receipt and retain copies of all original appeal information.

(c) The eligibility agency shall keep a copy and forward the original appeal along with the postmarked envelope to the Department's Bureau of Hearings and Appeals no later than 3 working days following the date the appeal is received by the eligibility agency.

(d) The eligibility agency may not take the proposed adverse action until 13 calendar days following the date the written notice is postmarked or hand-delivered to the parent or caretaker and then only if the parent or caretaker has not filed an appeal. Subsidy may be continued at the prior level only if the parent or caretaker meets the requirements in § 3042.163 (relating to subsidy continuation during the appeal process).

(e) The eligibility agency may take the proposed adverse action before 13 calendar days following the date a provider closes for financial difficulties or loss of certification or if funding is not available to continue subsidized care to the child.

§ 3042.166. Hearing procedures.

(a) Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings) applies to hearings that are held under this chapter, except as specifically superseded by this chapter.

(b) The Department will dismiss an appeal postmarked or delivered after 30 calendar days from the date the written notice is postmarked or hand-delivered to the parent or caretaker unless one of the provisions allowing for appeals after 30 calendar days applies as specified in § 275.3(b)(2) and (3) (relating to requirements).

(c) The hearing may be conducted by a telephone conference call with the parties to the appeal, including the parent or caretaker, the authorized representative of the parent or caretaker, the eligibility agency, the Department and the hearing officer.

(d) The parent or caretaker has the right to request a face-to-face hearing instead of a telephone hearing. Face-to-face hearings will be held in locations specified by the Department.

(e) If a parent or caretaker does not withdraw an appeal, the eligibility agency, or the Department, if appropriate, will take part in the scheduled hearing to justify the action to which the parent or caretaker objects.

(f) If the eligibility agency or the Department fails to appear at the hearing and the parent or caretaker appears, the parent's or caretaker's appeal will be sustained.

(g) If the parent or caretaker fails to appear for the hearing, regardless of whether the eligibility agency or the Department appears, the appeal is considered abandoned and the decision of the eligibility agency or the Department will be sustained.

(h) The Department will notify the eligibility agency and the parent or caretaker, in writing, when disposition of the appeal is made.

(i) The eligibility agency shall implement the final administrative action within the time limit ordered by the Department or on the first day child care is needed in the week following receipt of the final administrative action order.

OVERPAYMENT AND DISQUALIFICATION

§ 3042.171. Overpayment.

The parent or caretaker may not be required to repay an overpayment except for an overpayment resulting from one of the following:

(1) Fraud.

(2) Failure to comply with this chapter.

(3) Subsidy continuation pending an appeal when the parent or caretaker did not win the appeal.

§ 3042.172. Eligibility agency responsibilities regarding overpayment.

(a) The eligibility agency shall inform a parent or caretaker who files an appeal and requests subsidy continuation pending appeal that, if the hearing decision is in favor of the eligibility agency or the Department, the parent or caretaker shall reimburse the amount of the overpayment unless the hearing officer determines a hardship.

(b) The eligibility agency shall pursue possible overpayments in active and closed cases, including those that were voluntarily closed.

(c) The following are the responsibilities of the eligibility agency when exploring possible overpayments:

(1) Determination of whether the overpayment is the result of one of the conditions specified in § 3042.171 (relating to overpayment).

(2) Written assurance that the methods of exploring overpayments are appropriate to the particular situation and to the different eligibility factors.

(3) Assurance that the methods of exploring overpayments do not infringe on the civil liberties of individuals or interfere with the due process of law.

(4) Investigation of a credible complaint that a parent or caretaker is erroneously receiving subsidized child care.

(5) Identification and documentation of the causes of the overpayment.

(6) Computation of the amount of the overpayment.

(7) Referral of suspected fraud cases to the Office of Inspector General.

(8) Submission of an overpayment notice to the parent or caretaker as specified in § 3042.159 (relating to notice of overpayment).

(d) The eligibility agency shall refer all cases of suspected provider fraud to the Office of Inspector General.

§ 3042.173. Delaying recoupment.

(a) Recoupment shall be delayed until after a hearing decision if the family files an appeal of the overpayment decision no later than 10 calendar days after the date the written notice is postmarked or hand-delivered to the parent or caretaker by the eligibility agency.

(b) Recoupment shall be delayed for cases referred to the Office of Inspector General for suspected fraud until the investigation is complete.

(c) The method of recoupment in cases of suspected fraud will be determined in conjunction with the Office of Inspector General.

§ 3042.174. Notifying the Department.

The eligibility agency shall notify the Department when recoupment stops before the overpayment is fully recouped.

§ 3042.175. Repayment.

The parent or caretaker shall repay the eligibility agency or Department the full amount of the overpayment.

§ 3042.176. Collection.

(a) The eligibility agency shall collect the total amount of the overpayment from a family whose child continues to receive subsidized child care when the eligibility agency identifies an overpayment as specified in § 3042.172 (relating to eligibility agency responsibilities regarding overpayment).

(b) If the Department, eligibility agency or other entity identifies an overpayment unrelated to fraud, subject to repayment as specified in § 3042.171 (relating to overpayment), related to a family whose child continues to receive subsidized child care, the eligibility agency shall do all of the following:

(1) Notify the parent or caretaker by a letter that a repayment is required, the amount of the repayment and the following repayment options:

(i) A one-time payment of the full amount owed.

(ii) A one-time partial payment and an increase in the copayment to be paid until repayment is complete.

(iii) An increase in the copayment until the repayment is complete.

(2) Automatically implement an increase to the copayment until the repayment is complete when the parent or caretaker does not select an option as specified in paragraph (1) no later than 10 calendar days following the date of the letter.

(3) Notify the parent or caretaker by a second letter of failure to choose a repayment option as specified in paragraph (1), the amount of the increased copayment and the number of weeks the increased copayment will continue.

(c) When the Office of Inspector General has determined fraud in an active case, the eligibility agency shall determine collection methods in conjunction with the Office of Inspector General.

§ 3042.177. Copayment increase related to overpayment.

(a) A copayment increase for the purpose of collecting an overpayment may not exceed an amount greater than 5% of the family's gross monthly income. If the parent or caretaker indicates to the eligibility agency that an increase to 5% would cause hardship to the family, the family and the eligibility agency may agree to a lesser amount.

(b) A parent or caretaker may choose to increase the copayment beyond the amount specified in subsection (a) to repay an overpayment in a shorter period of time.

(c) The eligibility agency shall issue a written notice before implementation of an increase in the copayment.

§ 3042.178. Collection for a family whose child is no longer in care.

(a) The eligibility agency shall collect the total amount of the overpayment as specified in § 3042.172 (relating to eligibility agency responsibilities regarding overpayment) from a family whose child is no longer receiving subsidized child care if the eligibility agency identifies an overpayment.

(b) If the Department, eligibility agency or other entity identifies an overpayment unrelated to fraud, for a family whose child is no longer receiving subsidized child care, the eligibility agency shall do all of the following:

(1) Notify the Department of the subsidy termination date, the amount of the overpayment recouped and the amount outstanding. The Department will notify the parent or caretaker by letter of the overpayment, the amount of the outstanding overpayment and that repayment is required in either a single payment or under a payment plan agreeable to the parent or caretaker and the eligibility agency. The letter must state that the parent or caretaker has 10 calendar days to respond to the Department indicating agreement or disagreement and indicating the choice of a repayment method.

(2) Send a second letter that repeats the information contained in the letter specified in paragraph (1) when the Department notifies the eligibility agency that the parent or caretaker failed to respond. The second letter must also request a response from the parent or caretaker no later than 10 calendar days following the date of the letter.

(c) When the Office of Inspector General has determined fraud in a case when the child is no longer in care, the eligibility agency shall determine the collection methods in conjunction with the Office of Inspector General.

(d) The Department may institute civil legal proceedings when the parent or caretaker fails to respond to the second letter.

§ 3042.179. Disqualification.

(a) The parent or caretaker is disqualified from participating in the subsidized child care program if one of the following applies:

(1) A Federal or State court finds the parent or caretaker guilty of fraud in applying for or receiving subsidized child care.

(2) A hearing officer determines that the parent or caretaker committed fraud under the procedures and standards in Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings).

(3) The parent or caretaker signs a disqualification consent agreement as part of a court's deferred adjudication process.

(4) The parent or caretaker agrees to be disqualified by signing an administrative disqualification hearing waiver.

(b) Upon disqualification under subsection (a), a parent or caretaker and eligible children in the parent's or caretaker's family is prohibited from participation in the subsidized child care program:

(1) For 6 months from the date of the first conviction, hearing decision or determination.

(2) For 12 months from the second conviction, hearing decision or determination.

(3) Permanently from the date of the third conviction, hearing decision or determination.

(c) A parent or caretaker may not be granted a hearing on a court conviction or administrative disqualification hearing decision that led to the disqualification.

APPENDIX A

Income to be Included, Deducted and Excluded in Determining Gross Monthly Income

PART I. Income inclusions.

Income from the following sources is included when determining total gross monthly income:

A. Money, wages or salary earned by a parent or caretaker before deductions for taxes, Social Security, savings bonds, pensions, union dues, health insurance and similar purposes, for work performed as an employee. This includes commissions, tips, piece-rate payments and cash bonuses. Income earned by an unemancipated minor is not included.

B. Armed forces pay, which includes base pay plus cash, but does not include housing subsistence, allowances or the value of rent-free quarters.

C. Voluntary and court-ordered support received for any person in the family.

D. Net income from nonresident and real property, defined as gross receipts minus the expenses for continuing the income, such as depreciation charges, business taxes (not personal income taxes), interest on mortgages, repairs and similar expenses.

E. Social Security benefits, Supplemental Security Income, survivors' benefits and permanent disability insurance payments made by the Social Security Administration before deductions of health insurance premiums.

F. Railroad retirement, disability or survivors' benefit payments made by the United States Government under the Railroad Retirement Act of 1974 (45 U.S.C. §§ 231—231v) before deductions of health insurance premiums.

G. State blind pension payments made by the Department.

H. Public assistance benefits or retirement benefits.

I. Private pensions and annuities, including retirement benefits paid to a retired person or their survivors by a former employer or a union, either directly or through an insurance company.

J. Government employee pensions paid by Federal, State, county or other governmental agencies to former employees, including members of the armed forces, or their survivors.

K. Unemployment compensation received from government unemployment insurance agencies or private companies during periods of unemployment and strike benefits received from union funds.

L. Workers' compensation received from private or public insurance companies.

M. Veterans' payments, defined as money paid periodically by the Veterans Administration to disabled members of the armed forces or to the survivors or dependents of deceased or disabled veterans, subsistence allowances paid to the survivors of deceased veterans and subsistence allowances paid to veterans for education and on-the-job training, as well as so-called "refunds" paid to ex-service persons as GI insurance premiums. For a disabled veteran in the Vocational Rehabilitation Program, the subsistence allowance and the veteran's disability allowance are counted as income.

N. Capital gains, profit from S-corporations and dividends, including dividends from stocks, bonds, mutual funds or from membership in an association.

O. Interest on savings and bonds.

P. Income from estates and trust funds.

Q. Net income from royalties.

R. Lump sum cash of more than $100; inheritances, life insurance benefits; personal injury and other damage awards and settlements; retroactive benefits such as retirement, survivor's or disability insurance and delayed unemployment: divorce settlements; gifts; or workers' compensation.

S. Lump-sum cash lottery winnings or cash prizes of more than $100.

T. Profit from self-employment, calculated as total gross receipts minus costs of doing business. The costs of doing business shall only include the following:

(1) Costs of maintaining a place of business, such as rent, utilities, insurance on the business and its property, and property taxes. If a business is operated in a home, the costs of maintaining a place of business are only those costs identified for the part of the home used exclusively for the business.

(2) Interest on the purchase of income-producing equipment and property.

(3) Employee labor costs, such as wage, salaries, taxes, benefits, unemployment compensation or workers' compensation.

(4) Cost of goods sold, supplies and materials.

(5) Advertising costs.

(6) Accounting and legal fees.

(7) Transportation costs necessary to produce income.

U. Net income from room rent or room and board, calculated as follows: Gross income received minus $10 per month for each room rented. Divide the remainder by 2. That number is the income inclusion.

Conversion Table

Convert weekly, biweekly, semimonthly and other pay periods to gross monthly amounts using the following conversion table:

Frequency of income	*Conversion method*
Daily	Multiply the daily income by the number of workdays in a week, then multiply by 4.3.
Weekly	Multiply by 4.3.
Biweekly (every 2 weeks)	Divide by 2, then multiply by 4.3.
Semimonthly (twice per month)	Multiply by 2 for monthly gross income.
Monthly	Use the figure given.
Quarterly	Divide by 3.
Annually	Divide by 12.
Lump sum income	Divide by 12.

PART II. Income deductions.

The following are deducted when determining adjusted monthly income:

A. Voluntary or court-ordered support paid by the parent or caretaker or a family member to a present or former spouse not residing in the same household.

B. Voluntary or court-ordered child support paid by the parent or caretaker or family member to a person not residing in the same household.

C. A medical expense not reimbursed through medical insurance that exceeds 10% of the family gross monthly income. The medical expense must have been incurred within the 90-day period prior to the date the parent or caretaker notifies the eligibility agency of that expense and there must be an expectation that the expense will continue to be incurred for the 6 months following the outset of the expense. Medical expenses are based on the monthly expenses or monthly payment plan, or both. Medical expenses include bills for doctors, hospital costs, dental services, health care premiums, institutional care, medications, prosthetic devices, durable medical equipment or mental health services.

D. The stepparent deduction as shown in Appendix C (relating to stepparent deduction chart).

PART III. Income exclusions.

Income from the following sources is excluded in determining gross monthly income:

A. Employment earnings of an individual who is an unemancipated minor.

B. Tax refunds, including earned income tax credits.

C. Withdrawals of bank, credit union or brokerage deposits.

D. Money borrowed.

E. Nonrecurring money in amounts under $100 per person per year, given as a gift, from any source.

F. The value of benefits under the Food Stamp Act of 1977 (7 U.S.C. §§ 2011—2036d).

G. The value of foods donated from the United States Department of Agriculture.

H. The value of supplemental foods assistance under the Child Nutrition Act of 1966 (42 U.S.C. §§ 1771—1793) and the special food service programs for children under that act.

I. Loans and grants, such as scholarships, obtained and used for conditions that preclude their use for living costs.

J. A grant or loan to an undergraduate student for educational purposes, made or insured under any program administered under the Higher Education Act of 1965 (20 U.S.C. §§ 1001—1161aa-1).

K. A payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§ 4601—4655).

L. A home produce used for household consumption.

M. A payment made on behalf of an individual for household expenses, such as rent, food and utilities.

N. Payments to Volunteers in Service to America under the Domestic Volunteer Service Act of 1973 (42 U.S.C. §§ 4950—5085), which include AmeriCorps income.

O. Earnings received by any youth under the Workforce Investment Act of 1998, as amended (Pub.L. No. 105-220) or the Youth Build Program (29 U.S.C. § 3226).

P. Foster care payments by a foster care placement agency, including payments to permanent legal custodians.

Q. Stipends derived from the Foster Grandparent Program under section 211 of the Domestic Violence Service Act of 1973 (42 U.S.C. § 5011).

R. Low Income Home Energy Assistance Program (LIHEAP) benefits and cash in-kind energy assistance provided by private agencies and utility companies.

S. Adoption assistance payments by a county children and youth agency.

T. Income received from Federal student aid or participation in a Federal work-study program.

U. Payments made by the Veterans Administration to children of Vietnam veterans under The Benefits for Children of Vietnam Veterans Act (38 U.S.C. §§ 1802—1838).

