

# PROPOSED RULEMAKING

## DEPARTMENT OF HUMAN SERVICES

[ 55 PA. CODE CHS. 20, 3041, 3270, 3280 AND  
3290 ]

### Child Care Facilities

The Department of Human Services (Department) under the authority of Articles IX and X of the Human Services Code (62 P.S. §§ 901—922 and 1001—1088) proposes to amend Chapters 20, 3041, 3270, 3280 and 3290 to read as set forth in Annex A.

#### *Purpose*

The child care facility regulations under 55 Pa. Code Chapters 3270, 3280 and 3290 (relating to child day care centers; group child day care homes; and family child day care homes) provide standards to aid in protecting the health, safety and rights of families and to reduce risks to children in child care centers, group child care homes and family child care homes. The regulations identify the minimum level of compliance necessary to obtain the Department's certificate of compliance, which constitutes licensure or approval under 55 Pa. Code Chapter 20 (relating to licensure or approval of facilities and agencies) to operate a child care center, a group child care home or a family child care home. For the purpose of this document, a child care center, a group child care home or a family child care home provider which has a certificate of compliance shall be described as "certified." The process by which a child care provider becomes and remains certified is called "certification."

This proposed rulemaking is needed to address the new requirements in the Child Care and Development Block Grant Act of 1990 (CCDBG) (42 U.S.C.A. §§ 9857—9858r, as reauthorized by Pub.L. No. 113-186), which was enacted on November 19, 2014. The CCDBG annually provides more than \$197 million in funding to support child care services in the Commonwealth. The CCDBG has been in effect since 1996. When the original CCDBG was authorized in 1996, it included the first uniform standards for child care in the United States. The CCDBG provides funding for states to help low-income families by making funds available to child care providers that serve these families, establishes baseline health and safety protections for child care providers that receive the funds, and requires states to use a portion of the funds to improve the quality of child care services.

The Department's current regulations under 55 Pa. Code Chapters 3270, 3280 and 3290 include the baseline health and safety protections that were in the original CCDBG. The Department proposes to apply the current CCDBG health and safety requirements to all child care providers, not just those child care providers that receive CCDBG funds. All children in this Commonwealth who receive care from certified child care providers should be afforded the same health and safety protections. These new CCDBG requirements are included in the following description.

In addition to making changes to the regulations as required by the CCDBG, the Department is proposing other changes to better protect the health and safety of children in child care settings.

#### *New CCDBG Requirements*

To comply with the CCDBG requirements, the Department is proposing regulatory changes in the areas of: (1) annual unannounced inspections; (2) certification of family child care homes; (3) announced pre-certification inspections; (4) professional development; and (5) emergency plans.

#### *Annual Unannounced Inspections*

The Department is proposing changes to 55 Pa. Code Chapters 3270, 3280 and 3290 so that all certified child care providers meet the requirements of the CCDBG (42 U.S.C.A. § 9858c(c)(2)(K)(i)(II)). The Department will conduct an annual unannounced inspection for all certified child care providers. The purpose of the inspection is to determine compliance with the requirements of 55 Pa. Code Chapters 3270, 3280 and 3290.

The annual unannounced inspection is required by the CCDBG (42 U.S.C.A. § 9858c(c)(2)(K)(i)(II)(bb)). The inspection will also provide an opportunity for the Department to offer technical assistance on how to meet the regulatory requirements and provide quality child care services. The inspection will also inform the child care providers of the benefits of Keystone STARS, the Commonwealth's quality improvement program.

#### *Certification of Family Child Care Homes to Meet CCDBG Requirements*

To meet the new requirements of the CCDBG, family child care homes must follow the certification process. Prior to December 28, 2015, when Act 2015-92 took effect, family child care homes were registered, not certified, under Article X(c) of the Human Services Code. Registered family child care homes were not regularly inspected, but instead self-certified compliance with regulations, and received 2-year registration certificates. Act 2015-92 repealed Article X(c) of the Human Services Code. Family child care homes are now certified like other child care providers. Therefore, the Department is eliminating the previous differences in regulation between family child care homes and other certified child care facilities to conform to Act 2015-92.

In accordance with Act 2015-92, the Department is proposing changes to Chapter 3290 to require all family child care homes be certified and receive an annual certificate of compliance instead of a biennial certificate of registration through a self-certification process. Requiring family child care homes to become certified will provide the following benefits: (1) equity for the health and safety of children in all child care settings; (2) increased awareness among parents, community members and stakeholders that certified family child care home settings offer a viable option for child care needs; and (3) increased access for family child care homes to the Department's quality initiatives to prepare children to be lifetime learners.

The term "certificate of registration" is removed in all areas of this chapter and replaced with the term "certificate of compliance." In addition, the reference to the "registration" of family child care homes is removed from §§ 20.2 and 3041.13(a)(3) (relating to applicability; and relating to parent choice).

#### *Announced Precertification Inspections*

An agent of the Department will conduct an onsite announced inspection at all locations that seek to operate a child care center, group child care home or a family

child care home before issuing an initial certificate of compliance. As required by the CCDBG (42 U.S.C.A. § 9858c(c)(2)(K)(i)(II)), these precertification inspections will: (1) ensure that the applicant for a certificate of compliance understands the responsibilities involved to meet the requirements under 55 Pa. Code Chapters 3270, 3280 or 3290; (2) inform the applicant of any potential health and safety issues that need to be corrected prior to becoming certified; (3) alert the applicant of the technical assistance and quality initiatives that are available; and (4) alert the applicant of any information that the applicant must report to the Department.

#### *Professional Development*

Under the CCDBG (42 U.S.C.A. § 9858c(c)(2)(I)), all applicants who wish to operate as a child care provider in this Commonwealth must complete a one-time only, precertification professional development in ten health and safety areas:

- (1) Prevention and control of infectious diseases.
- (2) Prevention of Sudden Infant Death Syndrome and use of safe sleep practices.
- (3) Administration of medication.
- (4) Prevention of and response to emergencies due to food and allergic reactions.
- (5) Building and physical premises safety, including identification of protection from hazards that can cause bodily injury such as electrical hazards, bodies of water and vehicular traffic.
- (6) Prevention of shaken baby syndrome and abusive head trauma.
- (7) Emergency preparedness and response planning.
- (8) Handling and storage of hazardous materials.
- (9) Precautions when transporting children.
- (10) Pediatric first aid and pediatric cardiopulmonary resuscitation.

All staff persons currently employed in a certified child care center, group child care home or family child care home shall also complete the same one-time only professional development. The Department is making the professional development available for online and face-to-face sessions. The professional development is critical to ensure that child care providers and staff are aware of life saving techniques for infants, prevention of diseases, administration of medication and building safety. All legal entities, who apply to operate as a child care provider, shall show documentation of the completion of the health and safety topics professional development when submitting their applications to the Department. As defined in § 20.4 (relating to definitions), a "legal entity" is "a person, society, corporation, governing authority, or partnership legally responsible for the administration and operation of a facility or agency." When the applicant for a certificate of compliance is a person, the named individual must complete the pre-certification professional development and present documentation of completion. When the applicant is a corporation, partnership or other type of legal entity, the designated representative must show documentation of completion of the required precertification professional development. Any applicant that can document completion of the precertification professional development within the 2 years prior to the date of publication of the final-form rulemaking, will be considered as having satisfied the requirement.

There will be a one-time only implementation period of 180 days from the date of the publication of the final-form rulemaking for current child care staff who have not already met the professional development requirements. Any professional development sessions that have been completed within 2 years prior to the date of the publication of the final-form rulemaking will satisfy this requirement. After the implementation period, any child care staff hired by certified child care providers who have not completed the required professional development, will have 90 days after the date of hire to complete the professional development.

#### *Emergency Plan*

To meet requirements of the CCDBG (42 U.S.C.A. § 9858c(c)(2)(I)(i)(VII) and (U)), the Department is proposing to clarify the requirements for the emergency plans which all child care providers must establish in conjunction with local emergency units at the local municipality and county level. This requirement specifies that a child care provider's emergency plan shall include provisions that all child care staff are aware of the components of the plan. This proposed rulemaking would require that the child care provider hold an annual practice drill to review the requirements of the emergency plan. Also, this proposed rulemaking specifies the provisions that must be included in the child care provider's emergency plan for infants, toddlers and children who have disabilities or chronic medical conditions.

