

# RULES AND REGULATIONS

## Title 55—PUBLIC WELFARE

### DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 168]

#### Child Care

The Department of Public Welfare (Department), under the authority of Articles II and IV of the Public Welfare Code (code) (62 P. S. §§ 201—211 and 401—493), amends Chapter 168 (relating to child care) to read as set forth in Annex A.

Notice of proposed rulemaking was published at 36 Pa.B. 3262 (July 1, 2006).

#### *Purpose of Final-Form Rulemaking*

The purpose of this final-form rulemaking is to establish consistent policies for administration and payment for subsidized child care within the Office of Income Maintenance and the Office of Child Development that best meet the needs of families receiving subsidized child care and improve child care services to families receiving Temporary Assistance for Needy Families (TANF), General Assistance (GA) and Food Stamp (FS) benefits. Families receive subsidized child care under this chapter after being determined eligible for cash assistance or FS benefits. Those recipients also must have an approved Agreement of Mutual Responsibility (AMR) or an Employment Development Plan (EDP) under Chapter 165 (relating to road to economic self-sufficiency through employment and training (RESET) program). Subsidized child care is one of the supportive services provided to cash assistance and FS recipients to enable them to meet employment and training requirements. Eligibility for all special allowances for supportive services is determined under Chapter 165.

The Department's goal is to establish for cash assistance and FS recipients a "user-friendly" child care system that is accessible to eligible families who need help finding and paying for quality child care that is responsive to their needs. The final-form rulemaking supports families and children by making consistent administrative and payment policies for families receiving subsidized child care.

#### *Affected Individuals and Organizations*

The final-form rulemaking will, on a monthly basis, affect approximately 47,000 children who receive subsidized child care, 27,650 families who apply for or receive subsidized child care and 158 agencies authorized by the Department to administer subsidized child care, including 59 Child Care Information Services (CCIS) agencies.

Children and families are affected by the provisions in the final-form rulemaking that specify the requirements that they must meet to access subsidized child care. Agencies authorized by the Department to administer subsidized child care are affected since the final-form rulemaking changes the process and requirements regarding child care payment.

The Department has worked closely with families who access the subsidized child care program, child development and community service advocates, providers, agencies authorized by the Department to administer subsidized child care and other interested stakeholders to listen and respond to the needs, concerns and suggestions of each of these groups.

#### *Accomplishments and Benefits*

The final-form rulemaking benefits, on a monthly basis, approximately 47,000 children and 27,650 families of low income by allowing easier access to affordable, quality child care.

#### *Fiscal Impact*

The final-form rulemaking will result in no additional costs to parents receiving subsidized child care or providers. During a phase-in period in the first year, the estimated net cost is \$3.526 million for additional staff and related operating costs.

#### *Paperwork Requirements*

There are no changes in paperwork requirements as a result of the final-form rulemaking.

#### *Public Comment*

Written comments, suggestions and objections regarding the proposed rulemaking were requested within a 30-day period following publication. The Department received a total of 15 comments within the 30-day comment period. The Department received comments from every sector of the community that will be affected by the final-form rulemaking, including child development and community service advocates, providers and CCIS agencies.

Public commentators included 12 comment letters from individual entities, including one legal services agency, two child advocate associations, six CCIS agencies, one United Way organization, one provider and the Income Maintenance Advocacy Committee. The Department also received three comment letters from organizations on behalf of 128 member agencies.

The majority of the comments supported the final-form rulemaking. The United Way of Pennsylvania, on behalf of 80 United Way agencies, urged approval of the rulemaking, as did Quality Early Education through Salaries and Training (QUEST), on behalf of itself and 45 member entities.

Keystone Christian Education Association, the Pennsylvania Family Institute and REACH Alliance submitted one comment letter in which all three joined to collectively voice concern regarding a parent's right to choose a faith-based facility for child care.

The majority of the commentators, including the Pennsylvania Child Care Association (PACCA), QUEST and the United Way of Pennsylvania, indicated that the final-form rulemaking will enable the Department to integrate child care services for the children, parents and providers in the subsidized child care program. In addition, it will provide a seamless and fully coordinated child care system in this Commonwealth.

#### *Discussion of Comments and Major Changes*

This final-form rulemaking is more limited in scope than the proposed rulemaking. This final-form rulemaking achieves the major goals of changes in administrative and payment processes for subsidized child care for families receiving TANF, GA and FS benefits. These changes include the addition of § 168.3 (relating to authority to administer subsidized child care). Coordinating changes were made in several sections to reflect the Department's authority to delegate administrative responsibility to the CCIS.

Additional changes to make policies consistent for families receiving subsidized child care include: the requirement of a face-to-face interview; the change in co-payment from monthly to weekly and the requirement that a family select a provider within 30 days following the date the Department notifies the family the child may be enrolled in care.

The following is a summary of comments received and the Department's response to those comments regarding this final-form rulemaking. A summary of major changes from the proposed rulemaking is also included.

*General—Workload*

Two commentators, including QUEST, expressed concern that the CCIS agencies may be overburdened with additional cases and suggested that the Department monitor staffing levels at the CCIS to ensure that the additional workload is handled efficiently.

*Response*

The Department will monitor staffing levels at the CCIS in conjunction with its overall auditing of CCIS agreements.

*General—Business Practices and Procedures*

Two commentators requested clarification regarding policy, business practices and procedures for interacting with TANF, GA and FS clients and the role of the CCIS versus the County Assistance Office (CAO). Also, commentators requested clarification regarding funding to administer the subsidized child care program given the additional clients. PACCA suggested the Department seek input from the CCIS agencies regarding payment, but did not elaborate on the suggestion.

*Response*

The Department will provide training to clarify policy, business practices and procedures for interacting with TANF, GA and FS clients and the role of the CCIS versus the CAO. The training will occur prior to implementation of the final-form rulemaking. Section 168.3 provides authority for the Department to delegate the responsibilities in this chapter to another approved entity, including a CCIS.

Funding issues are outside the scope of this final-form rulemaking.

*General—Editorial Suggestions*

Two commentators suggested a redraft of the rulemaking with a variety of editorial suggestions. The Independent Regulatory Review Commission (IRRC) suggested using the term "parent/caretaker" rather than "parent" throughout the final-form rulemaking.

*Response*

The Department decided to continue to use the term "parent/caretaker" in the final-form rulemaking.