APPENDIX B

Copayment Chart

Family Copayment Scale Effective January 17, 2022

(Based on the 2022 Federal Poverty Income Guidelines)

Weekly Co-pay	*Family Size: 1 Annual Income*		*Weekly Co-pay*	*Family Size: 2 Annual Income*		*Weekly Co-pay*	*Family Size: 3 Annual Income*	
$5	Less than:	$7,567	$5	Less than:	$8,187	$5	Less than:	$7,741
$6	$7,567.01	$8,324	$6	$8,187.41	$9,211	$6	$7,741.01	$9,031
$7	$8,323.71	$9,080	$7	$9,210.84	$10,234	$7	$9,031.01	$10,321
$8	$9,080.41	$9,837	$8	$10,234.26	$11,258	$8	$10,321.01	$11,611
$9	$9,837.11	$10,594	$9	$11,257.69	$12,281	$9	$11,611.01	$12,902
$9	$10,593.81	$11,351	$10	$12,281.11	$13,305	$10	$12,902.01	$14,192
$10	$11,350.51	$12,107	$12	$13,304.54	$14,328	$12	$14,192.01	$15,482
$11	$12,107.21	$12,864	$13	$14,327.96	$15,351	$13	$15,482.01	$16,772
$12	$12,863.91	$13,621	$14	$15,351.39	$16,375	$15	$16,772.01	$18,062
$13	$13,620.61	$14,377	$15	$16,374.81	$17,398	$16	$18,062.01	$19,352
$14	$14,377.31	$15,134	$17	$17,398.24	$18,422	$18	$19,352.01	$20,642

Weekly Co-pay	*Family Size: 1 Annual Income*		*Weekly Co-pay*	*Family Size: 2 Annual Income*		*Weekly Co-pay*	*Family Size: 3 Annual Income*	
$15	$15,134.01	$15,891	$18	$18,421.66	$19,445	$19	$20,642.01	$21,933
$16	$15,890.71	$16,647	$19	$19,445.09	$20,469	$21	$21,933.01	$23,223
$17	$16,647.41	$17,404	$21	$20,468.51	$21,492	$23	$23,223.01	$24,513
$19	$17,404.11	$18,161	$22	$21,491.94	$22,515	$24	$24,513.01	$25,803
$20	$18,160.81	$18,918	$24	$22,515.36	$23,539	$26	$25,803.01	$27,093
$21	$18,917.51	$19,674	$25	$23,538.79	$24,562	$28	$27,093.01	$28,383
$22	$19,674.21	$20,431	$27	$24,562.21	$25,586	$30	$28,383.01	$29,673
$23	$20,430.91	$21,188	$28	$25,585.64	$26,609	$32	$29,673.01	$30,964
$24	$21,187.61	$21,944	$30	$26,609.06	$27,632	$34	$30,964.01	$32,254
$26	$21,944.31	$22,701	$31	$27,632.49	$28,656	$36	$32,254.01	$33,544
$27	$22,701.01	$23,458	$33	$28,655.91	$29,679	$38	$33,544.01	$34,834
$28	$23,457.71	$24,214	$35	$29,679.34	$30,703	$40	$34,834.01	$36,124
$30	$24,214.41	$24,971	$36	$30,702.76	$31,726	$42	$36,124.01	$37,414
$31	$24,971.11	$25,728	$38	$31,726.19	$32,750	$44	$37,414.01	$38,705
$32	$25,727.81	$26,485	$40	$32,749.61	$33,773	$46	$38,705.01	$39,995
$34	$26,484.51	$27,241	$42	$33,773.04	$34,796	$48	$39,995.01	$41,285
$35	$27,241.21	$27,998	$44	$34,796.46	$35,820	$51	$41,285.01	$42,575
$37	$27,997.91	$28,755	$46	$35,819.89	$36,843	$53	$42,575.01	$43,865
$38	$28,754.61	$29,511	$48	$36,843.31	$37,867	$55	$43,865.01	$45,155
$40	$29,511.31	$30,268	$50	$37,866.74	$38,890	$58	$45,155.01	$46,445
	200% FPIG	$25,760	$52	$38,890.16	$39,914	$60	$46,445.01	$47,736
			$54	$39,913.59	$40,937	$63	$47,736.01	$49,026
				200% FPIG	$34,840	$65	$49,026.01	$50,316
						$68	$50,316.01	$51,606
							200% FPIG	$43,920

Weekly Co-pay	*Family Size: 4 Annual Income*		*Weekly Co-pay*	*Family Size: 5 Annual Income*		*Weekly Co-pay*	*Family Size: 6 Annual Income*	
$5	Less than:	$9,341	$5	Less than:	$9,118	$5	Less than:	$8,361
$7	$9,341.01	$10,898	$6	$9,118.01	$10,942	$6	$8,361.01	$10,452
$8	$10,898.01	$12,455	$8	$10,942.01	$12,765	$7	$10,452.01	$12,542
$9	$12,455.01	$14,012	$9	$12,765.01	$14,589	$9	$12,542.01	$14,632
$11	$14,012.01	$15,569	$11	$14,589.01	$16,412	$11	$14,632.01	$16,723
$13	$15,569.01	$17,126	$13	$16,412.01	$18,236	$13	$16,723.01	$18,813
$14	$17,126.01	$18,683	$15	$18,236.01	$20,060	$15	$18,813.01	$20,903
$16	$18,683.01	$20,239	$17	$20,060.01	$21,883	$17	$20,903.01	$22,994
$18	$20,239.01	$21,796	$19	$21,883.01	$23,707	$19	$22,994.01	$25,084
$19	$21,796.01	$23,353	$21	$23,707.01	$25,530	$21	$25,084.01	$27,174
$21	$23,353.01	$24,910	$23	$25,530.01	$27,354	$24	$27,174.01	$29,265
$23	$24,910.01	$26,467	$25	$27,354.01	$29,178	$26	$29,265.01	$31,355
$25	$26,467.01	$28,024	$27	$29,178.01	$31,001	$29	$31,355.01	$33,445
$27	$28,024.01	$29,581	$30	$31,001.01	$32,825	$31	$33,445.01	$35,536
$29	$29,581.01	$31,138	$32	$32,825.01	$34,648	$34	$35,536.01	$37,626
$32	$31,138.01	$32,694	$35	$34,648.01	$36,472	$37	$37,626.01	$39,716
$34	$32,694.01	$34,251	$37	$36,472.01	$38,296	$40	$39,716.01	$41,807
$36	$34,251.01	$35,808	$40	$38,296.01	$40,119	$42	$41,807.01	$43,897
$38	$35,808.01	$37,365	$42	$40,119.01	$41,943	$45	$43,897.01	$45,987
$41	$37,365.01	$38,922	$45	$41,943.01	$43,766	$48	$45,987.01	$48,077

Weekly Co-pay	*Family Size: 4 Annual Income*		*Weekly Co-pay*	*Family Size: 5 Annual Income*		*Weekly Co-pay*	*Family Size: 6 Annual Income*	
$43	$38,922.01	$40,479	$47	$43,766.01	$45,590	$51	$48,077.01	$50,168
$45	$40,479.01	$42,036	$50	$45,590.01	$47,414	$54	$50,168.01	$52,258
$48	$42,036.01	$43,593	$53	$47,414.01	$49,237	$58	$52,258.01	$54,348
$50	$43,593.01	$45,149	$56	$49,237.01	$51,061	$61	$54,348.01	$56,439
$53	$45,149.01	$46,706	$59	$51,061.01	$52,884	$64	$56,439.01	$58,529
$56	$46,706.01	$48,263	$62	$52,884.01	$54,708	$68	$58,529.01	$60,619
$58	$48,263.01	$49,820	$65	$54,708.01	$56,532	$71	$60,619.01	$62,710
$61	$49,820.01	$51,377	$68	$56,532.01	$58,355	$75	$62,710.01	$64,800
$64	$51,377.01	$52,934	$71	$58,355.01	$60,179	$78	$64,800.01	$66,890
$67	$52,934.01	$54,491	$75	$60,179.01	$62,002	$82	$66,890.01	$68,981
$70	$54,491.01	$56,048	$78	$62,002.01	$63,826	$86	$68,981.01	$71,071
$73	$56,048.01	$57,604	$81	$63,826.01	$65,650	$89	$71,071.01	$73,161
$76	$57,604.01	$59,161	$85	$65,650.01	$67,473	$93	$73,161.01	$75,252
$79	$59,161.01	$60,718	$88	$67,473.01	$69,297	$97	$75,252.01	$77,342
$82	$60,718.01	$62,275	$92	$69,297.01	$71,120	$101	$77,342.01	$79,432
	200% FPIG	$53,000	$96	$71,120.01	$72,944	$106	$79,432.01	$81,523
				200% FPIG	$62,080	$110	$81,523.01	$83,613
							200% FPIG	$71,160

Weekly Co-pay	*Family Size: 7 Annual Income*		*Weekly Co-pay*	*Family Size: 8 Annual Income*		*Weekly Co-pay*	*Family Size: 9 Annual Income*	
$5	Less than:	$9,428	$5	Less than:	$10,495	$5	Less than:	$8,672
$6	$9,428.01	$11,785	$7	$10,495.01	$13,119	$6	$8,672.01	$11,562
$8	$11,785.01	$14,142	$9	$13,119.01	$15,743	$8	$11,562.01	$14,453
$10	$14,142.01	$16,499	$11	$15,743.01	$18,366	$10	$14,453.01	$17,343
$12	$16,499.01	$18,856	$14	$18,366.01	$20,990	$12	$17,343.01	$20,234
$14	$18,856.01	$21,213	$16	$20,990.01	$23,614	$15	$20,234.01	$23,124
$17	$21,213.01	$23,571	$18	$23,614.01	$26,238	$18	$23,124.01	$26,015
$19	$23,571.01	$25,928	$21	$26,238.01	$28,862	$20	$26,015.01	$28,905
$21	$25,928.01	$28,285	$24	$28,862.01	$31,485	$23	$28,905.01	$31,796
$24	$28,285.01	$30,642	$27	$31,485.01	$34,109	$26	$31,796.01	$34,686
$27	$30,642.01	$32,999	$30	$34,109.01	$36,733	$29	$34,686.01	$37,577
$29	$32,999.01	$35,356	$33	$36,733.01	$39,357	$33	$37,577.01	$40,467
$32	$35,356.01	$37,713	$36	$39,357.01	$41,980	$36	$40,467.01	$43,358
$35	$37,713.01	$40,070	$39	$41,980.01	$44,604	$40	$43,358.01	$46,248
$39	$40,070.01	$42,427	$43	$44,604.01	$47,228	$43	$46,248.01	$49,139
$42	$42,427.01	$44,784	$46	$47,228.01	$49,852	$47	$49,139.01	$52,029
$45	$44,784.01	$47,141	$50	$49,852.01	$52,476	$51	$52,029.01	$54,920
$48	$47,141.01	$49,498	$53	$52,476.01	$55,099	$55	$54,920.01	$57,810
$51	$49,498.01	$51,855	$57	$55,099.01	$57,723	$59	$57,810.01	$60,701
$54	$51,855.01	$54,212	$61	$57,723.01	$60,347	$63	$60,701.01	$63,591
$58	$54,212.01	$56,569	$64	$60,347.01	$62,971	$67	$63,591.01	$66,482
$61	$56,569.01	$58,926	$68	$62,971.01	$65,594	$71	$66,482.01	$69,372
$65	$58,926.01	$61,283	$72	$65,594.01	$68,218	$75	$69,372.01	$72,263
$69	$61,283.01	$63,640	$76	$68,218.01	$70,842	$80	$72,263.01	$75,153
$72	$63,640.01	$65,997	$81	$70,842.01	$73,466	$84	$75,153.01	$78,044
$76	$65,997.01	$68,354	$85	$73,466.01	$76,089	$89	$78,044.01	$80,934
$80	$68,354.01	$70,712	$89	$76,089.01	$78,713	$93	$80,934.01	$83,825

Weekly Co-pay	*Family Size: 7 Annual Income*		*Weekly Co-pay*	*Family Size: 8 Annual Income*		*Weekly Co-pay*	*Family Size: 9 Annual Income*	
$84	$70,712.01	$73,069	$94	$78,713.01	$81,337	$98	$83,825.01	$86,715
$88	$73,069.01	$75,426	$98	$81,337.01	$83,961	$103	$86,715.01	$89,606
$92	$75,426.01	$77,783	$103	$83,961.01	$86,585	$108	$89,606.01	$92,496
$97	$77,783.01	$80,140	$107	$86,585.01	$89,208	$113	$92,496.01	$95,387
$101	$80,140.01	$82,497	$112	$89,208.01	$91,832	$118	$95,387.01	$98,277
$105	$82,497.01	$84,854	$117	$91,832.01	$94,456	$124	$98,277.01	$101,168
$110	$84,854.01	$87,211	$122	$94,456.01	$97,080	$129	$101,168.01	$104,058
$114	$87,211.01	$89,568	$127	$97,080.01	$99,703	$135	$104,058.01	$106,949
$119	$89,568.01	$91,925	$132	$99,703.01	$102,327	$140	$106,949.01	$109,839
$124	$91,925.01	$94,282	$138	$102,327.01	$104,951	$146	$109,839.01	$112,730
	200% FPIG	$80,240		200% FPIG	$89,320	$152	$112,730.01	$115,620
							200% FPIG	$98,400

Weekly Co-pay	*Family Size: 10 Annual Income*		*Weekly Co-pay*	*Family Size: 11 Annual Income*		*Weekly Co-pay*	*Family Size: 12 Annual Income*	
$5	Less than:	$9,472	$5	Less than:	$10,272	$5	Less than:	$11,072
$6	$9,472.01	$12,629	$7	$10,272.01	$13,696	$7	$11,072.01	$14,763
$8	$12,629.01	$15,786	$9	$13,696.01	$17,120	$10	$14,763.01	$18,453
$11	$15,786.01	$18,943	$12	$17,120.01	$20,544	$13	$18,453.01	$22,144
$14	$18,943.01	$22,101	$15	$20,544.01	$23,968	$16	$22,144.01	$25,835
$16	$22,101.01	$25,258	$18	$23,968.01	$27,392	$19	$25,835.01	$29,525
$19	$25,258.01	$28,415	$21	$27,392.01	$30,816	$22	$29,525.01	$33,216
$22	$28,415.01	$31,572	$24	$30,816.01	$34,240	$26	$33,216.01	$36,907
$25	$31,572.01	$34,729	$28	$34,240.01	$37,663	$30	$36,907.01	$40,597
$29	$34,729.01	$37,887	$31	$37,663.01	$41,087	$34	$40,597.01	$44,288
$32	$37,887.01	$41,044	$35	$41,087.01	$44,511	$38	$44,288.01	$47,979
$36	$41,044.01	$44,201	$39	$44,511.01	$47,935	$42	$47,979.01	$51,669
$40	$44,201.01	$47,358	$43	$47,935.01	$51,359	$46	$51,669.01	$55,360
$43	$47,358.01	$50,516	$47	$51,359.01	$54,783	$51	$55,360.01	$59,051
$47	$50,516.01	$53,673	$51	$54,783.01	$58,207	$55	$59,051.01	$62,741
$52	$53,673.01	$56,830	$56	$58,207.01	$61,631	$60	$62,741.01	$66,432
$56	$56,830.01	$59,987	$60	$61,631.01	$65,055	$65	$66,432.01	$70,123
$60	$59,987.01	$63,145	$65	$65,055.01	$68,479	$70	$70,123.01	$73,814
$64	$63,145.01	$66,302	$69	$68,479.01	$71,903	$75	$73,814.01	$77,504
$68	$66,302.01	$69,459	$74	$71,903.01	$75,327	$80	$77,504.01	$81,195
$73	$69,459.01	$72,616	$79	$75,327.01	$78,751	$85	$81,195.01	$84,886
$77	$72,616.01	$75,773	$84	$78,751.01	$82,175	$91	$84,886.01	$88,576
$82	$75,773.01	$78,931	$89	$82,175.01	$85,599	$96	$88,576.01	$92,267
$87	$78,931.01	$82,088	$94	$85,599.01	$89,023	$102	$92,267.01	$95,958
$92	$82,088.01	$85,245	$100	$89,023.01	$92,447	$107	$95,958.01	$99,648
$97	$85,245.01	$88,402	$105	$92,447.01	$95,871	$113	$99,648.01	$103,339
$102	$88,402.01	$91,560	$111	$95,871.01	$99,295	$119	$103,339.01	$107,030
$107	$91,560.01	$94,717	$116	$99,295.01	$102,719	$125	$107,030.01	$110,720
$113	$94,717.01	$97,874	$122	$102,719.01	$106,142	$132	$110,720.01	$114,411
$118	$97,874.01	$101,031	$128	$106,142.01	$109,566	$138	$114,411.01	$118,102
$124	$101,031.01	$104,188	$134	$109,566.01	$112,990	$145	$118,102.01	$121,792
$129	$104,188.01	$107,346	$140	$112,990.01	$116,414	$151	$121,792.01	$125,483
$135	$107,346.01	$110,503	$147	$116,414.01	$119,838	$158	$125,483.01	$129,174