Under the current regulations, the child care provider must furnish a copy of the plan only to the county emergency management agency. However, the Commonwealth now follows the principles of the National Incident Management System and the Incident Command System as specified by the United States Department of Homeland Security and as directed under the Governor's Proclamation on December 20, 2004. It also follows a format similar to the National Response Framework (NRF). Recognizing that the majority of emergencies and disasters are local and are handled locally by first responders and emergency managers, the Department is proposing to follow the recommendations of the Pennsylvania Emergency Management Agency and the NRF to file the child care emergency plan with both the local municipality and the county. Local jurisdictions have the ability to perform response and recovery operations for most disasters or emergencies, but a disaster or emergency may be of such magnitude that response and recovery requirements exceed local resources and rely upon assistance from the county level.

#### *Additional Proposed Changes*

In addition to the proposed changes for compliance with the CCDBG, the Department proposes other regulatory changes for all child care providers in the areas of: (1) increased annual professional development hours; and (2) certification process.

#### *Increased Annual Professional Development Hours*

The Department is proposing to increase the number of annual professional development hours required for all child care staff persons in certified child care providers from 6 hours to 12 hours. The purpose is to update and strengthen the minimum standards for the child care staff professional development in all child care providers.

Since 1992, when the 6-hour annual professional development requirement was implemented, and 2008, when these regulations were last amended, the industry standards in health and safety have evolved. Nationwide, additional emphasis has been placed on increased profes-

sional development for child care staff as a means of better ensuring health and safety and the improvement of quality for child care providers.

This proposed requirement for the 12 hours of annual professional development for all child care staff is in addition to the one-time only professional development in ten health and safety topics that are required by the CCDBG. The one-time only professional development required by the CCDBG can count towards the 12 hours of annual professional development for a new child care staff person in the first year of employment.

Currently, child care staff working in child care providers that participate in the Keystone STARS quality initiative have a minimum of 12 hours of professional development annually. Increasing the number of professional development hours to 12 hours annually for all child care staff is consistent with the Department's commitment to improving quality. Further, aligning the professional development requirements for all certified providers with Keystone STARS professional development requirements better prepares the child care staff and the child care providers to adapt to other quality initiatives, including Pre-K Counts and Early Head Start.

#### *Certification Process*

The Department proposes to update the certification process for an applicant that wishes to open as a new child care provider to include the following: (1) attend an orientation training session offered by the Department; (2) submit a complete application to the Department to receive a certificate of compliance; (3) participate in an announced precertification inspection by an agent of the Department; (4) submit child abuse clearances as required by the Pennsylvania Child Protective Services Law (CPSL) (23 Pa.C.S. §§ 6344—6344.3); and (5) complete precertification professional development on ten health and safety topics as identified by the Department. Once the Department issues a certificate of compliance, the child care provider will be subject to an annual unannounced inspection. For current registered family child care homes to receive a certificate of compliance, the Department proposes to update the certification process as follows: (1) submit an application to the Department to receive a certificate of compliance; (2) complete precertification professional development on ten health and safety topics as identified by the Department or demonstrate that the operator previously completed the professional development within 2 years prior to the date of publication of the final-form rulemaking; (3) participate in an announced precertification inspection by a Department representative; (4) submit child abuse clearances required by the CPSL; and (5) be subject to an unannounced annual inspection.

To more clearly describe the details of this proposed rulemaking as required by the changes of the CCDBG and the Department's intended changes as a proposed rulemaking, the following section describes specific regulatory provisions being amended in 55 Pa. Code Chapters 3270, 3280 and 3290.

#### *Specific Regulation Sections*

The specific regulatory changes to Chapters 3270, 3280 and 3290 included in this proposed rulemaking are set forth as follows.

1. Chapters 3270, 3280 and 3290 (removing “day” from all sections of the regulations)

The Department is amending the name of the setting in which care is offered by removing the word “day” from the

description. The common usage is now “child care” rather than “day care.” This change is also consistent with Act 2015-92. The setting or location will be referred to as a child care center, a group child care home and a family child care home. The term “day” will be removed in all sections of these chapters.

2. § 3290.3 (relating to applicability)

Under § 3290.3(c), the Department is also deleting the reference to Article X(c) of the Human Services Code and replacing it with Article X to conform with changes under Act 2015-92.

Under § 3290.3(d), the Department is adding the requirement that an applicant must apply for a certificate of compliance in order to open or continue to operate a family child care home, as is currently required for child care centers and group child care homes.

3. §§ 3270.4, 3280.4 and 3290.4 (relating to definitions)

The definition of “certificate of compliance” relating to child care centers and group child care homes is amended to update the statutory citation to include a new section that has been added to Article X of the Human Services Code.

The definition of “parent” is amended to include foster mother or foster father. Although the foster mother or father is not the legal guardian of the child, he or she makes decisions about placing a child in a facility for child care services. This change is consistent with Act 2015-75, the “Activities and Experiences for Children in Out-of-Home Placement Act,” under which children in foster care should have the same opportunities to participate in age-appropriate every day activities as all other children, without unnecessary involvement of courts or child welfare agencies. See 11 P.S. §§ 2641—2648. If there is a disagreement between the foster parent and the legal guardian, the legal guardian is the parent for the purposes of this definition.

The definition of “volunteer” is amended to include a student 14 years of age or older but under 16 years of age who is enrolled in a Child Care and Support Services Management Program approved by the Pennsylvania Department of Education (PDE). Allowing these students to work as volunteers affords them the opportunity to gain experience in early childhood education and be able to enter the workforce at a higher level position when they turn 18 years of age. Usually, a person who turns 18 years of age can qualify to work at a child care center as an aide; however, persons who have volunteered in a PDE-approved program may have gained the experience to qualify as an assistant group supervisor.

4. § 3290.4

The definition of “applicant” is being revised to remove the reference to the registration process and reference the certification process. The definition of a “certificate of registration” is being deleted as the registration process has been eliminated and replaced with the certification process applicable to other child care facilities.

Further, the definition of “certificate of compliance” is added because that is the document that will be issued to family child care home providers.

The definition of “operator” is being revised to remove the reference to caregiver. The definition is also being revised to clarify that the operator is either the legal entity or a staff person designated by the legal entity, in order to limit the maximum number of unrelated children

in a family child care home as described in § 3290.51 (relating to maximum number of children).

The definition of “random sample” is being deleted because it was required for the prior registration process and is not required for the current certification process. The definition of “registration law” is also deleted.

The definition of “regulatory ratio” has been added to clarify the term as it is used in the definition of staff person.

The definition of “relative” is amended to reflect the definition of relative at 62 P.S. § 1001.

5. §§ 3270.11 and 3280.11 (relating to application for and issuance of a certificate of compliance)

Under §§ 3270.11(b) and 3280.11(b), the Department is proposing that an individual who attends an orientation training prior to applying for a certificate of compliance to operate a child care center or a group child care home cannot count this training towards the annual clock hours of training needed under §§ 3270.31 and 3280.31 (relating to age and training).

Under §§ 3270.11(c) and 3280.11(c), the Department is proposing that, prior to the issuance of a certificate of compliance, the applicant must complete professional development in ten health and safety topics as prescribed by the CCDBG (42 U.S.C.A. § 9858c(c)(2)(I)).

Under §§ 3270.11(d) and 3280.11(d), the Department is proposing that documentation of the completion of the professional development in §§ 3270.11(c) and 3280.11(c) must be included with the application for a certificate of compliance.

Under § 3280.11(e), the Department is clarifying the requirements for adhering to the CPSL. The Department is adding clearance requirements for each individual 18 years of age and older who lives in the household at least 30 days in a calendar year.

Under §§ 3270.11(g) and 3280.11(h), the Department is proposing that it will annually conduct at least one onsite unannounced inspection.

Under §§ 3270.11(j) and 3280.11(k), the Department is clarifying that a child care provider whose certificate of compliance is current as of the date of the final-form rulemaking will not be inspected under the final-form rulemaking until the current certificate of compliance is to be renewed or when the Department conducts an inspection in response to a regulatory complaint.