*General—Provision of Subsidized Child Care*

Two commentators requested a provision allowing subsidized child care for individuals who need regular mental health or behavioral health treatment to move toward self-sufficiency, but who cannot obtain this treatment because they lack child care.

Two commentators requested a provision allowing care of dependent disabled adult household members when necessary for the FS household member to participate in an employment and training program. In addition, they requested the same provision when a TANF or GA household member participates in a work activity.

*Response*

Although the Department appreciates these comments, the suggested changes are outside the scope of the final-form rulemaking. Department policy does not provide for payment of child care for purposes other than participation in employment or training. Special allowances for care of a disabled adult are provided under Chapter 165.

*General—Suggested Addition of Cross-Reference to 7 CFR 273.7*

Two commentators suggested a cross-reference to 7 CFR 273.7 (relating to work provisions) be added to seven sections of the final-form rulemaking. However, they offered no rationale for this recommendation.

*Response*

The Department has determined that it is unnecessary to add repeated cross-references to Federal FS employment and training regulations. It is clear throughout this chapter and in Chapter 165 that the provisions apply to an FS recipient who has an approved EDP.

*General Provisions*

*§ 168.1(a). Policy on payment of child care.*

Two commentators suggested that payment for child care be made to enable a parent not only to participate in a work activity but also to volunteer. The commentators stated that since TANF, GA and FS regulations allow parents to volunteer to participate in approved education and training programs and to receive supportive services, child care should be offered in these circumstances.

*Response*

If the volunteer activity is part of the parent's AMR or EDP, subsidized child care is provided to support this activity. Providing subsidized child care for volunteer activities not included in the AMR or EDP is outside the scope of this final-form rulemaking.

*§ 168.1(b). Policy on payment of child care.*

One commentator requested clarification of when and how often advance payment will occur. Another commentator supported the provision regarding advance payment in paragraph (3), but suggested the provision be revised as a separate section.

*Response*

With regard to when and how often advance payment will occur, the section cross-references § 165.42 (relating to advance payment of special allowances for supportive services), which limits the circumstances in which advance payment is made. The Department will provide more clarification in training, which will occur prior to implementation of the final-form rulemaking.

With regard to the suggestion to revise paragraph (3) as a separate section, the Department found that this would require a major change in formatting. It is more appropriate to keep paragraph (3) in this subsection since it describes information the Department provides to the parent in need of child care.

*§ 168.1(c). Policy on payment of child care.*

Two commentators suggested addition of the term "EDP." Another commentator requested clarification regarding the roles of the CAO and CCIS in providing a family with information about child care allowances.

*Response*

With regard to adding a reference to the EDP, the Department has not made this change and is using the language in the current regulation.

With regard to the request for clarification of the roles of the CAO and CCIS in providing a family with information on child care allowances, the CAO informs eligible families of the availability of child care allowances when the AMR or EDP is completed. The CCIS informs the family of their child care choices and how to obtain child care benefits.

§ 168.1(f). *Policy on payment of child care.*

Two commentators suggested including the term “EDP.” In addition, a commentator requested clarification of the CAO and CCIS roles.

*Response*

With regard to the request to add the term “EDP,” the Department has not made this change and is using the language in the current regulation. As previously stated, the Department has clarified the roles and responsibilities of the CAO and CCIS in response to the public comment.

§ 168.2. *Definitions.*

IRRC stated the term “AMR” is defined in greater detail in § 165.2 (relating to definitions) and suggested the definition should include a reference to § 165.2.

*Response*

The Department has not made this change and is using the language in the current regulation.

§ 168.2. *Definitions.*

Two commentators suggested revising the definition of “budget group” by deleting the cross-reference to § 183.2 (relating to definitions). The commentators stated that the definition in § 183.2 omits a child on Supplemental Security Income and that subsidized child care should be available for these children.

*Response*

The Department has not made this change and is using the language in the current regulation. The Department deleted the cross-reference to § 183.2.

§ 168.2. *Definitions.*

Two commentators suggested the inclusion of a definition for “care and control” as “exercising responsibility for the care and control of the child. This means actually participating in making plans for the support, education and maintenance of the child and supervising and carrying out the plans.” The commentators stated that the definition comes from the definition of “specified relative” in § 151.42 (relating to definitions). The commentators further stated that this suggestion is consistent with their suggested revision of the definition of “parent.”

*Response*

The Department has not made this change.

§ 168.2. *Definitions.*

IRRC suggested the use of the phrase “subsidized child care” in the definition of “co-payment” and, for consistency, throughout the rulemaking.

*Response*

This change was made.

§ 168.2. *Definitions.*

Two commentators suggested defining “EDP (Employment Development Plan).” IRRC suggested that a definition for EDP be added and should reflect the definition in Chapter 165.

*Response*

The Department has not made this change.

§ 168.2. *Definitions.*

IRRC stated that the citation of 7 CFR 273.1(a)(2) in the definition of “household” was too specific and indicated agreement with the Department’s plan to broaden the reference to include other paragraphs of 7 CFR 273.1.

*Response*

The Department has not added the definition of “household,” as the final-form rulemaking does not include this term.

§ 168.2. *Definitions.*

One commentator recommended that the definition of “nontraditional hours” should also include the statement “and meets the standards as set forth by CCIS regulations.”

*Response*

The Department finds it is unnecessary to include this statement. Hours of care are defined by time. All care must meet applicable standards of care, regardless of whether the hours are traditional or nontraditional.

§ 168.2. *Definitions.*

IRRC recommended including the term “caretaker” and the concept of “care and control” in the definition of “parent.” IRRC also questioned the use of the term “TANF specified relative” in the definition and stated “TANF” does not appear in § 151.42, but the term “specified relative” does appear.

Eleven commentators, including PACCA, QUEST and the United Way of Pennsylvania, supported the definition of “parent.” Three commentators opposed the definition and voiced concern about situations in which a parent is denied subsidy because another individual in the home is expected to care for the child although the individual is not legally responsible for the child.

*Response*

The Department has not made this change. The Department is using the term “parent/caretaker” that exists in the current regulation, making this definition unnecessary.

§ 168.2. *Definitions.*

IRRC stated the definition of “preexpenditure approval” is unclear and indicated that if the definition is retained the wording and intent must be clarified.

One commentator requested clarification regarding the definition. Other commentators opposed the definition of “preexpenditure approval.” The commentators who opposed the definition suggested the definition be deleted.

*Response*

The Department deleted the definition.