Weekly Co-pay	*Family Size: 10 Annual Income*		*Weekly Co-pay*	*Family Size: 11 Annual Income*		*Weekly Co-pay*	*Family Size: 12 Annual Income*	
$141	$110,503.01	$113,660	$153	$119,838.01	$123,262	$165	$129,174.01	$132,864
$147	$113,660.01	$116,817	$159	$123,262.01	$126,686	$172	$132,864.01	$136,555
$153	$116,817.01	$119,975	$166	$126,686.01	$130,110	$179	$136,555.01	$140,246
$159	$119,975.01	$123,132	$173	$130,110.01	$133,534	$186	$140,246.01	$143,936
$166	$123,132.01	$126,289	$180	$133,534.01	$136,958	$194	$143,936.01	$147,627
	200% FPIG	$107,480		200% FPIG	$116,560		200% FPIG	$125,640

Weekly Co-pay	*Family Size: 13 Annual Income*		*Weekly Co-pay*	*Family Size: 14 Annual Income*		*Weekly Co-pay*	*Family Size: 15 Annual Income*	
$5	Less than:	$11,872	$5	Less than:	$12,672	$5	Less than:	$8,982
$8	$11,872.01	$15,830	$8	$12,672.01	$16,897	$6	$8,982.01	$13,473
$11	$15,830.01	$19,787	$11	$16,897.01	$21,121	$9	$13,473.01	$17,963
$14	$19,787.01	$23,744	$15	$21,121.01	$25,345	$12	$17,963.01	$22,454
$17	$23,744.01	$27,702	$18	$25,345.01	$29,569	$15	$22,454.01	$26,945
$20	$27,702.01	$31,659	$22	$29,569.01	$33,793	$19	$26,945.01	$31,436
$24	$31,659.01	$35,617	$26	$33,793.01	$38,017	$23	$31,436.01	$35,927
$28	$35,617.01	$39,574	$30	$38,017.01	$42,241	$27	$35,927.01	$40,418
$32	$39,574.01	$43,531	$34	$42,241.01	$46,465	$32	$40,418.01	$44,909
$36	$43,531.01	$47,489	$38	$46,465.01	$50,690	$36	$44,909.01	$49,399
$40	$47,489.01	$51,446	$43	$50,690.01	$54,914	$41	$49,399.01	$53,890
$45	$51,446.01	$55,404	$48	$54,914.01	$59,138	$46	$53,890.01	$58,381
$50	$55,404.01	$59,361	$53	$59,138.01	$63,362	$51	$58,381.01	$62,872
$54	$59,361.01	$63,318	$58	$63,362.01	$67,586	$56	$62,872.01	$67,363
$59	$63,318.01	$67,276	$63	$67,586.01	$71,810	$62	$67,363.01	$71,854
$65	$67,276.01	$71,233	$69	$71,810.01	$76,034	$67	$71,854.01	$76,344
$70	$71,233.01	$75,191	$74	$76,034.01	$80,258	$73	$76,344.01	$80,835
$75	$75,191.01	$79,148	$80	$80,258.01	$84,483	$79	$80,835.01	$85,326
$80	$79,148.01	$83,105	$86	$84,483.01	$88,707	$85	$85,326.01	$89,817
$86	$83,105.01	$87,063	$91	$88,707.01	$92,931	$91	$89,817.01	$94,308
$91	$87,063.01	$91,020	$97	$92,931.01	$97,155	$97	$94,308.01	$98,799
$97	$91,020.01	$94,978	$104	$97,155.01	$101,379	$104	$98,799.01	$103,290
$103	$94,978.01	$98,935	$110	$101,379.01	$105,603	$110	$103,290.01	$107,780
$109	$98,935.01	$102,892	$116	$105,603.01	$109,827	$117	$107,780.01	$112,271
$115	$102,892.01	$106,850	$123	$109,827.01	$114,051	$124	$112,271.01	$116,762
$121	$106,850.01	$110,807	$130	$114,051.01	$118,276	$131	$116,762.01	$121,253
$128	$110,807.01	$114,765	$136	$118,276.01	$122,500	$138	$121,253.01	$125,744
$134	$114,765.01	$118,722	$143	$122,500.01	$126,724	$145	$125,744.01	$130,235
$141	$118,722.01	$122,679	$151	$126,724.01	$130,948	$153	$130,235.01	$134,726
$148	$122,679.01	$126,637	$158	$130,948.01	$135,172	$160	$134,726.01	$139,216
$155	$126,637.01	$130,594	$165	$135,172.01	$139,396	$168	$139,216.01	$143,707
$162	$130,594.01	$134,552	$173	$139,396.01	$143,620	$176	$143,707.01	$148,198
$169	$134,552.01	$138,509	$181	$143,620.01	$147,844	$184	$148,198.01	$152,689
$177	$138,509.01	$142,466	$189	$147,844.01	$152,069	$192	$152,689.01	$157,180
$184	$142,466.01	$146,424	$197	$152,069.01	$156,293	$201	$157,180.01	$161,671
$192	$146,424.01	$150,381	$205	$156,293.01	$160,517	$209	$161,671.01	$166,161
$200	$150,381.01	$154,339	$213	$160,517.01	$164,741	$218	$166,161.01	$170,652
$208	$154,339.01	$158,296	$222	$164,741.01	$168,965	$227	$170,652.01	$175,143
	200% FPIG	$134,720		200% FPIG	$143,800	$236	$175,143.01	$179,634

Weekly Co-pay	*Family Size: 13 Annual Income*		*Weekly Co-pay*	*Family Size: 14 Annual Income*		*Weekly Co-pay*	*Family Size: 15 Annual Income*	
							200% FPIG	$152,880

Weekly Co-pay	*Family Size: 16 Annual Income*		*Weekly Co-pay*	*Family Size: 17 Annual Income*		*Weekly Co-pay*	*Family Size: 18 Annual Income*	
$5	Less than:	$9,515	$5	Less than:	$10,049	$5	Less than:	$10,582
$6	$9,515.01	$14,273	$6	$10,049.01	$15,073	$7	$10,582.01	$15,873
$9	$14,273.01	$19,030	$10	$15,073.01	$20,097	$10	$15,873.01	$21,164
$13	$19,030.01	$23,788	$13	$20,097.01	$25,122	$14	$21,164.01	$26,455
$16	$23,788.01	$28,545	$17	$25,122.01	$30,146	$18	$26,455.01	$31,746
$20	$28,545.01	$33,303	$21	$30,146.01	$35,170	$23	$31,746.01	$37,037
$24	$33,303.01	$38,061	$26	$35,170.01	$40,194	$27	$37,037.01	$42,328
$29	$38,061.01	$42,818	$30	$40,194.01	$45,219	$32	$42,328.01	$47,619
$33	$42,818.01	$47,576	$35	$45,219.01	$50,243	$37	$47,619.01	$52,910
$38	$47,576.01	$52,333	$40	$50,243.01	$55,267	$42	$52,910.01	$58,201
$43	$52,333.01	$57,091	$46	$55,267.01	$60,292	$48	$58,201.01	$63,492
$48	$57,091.01	$61,848	$51	$60,292.01	$65,316	$54	$63,492.01	$68,783
$54	$61,848.01	$66,606	$57	$65,316.01	$70,340	$60	$68,783.01	$74,074
$60	$66,606.01	$71,364	$63	$70,340.01	$75,365	$66	$74,074.01	$79,365
$65	$71,364.01	$76,121	$69	$75,365.01	$80,389	$73	$79,365.01	$84,656
$71	$76,121.01	$80,879	$75	$80,389.01	$85,413	$79	$84,656.01	$89,947
$78	$80,879.01	$85,636	$82	$85,413.01	$90,437	$86	$89,947.01	$95,238
$84	$85,636.01	$90,394	$89	$90,437.01	$95,462	$93	$95,238.01	$100,529
$90	$90,394.01	$95,152	$95	$95,462.01	$100,486	$100	$100,529.01	$105,821
$96	$95,152.01	$99,909	$102	$100,486.01	$105,510	$107	$105,821.01	$111,112
$103	$99,909.01	$104,667	$109	$105,510.01	$110,535	$115	$111,112.01	$116,403
$110	$104,667.01	$109,424	$116	$110,535.01	$115,559	$122	$116,403.01	$121,694
$117	$109,424.01	$114,182	$123	$115,559.01	$120,583	$130	$121,694.01	$126,985
$124	$114,182.01	$118,939	$131	$120,583.01	$125,608	$138	$126,985.01	$132,276
$131	$118,939.01	$123,697	$138	$125,608.01	$130,632	$146	$132,276.01	$137,567
$138	$123,697.01	$128,455	$146	$130,632.01	$135,656	$154	$137,567.01	$142,858
$146	$128,455.01	$133,212	$154	$135,656.01	$140,680	$162	$142,858.01	$148,149
$154	$133,212.01	$137,970	$162	$140,680.01	$145,705	$171	$148,149.01	$153,440
$162	$137,970.01	$142,727	$171	$145,705.01	$150,729	$180	$153,440.01	$158,731
$170	$142,727.01	$147,485	$179	$150,729.01	$155,753	$189	$158,731.01	$164,022
$178	$147,485.01	$152,242	$188	$155,753.01	$160,778	$198	$164,022.01	$169,313
$186	$152,242.01	$157,000	$197	$160,778.01	$165,802	$207	$169,313.01	$174,604
$195	$157,000.01	$161,758	$206	$165,802.01	$170,826	$217	$174,604.01	$179,895
$204	$161,758.01	$166,515	$215	$170,826.01	$175,851	$226	$179,895.01	$185,186
$213	$166,515.01	$171,273	$224	$175,851.01	$180,875	$236	$185,186.01	$190,477
$222	$171,273.01	$176,030	$234	$180,875.01	$185,899	$246	$190,477.01	$195,768
$231	$176,030.01	$180,788	$244	$185,899.01	$190,923	$257	$195,768.01	$201,059
$240	$180,788.01	$185,545	$254	$190,923.01	$195,948	$267	$201,059.01	$206,350
$250	$185,545.01	$190,303	$264	$195,948.01	$200,972	$278	$206,350.01	$211,641
	200% FPIG	$161,960		200% FPIG	$171,040		200% FPIG	$180,120

Weekly Co-pay	*Family Size: 19 Annual Income*		*Weekly Co-pay*	*Family Size: 20 Annual Income*		*Weekly Co-pay*	*Family Size: 21 Annual Income*	
$5	Less than:	$11,116	$5	Less than:	$11,649	$5	Less than:	$12,182
$7	$11,116.01	$16,673	$7	$11,649.01	$17,473	$8	$12,182.01	$18,274
$11	$16,673.01	$22,231	$11	$17,473.01	$23,298	$12	$18,274.01	$24,365
$15	$22,231.01	$27,789	$16	$23,298.01	$29,122	$16	$24,365.01	$30,456
$19	$27,789.01	$33,347	$20	$29,122.01	$34,947	$21	$30,456.01	$36,547
$24	$33,347.01	$38,904	$25	$34,947.01	$40,771	$26	$36,547.01	$42,638
$29	$38,904.01	$44,462	$30	$40,771.01	$46,596	$31	$42,638.01	$48,730
$34	$44,462.01	$50,020	$35	$46,596.01	$52,420	$37	$48,730.01	$54,821
$39	$50,020.01	$55,578	$41	$52,420.01	$58,245	$43	$54,821.01	$60,912
$45	$55,578.01	$61,135	$47	$58,245.01	$64,069	$49	$60,912.01	$67,003
$50	$61,135.01	$66,693	$53	$64,069.01	$69,894	$55	$67,003.01	$73,094
$57	$66,693.01	$72,251	$59	$69,894.01	$75,718	$62	$73,094.01	$79,186
$63	$72,251.01	$77,809	$66	$75,718.01	$81,543	$69	$79,186.01	$85,277
$70	$77,809.01	$83,366	$73	$81,543.01	$87,367	$76	$85,277.01	$91,368
$76	$83,366.01	$88,924	$80	$87,367.01	$93,192	$84	$91,368.01	$97,459
$83	$88,924.01	$94,482	$87	$93,192.01	$99,016	$92	$97,459.01	$103,550
$91	$94,482.01	$100,040	$95	$99,016.01	$104,841	$100	$103,550.01	$109,642
$98	$100,040.01	$105,597	$103	$104,841.01	$110,665	$107	$109,642.01	$115,733
$105	$105,597.01	$111,155	$110	$110,665.01	$116,490	$115	$115,733.01	$121,824
$113	$111,155.01	$116,713	$118	$116,490.01	$122,314	$124	$121,824.01	$127,915
$120	$116,713.01	$122,271	$126	$122,314.01	$128,138	$132	$127,915.01	$134,006
$128	$122,271.01	$127,828	$134	$128,138.01	$133,963	$141	$134,006.01	$140,098
$136	$127,828.01	$133,386	$143	$133,963.01	$139,787	$149	$140,098.01	$146,189
$145	$133,386.01	$138,944	$152	$139,787.01	$145,612	$158	$146,189.01	$152,280
$153	$138,944.01	$144,502	$160	$145,612.01	$151,436	$168	$152,280.01	$158,371
$162	$144,502.01	$150,059	$169	$151,436.01	$157,261	$177	$158,371.01	$164,462
$171	$150,059.01	$155,617	$179	$157,261.01	$163,085	$187	$164,462.01	$170,554
$180	$155,617.01	$161,175	$188	$163,085.01	$168,910	$197	$170,554.01	$176,645
$189	$161,175.01	$166,733	$198	$168,910.01	$174,734	$207	$176,645.01	$182,736
$198	$166,733.01	$172,290	$208	$174,734.01	$180,559	$217	$182,736.01	$188,827
$208	$172,290.01	$177,848	$218	$180,559.01	$186,383	$228	$188,827.01	$194,918
$218	$177,848.01	$183,406	$228	$186,383.01	$192,208	$239	$194,918.01	$201,010
$228	$183,406.01	$188,964	$239	$192,208.01	$198,032	$250	$201,010.01	$207,101
$238	$188,964.01	$194,521	$249	$198,032.01	$203,857	$261	$207,101.01	$213,192
$248	$194,521.01	$200,079	$260	$203,857.01	$209,681	$272	$213,192.01	$219,283
$259	$200,079.01	$205,637	$271	$209,681.01	$215,506	$284	$219,283.01	$225,374
$270	$205,637.01	$211,195	$283	$215,506.01	$221,330	$296	$225,374.01	$231,466
$281	$211,195.01	$216,752	$294	$221,330.01	$227,155	$308	$231,466.01	$237,557
$292	$216,752.01	$222,310	$306	$227,155.01	$232,979	$320	$237,557.01	$243,648
	200% FPIG	$189,200		200% FPIG	$198,280		200% FPIG	$207,360

APPENDIX C

Stepparent Deduction Chart

County of residence	*Family composition / size*					
	2	*3*	*4*	*5*	*6*	*Each additional person*
Adams, Allegheny, Berks, Blair, Bradford, Butler, Centre, Columbia, Crawford, Cumberland, Dauphin, Delaware, Erie, Lackawanna, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Philadelphia, Sullivan, Susquehanna, Union, Warren, Wayne, Westmoreland, Wyoming and York	$461	$587	$724	$859	$976	$121
Armstrong, Bedford, Cambria, Clarion, Clearfield, Fayette, Forest, Fulton, Greene, Huntingdon, Jefferson, Juniata, Northumberland, Schuylkill and Somerset	$406	$532	$662	$791	$894	$121
Beaver, Cameron, Carbon, Clinton, Elk, Franklin, Indiana, Lawrence, McKean, Mercer, Mifflin, Perry, Potter, Snyder, Tioga, Venango and Washington	$444	$573	$698	$829	$943	$121
Bucks, Chester, Lancaster, Montgomery and Pike	$481	$614	$749	$885	$1,001	$121

[Pa.B. Doc. No. 23-1752. Filed for public inspection December 15, 2023, 9:00 a.m.]