6. § 3290.11 (relating to application for and issuance of a certificate of registration)

The requirements in this section are being amended and restructured to reflect the sequence of the requirements that an applicant must meet to complete an application for a certificate of compliance for a family child care home. These changes will make the process consistent with the requirements for group child care homes and child care centers.

Under § 3290.11(a), the Department is clarifying that an individual who wishes to make an inquiry about the certification process for a family child care home should contact the appropriate regional office of the Department.

Under § 3290.11(b), the Department is proposing that an applicant who attends an orientation training prior to applying for a certificate of compliance to operate a family child care home cannot count this training towards the annual clock hours needed under § 3290.31(f) (relating to age and training).

Under § 3290.11(c), the Department is proposing that an applicant must obtain a certificate of compliance from the Department prior to operating a family child care home.

Under § 3290.11(d), the Department is clarifying that an applicant must submit an application for a certificate of compliance to operate a family child care home to the appropriate regional office on forms approved by the Department.

Under § 3290.11(e), the Department is proposing that, prior to the issuance of a certificate of compliance, the applicant shall complete professional development in ten health and safety topics as prescribed by the CCDBG (42 U.S.C.A. § 9858c(c)(2)(I)).

Under § 3290.11(f), the Department is proposing that documentation of the completion of the professional development in § 3290.11(e) be included with the application for a certificate of compliance.

Under § 3290.11(g), the Department is proposing that family child care homes that have a certificate of registration prior to the date of the final-form rulemaking regulations must complete the pre-certification professional development as prescribed in § 3290.11(e).

Under § 3290.11(h), the Department is clarifying the requirements for adhering to the CPSL. The Department is adding clearance requirements for each individual 18 years of age and older who lives in the household at least 30 days in a calendar year.

Under § 3290.11(i), the Department is adding a requirement as prescribed by CCDBG (42 U.S.C.A. § 9858c(c)(2)(K)(i)(II)(aa)) that prior to making a decision about the issuance of a certificate of compliance, the Department’s agent shall conduct an announced pre-certification inspection at the location where the family child care home will operate.

Under § 3290.11(j), the Department is proposing that the Department issue a certificate of compliance not to exceed 12 months from the date of issuance. The requirement for the 12-month certificate of compliance is the same for a group child care home and child care center under section 1009 of the Human Services Code (62 P.S. § 1009).

Under § 3290.11(k), the Department is proposing that it will annually conduct at least one onsite unannounced inspection of each family child care home, as required by the CCDBG (42 U.S.C.A. § 9858c(c)(2)(K)(i)(II)(bb)).

Under § 3290.11(l), the Department is proposing that a family child care home be subject to announced and unannounced inspections in accordance with § 3290.21 (relating to Departmental access).

Under § 3290.11(m), the Department is proposing that a family child care home be subject to inspections as follows: an announced precertification inspection as required by the CCDBG (42 U.S.C.A. § 9858c(c)(2)(K)(i)(II)(aa)); an unannounced inspection occurring not less than annually as required by the CCDBG (42 U.S.C.A. § 9858c(c)(2)(K)(i)(II)(bb)); and an unannounced inspection in response to a complaint that alleges regulatory non-compliance.

Under § 3290.11(n), the Department is proposing that a family child care home provider seeking to renew a certificate of compliance shall submit a correct, completed application and other required materials to the appropriate regional office of the Department prior to the expiration of the current certificate of compliance.

Under § 3290.11(o), the Department is proposing that the certificate of registration for a family child care home which is current as of the date this proposed rulemaking is published as final be effective until the current certificate of registration expires or the family child care home provider submits an application for and receives a certificate of compliance, whichever is sooner.

Under § 3290.11(p), the Department is proposing that any existing sanctions in statute and regulation that relate to a certificate of compliance, such as a provisional certificate of compliance, a revocation of a certificate of compliance or a refusal to renew a certificate of compliance, be extended to family child care home providers.

7. § 3290.12 (relating to negative sanctions)

The Department is removing this section because it is no longer needed. As stated previously, § 3290.11(p) provides that the requirements for negative sanctions are set forth at 62 P.S. § 1026 and 55 Pa. Code §§ 20.54 and 20.71 (relating to provisional certificate of compliance; and conditions for denial, nonrenewal or revocation) and apply to all certified child care providers.

8. § 3290.13(a) (relating to appeals)

The Department is replacing the reference to “registration” with “licensure,” which is now applicable to family child care homes. This is consistent with regulations for child care centers or group child care homes.

9. §§ 3270.19(b), 3280.18(b), and 3290.16(b) (relating to child abuse reporting)

The Department is clarifying that a child care staff person, volunteer or other adult who is employed by a child care provider who has reason to believe that a child is a victim of child abuse, shall make the report to the Child Abuse Hotline online or any other method as prescribed by the Department. The Child Abuse Hotline is (800) 932-0313. The web address is [www.keepkidssafe.pa.gov](http://www.keepkidssafe.pa.gov).

10. §§ 3270.24(d), 3280.23(d) (relating to departmental access) and 3290.21(d)

As required by the CCDBG (42 U.S.C.A. § 9858c(c)(2)(K)(i)(II)(bb)), the Department is adding a provision that annual inspections be unannounced. Beginning with the effective date of the rulemaking, a child care provider will not be notified in advance of the date of the annual inspection. Unannounced inspections will give a more accurate picture of the status of compliance with the regulations.

11. §§ 3270.24(e), 3280.23(e) and 3290.21(e)

As required by the CCDBG (42 U.S.C.A. § 9858c(c)(2)(K)(i)(II)(aa)), the Department is adding a provision that an announced inspection will be conducted prior to the issuance of the initial certificate of compliance.

12. §§ 3270.25(a), 3280.24(a) and 3290.22(b) (relating to availability of certificate of compliance and applicable regulations)

The Department is proposing that a child care provider give the parent of each enrolled child information on how to access the applicable regulatory chapter electronically.

13. §§ 3270.27(a)(5) and (6) and (f), 3280.26(a)(5) and (6) and (f), and 3290.24(a)(5), (d) and (g) (relating to emergency plan)

The Department is proposing that the required emergency plan include an additional element that provides specific accommodations for the evacuation of infants,

toddlers, children with disabilities and children with medical conditions. This is a requirement of the CCDBG (42 U.S.C.A. § 9858c(c)(2)(U)(iii)(I)).

The Department is also proposing that the child care provider conduct drills annually for the emergency plan and maintain documentation that the drills are conducted. This addition is a requirement of the CCDBG (42 U.S.C.A. § 9858c(c)(2)(U)(iii)(III)).

The Department is also proposing that the child care provider shall send a copy of the emergency plan and subsequent plan updates to the local municipality as well as the county emergency management agency.

14. § 3290.25 (relating to waivers)

The Department is proposing that family child care home providers be allowed to submit a request for a waiver from the regulations under §§ 3290.61—3290.78 (relating to physical site); equipment (§§ 3290.101—3290.107); and facility persons (§ 3290.31). The waivers may be considered because the circumstances and the physical sites of a family child care home can vary.

15. §§ 3270.31, 3280.31 and 3290.31 (relating to age and training)

Under § 3290.31(a)(2), the Department is proposing that any family child care home provider who does not have documentation of a high school diploma or general education development certificate upon application for a certificate of compliance be given until the second renewal for the certificate of compliance to obtain or produce the documentation.

Under § 3290.31(a)(3), the Department is proposing that the family child care home provider present acceptable photo identification to the Department’s agents at the time of the inspection. The Department is requiring proof to ensure that the individual who is present during the inspection is actually the person whose qualification documentation is on file.

Under §§ 3270.31(g), 3280.31(g) and 3290.31(h), the Department is proposing that documentation of the completion of the professional development as prescribed in §§ 3270.31(f), 3280.31(f) and 3290.31(g) be placed in the child care staff person’s file or maintained in a manner designated by the Department so that the documentation can be verified by agents of the Department.

16. §§ 3270.33(d), 3280.33(c) and 3290.32(d) (relating to general requirements for facility persons; and suitability of persons in the facility)

The Department is also amending the requirement for training in first aid and CPR to include the word “pediatric” to reflect the requirement of the CCDBG (42 U.S.C.A. § 9858c(c)(2)(I)(i)(X)). The Department is inserting the word pediatric to assure that the child care staff person is aware of the techniques in first aid and CPR that are specific to young children.