§ 168.2. *Definitions.*

IRRC questioned the contents of the “provider agreement” and suggested that if the terms of the agreement are binding on providers, the contents or basic requirements should be in the regulations.

*Response*

The Department deleted this definition. With regard to the question pertaining to the contents of the provider agreement, there are three types of provider agreements: in-home; relative/neighbor and regulated provider. The provider agreement contains recordkeeping, reporting and billing requirements and payment rates. It also includes health and safety requirements for participation. Flexibility to amend these agreements is essential to the efficient and effective administration of the subsidized child care program.

Accordingly, the Department has determined it is not appropriate to put the terms of the provider agreement in regulations. To do so would impede prompt amendment of that agreement when change is required by Federal law or is desired for efficient administration of the program. The Department notes that agreements for other providers and vendors are not promulgated as regulations.

*§ 168.11(a). General requirements.*

IRRC requested clarification regarding how the Department intends to address eligibility for nonprofit providers who are not certified or registered under the existing child care facilities regulations. IRRC noted the concern of several commentators that they might be excluded from the list of eligible providers. IRRC also noted the recent decision of the Commonwealth Court in *St. Elizabeth's Child Care Center v. Department of Public Welfare*, 895 A.2d 1280 (2006). That decision held that the Department could not require a nonprofit religious child day care center to obtain a Certificate of Compliance to operate. One commentator also expressed a concern that religious facilities operating without a license would be excluded as an option for parents to choose to provide care for a child receiving subsidized child care services.

IRRC also questioned as unnecessary use of the phrase "specifically exempt" in subsection (a)(4) and (5).

*Response*

The *St. Elizabeth's* litigation is not relevant in the context of the child care subsidy regulation. Articles II and IV of the code provide full statutory authority for the Department to promulgate the child care subsidy regulation. The *St. Elizabeth's* court recognized that the Department has full power to regulate nonprofit facilities. Further, the law of the case in *St. Elizabeth's* currently is that the Department has an automatic stay of the Commonwealth Court decision. See *Public Advocate v. Philadelphia Gas Commission*, 646 A.2d 19 (Pa. Cmwlth. Ct. 1994). See 284 MAL 2006 Pa. Supreme Ct. filed April 24, 2006. The current standards for receipt of subsidy are neutral with respect to religion.

The Department is not amending this regulation except to delete the phrase "special allowances" and replace it with the word "payment."

*§ 168.11(b). General requirements.*

IRRC requested clarification regarding the difference between requirements for providers and the Department's standards for provider participation. IRRC suggested that cross-referencing might be helpful. IRRC recommended that requirements and standards for provider participation be set forth in the final-form rulemaking.

IRRC and two commentators suggested that the word "may" be replaced with the terms "shall have the right to." The commentators explained that states must allow a parent the opportunity to choose among the various types of providers under Federal law governing subsidized child

care in 45 CFR 98.30(e) (relating to parental choice). The commentators further stated that the language should reflect the language in § 3041.13 (relating to parent choice).

*Response*

The Department has deleted the reference to standards for provider participation. Requirements for provider participation are in § 168.19 (relating to child care arrangements), as well as in the provider agreement. Standards for provider participation vary appropriately with provider type. Providers not subject to regulation must comply with standards set forth in the provider agreement (for example, have a working telephone and smoke detectors).

The Department has determined it is not appropriate to put the terms of the provider agreement in regulations. To do so would impede prompt amendment of that agreement when change is required by Federal law or is desired for efficient administration of the program. The Department notes that agreements for other providers and vendors are not promulgated as regulations.

With regard to the request to include cross-reference to § 168.19, the Department has not made this change. The Department has replaced the term "may" with the terms "shall have the right to."

*§ 168.11(c). General requirements.*

Commentators requested clarification regarding the provision pertaining to preexpenditure approval. One commentator opposed the provision and suggested deletion.

*Response*

The Department deleted the provision.

*§ 168.17(2). Eligible children.*

IRRC stated that the reference to 7 CFR 273.1(b) (relating to household concept) was incomplete. IRRC indicated its agreement with the Department's plan to change that reference to 7 CFR 273.1(b)(1)(iii). Commentators suggested deleting the provision because they believed it to be confusing. The commentators stated that the provision does not seem to apply to non-FS households and appears to be unnecessary for FS households.

*Response*

The Department deleted subparagraph (ii)(B) which contained the cross-reference to 7 CFR 273.1(b). In addition, the Department reformatted paragraph (2)(ii) by eliminating the clauses.

*§ 168.17(4)(iii). Eligible children.*

IRRC and one commentator recommended that paragraph (4)(iii) be revised as new paragraph (5). Other commentators suggested revising the language to state "if the child does not have age-appropriate immunizations and is not exempt from immunization, child care shall be authorized and the parent shall be given 90 days to obtain immunizations for the child and self-certify that the child has the required immunizations or is exempt from immunization."

*Response*

The Department has not added paragraph (4). In final-form rulemaking, the Department has retained paragraph (3) in the current regulation, which addresses immunization.

§ 168.18(a). *Need for child care.*

Two commentators suggested that payment for child care be made to enable a parent not only to participate in a work activity but also to volunteer. The commentators stated that since TANF, GA and FS regulations allow parents to volunteer to participate in approved education and training programs and to receive supportive services, child care should be offered in these circumstances. The same commentators also suggested that payment for child care be made to enable a parent to participate in medical treatment that is needed for rehabilitation or to ameliorate their disabilities.

*Response*

Subsidized child care under this final-form rulemaking is provided for approved activities included in the parent's AMR or EDP, including volunteer activities. Enlarging the type of activities that can be approved in an AMR or EDP is outside the scope of this final-form rulemaking.

§ 168.18(b)(1). *Need for child care.*

Two commentators requested clarification regarding whether care would be provided for a single parent with a disability at the initial request for care.

*Response*

This provision did not change. A single parent with a disability can qualify for subsidized child care as needed to participate in an approved work activity in the AMR or EDP.

§ 168.18(b)(2). *Need for child care.*

Commentators requested clarification regarding the family composition and eligibility requirements regarding a teen parent.

*Response*

The Department has retained the language in the current regulation. Eligibility requirements for teen parents have not changed. The CAO will continue to determine a family's eligibility for subsidized child care.

§ 168.18(f). *Need for child care.*

IRRC recommended the Department clarify in the final-form rulemaking that the parent is required to attend the face-to-face interview with the CCIS and requested clarification regarding the procedures a CCIS will follow to avoid disruption in child care services when a parent cannot get transportation to the face-to-face interview or experiences other legitimate problems in completing the interview that are beyond the parent's control.