PROPOSED RULEMAKING

STATE BOARD OF COSMETOLOGY

[49 PA. CODE CH. 7]

Practice of Massage Therapy in Cosmetology or Esthetician Salons

The State Board of Cosmetology (Board) proposes to add § 7.150 (relating to practice of massage therapy in cosmetology or esthetician salons) to read as set forth in Annex A.

Effective Date

This proposed rulemaking will be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

The act of September 24, 2014 (P.L. 2476, No. 136) amended the act of May 3, 1933 (P.L. 242, No. 86) referred to as the Cosmetology Law (act) (63 P.S. §§ 507—527), by adding section 9.3 to the act (63 P.S. § 515.3) allowing for the practice of massage therapy within the licensed square footage of a cosmetology or esthetician salon. Section 9.3(d) of the act requires the Board and the State Board of Massage Therapy to jointly promulgate final regulations to carry out the provisions of section 9.3.

Background and Purpose

Section 9.3(a) of the act permits an individual licensed under the Massage Therapy Law (63 P.S. §§ 627.1—627.50), to practice massage therapy within the approved premises of a licensed cosmetology salon or a licensed esthetician salon if: (1) the massage therapy licensee is the owner of or employed by the salon and is not an independent contractor; (2) the massage therapist practices in accordance with the act and the Massage Therapy Law; and (3) the salon owner provides an appropriate level of privacy for clients. Section 9.3(a)(3)(i) and (ii) of the act further provides that no physical barrier is required when the massage therapist is performing services that a cosmetologist or esthetician could perform; however, should the services exceed those within the scope of cosmetology or esthetics, a separate room with permanent walls and doors must be utilized. Section 9.3(a)(3)(iii) of the act further provides that an esthetician may provide services in the separate room that is designated for massage therapy services, so long as the cosmetologist or esthetician and massage therapist are not providing services concurrently.

Under section 9.3(b) of the act, a licensee is subject to inspection by the Board and the State Board of Massage Therapy. A licensee who violates the act or the Massage Therapy Law shall be subject to discipline by the licensee's applicable licensing board. Section 9.3 of the act immediately permitted the practice of massage therapy within the licensed square footage of a cosmetology or esthetician salon. For the most part, the amendments to the act were self-executing. The purpose of the Board's joint regulations with the State Board of Massage Therapy is to clarify standards for the practice of massage therapy in cosmetology or esthetician salons, but it was not immediately clear what provisions required clarification and amendments to the regulations. The Board and the State Board of Massage Therapy worked together in determining and drafting the joint regulations and received input from regulated communities. The Board and the State Board of Massage Therapy agreed to promulgate regulations to address appropriate levels of privacy while practicing massage therapy and minimum size requirements for the separate massage therapy room.

Prior to the enactment of section 9.3 of the act, a patron wishing to receive services from a massage therapist and an esthetician would have to move from one room (a room considered not to be within the licensed square footage of the salon) to another room (a room considered to be within the licensed square footage of the salon) for each of the requested services. This process was found to be averse to the relaxing environment facilities were attempting to provide for their clients. The purpose of section 9.3 of the act is to allow for the practice of massage therapy within the licensed square footage of a cosmetology or esthetician salon. With the enactment of section 9.3(a)(3)(iii) of the act, a patron can receive massage therapy and esthetic services all within one room. This proposed rulemaking sets forth the requirements for practicing massage therapy in a cosmetology or esthetician salon. The State Board of Massage Therapy is similarly updating its regulations to clarify the standards for massage therapy in its salons and to ensure consistency between the standards of the Board and the State Board of Massage Therapy.

Description of the Proposed Amendments

The Board proposes to add § 7.150 to set forth the standards for practicing massage therapy within a cosmetology or esthetician salon under section 9.3 of the act. Subsection (a) would set forth the conditions that must be met to practice massage therapy within a cosmetology or esthetician salon, as required by section 9.3(a) of the act. Subsection (a)(1) would provide that the massage therapy licensee must be the owner of the salon or employed by the salon and is not an independent contractor as required by section 9.3(a)(1) of the act. Subsection (a)(2) would provide that the massage therapist would be required to practice in accordance with this section, Chapter 20 (relating to State Board of Massage Therapy), the act and the Massage Therapy Law. Subsection (a)(2)(i) provides that the salon owner may only employ a massage therapist who is currently licensed by the State Board of Massage Therapy. The subsection further provides that the salon owner is responsible to ensure each massage therapist employed by the salon complies with this section, Chapter 20, the act and the Massage Therapy Law. Subsection (a)(2)(ii) provides that the message therapist who is the owner of the salon shall comply with regulations applicable to salon owners as set forth in the Board's regulations in §§ 7.50—7.66 (relating to licensure and management of salons).

Subsection (a)(3) requires that a salon owner provide an appropriate level of privacy for clients. Subsection (a)(3)(i)(A) and (B) clarifies that when a massage therapist is practicing in a separate massage therapy room of the salon, or in the areas of the salon used for cosmetology or esthetics, the massage therapist is practicing in the licensed square footage of the salon. Furthermore, subsection (a)(3)(i)(A) and (B) clarifies what services require a separate massage therapy room by specifically listing the massage services that do not require the use of physical barriers. The Board's proposed regulation reflects section 9.3(a)(3)(i) of the act which provides that no physical barriers separating the areas used for massage therapy from the areas used for cosmetology or esthetics,

as defined in section 1 of the act (63 P.S. § 507), shall be required when a massage therapist performs massage services that a cosmetologist or esthetician is authorized to perform. Subsection (a)(3)(ii) clarifies that when a massage therapist is practicing in a separate massage therapy room of the salon, the massage therapist is practicing in the licensed square footage of the salon. Furthermore, subsection (a)(3)(ii) requires that a salon owner provide separate massage therapy rooms with permanent walls and doors to ensure privacy for clients receiving massage services from a massage therapist when the services are beyond the practice of cosmetology or esthetics, as required by section 9.3(a)(3)(i) of the act.

Subsection (a)(3)(ii)(A)—(C) sets forth standards for separate massage therapy rooms. Subsection (a)(3)(ii)(A) requires that massage therapy rooms be a minimum of 120 square feet in size, which is a generally accepted industry standard based on the size of a standard massage table (73 inches × 30 inches) and allows room for a massage therapist to safely maneuver around it (approximately 3 to 4 feet on each side of the table). The Board feels this requirement is necessary because § 7.76(a) (relating to floor space) requires an "additional area of at least 60 square feet. . .for each additional licensee in the salon." Accordingly, it is likely that salon owners unfamiliar with the practice of massage therapy will expect massage therapists to perform massage therapy in rooms designed for the practice of cosmetology or esthetician services (that is, rooms with little more than 60 square feet in size). A 60-square-foot room does not provide a massage therapist sufficient room to safely maneuver around a standard-sized massage table and keep the necessary supplies at hand. Additionally, massage therapy clients are often asked to position their arms at a 90-degree angle to the body, and the massage therapist must safely maneuver around the client's outstretched arms. Moreover, clients are typically expected to use the massage therapy room to disrobe and transition to the massage therapy table. Accordingly, massage therapy rooms frequently include a chair, as well as clothing storage such as clothing hooks or a shelving unit. It would be a safety risk to expect a massage therapist to safely perform massage therapy multiple times a day in any room smaller than 120 square feet. Accordingly, after discussing this issue at public board meetings, and reaching an agreement with the State Board of Massage Therapy, the Board is of the opinion that a minimum room size of 120 square feet is appropriate.

Subsection (a)(3)(ii)(B) discusses the storage of linens or other supplies used by a massage therapist in a salon. Sections 7.71a—7.71c (relating to equipment and supplies for esthetician salon; equipment and supplies for a nail technology salon; and equipment and supplies for a natural hair braiding salon) set minimum standards for equipment and supplies, detailing what must be available to licensees, and where linens must be stored. Being that massage therapists working in salons will be required to adhere to both State Board of Massage Therapy regulations and the Board's regulations, the Board believes that it must clarify where massage therapists may store linens and other supplies. Accordingly, subsection (a)(3)(ii)(B) allows the massage therapist to store linens or other supplies used for massage therapy in the massage therapy room or in the salon in a space designated by the salon owner.

Subsection (a)(3)(ii)(C) states esthetician services may be provided in the massage therapy room, so long as esthetician services were not provided concurrent to the massage therapy services, as required by section 9.3(a)(3)(iii) of the act.

Subsection (b) requires a massage therapist practicing massage therapy within the approved premises of a salon to practice in accordance with the act and correlating regulations, the State Board of Massage Therapy's regulations and the Massage Therapy Law, as required by section 9.3(a)(2) of the act.

Subsection (c) states that a massage therapist practicing in accordance with section 9.3 of the act would be subject to inspection by both the Board and the State Board of Massage Therapy, as required by section 9.3(b) of the act.

Subsection (d) states that a massage therapist practicing in a salon, who violates the act or the Massage Therapy Law, is subject to discipline by the State Board of Massage Therapy, as required by section 9.3(c) of the act.

Fiscal Impact and Paperwork Requirements

There will not be a negative fiscal impact on licensees or the Board. Section 9.3 of the act was added September 24, 2014, and permitted the practice of massage therapy within the licensed square footage of a cosmetology or esthetician salon as of November 24, 2014. The Board does not track how many massage therapists work in salons. However, it is unlikely that any significant number of massage therapists have been practicing in rooms smaller than 120 square feet because the practice of massage therapy in any room smaller than 120 square feet would be difficult and potentially dangerous. However, the small number of massage therapists who may be currently working in rooms smaller than 120 square feet will have to find a way to comply with the proposed regulation. For the reasons explained in this preamble, it is in the public interest to require that massage therapy be performed in a room large enough to accommodate all that is required.

While section 9.3(b) of the act indicates that massage therapists practicing in salons are subject to inspection by the Board and the State Board of Massage Therapy, the Board currently conducts these inspections, while the State Board of Massage Therapy does not. Accordingly, the Board's fees are structured to allow for these inspections.

Sunset Date

The Board continuously monitors the effectiveness of its regulations on a fiscal year and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on December 4, 2023, the Board submitted a copy of this proposed rulemaking and a copy of a regulatory analysis form to the Independent Regulatory Review Commission (IRRC) and to the chairperson of the Consumer Protection and Professional Licensure Committee of the Senate and the chairperson of the Professional Licensure Committee of the House of Representatives. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review

Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commissioner, the General Assembly and the Governor.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to the Regulatory Counsel, Department of State, P.O. Box 69523, Harrisburg, PA 17106-9523 or RA-STRegulatoryCounsel@pa.gov, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments should be identified as pertaining to rulemaking 16A-4518 (massage therapy in cosmetology or esthetician salons).

TAMMY O'NEIL,
Chairperson

Fiscal Note: 16A-4518. No fiscal impact; recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 7. STATE BOARD OF COSMETOLOGY

PRACTICE OF MASSAGE THERAPY IN COSMETOLOGY OR ESTHETICIAN SALONS

(*Editor's Note*: Section 7.150 is proposed to be added and is printed in regular type to enhance readability.)

§ 7.150. Practice of massage therapy in cosmetology or esthetician salons.

(a) A massage therapist licensed under the act of October 9, 2008 (P.L. 1438, No. 118) (63 P.S. §§ 627.1—627.50), referred to as the Massage Therapy Law, is permitted to practice massage therapy within the approved premises of a licensed cosmetology salon or a licensed esthetician salon if all of the following conditions are met:

(1) The massage therapy licensee is the owner of or employed by the salon and is not an independent contractor.

(2) The massage therapist practices in accordance with this section, Chapter 20 (relating to State Board of Massage Therapy), the act and the Massage Therapy Law. The following apply:

(i) The salon owner may only employ a massage therapist who is currently licensed by the State Board of Massage Therapy. The salon owner is responsible to ensure each massage therapist employed by the salon complies with this section, Chapter 20, the act and the Massage Therapy Law.

(ii) A massage therapist who is the owner of the salon shall comply with all of the regulations applicable to salon owners set forth in §§ 7.50—7.66 (relating to licensure and management of salons).

(3) The salon owner provides an appropriate level of privacy for clients in accordance with all of the following:

(i) *Massage therapy services within the scope of practice of the Cosmetology Law.* When a massage therapist is practicing in a separate massage therapy room of the salon or in the areas of the salon used for cosmetology or esthetics, the massage therapist is practicing in the licensed square footage of the salon. Physical barriers separating the areas used for massage therapy services from the areas used for cosmetology or esthetics are not required when a massage therapist provides massage therapy services that are within the scope of practice of cosmetology as defined in § 7.1 (relating to definitions) as follows:

(A) Massage therapy services of the scalp, face, arms or hands, or the upper part of the body.

(B) Massage therapy services of the feet or the lower legs of an individual up to the individual's knee.

(ii) *Massage therapy services beyond the scope of practice of the Cosmetology Law.* When a massage therapist is practicing in a separate massage therapy room of the salon, the massage therapist is practicing in the licensed square footage of the salon. A salon owner shall provide separate massage therapy rooms with permanent walls and doors to ensure privacy for clients receiving massage therapy services from a massage therapist when the massage therapy services are beyond the scope of practice of cosmetology or esthetics as provided in § 7.1. The following apply:

(A) The size of the separate massage therapy room must be a minimum of 120 square feet.

(B) The massage therapist may store linens or other supplies in the separate room provided or in the salon in a space designated by the salon owner.

(C) Esthetician services may be provided to a client in the same room where the client receives massage therapy, provided these services are not performed concurrently.

(b) A massage therapist providing massage therapy services within the approved premises of a salon shall practice in accordance with the act, this chapter and the Massage Therapy Law.

(c) A massage therapist providing massage therapy services within the approved premises of a salon is subject to inspection by the State Board of Massage Therapy and the board.

(d) A massage therapist providing massage therapy services within the approved premises of a salon who violates this section, the act or the Massage Therapy Law is subject to discipline by the State Board of Massage Therapy.

[Pa.B. Doc. No. 23-1753. Filed for public inspection December 15, 2023, 9:00 a.m.]

STATE BOARD OF MEDICINE

[49 PA. CODE CH. 18]

Physician Assistants

The State Board of Medicine (Board) proposes to amend Chapter 18, Subchapter D (relating to physician assistants) to read as set forth in Annex A. Specifically, the Board proposes amendments to §§ 18.122, 18.141—18.144, 18.151—18.154, 18.156—18.159, 18.161, 18.162, 18.171 and 18.172. The Board also proposes to delete § 18.155 (relating to satellite locations).

Effective Date

This proposed rulemaking will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

The primary statutory authority for this proposed rulemaking is the act of October 7, 2021 (P.L. 418, No. 79) (Act 79), which amended section 13 of the Medical Practice Act of 1985 (act) (63 P.S. § 422.13) by removing certain restrictions on physician assistant practice to provide greater autonomy in the practice of the profession. Under section 4 of Act 79, the Board is authorized to promulgate regulations necessary to carry out the act.

Section 13(c) of the act authorizes the Board to promulgate regulations which define the services and circumstances under which a physician assistant may perform a medical service.

Section 8 of the act (63 P.S. § 422.8) authorizes the Board to adopt these regulations as are reasonably necessary to carry out the purposes of the act, including the licensure of physician assistants.

Background and Need for Amendments

This proposed rulemaking is needed to effectuate Act 79 which is meant to help physician assistants work and practice with increased efficiency in this Commonwealth, which is one of the premier states for physician assistant education with more than 20 physician assistant programs offered in this Commonwealth. While many physician assistants receive their education in this Commonwealth, prior legislation made it less appealing for physician assistants to stay and practice in this Commonwealth. Act 79 modernizes physician assistant practice in this Commonwealth by (1) placing a physician assistant on the Board with a permanent seat, (2) removing the requirement that a supervising physician countersign 100% of the patient files, (3) allowing all written agreements between physicians and physician assistants to be "filed" with the Board instead of "approved" by the Board, (4) outlining appropriate supervision requirements based on the needs of the physicians, physician assistants and overall health care system and (5) increasing the number of physician assistants a supervising physician may have primary responsibility over from four to six physician assistants.