17. §§ 3270.34(c) and 3280.34(a) (relating to Director qualifications and responsibilities; and primary staff person qualifications and responsibilities)

Under §§ 3270.34(c) and 3280.34(a), the Department is proposing that the director or primary staff person in a group home, present acceptable photo identification to the Department’s agents when the Department is conducting an inspection. The Department has determined that these two supervisory positions equate to a person who is in charge of the child care provider. This change will assure

that the individual who is in charge is actually the person who the Department determined was qualified for the position.

18. § 3290.51 (relating to maximum number of children)

The Department is deleting the term “operator” and replacing it with “legal entity or staff person.” This will clarify that if the legal entity and a family child care home staff person both have their own children present in the family child care home at the same time, the related children of either the legal entity or the staff person, but not both, will be counted when determining maximum number of unrelated children.

19. § 3290.113(f) (relating to supervision of children)

The Department is proposing that family child care home providers have monitors with a camera or other video or sight technology to use when the only child care staff person present is not able to directly supervise the children during a restroom break, kitchen activities or any other situation in which the children cannot be seen, heard, directed and assessed. Appropriate supervision is critical to the health and safety of children. When there is only one person present to supervise children, the Department recognizes that there are times when that person cannot properly supervise the children and needs a device to assist with supervision.

20. § 3290.113(g)

Additionally, the Department is proposing that when a family child care home provider operates service for 24 hours a day, another child care staff person is required. No family child care staff person may work for a period of more than 16 hours in a 24-hour time period. This requirement is included because the Department recognizes that many family child care home providers offer services during nontraditional hours, such as nights and weekends. Other States, such as New Jersey, have placed similar limits on work hours to ensure that the family child care staff person is not caring for children more than 16 consecutive hours within a 24-hour period.

To ensure the safety of the children in care, the family child care home staff person must maintain an adequate level of alertness and must be awake in order to properly supervise and care for children.

21. §§ 3270.131(a), 3280.131(a) and 3290.131(a) (relating to health information)

The Department is proposing to shorten the time frame to submit an initial health report from 60 days to 30 days. This change is needed to allow the child care provider more opportunity to determine if the child is healthy enough to attend. The health report also shows whether the child has health conditions or diseases that would prohibit attendance or be contagious.

22. §§ 3270.166(7), 3280.166(7) and 3290.166(7) (relating to meals for infants)

The Department is proposing to add human milk as milk that cannot be heated in a microwave. See American Academy of Pediatrics, American Public Health Association, National Resource Center for Health and Safety in Child Care and Early Education, *Caring for our Children: National Health and Safety Performance Standards: Guidelines for Early Care and Education Programs* (3rd ed. 2011), Standard 4.3.1.3, available at <http://www.cfoc.nrckids.org/StandardView/4.3.1.3>. This is consistent with recognized national health and safety standards. The requirement is to use warm running water to heat the bottle instead.

### *Obsolete Provisions*

The Department is deleting the following sections because they are obsolete.

- § 3290.211 (relating to approval by the Department of Labor and Industry).

- §§ 3270.232 and 3280.212 (relating to indoor and outdoor space and capacity; and indoor and outdoor capacity).

- § 3280.214 (relating to insurance).

- §§ 3270.233, 3280.215 and 3290.212 (relating to play surfaces).

### *Affected Individuals and Organizations*

Children are directly impacted by this proposed rulemaking. There are an estimated 400,000 children receiving child care at regulated child care providers in this Commonwealth who will benefit from the increased health and safety requirements. The minimum health and safety standards in Chapters 3270, 3280 and 3290 protect children who attend 4,737 child care centers, 753 group homes and 2,474 family child care homes in this Commonwealth.

The current certified child care providers and certified or registered family child care providers are also impacted as they will be required to participate in additional professional development and be subject to annual unannounced inspections. The current certified or registered family child care providers may have to obtain monitors with cameras or other technologies. The applicants for a certificate of compliance, after the effective date of the final-form rulemaking will be subject to an announced inspection from the Department’s representatives as well as precertification professional development prior to the Department issuing a certificate of compliance. The child care providers need additional professional development as prescribed by the CCDBG (42 U.S.C.A. § 9858c(c)(2)(G)) and an additional 6 hours of professional development on an annual basis.

Parents also are impacted by this proposed rulemaking. Parents want their children to be safe in child care. At the same time, the cost of child care is of concern to parents and directly impacts the choices that parents make regarding child care. This proposed rulemaking may result in increased costs to parents due to the increased costs incurred by child care providers for professional development.

### *Accomplishments and Benefits*

The child care service regulations were last amended in September 2008. Since 2008, many changes have occurred that affect the regulations and operation of a child care provider. The CCDBG has imposed requirements that states provide specific professional development and conduct annual unannounced inspections for all regulated child care facilities (42 U.S.C.A. § 9858c(c)(2)(G), (I) and (K)(i)(II)(bb)). The proposed regulatory requirements comply with the requirements under the CCDBG.

In addition, the Department has included many quality initiatives for child care providers to help them improve the quality of service delivery to children. The quality initiatives include increased professional development requirements for child care staff. By proposing an increase to the annual number of hours of professional development that all child care staff persons shall complete, children in all child care providers are receiving care that better assures their health and safety while improving quality.

*Fiscal Impact**Pre-Certification Professional Development*

There will be costs associated for current child care providers because of the precertification professional development that is required by the CCDBG (42 U.S.C.A. § 9858c(c)(2)(G), (I)). The free professional development will be available online and on a face-to-face basis. However, the operator may have to schedule professional development during operating hours and may incur overtime costs or substitute staff costs.

*Increased Annual Professional Development Hours*

There will be an ongoing cost for all current child care staff who will need an additional 6 hours of professional development annually in the specific areas as described in §§ 3270.31, 3280.31 and 3290.31. The current child care providers may incur costs for the training, substitutes and overtime.

*Monitors and other technologies*

The proposed amendments regarding a monitor with video capability will be approximately \$125 per device for family child care homes. The Department determines that this cost is a necessity as it is needed to ensure that the family child care home provider meets the supervision requirements at all times when there are children in care. When the family child care home provider is alone, there needs to be a safeguard to assure that children are properly supervised. The other technologies vary in cost depending on the type of device chosen by the family child care provider. The device must meet the requirements of the supervision regulation. The existing definition of “supervise” under Chapter 3290 is “to be present in the child care facility with the children or with the facility person under supervision. Supervision is critical oversight in which the supervisor can see, hear, direct and assess the activity of the supervisee.” See 55 Pa. Code § 3290.4.

*Paperwork Requirements*

Child care providers are required to document attendance at professional development sessions to verify attendance at the required training. Documentation may be maintained by means of an electronic system or in a written format. The Department’s agents will review the documentation of the professional development when conducting inspections.

*Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*, except for §§ 3270.31(f), 3280.31(f) and 3290.31(g). The Department is providing for an additional 180 days for the operators and current staff to receive professional development under §§ 3270.31(f), 3280.31(f) and 3290.31(g).

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Tamula Ferguson, Bureau of Certification Services, Office of Child Development and Early Learning, Department of Human Services, 333 Market Street, Harrisburg, PA 17105, tferguson@pa.gov within 30 calendar days after the date of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 14-542 when submitting comments.

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

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 28, 2018, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Children and Youth and the Senate Committee on Health and Human Services. In addition to submitting this proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has any comments, recommendations or objections to this proposed rulemaking, it may notify the Department and the Committees within 30 days of the close of the public comment period. Such notification shall not specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review by the Department, the General Assembly and the Governor, of any comments, recommendations or objections raised prior to the final publication of the rulemaking.