Commentators, including PACCA, QUEST and the United Way of Pennsylvania, supported the requirement as written. One commentator requested clarification regarding data collection and management. Other commentators suggested that time spent in the face-to-face interview should count as time spent in a work activity.

One commentator suggested revising the language to allow for subsidy suspension following failure to meet the face-to-face requirement until the date the parent attends a face-to-face interview or otherwise meets the requirement. Another commentator suggested that eligibility be reinstated retroactive to the date the parent failed to meet the requirement if the parent later meets the requirement.

Some commentators opposed the face-to-face requirement, but suggested the following changes if the requirement remained intact: count the face-to-face interview as

an excused work absence; make the CCIS staff available to interview parents at EARN contractor sites; count time spent in the face-to-face interview as work participation and waive the requirement for parents who have formerly attended a face-to-face interview with the CCIS.

*Response*

As previously stated, the Department will provide training that will include clarification regarding data collection and management, including the face-to-face interview. The training will occur prior to implementation of the final-form rulemaking.

The face-to-face interview is essential to providing counseling and information to the parent regarding quality child care and additional resources available to the family. Accordingly, the Department has determined that it is not appropriate to eliminate the face-to-face requirement, suspend eligibility or allow retroactive eligibility for a parent who fails to complete the face-to-face interview within 60 days.

The regulation provides for an additional 30 days to complete the face-to-face interview if the parent has a hardship, such as transportation or another legitimate problem. In addition, it provides for use of a telephone interview after two 30-day periods for a face-to-face interview if scheduling a face-to-face interview would require the parent to miss work. The Department finds that the accommodations for parents are flexible and provide adequate time for parents to meet the face-to-face requirement.

Counting attendance at the face-to-face interview as a work activity for employment and training purposes is outside the scope of this final-form rulemaking. As to the suggestion that appearance at a face-to-face interview be counted as an excused work absence, that is a matter for the employer.

§ 168.19(2)(i). *Child care arrangements.*

Commentators suggested that the term "biological or adoptive parent" continue to be used.

*Response*

The Department agrees and retained this language in this final-form rulemaking.

§ 168.20(c) and (d). *Child care co-payment.*

Two commentators suggested that the language reflect that a change in co-payment may happen as the result of a partial redetermination in addition to a full redetermination.

Commentators also suggested that the terms "written advance notice" replace the term "notification" in subsection (d). The commentators offered no rationale for these changes.

*Response*

The Department finds that it is unnecessary to modify the term "redetermination." The term "redetermination" encompasses both partial and complete redeterminations.

With regard to the suggestion to replace the term "notification," the Department has made this change.

§ 168.21(a). *Ineligibility for failure to pay co-payment.*

Commentators questioned whether the provision permitting satisfactory arrangements to pay delinquent co-payment reflects current CCIS policy or regulation.

*Response*

This regulation is consistent with current CCIS policy.

§ 168.41(3). *Verification requirements.*

One commentator opposed the use of a collateral contact with the provider as a means to verify child care costs.

*Response*

The Department believes the use of a collateral contact is acceptable. Paragraph (4) clarifies that when payment is made based on a collateral contact, the provider must submit written information within 30 days. Furthermore, the provision for collateral contact is included in the regulation to address circumstances in which a provider has submitted monthly the Attendance Invoice but there are issues pending resolution. The collateral contact supplements the Attendance Invoice in these circumstances.

§ 168.43. *Verification of the disability of a child.*

IRRC recommended revising the title of the section by replacing the term “disability” with the term “injury or impairment.” IRRC and one commentator requested clarification regarding to whom the parent must submit the verification.

Other commentators suggested revising the language to state “For a child between the ages of 13 and 19 to be eligible for care pursuant to § 168.17(3)(ii) (relating to eligible children), a . . .” The commentators also suggested the inclusion of the term “herself” in addition to the term “himself.”

*Response*

The Department has not made this change and is using the language in the current regulation.

§ 168.44. *Verification of the disability of a parent/ caretaker.*

IRRC and one commentator requested clarification regarding to whom the parent must submit the verification.

Other commentators suggested deleting the section, but offered no rationale for the suggestion.

*Response*

The Department has not made this change and is using the language in the current regulation.

§ 168.49. *Verification of payment of co-payment for the employed budget group.*

Most commentators supported the provision, but two commentators opposed it and stated that satisfactory arrangements to pay a delinquent co-payment are unacceptable and do not reflect current CCIS policy or regulation.

*Response*

The Department has not changed this section. The provision permitting satisfactory arrangements to pay a delinquent co-payment is consistent with current CCIS policy.

§ 168.61. *Reporting requirements.*

IRRC requested clarification regarding to whom the parent must report changes in child care arrangements.

*Response*

Currently, parents report changes in child care arrangements to the CAO. In the future, responsibility for administration of subsidized child care for TANF, GA and FS recipients will be assumed by the CCIS. At that time, parents must begin reporting changes to the CCIS. The

Department has revised the language to clarify that the parent must submit verification to the Department or its designated agent.

§ 168.71(3). *Monthly payment determination.*

Commentators suggested keeping this provision, but offered no rationale for the suggestion.

*Response*

The Department has not changed this paragraph.

§ 168.72. *Determining monthly child care costs.*

One commentator requested revision of this section. The commentator stated that the wording “The actual child care costs reported and verified as paid or incurred in a month are considered. Actual child care costs include: . . .” does not accurately reflect the payment policies currently used by the CCIS.

*Response*

The Department agrees and deleted the language in question.

§ 168.72(2). *Determining monthly child care costs.*

IRRC recommended that the Department consider revising the language to include provision for specific reasons for absences beyond illness. Some commentators suggested keeping the term “vacation and the like.” The commentators stated that under § 3041.19(a) (relating to absence), the Department will pay for up to ten consecutive absences for any reason and believe this language should be mirrored in this final-form rulemaking. The commentators further stated that they believe this language is more restrictive and keeping the terms would permit a child’s spot to be retained when a child’s absence is for a legitimate, family-related reason.

*Response*

The Department has revised the language to not restrict the reasons the child was not in attendance.

§ 168.81. *Payment methods.*

One commentator requested clarification regarding this provision. The commentator believed the section should be revised to more clearly reflect that all providers must participate in the vendor payment system (that is, sign a provider agreement).