Description of Proposed Amendments

The Board proposes comprehensive amendments to Chapter 18, Subchapter D to update the regulations to reflect current practices and to incorporate the changes made to the act by Act 79.

In § 18.122 (relating to definitions), the Board proposes to amend several definitions as follows:

The definition of "ARC-PA" is proposed to be amended to include the complete formal name of the Accreditation Review Commission on Education for Physician Assistants.

This proposed regulation creates a definition for "health care facility" to mirror the definition of "health care facility" as defined in section 103 of the Health Care Facilities Act (35 P.S. § 448.103). The act references both health care facilities and the Health Care Facilities Act (35 P.S. §§ 448.101—448.904b) but this term is not defined in the Board's regulations. The existing regulations refer only to hospital and medical facility which is not inclusive of all licensed facilities under the Health Care Facilities Act in which a physician assistant may work.

The definition of "medical care facility" is proposed to be deleted in its entirety. The act does not define or even refer to a medical care facility. The act refers only to a health care facility as defined by the Health Care Facilities Act. To make the regulations consistent with the act, the term "medical care facility" will be replaced throughout the regulations with the term "health care facility."

The definition of "order" is proposed to be amended to delete the requirement that onsite administration of a drug be limited to a hospital, medical care facility or office setting. The existing language is meant to encompass all practice locations in which a physician assistant might administer a drug; however, this language is outdated. Currently, physician assistants practice in, and administer drugs onsite in, more locations than hospitals, medical care facilities or office settings. There may be scenarios where a physician assistant administers a drug at a sporting event, a pop-up clinic or in a pharmacy. The deletion of the reference to a hospital, medical care facility and office setting will allow the definition to apply in all onsite settings in which a drug may be administered onsite by a physician assistant.

The definition of "physician assistant program" proposes to be amended to remove the requirement that the training and education program for physician assistants be recognized by the Board "and" accredited by the CAHEA, the CAAHEP, ARC-PA or a successor agency. The Board has already approved training and education programs accredited by CAHEA, the CAAHEP or ARC-PA so the requirement for Board recognition is redundant. Instead, the proposed language changes "and" to "or" so that the Board will have the authority to approve new accrediting organizations that are not successor organizations of CAHEA, the CAAHEP or ARC-PA.

The definition of "prescription" is proposed to be updated to current practice by allowing the prescribing to be done electronically since that is how most prescribing presently occurs. Without this amendment, electronic orders for a drug or device would not fall into the definition of "prescription" which could result in the argument being made that the prescribing regulations in §§ 18.151 and 18.158 (relating to role of physician assistant; and prescribing and dispensing drugs, pharmaceutical aids and devices) do not apply. To prevent this, the word "electronic" is proposed to be included in the regulations so that all forms of prescribing are included.

The definition of "primary supervising physician" is proposed to be amended to delete the reference to "directing and personally" supervising consistent with Act 79.

This proposed rulemaking deletes the definition of "satellite location" because it is no longer relevant to the Board's regulations with the enactment of Act 79. The proposed deletion of the term "directing and personally supervising" from the definition of "primary supervising physician" eliminates the basis on which satellite office approval is required. The need for onsite presence on a fixed schedule was the only distinction between a satellite location and a primary practice location.

This proposed rulemaking defines "scope of practice" because Act 79 refers to the term "scope of practice" but does not define its meaning. The proposed definition reflects the role of the physician assistant as set forth in § 18.151(b) and limits the scope of practice of the physician assistant to medical services as set forth in the written agreement. The terms "medical services" and "skills, training and experience" are used in the definition of "scope of practice" because they are consistent with the existing language in § 18.151(b).

The definition of "substitute supervising physician" is proposed to be amended to clarify that the substitute

supervising physician is either designated in a written agreement on file with the Board or kept on file at the practice location where the physician assistant is rendering services. The Board does not think it is necessary to designate all substitute physicians in the written agreement. It is a cumbersome and overly burdensome requirement, and the Board proposes to simplify this reporting requirement.

The definition of "supervising physician" is proposed to be amended to clarify that the physician assistant may serve a primary supervising physician and one or more substitute supervising physicians as long as at least one substitute supervising physician is named in the written agreement on file with the Board. A substitute supervising physician must either be named in the written agreement on file with the Board or the relationship as a substitute supervising physician must be maintained at the practice location where the physician assistant practices. The term supervising physician refers to both the primary supervising physician and any of the substitute supervising physicians.

The definition of "supervision" is proposed to be amended to delete the requirement that the supervising physician has "personal direction" over the physician assistant. This proposed amendment reflects the language of Act 79 which deletes the requirement that the supervising physician "directly and personally" supervise a physician assistant. Subsection (i) is proposed to be further amended to delete the phrase "by radio, telephone or other telecommunications device" when referring to how a supervising physician and physician assistant may be in contact with each other. The terms that are proposed to be deleted are outdated and do not cover all the ways in which a physician assistant and supervising physician may contact each other. Furthermore, it is not necessary to list all means of communication in the regulation. In subsection (ii)(A), the term "active and continuing" is proposed to be deleted since the written agreement will outline the degree of oversight the supervising physician will have over the physician assistant. Phrases related to "personal" review are deleted in subsection (ii)(C) consistent with Act 79. Finally, this proposed rulemaking deletes reference to the review of patient records being done within 10 days and instead requires the supervising physician to review patient records in accordance with § 18.142(2) (relating to written agreements). Section 18.142(2) requires the primary or substitute supervising physician to countersign the patient record as required by Act 79. The relevant language of Act 79 allows the supervising physician to determine countersignature requirements except for when the physician assistant is practicing in the first 12 months post-graduation or the first 12 months practicing in a new specialty. In those two scenarios, the supervising physician must countersign 100% of the patient records.

This proposed rulemaking defines the term "unable to supervise" to designate when the physician assistant may provide services to a substitute supervising physician. It is important to note that the primary supervising physician does not have to be physically unable to supervise for the physician assistant to serve a substitute which was not clear in the current language of the regulations.

The definition of "written agreement" is proposed to be amended to clarify that it is an agreement between the physician assistant and the primary supervising physician. While substitute supervising physicians may be named in the written agreement, the agreement is only signed by the primary supervising physician and the physician assistant.

Section 18.141(2) (relating to criteria for licensure as a physician assistant) is proposed to be amended to require that approved physician assistant programs be accredited as provided for in § 18.131 (relating to recognized educational programs/standards). This proposed rulemaking deletes the requirement that the physician assistant program be "recognized by the Board." This additional language is not necessary because the Board has already approved the accredited programs referenced in § 18.131(a) and allows the Board to recognize additional programs in § 18.131(b).

Section 18.142(a)(1) is proposed to be amended to reflect that the written agreement must identify and be signed by the physician assistant and the primary supervising physician. Subsection (a)(1) further provides that the primary supervising physician must be a medical doctor. In smaller office practice settings, the physician assistant may only serve the primary supervising physician named in the written agreement on file with the Board or the substitute supervising physician if one is named in the written agreement on file with the Board. However, in a larger practice setting, such as an orthopedic institute, the physician assistant might serve several substitute supervising physicians in addition to their primary supervising physician. In this scenario, the physician assistant's written agreement would name the primary supervising physician and at least one substitute supervising physician. A list of all other substitute supervising physicians that the physician assistant serves would be maintained at that practice location where the physician assistant practices. If the physician assistant is providing services in a health care facility as defined by the Health Care Facilities Act, the physician assistant would file a written agreement with the Board which names a primary supervising physician and at least one substitute, but again, the physician assistant may serve numerous substitute physicians in that facility. In accordance with section 13(g) of the act, the attending physician for the patient that the physician assistant is seeing would become the primary supervising physician for that patient and take on responsibility for the medical services rendered by the physician assistant in the care of that patient. Also, the facility will maintain a list of all the supervising physicians that the physician assistant serves at that practice location.

The current regulations in subsection (a)(1) require the written agreement to include every physician that the physician assistant would be serving, including the primary supervising physician and all substitute supervising physicians. However, this requirement resulted in the Board becoming overburdened with written agreement change forms every time the physician assistant served a new substitute supervising physician. The Board does not think it is necessary to designate all substitute physicians in the written agreement. It is a cumbersome and overly burdensome requirement, and the Board proposes to simplify this reporting requirement.

The proposed language in subsection (a)(2) deletes the requirement that the written agreement specify the "manner in which the physician assistant will be assisting each named physician" and "the functions to be delegated to the physician assistant." The outdated language is proposed to be replaced with the requirement that the written agreement specify the physician assistant's scope of practice, consistent with section 13(e)(2) of the act. Subsection (a)(3) proposes to delete the requirement that the written agreement specify the "manner in which the physician assistant will be assisting each named physician, including the frequency of personal contact with the physician assistant" and replace that language with "the

nature and degree of supervision the primary supervising physician will provide the physician assistant." This proposed amendment reflects the intention of section 13(e)(3) of the act to allow the supervising physician to determine the appropriate supervision necessary. The proposed language in subsection (a)(4) deletes the existing regulatory language and replaces it with the requirement that the written agreement "be prepared and submitted by the primary supervising physician, the physician assistant or a delegate of the primary supervising physician and the physician assistant." The Board proposes to add, "[i]t shall not be a defense in any administrative or civil action that the physician assistant acted outside the scope of the Board-filed description or that the supervising physician utilized the physician assistant outside the scope of the Board-filed description because the supervising physician or physician assistant permitted another person to represent to the Board that the description had been approved by the supervising physician or physician assistant." This provision is consistent with the language of section 13(e)(4) of the act. The outdated language in subsection (a)(5) relating to the timing of when the countersignature must occur—within 10 days—is proposed to be deleted and replaced by a reference to the written agreement because section 13(d.1)(3) of the act directs the primary supervising physician to determine the countersignature requirements of patient records. Proposed subsection (a)(5)(ii)(A) and (B) includes the two exceptions to when the supervising physician may determine the countersignature requirement. Subsection (a)(5)(ii)(A) requires that the primary supervising physician countersign 100% of patient records within a reasonable time, not to exceed 10 days, for the first 12 months of the physician assistant's practice post-graduation. Subsection (a)(5)(ii)(B) requires that the primary supervising physician countersign 100% of patient records within a reasonable time, not to exceed 10 days, for the first 12 months of the physician assistant's practice in a new specialty. Subsection (a)(6) is proposed to be amended to require that the written agreement identify the primary practice setting that the physician assistant will serve. This proposed rulemaking adds subsection (a)(7) to require the physician assistant to name at least one substitute supervising physician in the written agreement if the physician assistant intends to practice if the primary supervising physician becomes permanently unable to supervise. The proposed amendment to § 18.143(a)(3) (relating to criteria for registration as a supervising physician) prohibits a physician assistant from practicing when the primary supervising physician is permanently unable to supervise.

Section 18.142(b) proposes to delete the requirement that written agreements be approved by the Board. Instead, this section is proposed to specify that the written agreement must be "filed with" the Board to mirror the language of section 13(e)(6) of the act. The remainder of the existing language is proposed to be deleted because the Board will not verify compliance of the written agreements with the act or regulations, except for audited written agreement applications. Additional language is proposed to be added to clarify that the written agreements become effective upon submission to the Board since the Board is no longer required to review and approve written agreements prior to approval.

Section 18.142(c) proposes to delete the word "immediate" and instead proposes to use the term "upon request" when referring to the physician assistant and the primary supervising physician's duty to provide access to written agreements. Currently there is not, and never has been, a statutory requirement that written agreements be provided immediately. The Board is concerned that the existing language may cause the physician assistant or the primary supervising physician to compromise patient care if they are required to stop and immediately produce the written agreement within that moment.

Section 18.143(a) proposes amendments to clarify that the Board registers the primary supervising physician as opposed to all substitute supervising physicians that the physician assistant may serve. Subsection (a)(3) is proposed to be amended to delete the requirement that the physician assistant provide a list of the other physicians who are serving as supervising physicians. The proposed amendment requires instead that the physician assistant provide the name and license number of "at least one" primary supervising physician and "a substitute." The Board believes that the current regulatory requirement is unnecessary and is overly burdensome. This proposed rulemaking clarifies that the physician assistant will refrain from practicing unless at least one substitute supervising physician is named in the written agreement on file with the Board.

Subsection (b) is proposed to be deleted in its entirety because satellite locations no longer need to be treated differently from primary practice locations. The act deleted the phrase "directly and personally" supervise from the definition of "primary supervising physician." Since onsite supervision was the only distinction between satellite offices and primary practice locations, the elimination of "personal" supervision has eliminated the necessity of distinguishing satellite offices. Subsection (c) proposes to clarify that the Board will maintain a list of registered primary supervising physicians since substitute supervising physicians are not registered with the Board. This list would include the primary supervising physician's name and address on file with the Board, along with the date of the filing of the written agreement, since that would be the written agreement effective date, and the names of all physician assistants under the primary supervising physician's supervision. This subsection proposes to require only one substitute supervising physician to be named in the written agreement. This proposed rulemaking requires the Board to maintain on file the date that the written agreement was filed with the Board because that is the date that the written agreement became effective. The reference to satellite locations is deleted consistent with Act 79.

Section 18.144(4) (relating to responsibility of primary supervising physician) is proposed to be deleted in its entirety because it is not consistent with the language in Act 79. The degree of supervision is already encompassed in the regulations regarding written agreements. Paragraph (5), which requires that the physician assistant see each hospitalized patient at least once, is also proposed to be deleted because it is not consistent with current practice. The frequency of how often a hospitalized patient should be seen is determined by the medical care or health care facility, through its bylaws, or by the supervising physician. Paragraph (6) proposes to delete the phrase "by the physician assistant relayed to other health care practitioners" to make this subsection more general and encompassing regarding the supervising physician's duty to provide access to written agreements and clarification of orders and prescriptions. Paragraph (7) proposes to clarify that the primary supervising physician must maintain oversight and responsibility for the medical services provided by the physician assistant consistent with Act 79. Paragraph (8) proposes to require the practice or facility to maintain a current list of all

substitute supervising physicians with which a physician assistant will work. This may include additional substitute supervising physicians who will assume responsibility of the physician assistant in the primary supervising physician's absence. The Board proposes to add paragraph (9) which requires that the Board be notified of any change in the primary practice address using a written agreement change form within 15 days. This will ensure the Board is aware of where the physician assistant is working.

Section 18.151(a) is proposed to be amended to reflect that the physician assistant practices medicine as provided for in the written agreement. A written agreement not only includes information such as name, address and license number of the primary supervising physician and physician assistant, but it would also outline information such as specialty of the primary supervising physician, whether or not the physician assistant will be working in a health care facility, whether the physician assistant will prescribe or dispense drugs, and if so, what schedule categories, the physician assistant's scope of practice, and the nature and degree of supervising the primary supervising physician will provide. This proposed language reflects that the supervising physician no longer "directly and personally" supervises the physician assistant. The proposed amendment to this subsection also reflects the requirement of Act 79 that the services provided by the physician assistant must be provided for in the written agreement. Subsection (b) proposes to delete the reference to the supervising physician directing the physician assistant since the supervising physician no longer "directly and personally" supervises the physician assistant. This subsection is proposed to be further amended to require the physician assistant to provide medical services that are within the physician assistant's scope of practice, consistent with the language section 13(e)(2) of the act. Subsection (c) proposes to delete the prohibition that a physician assistant may not determine the cause of death. This proposed amendment updates the language to comply with current law, a legislative change enacted by the act of July 7, 2017 (P.L. 296, No. 17).