**Fiscal Note:** 14-542. No fiscal impact; (8) recommends adoption.

**Annex A****TITLE 55. HUMAN SERVICES****PART I. DEPARTMENT OF HUMAN SERVICES****Subpart C. LICENSING/APPROVAL****CHAPTER 20. LICENSURE OR APPROVAL OF FACILITIES AND AGENCIES****GENERAL PROVISIONS****§ 20.2. Applicability.**

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

(b) [ **This chapter does not apply to family day care homes that are registered under the authority of Article X of the Public Welfare Code, except for appeals as provided in § 20.82 (relating to written request for appeal).**

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

**PART V. CHILDREN, YOUTH AND FAMILIES  
MANUAL****Subpart B. ELIGIBILITY FOR SERVICES****CHAPTER 3041. SUBSIDIZED CHILD CARE  
ELIGIBILITY****GENERAL REQUIREMENTS AND BENEFITS****§ 3041.13. Parent choice.**

(a) A family who is eligible for subsidized child care shall have the right to choose care from a provider who agrees to comply with the Department’s standards for provider participation. Providers eligible to participate include:

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

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

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

(4) A provider specifically exempt from certification [ or registration ] under Chapters 3270, 3280 and 3290.

\* \* \* \* \*

Subpart D. NONRESIDENTIAL AGENCIES, FACILITIES AND SERVICES

Article I. Licensing/Approval

CHAPTER 3270. CHILD [ DAY ] CARE CENTERS

GENERAL PROVISIONS

§ 3270.1. Introduction.

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

§ 3270.2. Purpose.

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

§ 3270.3. Applicability.

\* \* \* \* \*

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

\* \* \* \* \*

§ 3270.4. Definitions.

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

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

Act—The [ Public Welfare ] Human Services Code (62 P.S. §§ 101—[ 1411 ] 1503).

\* \* \* \* \*

Certificate of compliance—A document issued by the Department to a legal entity permitting the entity to operate a specific type of facility for a specific period of time according to applicable Department regulations. A certificate of compliance approves the operation of a facility subject to Article IX of the act (62 P.S. §§ 901—922) or licenses the operation of a facility subject to Article X of the act (62 P.S. §§ 1001—[ 1087 ] 1088).

\* \* \* \* \*

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

\* \* \* \* \*

Facility—A child [ day ] care center.

\* \* \* \* \*

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

\* \* \* \* \*

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

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

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

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

Regulatory Ratio—The maximum number of children based on the age of the child or children for whom a staff person can be responsible.

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

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

\* \* \* \* \*

Volunteer—One of the following:

(i) A student 14 years of age or older but under 16 years of age enrolled in a Child Care and Support Services Management program approved by the Pennsylvania Department of Education who is not included in the regulatory ratio and who assists in implementing daily program activities under the supervision of a staff person.

(ii) A person 16 years of age or older who is not included in the regulatory ratio and who assists in implementing daily program activities under the supervision of a staff person.

\* \* \* \* \*

GENERAL REQUIREMENTS

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

\* \* \* \* \*

(b) A legal entity or a representative of the legal entity shall participate in an orientation training provided by the Department within 12 months prior to commencing operation of the child [ day ] care center. The orientation does not count toward the annual minimum of [ 6 ] 12 hours of child care training required in § 3270.31(e) (relating to age and training).

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

(1) Prevention and control of infectious diseases.



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

(3) Administration of medication.

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

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

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

(7) Emergency preparedness and response planning.

(8) Handling and storage of hazardous materials.

(9) Precautions when transporting children.

(10) Pediatric first aid and pediatric cardiopulmonary resuscitation.

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

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

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

[ (e) ] A facility will be inspected at least once every 12 months by an agent of the Department. ]

(g) The Department will annually conduct at least one on-site unannounced inspection of a child care facility.

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

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

[ (h) ] (j) A facility whose certificate of compliance is current as of [ September 22, 2008 ] \_\_\_\_\_ *(Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.)* will not be inspected under this chapter until the current certificate of compliance is due to be renewed or when a regulatory violation is alleged and the Department responds to the alleged violation with an inspection.

**§ 3270.16. Dual licensure.**

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

**§ 3270.19. Child abuse reporting.**

\* \* \* \* \*

(b) [ A staff person may be designated by the operator as the person responsible to notify ChildLine of suspected child abuse. The operator or designated staff person with this responsibility shall immediately notify ChildLine at 1 (800) 932-0313. ] A facility person who has reasonable cause to suspect that a child is a victim of child abuse shall immediately make a report of suspected child abuse to ChildLine through the hotline, online, or any other method as prescribed by the Department.

\* \* \* \* \*

**§ 3270.24. Departmental access.**

\* \* \* \* \*

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

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

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

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

(a) The facility's current certificate of compliance [ and a copy of the applicable regulations under which the facility is certified ] shall be posted in a conspicuous location used by parents[ , ]. The operator shall provide the parent of each child enrolled with information on how to access the regulations in this chapter electronically and with instructions for contacting the appropriate regional [ day ] child care office [ posted at the same location ].

\* \* \* \* \*

**§ 3270.27. Emergency plan.**

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

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

(2) Evacuation of children from the facility building and evacuation of children to a location away from the facility premises. The evacuation routes and evacuation plans to exit the building may be the same as those required by § 3270.94(f) and (g) (relating to fire drills).

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

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

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

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

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

\* \* \* \* \*

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

**FACILITY PERSONS**

**§ 3270.31. Age and training.**

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

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

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

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

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

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

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

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

\* \* \* \* \*

(e) A staff person shall obtain an annual minimum of [ 6 ] 12 clock hours of child care training.

\* \* \* \* \*

(iv) Water safety instruction. Competence is the completion of basic instruction in water safety from a certified lifeguard.

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

(1) Prevention and control of infectious diseases.

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

(3) Administration of medication.

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

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

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

(7) Emergency preparedness and response planning.

(8) Handling and storage of hazardous materials.

(9) Precautions when transporting children.

(10) Pediatric first aid and pediatric cardiopulmonary resuscitation.

[ f ] (g) Completion of [ training ] professional development shall be documented by the signature and title of a representative of the [ training ] professional development entity and include the date [ training ] professional development was completed. Documentation shall be retained in the facility person's file or maintained in an electronic system as designated by the Department.

**§ 3270.32. Suitability of persons in the facility.**

\* \* \* \* \*

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

\* \* \* \* \*

**§ 3270.33. General requirements for facility persons.**

\* \* \* \* \*

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

**§ 3270.34. Director qualifications and responsibilities.**

\* \* \* \* \*

(c) A director shall be employed by a facility and be present at the facility site a minimum of 30 hours per week. A valid photo identification of the director or designated responsible person shall be provided to the agent of the Department at the time of inspection.

\* \* \* \* \*

**PHYSICAL SITE**

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

\* \* \* \* \*

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

**§ 3270.79. Firearms.**

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

**PROGRAM**

**§ 3270.115. Water activity.**

\* \* \* \* \*

(b) *Wading.*

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

\* \* \* \* \*

**CHILD HEALTH**

**§ 3270.131. Health information.**

(a) The operator shall require the parent of an enrolled child, including a child, a foster child and a relative of an operator or a facility person, to provide an initial health report no later than [ 60 ] 30 days following the first day of attendance at the facility.

\* \* \* \* \*

**NUTRITION**

**§ 3270.161. Food.**

\* \* \* \* \*

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

\* \* \* \* \*

**§ 3270.166. Meals for infants.**

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

\* \* \* \* \*

(7) [ **Bottled formula may not be heated in a microwave oven** ] Neither bottled formula nor human milk may be heated in a microwave.