*Response*

The Department finds that this section clearly reflects that all providers participate in vendor payment. Exceptions for payment to the parent are limited to those in the regulation. Accordingly, the Department finds that no change in content is necessary. The Department reformatted for clarity.

§ 168.82. *Time frames for authorization of payment.*

IRRC questioned as unnecessary the inclusion of this section and requested clarification if the Department retains the section. Some commentators suggested the deletion of the section. Other commentators suggested including a new section stating that “Coverage of child care costs shall begin on the date the family began to incur child care costs for a work activity approved on the AMR or EDP.”

*Response*

The section was not added in this final-form rulemaking. In addition, the request for an additional section is outside the scope of this final-form rulemaking. The determination of when a parent is eligible for child care

and on what date the child care need begins is made by the CAO under Chapter 165.

§ 168.91. *Restitution.*

One commentator requested clarification regarding this section. The commentator believes the section is ambiguous and not understandable.

*Response*

The Department finds that Chapter 255 (relating to restitution), cross-referenced in this section, clarifies the requirements regarding restitution.

*Additional Changes*

In addition to the major changes previously discussed, the Department made several changes in preparation of the final-form rulemaking including correcting typographical errors and revising language to enhance clarity and conform to the changes previously discussed.

The Department deleted the definitions of “regulated care,” “self-certification,” “service month” and “unregulated care,” as the terms are not used in the final-form rulemaking. The Department also deleted the definitions of “CAO,” “disability” and “family” as unnecessary. In addition, the Department changed the definition of “in-home care” and “relative/neighbor care” for clarity.

*Regulatory Review Act*

Under section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), on November 8, 2006, the Department submitted a copy of the notice of proposed rulemaking, published at 36 Pa.B. 3262, to IRRC and the Chairpersons of the House Committee on Children and Youth and the Senate Committee on Public Health and Welfare for review and comment.

Under section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.1) and (j.2) of the Regulatory Review Act, on November 21, 2006, the final-form rulemaking was approved by the Senate Committee on Public Health and Welfare. On November 29, 2006, the final-form rulemaking was deemed approved by the House Committee on Children and Youth. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 30, 2006, and approved the final-form rulemaking.

*Findings*

The Department finds that:

(1) The public notice of intention to amend the administrative regulations by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) known as the Commonwealth Documents Law (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2

(2) The adoption of this rulemaking in the manner provided by this order is necessary and appropriate for the administration and enforcement of Articles II and IV of the code.

*Order*

The Department, acting under Articles II and IV of the code, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapter 168, are amended by amending §§ 168.1, 168.2, 168.11, 168.17, 168.18, 168.20, 168.21, 168.41, 168.61, 168.71, 168.72, 168.74 and 168.81 and by adding § 168.3 to read as set forth in Annex A.

*(Editor’s Note:* The proposal to amend §§ 168.19, 168.43, 168.44, 168.49, 168.51, 168.91 and 168.101, to add §§ 168.4 and 168.82 and to delete § 168.45, included in the proposed rulemaking at 36 Pa.B. 3262, have been withdrawn by the Department.)

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

(c) The Secretary of the Department shall certify and deposit this order and Annex A with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

ESTELLE B. RICHMAN,  
*Secretary*

*(Editor’s Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 7777 (December 16, 2006).)

**Fiscal Note:** 14-505. (1) General Fund;

	Cash Grants	Child Care Services
(2) Implementing Year 2006-07 is	\$0	\$0
(3) 1st Succeeding Year 2007-08 is	\$619 million	\$3.910 million
2nd Succeeding Year 2008-09 is	\$3.172 million	\$6.143 million
3rd Succeeding Year 2009-10 is	\$3.965 million	\$6.327 million
4th Succeeding Year 2010-11 is	\$4.758 million	\$6.517 million
5th Succeeding Year 2011-12 is	\$5.551 million	\$6.712 million
	Child Care Services (State)	Cash Grants (State)
(4) 2005-06 Program—	\$80.209 million	\$434.931 million
2004-05 Program—	\$60.877 million	\$384.182 million
2003-04 Program—	\$59.683 million	\$330.772 million

(7) Cash Grants, Child Care Services; (8) recommends adoption. Funds have been included in the 2005-2006 budget for this purpose. Funds have been included in the 2006-2007 budget for this purpose. This action will result in savings to the General Fund for County Assistance Offices estimated at \$1.003 million in 2006-2007 and \$3.398 million for each year thereafter.

**Annex A**

**TITLE 55. PUBLIC WELFARE**

**PART II. PUBLIC ASSISTANCE MANUAL**

**Subpart C. ELIGIBILITY REQUIREMENTS**

**CHAPTER 168. CHILD CARE**

**GENERAL PROVISIONS**

**§ 168.1. Policy on payment of child care.**

(a) To the extent funds are available, payment for child care will be made to enable the parent/caretaker to

participate in work-related activities. To qualify for a child care payment, the individual must be eligible to receive cash assistance, including persons who do not receive a cash payment due to the minimum monthly check requirement or due to a month of zero cash payment. Child care payments are considered a reimbursement for past or future child care expenses for food stamp eligibility purposes.

(b) The Department will promptly inform a recipient of food stamps or cash assistance who is in need of child care about the following:

- (1) The types and locations of child care providers.
- (2) The services available from the CCIS, for help in finding and selecting a child care provider.
- (3) Child care payments will be paid in advance of the date that payment is required by the provider, consistent with the requirements and time frames in § 165.42 (relating to advance payment of special allowances for supportive services), to ensure that the participant will have access to the child care provider of the participant's choice. The advance payment requirement does not apply to vendor payments for child care. Advance payments are considered a reimbursement of future child care expenses for food stamp eligibility purposes.

(i) The Department will make an exception to the provisions which limit advance payment to instances in which the provider requires it, and which restrict advance payment for providers enrolled in the child care vendor payment system for a TANF budget group determined prospectively ineligible as a result of starting new employment under § 168.71(1)(ii) (relating to monthly payment determination).

(ii) The Department will make an advance payment from the first day of employment until the date of discontinuance if the information is verified through a collateral contact consistent with § 168.41(4) (relating to verification requirements).

(c) At application, reapplication and whenever the agreement of mutual responsibility is developed or revised, the CAO will inform applicants and recipients in writing and orally of the availability of child care allowances.

(d) Determination of eligibility and notification of approval or denial of child care payments will be done in accordance with § 165.43 (relating to special allowances for supportive services and time frames for eligibility determinations).