Section 18.152(a)(2) (relating to prohibitions) is proposed to be deleted in its entirety because it is redundant to the information in subsection (a)(1). The written agreement determines whether a physician assistant may prescribe or dispense drugs. Subsection (a)(3) is also proposed to be deleted in its entirety. The fact that a primary supervising physician no longer "directly and personally" supervises physician assistants has eliminated the distinction that previously existed between a satellite office and a primary practice setting. There is no longer a need for the registration of satellite offices with the Board. Subsection (a)(4) proposes to delete the prohibition of billing patients for services provided. This amendment reflects current practice since Medicare allows for independent billing by physician assistants under the Physician Assistant Medicare Payment Rules of 2022, which became effective on January 1, 2022. Subsection (a)(5) proposes to use the gender-neutral term "the physician assistant." The existing language in subsection (a)(6) is proposed to be deleted and the terminology would be amended to delete outdated advertising methods. The amended language prohibits a physician assistant from intentionally advertising as an independent practitioner or holding themselves out as an independent practitioner. This proposed amendment maintains the prohibition against independent practice while recognizing that physician assistants may be listed on panels or under a medical provider in many settings. Subsection (a)(8) is proposed to be deleted in its entirety as the language is redundant. This prohibition is covered in other sections of 13(e) of the act, which prohibits a physician assistant from assisting a physician in a manner not described in the agreement or without the nature and degree of supervision described in the agreement. Subsection (b)(2) is proposed to be amended to increase the ratio of how many physician assistants a primary supervising physician may have primary responsibility of from two to six. This amendment includes additional language that the Board may approve the supervision of additional physician assistants. These amendments are consistent with Act 79.

Section 18.153(b) (relating to executing and relaying medical regimens) is proposed to be deleted in its entirety. Subsection (b) no longer applies because the supervising physician is no longer required to be on site under section 13(d) of the act. Additionally, this language is not required by Act 79. Subsection (c) proposes to delete the now outdated language which requires the countersignature of patient records by the supervising physician within 10 days. Instead, the proposed language of this section reflects that the countersignature requirements will be specified in the written agreement as required by Act 79 in section 13(d.1)(3) of the act. Subsection (d) proposes to delete the requirement that the physician assistant and the primary supervising physician provide "immediate" access to the written agreement. There is not currently, and never has been, a statutory requirement that written agreements be provided immediately. There was concern that existing language may cause the physician assistant or the primary supervising physician to compromise patient care if they are required to stop and immediately produce the written agreement within that moment. Additionally, all references to "medical care facility" is replaced with "health care facility."

Section 18.154(a) (relating to substitute supervising physician) proposes to delete the language indicating that all substitute supervising physicians must be registered with the Board. This proposed amendment requires the written agreement to name at least one substitute supervising physician that the physician assistant may serve. A list of all other substitute supervising must be maintained at the practice or facility, as required under § 18.144(8). Section 18.154(c) proposes to require that the substitute supervising physician retain responsibility for the medical services that the physician assistant renders. This proposed rulemaking adds subsection (e) to require that in the event of the primary supervising physician becoming permanently unable to supervise, the substitute supervising physician will assume primary responsibility for the physician assistant until a new written agreement can be filed. However, this arrangement cannot exceed 30 days. This proposed amendment is necessary because a temporary transition period is needed if the supervising physician dies or leaves their employment, and this language will allow the physician assistant to keep practicing if it takes some time to have a new written agreement filed with the Board. The Board does not currently have regulations that address the death or other sudden and unexpected departure of a primary supervising physician. Currently, the death or departure of a primary supervising physician negates the written agreement and prohibits the physician assistant from practicing which, in turn, causes a gap in patient care. This proposed amendment will cure that problem.

Section 18.155 (relating to satellite locations) is proposed to be deleted in its entirety because this section is no longer relevant. Act 79 removes the requirement that

the supervising physician be onsite. Additionally, since the supervising physician no longer "directly and personally" supervises the physician assistant, there is no longer a distinction between satellite offices and primary practice locations. Therefore, there is no longer a need to regulate satellite offices.

Section 18.156(b) (relating monitoring and review of physician assistant utilization) is proposed to be amended with the Board addition of the term "inspection" to clarify the type of reports to be submitted to the Board. Additionally, the Board proposes to delete the reference to satellite locations because it is no longer relevant to the Board's regulations with the enactment of Act 79.

Section 18.157(a) (relating to administration of controlled substances and whole blood and blood components) is proposed to be amended to replace the term "hospital" with "health care facility" so that this section would apply to the administration of controlled substances in all licensed facilities and not just hospitals, medical care facilities and office settings.

Section 18.158(a)(4) (relating prescribing and dispensing drugs, pharmaceutical aids and devices) is proposed to be amended to reflect that a physician assistant must prescribe or dispense a drug for a patient in accordance with the written agreement and not per the supervising physician's instructions. This language is consistent with the rest of the Board's regulations which refer to the written agreement only and not the supervising physician's instructions. Subsection (b) is proposed to be amended to no longer refer to this section as "prescription blanks" since that is an outdated term. Instead, the section is proposed to be entitled "prescriptions" and would include prescription blanks and electronic prescriptions. The purpose of this proposed amendment is to expand the existing language to include electronic prescriptions, recognizing that most medical practices utilize electronic prescriptions. The term hospital is replaced with "health care facility." Currently, in inappropriate prescribing scenarios, the pharmacist would contact the physician assistant as the prescriber, who would then address it with the supervising physician and the patient. Subsection (d)(3) is proposed to be deleted in its entirety because there is no longer an onsite presence requirement. Additionally, the primary supervising physician no longer "directly and personally" supervises the physician assistant. The requirement that the physician assistant report a drug prescribed in the supervising physician's absence would be outlined in the written agreement. Subsection (d)(4) is proposed to be amended to require that countersignatures must occur as outlined in the written agreement, consistent with section 13(d.1)(3) of the act as amended by Act 79, and as required in § 18.142(a)(5)(ii). Subsection (d)(5) proposes to delete the requirement that the physician assistant and primary supervising physician provide immediate access to the written agreement since immediate access may not always be possible. Currently there is not, and never has been, a statutory requirement that written agreements be provided immediately. There was concern that existing language may cause the physician assistant or the primary supervising physician to compromise patient care if they are required to stop and immediately produce the written agreement within that moment.

Section 18.159 (relating to medical records) proposes to delete the requirement that the supervising physician review medical records prepared by the physician assistant within 10 days. The proposed amendment requires the supervising physician to review the medical records in a timely manner as described in the written agreement and as required in § 18.142(a)(5)(ii). This way, the supervising physician can determine how often they will review the physician assistant's medical records, if at all, so long as it is still a timely review.

Section 18.161 (relating to physician assistant employed by medical care facilities) proposes to delete the term "medical care facility" and replace it with the term "health care facility" to cover all practice settings in which a physician assistant may work and to maintain consistency between the regulation and the act. Subsection (b), which limits a physician assistant from being responsible to more than three supervising physicians in a medical care facility, is proposed to be deleted in its entirety. This limitation is not imposed by Act 79, or the act and it is not practical for physician assistants who cover multiple services within a facility. This proposed rulemaking deletes the first portion of subsection (c), which states that a medical care facility is not required to hire or employ physician assistants because it is redundant with subsection (a) which states that physician assistants "may" be employed by a medical care facility. The Board proposes to delete the term "hospitalized" from subsection (c) since not all facility patients are hospitalized. Finally, the Board proposes to add subsection (e) which addresses attending physicians in a health care facility licensed under the Health Care Facilities Act. This section states that the attending physician of record for a particular patient shall act as the primary supervising physician for the physician assistant while that patient is under the care of the attending physician. This proposed language is consistent with section 13(g) of the act.

Section 18.162(a) (relating to emergency medical services) proposes to delete the requirement that the physician assistant only provide medical services in an emergency medical care setting if they are under the supervision of the supervising physician. The remaining language requires that the physician assistant have training in emergency medicine and is provided for in the written agreement.

Section 18.171(a)(2) (relating to physician assistant identification) proposes to be deleted in its entirety because the medical services that a physician assistant may perform and the way they shall be performed is determined by the written agreement not by regulatory language. Subsection (c) proposes to delete the reference to satellite locations as they are no longer relevant to this regulation.

Section 18.172 (relating to notification of changes in employment) proposes to update the language to current practice by deleting references to required notification being in writing from the primary supervising physician. This language is outdated because notification forms are now only available online.

Fiscal Impact and Paperwork Requirements

This proposed rulemaking will not have any fiscal impact on licensees, the Board or the Commonwealth, nor is any additional paperwork anticipated.

Sunset Date

The Board continuously monitors its regulations; therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on November 27, 2023, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regu-

latory Review Commission (IRRC) and to the chairperson of the Consumer Protection and Professional Licensure Committee of the Senate (SCP/PLC) and the chairperson of the Professional Licensure Committee of the House of Representatives (HPLC). A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Board, the General Assembly and the Governor.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to the Board Counsel, State Board of Medicine, P.O. Box 69523, Harrisburg, PA 17106-5923, RA-STRegulatoryCounsel@pa.gov within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference 16A-4955 (Physician Assistants) when submitting comments.

MARK B. WOODLAND, MS, MD,
Chairperson

Fiscal Note: 16A-4955. No fiscal impact; recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 18. STATE BOARD OF MEDICINE—PRACTITIONERS OTHER THAN MEDICAL DOCTORS

Subchapter D. PHYSICIAN ASSISTANTS

GENERAL PROVISIONS

§ 18.122. Definitions.

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

ARC-PA—The Accreditation Review Commission **on Education for Physician Assistants**.

Administration—The direct application of a drug, whole blood, blood components, diagnostic procedure or device, whether by injection, inhalation, ingestion, skin application or other means, into the body of a patient.

* * * * *

Emergency medical care setting—

(i) A health care setting which is established to provide emergency medical care as its primary purpose.

(ii) The term does not include a setting which provides general or specialized medical services that are not routinely emergency in nature even though that setting provides emergency medical care from time to time.

***Health care facility*—As defined in section 103 of the Health Care Facilities Act (35 P.S. § 448.103).**

[*Medical care facility*—An entity licensed or approved to render health care services.]

Medical regimen—A therapeutic, corrective or diagnostic measure performed or ordered by a physician, or performed or ordered by a physician assistant acting within the physician assistant's scope of practice, and in accordance with the written agreement between the supervising physician and the physician assistant.

Medical service—An activity which lies within the scope of the practice of medicine and surgery.

NCCPA—The National Commission on Certification of Physician Assistants, the organization recognized by the Board to certify and recertify physician assistants by requiring continuing education and examination.

Order—An oral or written directive for a therapeutic, corrective or diagnostic measure, including a drug to be dispensed for onsite administration **[in a hospital, medical care facility or office setting]**.

Physician—A medical doctor or doctor of osteopathic medicine.

* * * * *

Physician assistant program—A program for the training and education of physician assistants which is recognized by the Board **[and]** **or** accredited by the CAHEA, the CAAHEP, ARC-PA or a successor agency.

Prescription—

(i) A written**, electronic** or oral order for a drug or device to be dispensed to or for an ultimate user.

(ii) The term does not include an order for a drug which is dispensed for immediate administration to the ultimate user; for example, an order to dispense a drug to a patient for immediate administration in an office or hospital is not a prescription.

Primary supervising physician—A medical doctor who is registered with the Board and designated in the written agreement as having primary responsibility for **[directing and personally]** supervising the physician assistant.

[*Satellite location*—A location, other than the primary place at which the supervising physician provides medical services to patients, where a physician assistant provides medical services.]

***Scope of practice*—The medical services within a physician assistant's skills, training and experience that a physician assistant may perform as set forth in the written agreement.**

Substitute supervising physician—A **[supervising physician]** **medical doctor** who is **[registered with the Board and]** designated in the written agreement **on file with the Board, or maintained at the practice location,** as assuming primary responsibility for a physician assistant when the primary supervising physician is **[unavailable]** **unable to supervise**.

Supervising physician—**[Each physician who is identified in a written agreement as a physician who supervises a physician assistant]** **The primary supervising physician and each substitute supervising physician who supervises a physician assistant, who is either identified in a written agreement on file with the Board or maintained at the practice location where the physician assistant practices**.

Supervision—

(i) Oversight **[and personal direction of,]** and responsibility for, the medical services rendered by a physician assistant. The constant physical presence of the supervising physician is not required so long as the supervising physician and the physician assistant are, or can be, easily in contact with each other **[by radio, telephone or other telecommunications device]**.

(ii) An appropriate degree of supervision includes:

(A) **[Active and continuing overview]** **Overview** of the physician assistant's activities **[to determine that the physician's directions are being implemented]** **as provided for in the written agreement**.

(B) Immediate availability of the supervising physician to the physician assistant for necessary consultations.

(C) **[Personal and regular review within 10 days]** **Review** by the supervising physician of the patient records upon which entries are made by the physician assistant **in accordance with § 18.142(5) (relating to written agreements)**.

***Unable to supervise*—When the primary supervising physician cannot supervise the physician assistant due to temporary absence, the primary supervising physician is working at another location or the physician assistant is providing services for a substitute supervising physician who is either named in the written agreement on file with the Board or maintained at the practice location.**

Written agreement—The agreement between the physician assistant and **primary** supervising physician, which satisfies the requirements of § 18.142 **[(relating to written agreements)]**.

LICENSURE OF PHYSICIAN ASSISTANTS AND REGISTRATION OF SUPERVISING PHYSICIANS

§ 18.141. Criteria for licensure as a physician assistant.

The Board will approve for licensure as a physician assistant an applicant who **meets all of the following requirements**:

(1) Satisfies the licensure requirements in § 16.12 (relating to general qualifications for licenses and certificates) including the completion of at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 16.108(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(2) Has graduated from **[a]** **an accredited** physician assistant program **[recognized by the Board]** **as provided for under § 18.131 (relating to recognized educational programs/standards)**.

(3) Has submitted a completed application together with the required fee, under § 16.13 (relating to licensure, certification, examination and registration fees).

(4) Has passed the physician assistant examination.

§ 18.142. Written agreements.

(a) The written agreement required by section 13(e) of the act (63 P.S. § 422.13(e)) satisfies the following requirements. The agreement must:

(1) Identify and be signed by the physician assistant and **[each physician the physician assistant will be assisting who will be acting as a]** **the primary** supervising physician. **[At least one]** **The primary supervising** physician shall be a medical doctor.

(2) Describe the **[manner in which the physician assistant will be assisting each named physician. The description must list functions to be delegated to the physician assistant]** **physician assistant's scope of practice**.

(3) Describe the **[time, place and manner of supervision and direction each named]** **nature and degree of supervision the supervising** physician will provide the physician assistant **[, including the frequency of personal contact with the physician assistant]**.

(4) **[Designate one of the named physicians who shall be a medical doctor as the primary supervising physician]** **Be prepared and submitted by the primary supervising physician, the physician assistant or a delegate of the primary supervising physician and the physician assistant. It shall not be a defense in any administrative or civil action that the physician assistant acted outside of the scope of the Board-filed description or that the supervising physician utilized the physician assistant outside of the scope of the Board-filed description because the supervising physician or physician assistant permitted another person to represent to the Board that the description had been approved by the supervising physician or physician assistant**.

(5) Require that the supervising physician shall countersign the patient record **[completed by the physician assistant within a reasonable amount of time. This time period may not exceed 10 days]** **as outlined in the written agreement and as provided for as follows:**

(i) The primary supervising physician shall determine countersignature requirements of patient records completed by the physician assistant in a written agreement, except as provided under subparagraph (ii).

(ii) The primary supervising physician shall countersign 100% of patient records completed by the physician assistant within a reasonable time, which may not exceed 10 days, during the following periods:

(A) The first 12 months of the physician assistant's practice post-graduation and after the physician assistant has fulfilled the criteria for licensure set forth in section 36(c) of the act (63 P.S. § 422.36(c)).

(B) The first 12 months of the physician assistant's practice in a new specialty in which the physician assistant is practicing.

(6) Identify the **[locations and practice settings]** **primary practice setting** where the physician assistant will serve.

(7) Name at least one substitute supervising physician if the physician assistant intends to practice if the primary supervising physician is permanently unable to supervise.