**TRANSPORTATION**

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

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

\* \* \* \* \*

**§ 3270.184. Release of information.**

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

\* \* \* \* \*

**HEAD START PROGRAMS**

**§ 3270.221. Certificate of compliance.**

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

**SPECIAL EXCEPTIONS**

**§ 3270.231. Staff qualifications.**

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

\* \* \* \* \*

**§ 3270.232. [ Indoor and outdoor space and capacity. ] Reserved.**

[ (a) **Facilities licensed or approved prior to April 2, 1978, that comply with the indoor space requirements effective September 1, 1977, permanently satisfy the indoor space requirements specified in § 3270.61 (relating to measurement and use of indoor child care space).**

(b) **Infant and toddler indoor or outdoor play space capacity established prior to April 4, 1992, shall remain in effect.**

(c) **A facility certified by the Department which does not provide play space as described at**

**§ 3270.62(a) (relating to measurement and use of play space) as of April 4, 1992, is exempt from the requirement, if the facility location remains unchanged. ]**

**§ 3270.233. [ Play surfaces. ] Reserved.**

[ (a) **A facility lawfully operating as of September 22, 2008, has until September 22, 2010, to comply with the protective surface requirement described in § 3270.102(c) (relating to condition of play equipment).**

(b) **A facility lawfully operating as of September 22, 2008, which has a play surface not in compliance with § 3270.102(e) has until September 22, 2010, to comply with the requirement described in § 3270.102(e). ]**

**SCHOOL-AGE PROGRAMS**

**§ 3270.241. Requirements specific to school-age programs.**

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

\* \* \* \* \*

**CHAPTER 3280. GROUP CHILD [ DAY ] CARE HOMES**

**GENERAL PROVISIONS**

**§ 3280.1. Introduction.**

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

**§ 3280.2. Purpose.**

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

**§ 3280.3. Applicability.**

\* \* \* \* \*

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

\* \* \* \* \*

**§ 3280.4. Definitions.**

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

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

Act—The [ Public Welfare ] Human Services Code (62 P.S. §§ 101—[ 1411 ] 1503).

\* \* \* \* \*

*Certificate of compliance*—A document issued by the Department to a legal entity permitting the entity to operate a specific type of facility for a specific period of time according to applicable Department regulations. A certificate of compliance approves the operation of a facility subject to Article IX of the act (62 P.S. §§ 901—922) or licenses the operation of a facility subject to Article X of the act (62 P.S. §§ 1001—[ 1056 ] 1088).

\* \* \* \* \*

*Facility*—A group child [ day ] care home.

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

**Regulatory Ratio**—The maximum number of children based on the age of the child or children for whom a staff person can be responsible.

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

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

\* \* \* \* \*

*Volunteer*—**One of the following:**

(i) **A student 14 years of age or older but under 16 years of age enrolled in a Child Care and Support Services Management program approved by the Pennsylvania Department of Education who is not included in the regulatory ratio and who assists in implementing daily program activities under the supervision of a staff person.**

(ii) A person 16 years of age or older who is not included in the regulatory ratio and who assists in implementing daily program activities under the supervision of a staff person.

\* \* \* \* \*

**GENERAL REQUIREMENTS**

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

\* \* \* \* \*

(b) A legal entity or a representative of the legal entity shall participate in an orientation training provided by the Department within 12 months prior to commencing operation of the group child [ day ] care home. The orientation does not count toward the annual minimum of [ 6 ] 12 hours of child care training required in § 3280.31(e) (relating to age and training).

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

**(1) Prevention and control of infectious diseases.**

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

**(3) Administration of medication.**

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

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

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

**(7) Emergency preparedness and response planning.**

**(8) Handling and storage of hazardous materials.**

**(9) Precautions when transporting children.**

**(10) Pediatric first aid and pediatric cardiopulmonary resuscitation.**

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

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

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

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

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

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

**(3) Clearances are required for the legal entity and for each individual 18 years of age or older who resides in the facility at least 30 days in a**

calendar year by the Department if an application for renewal is received following expiration of the current certificate of compliance.

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

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

[ (e) A facility will be inspected at least once every 12 months by an agent of the Department. ]

(h) The Department will annually conduct at least one on-site unannounced inspection of a child care facility.

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

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

[ (h) ] (k) A facility whose certificate of compliance is current as of [ September 22, 2008 ] \_\_\_\_\_ *(Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.)* will not be inspected under this chapter until the current certificate of compliance is due to be renewed or when a regulatory violation is alleged and the Department responds to the alleged violation with an inspection.

§ 3280.18. Child abuse reporting.

\* \* \* \* \*

(b) [ A staff person may be designated by the operator as the person responsible to notify ChildLine of suspected child abuse. The operator or designated staff person with this responsibility shall immediately notify ChildLine at 1 (800) 932-0313. ] A facility person who has reasonable cause to suspect that a child is a victim of child abuse shall immediately make a report of suspected child abuse to ChildLine through the hotline or online or any other method as prescribed by the Department.

\* \* \* \* \*

§ 3280.23. Departmental access.

\* \* \* \* \*

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

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

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

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

(a) The facility's current certificate of compliance [ and a copy of the applicable regulations under which the facility is certified ] shall be posted in a conspicuous location used by parents[ , ]. The operator shall

provide the parent of each child enrolled with information on how to access the regulations in this chapter electronically and with instructions for contacting the appropriate regional [ day ] child care office [ posted at the same location ] .

\* \* \* \* \*

§ 3280.26. Emergency plan.

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

\* \* \* \* \*

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

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

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

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

\* \* \* \* \*

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

FACILITY PERSONS

§ 3280.31. Age and training.

(a) A volunteer [ **shall be 16 years of age or older and** ] shall be directly supervised at all times.

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

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

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

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

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

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

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

\* \* \* \* \*

(e) A staff person shall obtain an annual minimum of [ 6 ] 12 clock hours of child care training.

\* \* \* \* \*

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

(1) Prevention and control of infectious diseases.

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

- (3) Administration of medication.
- (4) Prevention of and response to emergencies due to food and allergic reactions.
- (5) Building and physical premises safety, including identification of protection from hazards that can cause bodily injury such as electrical hazards, bodies of water and vehicular traffic.
- (6) Prevention of shaken baby syndrome and abusive head trauma.
- (7) Emergency preparedness and response planning.
- (8) Handling and storage of hazardous materials.
- (9) Precautions when transporting children.
- (10) Pediatric first aid and pediatric cardiopulmonary resuscitation.

[ f ] (g) Completion of [ training ] **professional development** shall be documented by the signature and title of a representative of the [ training ] **professional development** entity and include the date [ training ] **professional development** was completed. Documentation shall be retained in the facility person's file **or maintained in an electronic system as designated by the Department.**

§ 3280.32. **Suitability of persons in the facility.**

\* \* \* \* \*

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

\* \* \* \* \*

§ 3280.33. **General requirements for facility persons.**

\* \* \* \* \*

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

§ 3280.34. **Primary staff person qualifications and responsibilities.**

(a) A primary staff person is responsible for the supervision of children receiving care in the facility. **A valid photo identification of the primary staff person or designated responsible person shall be provided to the agent of the Department at the time of inspection.**

\* \* \* \* \*

**PROGRAM**

§ 3280.115. **Water activity.**

\* \* \* \* \*

(b) *Wading.*

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

\* \* \* \* \*

**CHILD HEALTH**

§ 3280.131. **Health information.**

(a) The operator shall require the parent of an enrolled child, including a child, a foster child and a relative of an

operator or a facility person, to provide an initial health report no later than [ 60 ] **30** days following the first day of attendance at the facility.

\* \* \* \* \*

**NUTRITION**

§ 3280.166. **Meals for infants.**

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

\* \* \* \* \*

(7) [ **Bottled formula may not be heated in a microwave oven** ] **Neither bottled formula nor human milk may be heated in a microwave.**

**TRANSPORTATION**

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

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

\* \* \* \* \*

**CHILD RECORDS**

§ 3280.184. **Release of information.**

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

\* \* \* \* \*

**SPECIAL EXCEPTIONS**

§ 3280.212. [ **Indoor and outdoor capacity.** ] **Reserved.**

[ **Indoor and outdoor capacity established by the Department in a certified group day child care home prior to April 4, 1992, shall remain in effect.** ]

§ 3280.213. [ **Approval by the Department of Labor and Industry.** ] **Reserved.**

[ (a) A facility certified by the Department as of April 4, 1992, will be permitted 12 months beyond the expiration date of the current certificate of compliance to comply with the requirements of the Department of Labor and Industry or its delegate agency, as described at § 3280.15 (relating to building codes).

(b) A facility certified by the Department as of April 4, 1993, will be permitted until April 4, 1994, to comply with the requirements of the Department of Labor and Industry, or its delegate agency, as described in § 3280.15. ]

§ 3280.214. [ **Insurance.** ] **Reserved.**

[ A facility certified by the Department as of April 4, 1992, will be permitted 12 months beyond the expiration date of the current certificate of compliance to comply with the requirement for liability insurance, as described in § 3280.17 (relating to liability insurance). ]

§ 3280.215. [ **Play surfaces.** ] **Reserved.**

[ (a) A facility lawfully operating as of September 22, 2008, has until September 22, 2010, to comply with the protective surface requirement described in § 3280.102(c) (relating to condition of play equipment).