(e) Authorization of payment for child care will be done based on time frames consistent with § 165.45 (relating to time frames for authorization of special allowances for supportive services).

(f) The Department will discuss the maximum child care allowances and the co-payment sliding fee scale in Chapter 3041, Appendix B (relating to co-payment chart, family co-payment scale), whenever the Agreement of Mutual Responsibility (AMR) is developed or revised and reflects a need for child care. The Department will advise clients that copies of the maximum child care allowances and the co-payment sliding fee scale are available upon request at the CAO.

(g) The Department will provide help in finding and selecting a child care provider.

### § 168.2. Definitions.

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

*Budget group*—A group of persons receiving TANF. A child receiving SSI benefits and for whom child care payments are requested is included in the budget group.

*CCIS—Child Care Information Services Agency*—A public or private agency with which the Department has a contract to manage the subsidized child care program in part of a county, a county or several counties.

*Co-payment*—The weekly amount the family pays for subsidized child care.

*Co-payment sliding fee scale*—A scale based on family size and income from which a determination of the child care co-payment is made as set forth in Chapter 3041, Appendix B (relating to co-payment chart, family co-payment scale).

*Full-time care*—Child care of at least 5 hours per day.

*In-home care*—Child care provided by an individual in the child's home.

*MCCA—Maximum child care allowance*—The ceiling set by the Department for payment of child care services to budget groups eligible for child care payment.

*Nontraditional hours*—Hours of child care provided to a child whose parent/caretaker works on Saturday, Sunday or between the hours of 6 p.m. and 6 a.m.

*Parental access*—Access by the parent to the child at any time while the child is in care without the need for prior notification.

*Part-time care*—Child care of less than 5 hours per day.

*Relative/neighbor care*—Child care provided by an individual who cares for three or fewer children unrelated to the provider in the provider's home.

*Restricted endorsement*—A check made payable to two parties which requires the signature endorsement of both parties to cash the check.

*Satisfactory arrangement*—The plan made by the budget group to pay overdue fees which are acceptable to the child care provider.

*Specified relative*—The term as defined in Chapter 151 (relating to specified relatives).

*Sleep-time*—Care provided for a child when the parent's/caretaker's work shift ends between the hours of 12 a.m. and 9 a.m. to allow the parent/caretaker time to sleep.

*TANF—Temporary Assistance for Needy Families Program*—A Federal nonentitlement program under sections 401—409 of the Social Security Act (42 U.S.C.A. §§ 601—619) which provides cash assistance to families that include dependent children and an adult who is working toward self-sufficiency. Eligibility for TANF is determined by the local CAO.

*Vendor payment*—A child care payment made by the Department directly to a child care provider who has signed a provider agreement.

### § 168.3. Authority to administer subsidized child care.

The Department may delegate to another approved entity, such as the CCIS, the responsibilities in this chapter for the purpose of administering subsidized child care.



**ELIGIBILITY REQUIREMENTS**

**§ 168.11. General requirements.**

(a) Payment for child care is available for the following types of child care:

- (1) Center-based day care.
- (2) Group home day care.
- (3) Family day care.
- (4) Relative/neighbor care.
- (5) In-home care.

(b) The parent/caretaker shall have the right to choose from any type of child care that is available under this chapter and the right to choose any child care provider who meets the requirements of this chapter.

**§ 168.17. Eligible children.**

To be eligible for a child care payment, the budget group shall include a child who meets the following criteria. The child meets the following conditions:

(1) Is a TANF dependent child under Chapter 153 (relating to deprivation of support or care) and § 145.43(a)(1) (relating to requirements) or would qualify as a TANF dependent child under Chapter 153 and § 145.43(a)(1) except for receipt of SSI or foster care benefits.

(2) Meets one of the following conditions:

- (i) Is under 13 years of age.
- (ii) Is 13 years of age or older but under 19 years of age and is physically or mentally incapable of caring for himself as verified by a physician or licensed psychologist.
- (3) Is age appropriately immunized. If the child does not have age-appropriate immunizations, the parent/caretaker has 90 days to obtain and document immunizations for the child unless one of the following applies:

- (i) The parent/caretaker objects to immunizations on religious grounds.
- (ii) The child's medical condition contraindicates immunizations as verified by a physician.

**§ 168.18. Need for child care.**

(a) Child care must be needed to enable a member of the budget group to participate in a work-related activity.

(b) Child care services will not be considered as needed when an unemployed parent/caretaker of the child is in the home, unless one of the following applies:

- (1) The parent/caretaker is physically or mentally incapable of providing child care, as verified by a physician or licensed psychologist.
- (2) The parent/caretaker is involved in work-related activities or the custodial parent is participating in a Department of Education Pregnant and Parenting Youth Program.
- (3) The child is at risk because of suspected child abuse.

(c) Child care will be considered as needed for entry into or during breaks in approved work-related activities for up to 30 days.

(d) Child care will not be considered as needed when the biological or adoptive parent, specified relative or legal guardian of the child is the owner/operator of a child care business where care is available for the child.

(e) Subsidized child care may not be used as a substitute for a publicly funded educational program, such as kindergarten or a specialized treatment program.

(f) A parent/caretaker is ineligible for subsidized child care if he does not attend a face-to-face interview no later than 30 calendar days following the request for care. The Department may extend the 30-day time frame for the face-to-face interview if, on or before the 30th calendar day, the parent/caretaker claims hardship due to conflicts with the parent's/caretaker's working hours, transportation problems or illness of the parent/caretaker or another family member. At the time the parent/caretaker claims hardship, the Department may grant an additional 30 days from the date the hardship is claimed for the interview. The Department may substitute a telephone contact for a face-to-face interview if a face-to-face interview cannot be scheduled without the parent/caretaker having to take time off from work.

(g) A parent/caretaker is ineligible for subsidized child care if he does not select an eligible child care provider and enroll the child within 30 calendar days following the date the Department notifies the parent/caretaker that the child may be enrolled or that the family's current child care provider is ineligible to participate in the subsidized child care program.

**§ 168.20. Child care co-payment.**

(a) The employed TANF budget group shall pay the required co-payment toward the cost of child care.

(b) The co-payment is due on the first day of the service week and each week thereafter, regardless of the day the child is enrolled.

(c) If the co-payment is decreased as the result of a redetermination, the employed TANF budget group shall begin paying the reduced co-payment on the first day of the service week following the date of the redetermination.