(b) The written agreement shall be **[approved by]** **filed with** the Board **[as satisfying the requirements in subsection (a) and as being consistent with relevant provisions of the act and regulations contained in this subchapter]** **and shall be effective upon submission to the Board by the primary supervising physician, physician assistant or a delegate of the primary supervising physician and physician assistant**.

(c) **[A]** **Upon request, a** physician assistant or supervising physician shall provide **[immediate]** access to the written agreement to **[anyone seeking to]** confirm the scope of the physician assistant's authority.

§ 18.143. Criteria for registration as a supervising physician.

(a) The Board will register a **primary** supervising physician applicant who:

(1) Possesses a current license without restriction to practice medicine and surgery in this Commonwealth.

(2) Has filed a completed registration form accompanied by the written agreement (see § 18.142 (relating to written agreements)) and the required fee under § 16.13 (relating to licensure, certification, examination and registration fees). The registration requires detailed information regarding the physician's professional background and specialties, medical education, internship, residency, continuing education, membership in American Boards of medical specialty, hospital or staff privileges and other information the Board may require.

(3) Includes with the registration, **[a list, identifying by name and license number, the other physicians who are serving as supervising physicians]** **the name and license number of at least one other physician who is serving as a substitute supervising physician** of the designated physician assistant **[under other written agreements]**. **The physician assistant shall refrain from practicing when the primary supervising physician is permanently unable to supervise unless at least one substitute supervising physician is named in the written agreement on file with the Board.**

(b) **[If the supervising physician plans to utilize physician assistants in satellite locations, the supervising physician shall provide the Board with supplemental information as set forth in § 18.155 (relating to satellite locations) and additional information requested by the Board directly relating to the satellite location]** **[Reserved]**.

(c) The Board will keep a current list of registered **primary** supervising physicians. The list will include the **primary supervising** physician's name, the address **[of residence, current business address]** **on file with the Board**, the date **[of filing]** **the written agreement was filed with the Board**, **[satellite locations if applicable,]** the names of current physician assistants under the **primary supervising** physician's supervision and **[the physicians]** **at least one physician** willing to provide substitute supervision **in accordance with § 18.154 (relating to substitute supervising physician)**.

§ 18.144. Responsibility of primary supervising physician.

A primary supervising physician shall assume the following responsibilities. The supervisor shall:

(1) Monitor the compliance of all parties to the written agreement with the standards contained in the written agreement, the act and this subchapter.

(2) Advise any party to the written agreement of the failure to conform with the standards contained in the written agreement, the act and this subchapter.

(3) Arrange for a substitute supervising physician. **[( ]**See § 18.154 (relating to substitute supervising physician).**[ )]**

(4) **[Review directly with the patient the progress of the patient's care as needed based upon the patient's medical condition and prognosis or as requested by the patient]** **[Reserved]**.

(5) **[See each patient while hospitalized at least once]** **[Reserved]**.

(6) Provide access to the written agreement upon request and provide clarification of orders and prescriptions **[by the physician assistant relayed to other health care practitioners]**.

(7) **[Accept full professional and legal responsibility for the performance of the physician assistant and the care and treatment of the patients]** **Maintain oversight and responsibility for the medical services rendered by physician assistant**.

(8) Maintain at the practice or facility a current list of all substitute supervising physicians with which a physician assistant will work.

(9) Notify the Board of any change in the primary practice address using a written agreement change form within 15 days.

PHYSICIAN ASSISTANT UTILIZATION

§ 18.151. Role of physician assistant.

(a) The physician assistant practices medicine with physician supervision. A physician assistant may perform those duties and responsibilities, including the ordering, prescribing, dispensing, and administration of drugs and medical devices, as well as the ordering, prescribing, and executing of diagnostic and therapeutic medical regimens, as **[directed by the supervising physician]** **provided in the written agreement**.

(b) The physician assistant may provide any medical service **[as directed by the supervising physician]** when the service is within the physician assistant's **[skills, training and experience, forms a component of the physician's]** scope of practice, is **[included]** **identified** in the written agreement and is **[provided with the amount of supervision in keeping]** **consistent** with the accepted standards of medical practice.

(c) The physician assistant may pronounce death, **[but not]** **determine** the cause of death, and may authenticate with the physician assistant's signature any form related to pronouncing death. If the attending physician is not available, the physician assistant shall notify the county coroner. The coroner has the authority to release the body of the deceased to the funeral director.

(d) The physician assistant may authenticate with the physician assistant's signature any form that may otherwise be authenticated by a physician's signature as permitted by the supervising physician, **[State or Federal]** **Federal or State** law and facility protocol, if applicable.

(e) The physician assistant shall be considered the agent of the supervising physician in the performance of all practice-related activities including the ordering of diagnostic, therapeutic and other medical services.

§ 18.152. Prohibitions.

(a) A physician assistant may not:

(1) Provide medical services except as described in the written agreement.

(2) **[Prescribe or dispense drugs except as described in the written agreement]** **[Reserved]**.

(3) **[Maintain or manage a satellite location under § 18.155 (relating to satellite locations) unless the maintenance or management is registered with the Board]** **[Reserved]**.

(4) Independently practice **[or bill patients for services provided]**.

(5) Independently delegate a task specifically assigned to **[him]** **the physician assistant** by the supervising physician to another health care provider.

(6) **[List his name independently in a telephone directory or other directory for public use in a manner which indicates that he functions]** **Intentionally advertise as an independent practitioner or hold oneself out** as an independent practitioner.

(7) Perform acupuncture except as permitted by section 13(k) of the act (63 P.S. § 422.13(k)).

(8) **[Perform a medical service without the supervision of a supervising physician]** **[Reserved]**.

(b) A supervising physician may not:

(1) Permit a physician assistant to engage in conduct proscribed in subsection (a).

(2) Have primary responsibility for more than **[two]** **six** physician assistants **unless the Board approves supervision of additional physician assistants**.

§ 18.153. Executing and relaying medical regimens.

(a) A physician assistant may execute a written or oral order for a medical regimen or may relay a written or oral order for a medical regimen to be executed by a health care practitioner subject to the requirements of this section.

(b) **[As provided for in the written agreement, the physician assistant shall report orally or in writing, to a supervising physician, within 36 hours, those medical regimens executed or relayed by the physician assistant while the supervising physician was not physically present, and the basis for each decision to execute or relay a medical regimen]** **[Reserved]**.

(c) The physician assistant shall record, date and authenticate the medical regimen on the patient's chart at the time it is executed or relayed. When working in a **[medical care]** **health care** facility, a physician assistant may comply with the recordation requirement by directing the recipient of the order to record, date and authenticate that the recipient received the order, if this practice is consistent with the **[medical care]** **health care** facility's written policies. The supervising physician shall countersign the patient record **[within a reasonable time not to exceed 10 days, unless countersignature is required sooner by regulation, policy within the medical care facility or the requirements of a third-party payor]** **as provided for in the written agreement or as required under § 18.142(a)(5)(ii) (relating to written agreements)**.

(d) A physician assistant or **primary** supervising physician shall provide **[immediate]** access to the written agreement to anyone seeking to confirm the physician assistant's authority to relay a medical regimen or administer a therapeutic or diagnostic measure.

§ 18.154. Substitute supervising physician.

(a) If the primary supervising physician is **[unavailable]** **permanently unable** to supervise the physician assistant, the primary supervising physician may not delegate patient care to the physician assistant unless **[appropriate arrangements for substitute supervision are]** **at least one substitute supervising physician is named** in the written agreement and **[the substitute physician is registered as a supervising physician]** **on file** with the Board. **A list of all other substitute supervising physicians that the physician assistant may serve must be maintained at the physician assistant's practice location.**

(b) It is the responsibility of the substitute supervising physician to ensure that supervision is maintained in the absence of the primary supervising physician.

(c) During the period of supervision by the substitute supervising physician, the substitute supervising physician retains **[full professional and legal responsibility for the performance of]** **responsibility for the medical services that** the physician assistant **[and the care and treatment of the patients treated by the physician assistant]** **renders**.

(d) Failure to properly supervise may provide grounds for disciplinary action against the substitute supervising physician.

(e) In the event of the primary supervising physician becomes permanently unable to supervise, the substitute supervising physician shall assume primary responsibility for the physician assistant until a new written agreement can be filed for a time period not to exceed 30 days.

§ 18.155. **[Satellite locations]** **[Reserved]**.

[(a) *Registration of satellite location.* A physician assistant may not provide medical services at a satellite location unless the supervising physician has filed a registration with the Board.

(b) *Contents of statement.* A separate statement shall be made for each satellite location. The statement must demonstrate that:

(1) The physician assistant will be utilized in an area of medical need.

(2) There is adequate provision for direct communication between the physician assistant and the supervising physician and that the distance between the location where the physician provides

services and the satellite location is not so great as to prohibit or impede appropriate support services.

(3) The supervising physician shall review directly with the patient the progress of the patient's care as needed based upon the patient's medical condition and prognosis or as requested by the patient.

(4) The supervising physician will visit the satellite location at least once every 10 days and devote enough time onsite to provide supervision and personally review the records of selected patients seen by the physician assistant in this setting. The supervising physician shall notate those patient records as reviewed.

(c) *Failure to comply with this section.* Failure to maintain the standards required for a satellite location may result not only in the loss of the privilege to maintain a satellite location but also may result in disciplinary action against the physician assistant and the supervising physician.]

§ 18.156. Monitoring and review of physician assistant utilization.

(a) Representatives of the Board will be authorized to conduct scheduled and unscheduled onsite inspections of the locations where the physician assistants are utilized during the supervising physician's office hours to review the following:

(1) Supervision of the physician assistant. See §§ 18.144 and 18.154 (relating to responsibility of primary supervising physician; and substitute supervising physician).

(2) Presence of the written agreement and compliance with its terms. See § 18.142 (relating to written agreements).

(3) Utilization in conformity with the act, this subchapter and the written agreement.

(4) Appropriate identification of physician assistant. See § 18.171 (relating to physician assistant identification).

(5) Compliance with licensure and registration requirements. See §§ 18.141 and 18.145 (relating to criteria for licensure as a physician assistant; and biennial registration requirements; renewal of physician assistant license).

(6) Maintenance of records evidencing patient and supervisory contact by the supervising physician.

(b) **[Reports]** **Inspection reports** shall be submitted to the Board and become a permanent record under the supervising physician's registration. Deficiencies reported will be reviewed by the Board and may provide a basis for **[loss of the privilege to maintain a satellite location and]** disciplinary action against the physician assistant and the supervising physician.

(c) The Board reserves the right to review physician assistant utilization without prior notice to either the physician assistant or the supervising physician. It is a violation of this subchapter for a supervising physician or a physician assistant to refuse to comply with the request by the Board for the information in subsection (a).

(d) Additional inspections, including follow-up inspections may be conducted if the Board has reason to believe that a condition exists which threatens the public health, safety or welfare.

§ 18.157. Administration of controlled substances and whole blood and blood components.

(a) In a **[hospital, medical]** **health** care facility or office setting, the physician assistant may order or administer, or both, controlled substances and whole blood and blood components if the authority to order and administer these medications and fluids is expressly set forth in the written agreement.

(b) The physician assistant shall comply with the minimum standards for ordering and administering controlled substances specified in § 16.92 (relating to prescribing, administering and dispensing controlled substances).

§ 18.158. Prescribing and dispensing drugs, pharmaceutical aids and devices.

(a) *Prescribing, dispensing and administration of drugs.*

(1) The supervising physician may delegate to the physician assistant the prescribing, dispensing and administering of drugs and therapeutic devices.

(2) A physician assistant may not prescribe or dispense Schedule I controlled substances as defined by section 4 of The Controlled Substances, Drug, Device, and Cosmetic Act (35 P.S. § 780-104).

(3) A physician assistant may prescribe a Schedule II controlled substance for initial therapy, up to a 72-hour dose. The physician assistant shall notify the supervising physician of the prescription as soon as possible, but in no event longer than 24 hours from the issuance of the prescription. A physician assistant may write a prescription for a Schedule II controlled substance for up to a 30-day supply if it was approved by the supervising physician for ongoing therapy. The prescription must clearly state on its face that it is for initial or ongoing therapy.

(4) A physician assistant may only prescribe or dispense a drug for a patient who is under the care of the physician responsible for the supervision of the physician assistant and only in accordance with the **[supervising physician's instructions and]** written agreement.

(5) A physician assistant may request, receive and sign for professional samples and may distribute professional samples to patients.

(6) A physician assistant authorized to prescribe or dispense, or both, controlled substances shall register with the Drug Enforcement Administration (DEA).

(b) **[*Prescription blanks*]** ***Prescriptions***. The requirements for prescription blanks **and electronic prescriptions** are as follows:

(1) **[Prescription blanks]** **Prescriptions** must bear the license number of the physician assistant and the name of the physician assistant in a printed format at the heading of the **[blank]** **prescription**. The supervising physician must also be identified as required in § 16.91 (relating to identifying information on prescriptions and orders for equipment and service).

(2) The signature of a physician assistant shall be followed by the initials "PA-C" or similar designation to identify the signer as a physician assistant. When appropriate, the physician assistant's DEA registration number must appear on the prescription.

(3) The supervising physician is prohibited from presigning prescription blanks.

(4) The physician assistant may use a prescription blank generated by a **[hospital]** **health care facility** provided the information in paragraph (1) appears on the blank.

(c) *Inappropriate prescription.* The supervising physician shall immediately advise the patient, notify the physician assistant and, in the case of a written prescription, advise the pharmacy if the physician assistant is prescribing or dispensing a drug inappropriately. The supervising physician shall advise the patient and notify the physician assistant to discontinue using the drug and, in the case of a written prescription, notify the pharmacy to discontinue the prescription. The order to discontinue use of the drug or prescription shall be noted in the patient's medical record by the supervising physician.

(d) *Recordkeeping requirements.* Recordkeeping requirements are as follows:

(1) When prescribing a drug, the physician assistant shall keep a copy of the prescription, including the number of refills, in a ready reference file, or record the name, amount and doses of the drug prescribed, the number of refills, the date of the prescription and the physician assistant's name in the patient's medical records.

(2) When dispensing a drug, the physician assistant shall record the physician assistant's name, the name of the medication dispensed, the amount of medication dispensed, the dose of the medication dispensed and the date dispensed in the patient's medical records.

(3) **[The physician assistant shall report, orally or in writing, to the supervising physician within 36 hours, a drug prescribed or medication dispensed by the physician assistant while the supervising physician was not physically present, and the basis for each decision to prescribe or dispense in accordance with the written agreement]** **[Reserved]**.

(4) The supervising physician shall countersign the patient record **[within 10 days]** **as provided for in the agreement and as required under § 18.142(a)(5)(ii) (relating to written agreements)**.

(5) **[The]** **Upon request, the** physician assistant and the **primary** supervising physician shall provide **[immediate]** access to the written agreement to anyone seeking to confirm the physician assistant's authority to prescribe or dispense a drug. The written agreement must list the categories of drugs which the physician assistant is not permitted to prescribe.

(e) *Compliance with regulations relating to prescribing, administering, dispensing, packaging and labeling of drugs.* A physician assistant shall comply with §§ 16.92—16.94 (relating to prescribing, administering and dispensing controlled substances; packaging; and labeling of dispensed drugs) and Department of Health regulations in 28 Pa. Code §§ 25.51—25.58 (relating to prescriptions) and regulations regarding packaging and labeling dispensed drugs. See § 16.94 and 28 Pa. Code §§ 25.91—25.95 (relating to labeling of drugs, devices and cosmetics).

§ 18.159. Medical records.

The supervising physician shall timely review**[, not to exceed 10 days,]** the medical records prepared by the physician assistant to ensure that the requirements of § 16.95 (relating to medical records) have been satisfied **as described in the written agreement or as required under § 18.142(a)(5)(ii) (relating to written agreements)**.

[MEDICAL CARE FACILITIES] **HEALTH CARE FACILITIES** AND EMERGENCY MEDICAL SERVICES

§ 18.161. Physician assistant employed by **[medical]** **health** care facilities.

(a) A physician assistant may be employed by a **[medical]** **health** care facility, but shall comply with the requirements of the act and this subchapter.