(b) A facility lawfully operating as of September 22, 2008 which has a play surface not in compliance with § 3280.102(e) has until September 22, 2010 to comply with § 3280.102(e). ]

SCHOOL-AGE PROGRAMS

§ 3280.221. Requirements specific to school-age programs.

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

\* \* \* \* \*

CHAPTER 3290. FAMILY CHILD [ DAY ] CARE HOMES

GENERAL PROVISIONS

§ 3290.1. Introduction.

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

§ 3290.2. Purpose.

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

§ 3290.3. Applicability.

\* \* \* \* \*

(c) In addition to the requirements in this chapter, the family child [ day ] care home shall be in compliance with applicable provisions of [ Article X (c) ] Article X of the act (62 P.S. §§ [ 1070—1080 ] 1001—1088).

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

§ 3290.4. Definitions.

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

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

Act—The [ Public Welfare ] Human Services Code (62 P.S. §§ 101—[ 1411 ] 1503).

\* \* \* \* \*

Applicant—A legal entity who [ makes a written request to operate a registered family child day care home ] applies to operate a certified family child care home.

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

\* \* \* \* \*

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

[ Certification of registration—A document issued by the Department to a legal entity permitting the legal entity to operate a specific type of facility at a specific location for a specific period of time not to exceed 2 years from the date of issue, according to applicable Departmental regulations. A certificate of registration approves the operation of a facility subject to Article X(c) of the act (62 P.S. §§ 1070—1080). ]

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

Child—A person 15 years of age or younger.

\* \* \* \* \*

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

\* \* \* \* \*

Facility—A family child [ day ] care home.

\* \* \* \* \*

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

\* \* \* \* \*

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

Operator—[ The term is synonymous with the term "caregiver" in section 1070 of the act (62 P.S. § 1070). ] The legal entity or a person designated by the legal entity to serve as the staff person.

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

\* \* \* \* \*

[ Random sample—The total of the registered family child day care homes annually selected for inspection by the Department. ]

Regional office of child [ day ] care—One of four Departmental offices responsible for certified child [ day ] care facilities located in counties assigned to the regional office. A certificate of [ registration ] compliance is

issued by a regional office to the legal entity responsible for the operation of a family child [ day ] care home.

[ *Registration law*—The act of December 5, 1980 (P.L. 1112, No. 193) (62 P.S. §§ 1070—1080). ]

**Regulatory Ratio**—The maximum number of children based on the age of the child or children for whom a staff person can be responsible.

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

*Revocation*—The Department’s written retraction of a certificate of [ registration ] **compliance** which occurs prior to expiration of the facility’s certificate of [ registration ] **compliance**.

\* \* \* \* \*

*Volunteer*—**One of the following:**

(i) **A student 14 years of age or older but under 16 years of age enrolled in a Child Care and Support Services Management program approved by the Pennsylvania Department of Education who is not included in the ratio and who assists in implementing daily program activities under the supervision of a staff person;**

(ii) A person 16 years of age or older who is not included in the regulatory ratio and who assists in implementing daily program activities **under the supervision of a staff person.**

**GENERAL REQUIREMENTS**

§ 3290.11. Application for and issuance of a certificate of [ registration ] **compliance**.

[ (a) An individual desiring information about the registration law or about regulations for the operation of a family child day care home shall request the documents from the appropriate regional office of the Department.

(b) A legal entity desiring to apply for a certificate of registration shall request application documents from the appropriate regional office of the Department.

(c) A legal entity or a representative of the legal entity shall participate in an orientation training provided by the Department within 12 months prior to issuance of a certificate of registration. The orientation does not count toward the biennial minimum of 12 clock hours of child care training required in § 3290.31(f) (relating to age and training).

(d) Prior to providing child day care at any one time to more than three children unrelated to the operator, the legal entity shall apply for and will be issued a certificate of registration.

(e) A legal entity seeking to operate a facility shall apply to the appropriate regional office on a form approved by the Department. The legal entity shall be required to submit information specified by the registration law and this chapter.

(f) The legal entity applying for a certificate of registration shall certify, in writing, compliance with the registration law and this chapter.

(g) Following review of the application and related documents, the Department will approve or deny the issuance of a certificate of registration.

(h) A certificate of registration will be issued for a period not to exceed 24 months following date of issue.

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

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

(3) If a facility is to be operated at a new location or by a new legal entity, the legal entity shall advise the appropriate regional office at least 30 days in advance of the change.

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

(1) For purposes of the random sample on an announced or unannounced basis.

(2) At the request of an operator on an announced or unannounced basis.

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

(j) If a certificate of registration lapses, the legal entity shall file an original application and the supplemental information required by the Department.

(k) Prior to expiration of a current certificate of registration, the legal entity will receive notice from the Department regarding renewal of the certificate.

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

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

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

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

(i) The current registration certificate was issued prior to May 28, 2007.

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

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

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



(n) An operator whose facility's certificate of registration is current as of September 22, 2008, will not be required to certify compliance with this chapter until renewal of the certificate of registration or until the Department inspects in response to an alleged regulatory violation, whichever occurs first. ]

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

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

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

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

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

- (1) Prevention and control of infectious diseases.
- (2) Prevention of Sudden Infant Death Syndrome and use of safe sleep practices.
- (3) Administration of medication.
- (4) Prevention of and response to emergencies due to food and allergic reactions.
- (5) Building and physical premises safety, including identification of protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic.
- (6) Prevention of shaken baby syndrome and abusive head trauma.
- (7) Emergency preparedness and response planning.
- (8) Handling and storage of hazardous materials.
- (9) Precautions when transporting children.
- (10) Pediatric first aid and pediatric cardiopulmonary resuscitation.

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

(g) Family child care home providers that operate under a certificate of registration prior to \_\_\_\_\_ (Editor's Note: The blank refers to the effective

date of adoption of this proposed rulemaking.) shall complete the professional development under subsection (e).

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

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

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

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

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

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

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

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

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

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

(k) The Department will annually conduct at least one on-site unannounced inspection of a child care facility.

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

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

- (1) An announced precertification inspection.
- (2) An unannounced inspection, not less than annually.
- (3) In response to a complaint on an unannounced basis.

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

(o) A legal entity whose facility's certificate of registration is current as of the (date of publication of the final-form regulation) will not be required to obtain a certificate of compliance until the registration certificate expires or the operator applies for a renewal of the certificate by submitting an application for a certificate of compliance, whichever is sooner.

(p) Sanctions relating to the status of a certificate of compliance under the authority of 62 P.S. 1026 and this chapter apply to a family child care home.

§ 3290.12. [ Negative sanctions. ] Reserved.

[ (a) If the Department's agent records noncompliance with the registration law or this chapter during an inspection, the operator shall submit a written plan to correct the noncompliance. The operator shall establish in writing, with the Department's agent, an acceptable period of time in which the noncompliance will be corrected.

(b) The Department may deny issuance of a certificate of registration to an operator for one or more of the following reasons:

(1) Failure to certify compliance with the registration law or this chapter.

(2) Fraud or deceit in the self-certification process.

(3) Failure to meet the requirements of the CPSL.

(c) The Department may refuse to renew or may revoke a certificate of registration to an operator for one or more of the following reasons:

(1) Noncompliance with the registration law or this chapter.

(2) Fraud or deceit in the self-certification process.

(3) Lending, borrowing or using the certificate of another operator or in any way knowingly aiding the improper issuance of a certificate of registration.

(4) Lending, borrowing or using the certificate of another operator or in any way knowingly aiding the improper issuance of a certificate of registration.

(5) Gross incompetence, negligence or misconduct in operating the facility.

(6) Mistreating or abusing children cared for in the facility.

(7) Failure to submit to the Department an acceptable plan to correct noncompliance.

(8) Failure to comply with the acceptable plan to correct noncompliance.

(d) The Department will review and may deny, refuse to renew or revoke a certificate of registration to an operator if one or more of the following applies to an operator, staff person, volunteer or another person present at the facility while children are in care.

(1) The person is convicted of a felony.

(2) The person is convicted of a crime involving child abuse, child neglect, moral corruptness or physical violence.