(d) If the co-payment is increased as the result of a redetermination, the employed TANF budget group shall begin paying the increased co-payment on the first service day of the week following the notification advising the budget group of the co-payment increase.

(e) If the co-payments for 1 month are equal to or exceed the monthly payment for care, the family is not eligible for subsidized child care with that provider.

**§ 168.21. Ineligibility for failure to pay co-payment.**

Ineligibility for child care payment results when the TANF budget group is employed and fails to pay the required co-payment toward the cost of child care. The TANF budget group is ineligible until overdue co-payments are paid or satisfactory arrangements to pay overdue co-payments are made with the provider.

**VERIFICATION**

**§ 168.41. Verification requirements.**

The applicant or recipient is required, as a condition of eligibility, to cooperate in providing necessary information and verification to establish eligibility.

(1) Before authorizing the initial child care payment, the CAO will determine the following:

- (i) Whether the child care is necessary to participate in a work-related activity.
- (ii) The expected charge.
- (iii) The date the service is needed by the participant.

(iv) The date that payment for the service is required under the provider's usual payment policy or practice.

(2) When the parent/caretaker provides verification to the Department that indicates a change in eligibility, payment will be reduced, terminated or increased, as appropriate, upon issuance of appropriate notice to the parent/caretaker, in accordance with §§ 133.4 and 168.101 (relating to procedures; and appeal and fair hearing).

(3) Child care costs shall be verified monthly on a form specified by the Department or by a written statement signed by the provider or by a collateral contact by the Department with the child care provider.

(4) A collateral contact will be used whenever necessary to ensure that payment is made in advance of the date that payment is required by the child care provider consistent with § 168.1(b)(3) (relating to policy on payment of child care). When a child care payment is authorized based on a collateral contact with or by a written statement from the provider, verification of the charge for child care on a form specified by the Department shall be submitted to the Department within 30 days of the first day child care costs were incurred. The Department will assist the client, as needed, to obtain a completed verification form from the provider. Failure to provide verification within the specified time period could result in nonauthorization of the child care payment.

(5) Verification of factors other than cost relating to the need for child care shall consist of collateral contacts with, or written statements from, employers, prospective employers, physicians, licensed psychologists, school officials, training providers or pay stubs. Information previously verified need not be reverified unless it is subject to change.

#### REPORTING REQUIREMENTS

##### § 168.61. Reporting requirements.

The budget group shall report changes in child care arrangements to the Department or its designated agent within 10 calendar days from the date the change occurred. Documentation of child care payment shall be retained in the case record in accordance with § 3041.85 (relating to record retention).

#### PAYMENT DETERMINATION

##### § 168.71. Monthly payment determination.

The amount of the child care payment is determined for each month.

(1) The allowable child care payment is the rate the provider charges to the general public or the MCCA established by the Department, whichever is less.

(i) For participants in unpaid work-related activities, payment is the rate the provider charges to the general public or the MCCA established by the Department, whichever is less.

(ii) For participants in paid work-related activities, payment is made for the actual costs of child care up to the maximum allowance established by the Department or the rate charged the general public, whichever is less, minus the family co-payment as determined in § 168.74 (relating to determining weekly child-care co-payment for the employed TANF budget group).

(A) A TANF budget group determined prospectively ineligible for TANF benefits as a result of starting employment will have the co-payment waived from the first day of employment until the date of discontinuance

of the TANF benefits in accordance with § 183.105 (relating to increases in income), if the budget group has reported timely in accordance with § 125.24(d) (relating to responsibility for reporting changes).

(B) A TANF budget group determined prospectively eligible for TANF benefits when a parent/caretaker is starting employment will have the co-payment waived from the first day of employment until the last day of the calendar month in which the first pay is received, provided the TANF budget group has reported timely in accordance with § 125.24(d).

(2) When the month of child care eligibility is not a full calendar month, the child care payment is prorated for the number of calendar days for which the TANF budget group is eligible.

(3) Corrective or delayed payments are issued consistent with the requirements in Chapters 175 and 227 (relating to allowances and benefits; and central office disbursement).

##### § 168.72. Determining monthly child care costs.

Child care costs include the following:

(1) A charge for child care during the hours of the work-related activity, including travel time and sleep-time.

(2) A charge for up to 10 consecutive days on which the child was not in attendance.

(3) A charge for transporting the child to or from care if the charge is included as part of the normal child care charge and not levied as a separate charge.

##### § 168.74. Determining weekly child care co-payment for the employed TANF budget group.

The co-payment is determined weekly based upon gross monthly income and budget group size, using the co-payment sliding fee scale in Chapter 3041, Appendix B. Gross monthly income is determined based on anticipated or actual amounts as determined in accordance with Chapter 183 (relating to income).

(1) The co-payment is waived for the calendar month in which the first pay is received or until the date of discontinuance due to a prospective determination of ineligibility, in accordance with § 168.71 (relating to monthly payment determination). In the second month, the co-payment is determined using anticipated income, excluding the TANF grant as countable income.

(2) In the third month, the co-payment is determined using anticipated income and the TANF grant adjusted for earnings. This co-payment is used prospectively until the next redetermination, or the client requests a review of the co-payment amount, or there is a change in employment.

(3) If retroactive benefits are requested, the co-payment for each retroactive month will be determined using the actual income in the month of application.

#### CHILD CARE PAYMENT METHODS

##### § 168.81. Payment methods.

(a) Subject to subsection (b), the Department will make a vendor payment for child care expenses incurred in a month.

(b) Payment is made to a vendor unless one of the following applies:

(1) Care is provided in the child's home.

(2) The parent/caretaker requires reimbursement for child care costs incurred during retroactive periods of eligibility.

[Pa.B. Doc. No. 06-2554. Filed for public inspection December 29, 2006, 9:00 a.m.]

## Title 67—TRANSPORTATION

### DEPARTMENT OF TRANSPORTATION

#### [67 PA. CODE CH. 102]

#### Child Passenger Protection

The Department of Transportation, under 75 Pa.C.S. §§ 4581 and 6103 (relating to restraint systems; and promulgation of rules and regulations by department), amends Chapter 102 (relating to child passenger protection) to read as set forth in Annex A.

#### *Purpose of Chapter 102*

The purpose of Chapter 102 is to improve safety in transporting children by providing for exemption from the booster seat requirements in 75 Pa.C.S. (relating to Vehicle Code) (Vehicle Code) for children over a certain weight or height, or for children with a medical condition which makes use of a standard child passenger restraint system inappropriate.