(b) **[The physician assistant may not be responsible to more than three supervising physicians in a medical care facility]** **[Reserved]**.

(c) **[This subchapter does not require medical care facilities to employ physician assistants or to permit their utilization on their premises.]** Physician assistants are permitted to provide medical services to the **[hospitalized]** patients of their supervising physicians if the **[medical]** **health** care facility permits it.

(d) Physician assistants granted privileges by, or practicing in, a **[medical]** **health** care facility shall conform to policies and requirements delineated by the facility.

(e) In health care facilities, the attending physician of record for a patient shall act as the primary supervising physician for the physician assistant while the patient is under the care of the attending physician.

§ 18.162. Emergency medical services.

(a) A physician assistant may only provide medical service in an emergency medical care setting if the physician assistant has training in emergency medicine**[, functions within the purview of the physician assistant's]** **and is provided for in the** written agreement **[and is under the supervision of the supervising physician]**.

(b) A physician assistant licensed in this Commonwealth or licensed or authorized to practice in any other state who is responding to a need for medical care created by a declared state of emergency or a state or local disaster (not to be defined as an emergency situation which occurs in the place of one's employment) may render care consistent with relevant standards of care.

IDENTIFICATION AND NOTICE RESPONSIBILITIES

§ 18.171. Physician assistant identification.

(a) A physician assistant may not render medical services to a patient until the patient or the patient's legal guardian has been informed that:

(1) The physician assistant is not a physician.

(2) **[The physician assistant may perform the service required as the agent of the physician and only as directed by the supervising physician]** **[Reserved]**.

(3) The patient has the right to be treated by the physician if the patient desires.

(b) It is the supervising physician's responsibility to be alert to patient complaints concerning the type or quality of services provided by the physician assistant.

(c) In the supervising physician's office **[and satellite locations]**, a notice plainly visible to patients shall be posted in a prominent place explaining that a "physician assistant" is authorized to assist a physician in the provision of medical care and services. The supervising physician shall display the registration to supervise in the office. The physician assistant's license shall be prominently displayed at any location at which the physician assistant provides services. Duplicate licenses may be obtained from the Board if required.

(d) The physician assistant shall wear an identification tag which uses the term "Physician Assistant" in easily readable type. The tag shall be conspicuously worn.

§ 18.172. Notification of changes in employment.

(a) The physician assistant is required to notify the Board**[, in writing,]** of a change in or termination of employment or a change in mailing address within 15 days. Failure to notify the Board**[, in writing,]** of a change in mailing address may result in failure to receive pertinent material distributed by the Board. The physician assistant shall provide the Board with the new address of residence, address of employment and name of **the** registered **primary** supervising physician.

(b) The **primary** supervising physician is required to notify the Board**[, in writing,]** of a change or termination of supervision of a physician assistant within 15 days.

(c) Failure to notify the Board of changes in employment or a termination in the physician/physician assistant relationship is a basis for disciplinary action against the **primary supervising** physician's license, the **primary** supervising physician's registration and the physician assistant's license.

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STATE BOARD OF MASSAGE THERAPY

[49 PA. CODE CH. 20]

Practice of Massage Therapy in Cosmetology or Esthetician Salons

The State Board of Massage Therapy (Massage Board) proposes to add §§ 20.61 and 20.62 (relating to definitions; and practice of massage therapy in cosmetology or esthetician salons) to read as set forth in Annex A.

Effective Date

This proposed rulemaking will be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

The act of September 24, 2014 (P.L. 2476, No. 136) amended the act of May 3, 1933 (P.L. 242, No. 86) (63 P.S. §§ 507—527), referred to as the Cosmetology Law by adding section 9.3 (63 P.S. § 515.3) allowing for the practice of massage therapy within the licensed square footage of a cosmetology or esthetician salon. Section 9.3(d) of the Cosmetology Law requires the State Board of Cosmetology (Cosmetology Board) and the Massage Board to jointly promulgate final regulations to carry out the provisions of section 9.3.

Background and Purpose

Section 9.3(a) of the Cosmetology Law permits an individual licensed under the Massage Therapy Law (act) (63 P.S. §§ 627.1—627.50) to practice massage therapy within the approved premises of a licensed cosmetology salon or a licensed esthetician salon if: (1) the massage therapy licensee is the owner of or employed by the salon and is not an independent contractor; (2) the massage therapist practices in accordance with the Cosmetology Law and the act; (3) the salon owner provides an appropriate level of privacy for clients. Section 9.3(a)(3)(i) and (ii) of the Cosmetology Law provides that no physical barrier is required when the massage therapist is performing services that a cosmetologist or esthetician could perform; however, should the services exceed those within the scope of cosmetology or esthetics a separate room with permanent walls and doors must be utilized. Section 9.3(a)(3)(iii) of the Cosmetology Law further provides that an esthetician may provide services in the separate room that is designated for massage therapy services, so long as the cosmetologist or esthetician and massage therapist are not providing services concurrently.

Under section 9.3(b) of the Cosmetology Law, a licensee is subject to inspection by the Cosmetology Board and the Massage Board. A licensee who violates the Cosmetology Law or the act is subject to discipline by the licensee's applicable licensing board. Section 9.3 of the Cosmetology Law was effective on November 24, 2014, and immediately permitted the practice of massage therapy within the licensed square footage of a cosmetology or esthetician salon. The purpose of the Massage Board's joint regulations with the Cosmetology Board is to clarify standards for the practice of massage therapy in cosmetology or esthetician salons.

Prior to the enactment of section 9.3 of the Cosmetology Law, a patron wishing to receive services from a massage therapist and an esthetician would have to move from one room (a room considered not to be within the licensed square footage of the salon) to another room (a room considered to be within the licensed square footage of the salon) for each of the requested services. This process was found to be averse to the relaxing environment facilities were attempting to provide for their clients. The purpose of section 9.3 of the Cosmetology Law is to allow for the practice of massage therapy within the licensed square footage of a cosmetology or esthetician salon. With the enactment of section 9.3(a)(3)(iii) of the Cosmetology Law, a patron can receive massage therapy and esthetic services all within one room. This proposed rulemaking sets forth the requirements for practicing massage therapy in a cosmetology or esthetician salon. The Cosmetology Board is similarly proposing to update its regulations to clarify the standards for massage therapy in its salons and to ensure consistency between the standards of both boards.

Description of the Proposed Amendments

The Massage Board proposes to add §§ 20.61 and 20.62 to set forth the standards for practicing massage therapy within a cosmetology or esthetician salon under section 9.3 of the Cosmetology Law.

Section 20.61 defines the terms "Cosmetology Law" and "salon," in relation to § 20.62. Section 20.62(a) sets forth the conditions that must be met to practice massage therapy within a cosmetology or esthetician salon, as required by section 9.3(a) of the Cosmetology Law. Subsection (a)(1) states that a massage therapist must be the

owner of the salon or an employee, not an independent contractor, as required by section 9.3(a)(1) of the Cosmetology Law.

Subsection (a)(2) requires that a salon owner provide an appropriate level of privacy for clients. Subsection (a)(2)(i)(A) and (B) clarifies that when a massage therapist is practicing in a separate massage therapy room of the salon, or in the areas of the salon used for cosmetology or esthetics, the massage therapist is practicing in the licensed square footage of the salon. Furthermore, subsection (a)(2)(i)(A) and (B) provides clarification as to what services require a separate massage therapy room by specifically listing the massage services that do not require the use of physical barriers. The Massage Board's proposed rulemaking reflects section 9.3(a)(3)(i) of the Cosmetology Law which provides that no physical barriers separating the areas used for massage therapy from the areas used for cosmetology or esthetics, as defined in section 1 of the Cosmetology Law (63 P.S. § 507), shall be required when a massage therapist performs massage services that a cosmetologist or esthetician is authorized to perform. Subsection (a)(2)(ii) clarifies that when a massage therapist is practicing in a separate massage therapy room of the salon, the massage therapist is practicing in the licensed square footage of the salon. Furthermore, subsection (a)(2)(ii) requires that a salon owner provide separate massage therapy rooms with permanent walls and doors to ensure privacy for clients receiving massage services from a massage therapist when the services are beyond the practice of cosmetology or esthetics, as required by section 9.3(a)(3)(i) of the Cosmetology Law.

Subsection (a)(2)(ii)(A)—(C) sets forth standards for separate massage therapy rooms. Subsection (a)(2)(ii)(A) requires that massage therapy rooms be a minimum of 120 square feet in size, which is a generally accepted industry standard based on the size of a standard massage table (73 inches × 30 inches) and allows room for a massage therapist to safely maneuver around it (approximately 3 to 4 feet on each side of the table). The Massage Board feels this requirement is necessary because § 7.76(a) (relating to floor space) of the Cosmetology Board's regulations provide "[a]n additional area of at least 60 square feet is required for each additional licensee in the salon." Accordingly, it is likely that salon owners unfamiliar with the practice of massage therapy will expect massage therapists to perform massage therapy in rooms designed for the practice of cosmetology or esthetician services (that is, rooms with little more than 60 square feet in size). A 60-square-foot room does not provide a massage therapist sufficient room to safely maneuver around a standard-sized massage table and keep the necessary supplies at hand. Additionally, massage therapy clients are often asked to position their arms at a 90-degree angle to the body, and the massage therapist must safely maneuver around the client's outstretched arms. Moreover, clients are typically expected to use the massage therapy room to disrobe and transition to the massage therapy table. Accordingly, massage therapy rooms frequently include a chair, as well as clothing storage such as clothing hooks or a shelving unit. It would be a safety risk to expect a massage therapist to safely perform massage therapy multiple times a day in any room smaller than 120 square feet. Accordingly, after discussing this issue at public board meetings, and reaching an agreement with the Cosmetology Board, the Massage Board is of the opinion that a minimum room size of 120 square feet is appropriate.

Subsection (a)(2)(ii)(B) discusses the storage of linens or other supplies used by a massage therapist in a salon. Cosmetology Board regulations in §§ 7.71a—7.71c (relating to equipment and supplies for an esthetician salon; equipment and supplies for a nail technology salon; and equipment and supplies for a natural hair braiding salon) set minimum standards for equipment and supplies, detailing what must be available to licensees/certificate holders and where linens must be stored. Being that massage therapists working in salons will be required to adhere to both Massage Board regulations and Cosmetology Board regulations, the Massage Board believes that it must clarify where massage therapists may store linens and other supplies. Accordingly, subsection (a)(2)(ii)(B) allows the massage therapist to store linens or other supplies used for massage therapy in the massage therapy room or in the salon in a space designated by the salon owner.

Subsection (a)(2)(ii)(C) states esthetician services may be provided in the massage therapy room, so long as esthetician services were not provided concurrent to the massage therapy services, as required by section 9.3(a)(3)(iii) of the Cosmetology Law.

Subsection (b) requires a massage therapist practicing massage therapy within the approved premises of a salon to practice in accordance with the Massage Board's regulations, the act and the Cosmetology Law, as required by section 9.3(a)(2) of the Cosmetology Law.

Subsection (c) states that a massage therapist practicing in accordance with section 9.3 of the Cosmetology Law would be subject to inspection by both the Massage Board and Cosmetology Board, as required by section 9.3(b) of the Cosmetology Law.

Subsection (d) states that a massage therapist practicing in a salon, who violates the Cosmetology Law or the Massage Therapy Law, is subject to discipline by the Massage Board, as required by section 9.3(c) of the Cosmetology Law.

Fiscal Impact and Paperwork Requirements

There will be no unnecessary negative fiscal impact on licensees or the Massage Board. Section 9.3 of the Cosmetology Law permits the practice of massage therapy within the licensed square footage of a cosmetology or esthetician salon as of November 24, 2014. The Massage Board does not track how many massage therapists work in salons. Furthermore, the Massage Board does not track how many massage therapists may be working in rooms smaller than required in this proposed rulemaking. However, it is unlikely that any significant number of massage therapists have been practicing in rooms smaller than 120 square feet because the practice of massage therapy in a room smaller than 120 square feet would be difficult and potentially dangerous. Furthermore, 120 square feet is a generally accepted minimum industry standard based on the size of a standard massage table (73 inches × 30 inches) and allowing room for a massage therapist to safely maneuver around it (approximately 3 to 4 feet on each side of the table). However, the small number of massage therapists who may be currently working in rooms smaller than 120 square feet will have to comply with the proposed regulation. For the reasons explained in this preamble, it is in the public interest to require that massage therapy be performed in a room large enough to accommodate all that is required.

Sunset Date

The Massage Board continuously monitors the effectiveness of its regulations on a fiscal year and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on December 4, 2023, the Massage Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the chairperson of the Consumer Protection and Professional Licensure Committee of the Senate and the chairperson of the Professional Licensure Committee of the House of Representatives. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commissioner, the General Assembly and the Governor.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to the Regulatory Counsel, Department of State, P.O. Box 69523, Harrisburg, PA 17106-9523 or RA-STRegulatoryCounsel@pa.gov, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments should be identified as pertaining to rulemaking 16A-726 (massage therapy in cosmetology or esthetician salons).

NANCY M. PORAMBO, LMT,
Chairperson

Fiscal Note: 16A-726. No fiscal impact; recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 20. STATE BOARD OF MASSAGE THERAPY

PRACTICE OF MASSAGE THERAPY IN COSMETOLOGY OR ESTHETICIAN SALONS

(*Editor's Note*: Sections 20.61 and 20.62 are proposed to be added and are printed in regular type to enhance readability.)

§ 20.61. Definitions.

The following words and terms, when used in this section and § 20.62 (relating to practice of massage therapy in cosmetology or esthetician salons), have the following meanings, unless the context clearly indicates otherwise:

Cosmetology Law—The act of May 3, 1933 (P.L. 242, No. 86) (63 P.S. §§ 507—527), referred to as the Cosmetology Law.

Salon—A cosmetology salon or esthetician salon licensed by the State Board of Cosmetology in accordance with the Cosmetology Law.

§ 20.62. Practice of massage therapy in cosmetology or esthetician salons.

(a) A massage therapist licensed under the act is permitted to practice massage therapy within the approved premises of a salon if all of the following conditions are met:

(1) The massage therapist is the owner of or employed by the salon and is not an independent contractor.

(2) The salon owner provides an appropriate level of privacy for clients in accordance with all of the following:

(i) *Massage therapy services within the scope of practice of the Cosmetology Law.* When a massage therapist is practicing in a separate massage therapy room of the salon, or in the areas of the salon used for cosmetology or esthetics, the massage therapist is practicing in the licensed square footage of the salon. Physical barriers separating the areas used for massage therapy services from the areas used for cosmetology or esthetics are not required when a massage therapist provides massage therapy services that are within the scope of practice of cosmetology as defined in § 7.1 (relating to definitions) as follows:

(A) Massage therapy services of the scalp, face, arms or hands, or the upper part of the body.

(B) Massage therapy services of the feet or the lower legs of an individual up to the individual's knee.

(ii) *Massage therapy services beyond the scope of practice of the Cosmetology Law.* When a massage therapist is practicing in a separate massage therapy room of the salon, the massage therapist is practicing in the licensed square footage of the salon. A salon owner shall provide separate massage therapy rooms with permanent walls and doors to ensure privacy for clients receiving massage therapy services from a massage therapist when the massage therapy services are beyond the scope of practice of cosmetology or esthetics as provided in § 7.1. The following apply:

(A) The size of the separate massage therapy room must be a minimum of 120 square feet.

(B) The massage therapist may store linens or other supplies in the separate room provided or in the salon in a space designated by the salon owner.

(C) Esthetician services may be provided to a client in the same room where the client receives massage therapy, provided these services are not performed concurrently.

(b) A massage therapist providing massage therapy services within the approved premises of a salon shall practice in accordance with this chapter, the act and the Cosmetology Law.

(c) A massage therapist providing massage therapy services within the approved premises of a salon is subject to inspection by the State Board of Cosmetology and the board.

(d) A massage therapist providing massage therapy services within the approved premises of a salon who violates this section, the act or the Cosmetology Law is subject to discipline by the board.

[Pa.B. Doc. No. 23-1755. Filed for public inspection December 15, 2023, 9:00 a.m.]