(3) The person demonstrates a mental illness which creates a risk to children that is determined and documented by a physician or CRNP.

(4) The person evidences drug or alcohol addiction within the most recent 12-month period that is determined and documented by a physician or CRNP.

(5) The person is named in accordance with the CPSL as a perpetrator in an indicated or founded report of child abuse. ]

§ 3290.13. Appeals.

(a) Appeals related to the Department's [ registration ] licensure decisions shall be made under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

\* \* \* \* \*

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

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

(1) Denial of a certificate of [ registration ] compliance.

(2) Failure to renew a certificate of [ registration ] compliance.

(3) Revocation of a certificate of [ registration ] compliance.

\* \* \* \* \*

§ 3290.14. Building codes.

A certificate of [ registration ] compliance will not be granted by the Department until the legal entity provides a certificate of occupancy as proof of compliance with the applicable requirements in 34 Pa. Code § 403.23 (relating to child day care facilities).

§ 3290.16. Child abuse reporting.

\* \* \* \* \*

(b) [ A staff person may be designated by the operator as the person responsible to notify ChildLine of suspected child abuse. The operator or designated staff person with this responsibility shall immediately notify ChildLine at 1 (800) 932-0313. ]

A staff person who has reasonable cause to suspect that a child is a victim of child abuse shall immediately make a report of suspected child abuse to ChildLine through the hotline or online or any other method as prescribed by the Department.

\* \* \* \* \*

§ 3290.21. Departmental access.

\* \* \* \* \*

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

(d) An agent of the department will annually conduct at least one on-site unannounced inspection of a child care facility.

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

§ 3290.22. Availability of certificate of [ **registration** ] **compliance** and applicable regulations.

(a) The facility's current certificate of [ **registration** and a copy of the applicable regulations under which the facility is certified ] **compliance** shall be posted in a conspicuous location used by parents, with instructions for contacting the appropriate regional [ **day care** ] office posted at the same location.

(b) [ **The operator shall provide the parent of each child enrolled in the facility with a copy of this chapter.** ]

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

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

**§ 3290.23. Compliance with nondiscrimination requirements.**

\* \* \* \* \*

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

(1) The Pennsylvania Human Relations Act (43 P.S. §§ 951—962.2).

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

(3) Title VI of the Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000d—2000d-4a).

(4) Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e—2000e-5).

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

(6) The Americans with Disabilities Act of 1990 (42 U.S.C.A. §§ 12101—12514).

(c) The appropriate forms to establish compliance shall be included with the application for [ **certificate of registration** ] **certification**.

**§ 3290.24. Emergency plan.**

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

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

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

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

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

*(Editor's Note: The following section is proposed to be added and printed in regular type to enhance readability.)*

**§ 3290.25. Waivers.**

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

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

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

(1) Facility persons requirements in §§ 3290.31(a)(2) (relating to age and training).

(2) Physical site requirements in §§ 3290.61—3290.78 (relating to physical site).

(3) Equipment requirements in §§ 3290.101—3290.107 (relating to equipment).

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

(1) The waiver is not requested as a substitute for correcting a Departmental citation of noncompliance.

(2) The request for waiver does not alter the applicability or purpose of a regulation.

(3) The request shows evidence that the operator has a plan to achieve the objective of the regulation.

(4) The request certifies that the operator will meet regulatory standards related to the health, safety and rights of children.

(5) The request for waiver does not violate or condone noncompliance with another Federal or State law or regulation.

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

FACILITY PERSONS

§ 3290.31. Age and training.

(a) The operator shall have the following qualifications:

(1) Be 18 years of age or older.

(2) Have a high school diploma or a general educational development certificate and submit proof to the appropriate regional office of the Department at the time of [ registration renewal ] the initial application. If the operator does not have the documentation at the time of the initial application, then it must be submitted by the time of the submission of the second renewal application.

(3) A valid photo identification of the operator shall be provided to the agent of the Department at the time of inspection.

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

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

(g) [ Completion of training shall be documented by the signature and title of a representative of the training entity and shall include the date training was completed. Documentation shall be retained in the facility person's file. ] All staff shall complete professional development in the following topics within 90 days of the date of hire:

- (1) Prevention and control of infectious diseases.
- (2) Prevention of Sudden Infant Death Syndrome and use of safe sleep practices.
- (3) Administration of medication.
- (4) Prevention of and response to emergencies due to food and allergic reactions.
- (5) Building and physical premises safety, including identification of protection from hazards that can cause bodily injury such as electrical hazards, bodies of water and vehicular traffic.
- (6) Prevention of shaken baby syndrome and abusive head trauma.
- (7) Emergency preparedness and response planning.
- (8) Handling and storage of hazardous materials.
- (9) Precautions when transporting children.
- (10) Pediatric first aid and pediatric cardiopulmonary resuscitation.

(h) Completion of professional development shall be documented by the signature and title of a representative of the professional development entity and include the date the professional development was completed. Documentation shall be retained in the staff person's file.

(i) Current staff persons other than the operator shall complete the precertification professional development under subsection (g). Documentation of the completion of training shall be kept in the facility file or maintained in an electronic system as designated by the Department.

§ 3290.32. Suitability of persons in the facility.

\* \* \* \* \*

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

\* \* \* \* \*

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

STAFF-CHILD RATIO

§ 3290.51. Maximum number of children.

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

§ 3290.52. Ratio requirements.

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

\* \* \* \* \*

PROGRAM

§ 3290.113. Supervision of children.

\* \* \* \* \*

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

(f) While on the family child care home premises, an operator shall use a monitoring device with a video camera or other video or sight technological device to supervise a child if the operator is not able to directly see, hear, direct and assess the activity of the child due to activities such as the need to be in the restroom or for the preparation of meals and snacks. The alternative method of supervision shall only be for the time it takes to complete the specific activity.

(g) When a family child care home operator provides services for 24 hours per day, the operator may not work for a period of more than 16 hours in

a 24-hour time period. The operator must secure a designated staff person to ensure that there is appropriate supervision as required in subsection (a).

CHILD HEALTH

§ 3290.131. Health information.

(a) The operator shall require the parent of an enrolled child to provide an initial health report no later than [ 60 ] 30 days following the first day of attendance at the facility.

\* \* \* \* \*

ADULT HEALTH

§ 3290.151. Health assessment.

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

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

\* \* \* \* \*

NUTRITION

§ 3290.166. Meals for infants.

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

\* \* \* \* \*

(7) [ Bottled formula may not be heated in a microwave oven. ] Neither bottled formula nor human milk may be heated in a microwave oven.

CHILD RECORDS

§ 3290.184. Release of information.

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

\* \* \* \* \*

SPECIAL EXCEPTIONS

§ 3290.211. [ Approval by the Department of Labor and Industry. ] Reserved.

[ (a) A facility registered by the Department as of April 4, 1992, will be permitted one full registration

period (24 months) beyond the expiration of the current certificate of registration to comply with the requirements of the Department of Labor and Industry or its delegate agency, as described at § 3290.14 (relating to firesafety approval).

(b) A facility registered by the Department between April 4, 1992, and April 4, 1994, is required to provide:

(1) An operable smoke detector placed on each level of the facility used by day child care children.

(2) An operable smoke detector on each level of exit from the facility.

(3) A portable fire extinguisher located in the kitchen and in other working areas. A fire extinguisher shall be equipped with a pressure gauge and shall be suitable for a class B fire.

(c) Subsection (b) applies for a maximum of 24 months from the date the facility is registered by the Department. Following expiration of the 24-month period, a facility shall comply with the requirements of the Department of Labor and Industry or its delegate agency, as described at § 3290.14. ]

§ 3290.212. [ Play surfaces. ] Reserved.

[ (a) A facility registered by the Department as of September 22, 2008, has until September 22, 2010, to comply with the protective surface requirement as described in § 3290.102(c) (relating to condition of play equipment). (b) A facility registered by the Department as of September 22, 2008, which has a play surface or play surface not in compliance with § 3920.102(e), has until September 22, 2010, to comply with § 3290.102(e). ]

§ 3290.213. Age and training.

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

[Pa.B. Doc. No. 18-1587. Filed for public inspection October 12, 2018, 9:00 a.m.]