#### *Publication for Public Comment*

Notice of proposed rulemaking was published at 34 Pa.B. 5684 (October 16, 2004) and the public was invited to submit comments. The proposed rulemaking was also submitted to the Independent Regulatory Review omission (IRRC) and to the House and Senate Transportation Committees. Comments were received from IRRC and from the public. The Department considered the written comments in formulating this final-form rulemaking.

#### *Summary of Comments and Changes to Final-Form Rulemaking*

Public comments were received from Ray F. Middleman, Esq. (on behalf of the Pennsylvania Taxi and Paratransit Association, The Yellow Cab Company of Pittsburgh, Airport Limousine Service, Inc., Checker Cab Company and YC Holdings, Inc.) and from the Pennsylvania Public Transportation Association (PPTA). Comments were also received from IRRC.

The Middleman comments urged that the rulemaking should exempt common carriers, such as the clients on whose behalf Middleman comments, from the requirements of the final-form rulemaking. The comment notes that carriers, particularly those in the business of call and demand transportation services, such as taxis, would have to be prepared with the various "appropriate" child passenger restraint systems to meet the range, in number and age, of child passengers they may possibly be asked to transport.

The Department recognizes the dilemma of call and demand carriers, but is without authority to include the recommended exception. Section 4581(a)(1) and (1.1) of the Vehicle Code, not the regulation, imposes the requirement to provide child passenger restraint on persons operating "a passenger car, Class I truck, Class II truck, classic motor vehicle, antique motor vehicle or motor home...." The provision does not exempt common carriers from the applicability of the requirements. The definition of "passenger car" in section 102 of the Vehicle Code

(relating to definitions) states that "a motor vehicle, except a motorcycle, designed primarily for the transportation of persons and designed for carrying no more than 15 passengers, including the driver, and primarily used for the transportation of persons." The definition does not exclude taxis. The Department cannot adopt a regulation contrary to the Vehicle Code and cannot, by regulation, provide an exemption from a statutory provision enacted by the General Assembly when the Legislature has not provided for an exemption.

It should be noted that the 2004 amendments to the Vehicle Code that prompted the promulgation of this final-form rulemaking added the provisions regarding children between 4 and 8 years of age. The requirement to provide restraint for children under 4 years of age had been in the Vehicle Code, and applicable to call and demand carriers, for some time.

The comments of the PPTA take the similar position that public transportation vehicles should be exempted from this final-form rulemaking. As noted, however, the applicability of the requirement to provide child passenger restraint is established by the Vehicle Code, not the regulations, and the Department is without authority to amend the statute by adoption of a regulation. Notably, the PPTA comments argue, at one point, "that public transportation providers must be exempt from this lawmaking." The exemption sought must come from the General Assembly and cannot legally be accomplished through a Department rulemaking.

It should be noted that not all vehicles used in public transportation are subject to the child passenger restraint requirements of the Vehicle Code. Only vehicles falling within the definitions of "passenger car," "Class I truck," "Class II truck," "classic motor vehicle," "antique motor vehicle" or "motor home" in the Vehicle Code would be subject to the statutory child passenger restraint requirement.

The PPTA comments also urge that the final-form rulemaking clarify that responsibility for the provision of the appropriate child passenger restraint system be placed on the passenger, presumably not the child but the adult responsible for the child. Again, the establishment of responsibility through regulation is beyond the authority of the Department. The statute places the onus of providing child passenger restraint on the person operating the vehicle. See section 4581 a(1) and (1.1) of the Vehicle Code. The Department cannot, through regulation, shift that onus to another person or persons.

In addition to the fiscal and logistical arguments raised in the PPTA comments in support of its request for exemption of public transportation providers, the PPTA urges that "it must be clearly stated that physician exemptions, and any changes thereto, are the responsibility of the passenger." With respect to the transportation of children by common carriers, the comment has some merit. Section 102.3(b) (relating to medical exemption from use of child passenger restraint system) has been amended to read: "The completed form must be in the possession of the vehicle operator or other adult traveling with the child whenever the child is being transported."

In its comments, IRRC noted that public commentators are not clear whether school buses, taxi cabs, limousines and other forms of public and private transportation fall under the final-form rulemaking and recommend that the Department include a section defining its scope. The Department does not believe this amendment is necessary. As previously noted, the Vehicle Code makes clear

the classes of vehicles to which the statutory requirements apply and the Vehicle Code includes definitions of those classes of vehicles. It would be redundant for the final-form rulemaking to repeat the language and definitions in the Vehicle Code.

IRRC also suggested that the Department should identify the number of call and demand service vehicles and quantify the costs associated with compliance with this final-form rulemaking by common carriers. In 2005 there were 2,561 limousines and 2,830 taxis registered in this Commonwealth. A booster seat can cost between \$25 and \$130. The aggregate cost to this segment of the regulated community to acquire one seat per vehicle is between \$134,775 and \$700,830.

IRRC has also noted the language in § 102.102 (relating to physical criteria for use of child passenger restraint system) requiring the child to be fastened in a restraint appropriate for the child's age, height and weight "in accordance with the recommendations of the manufacturer." IRRC questioned how the vehicle operator can demonstrate that the recommendations of the manufacturer have been followed. Labels on the equipment indicate the range of age, height and weight for which the equipment has been designed. In addition, child passenger restraint system provide instructions on the proper installation. The user and certainly law enforcement can key on visual cues such as whether the child's head is held too high above the device or if the shoulder belt restrains the child across the chest, as opposed to at the neck, to determine and demonstrate that the restraint is being properly used.

IRRC also commented that the final-form rulemaking appears only to provide exemption from use of a child passenger restraint system and not booster seats. In a related comment, IRRC noted some lack of clarity in the final-form rulemaking's use of the terms "child restraint system," "child passenger restraint system" and "child booster seat." In response to these comments, the definitions of "child booster seat" and "child passenger restraint system" have been amended to make clear that "child passenger restraint system" includes child booster seats. The term "child restraint system" is no longer used. These amendments clarify any ambiguity regarding the applicability of the exemption provisions.

#### *Persons and Entities Affected*

This final-form rulemaking will affect vehicle operators transporting children under 8 years of age.

#### *Fiscal Impact*

This final-form rulemaking will not require the expenditure of additional funds by the Commonwealth. The cost to the regulated community will be in the cost of a booster seat which range between \$25 and \$130. This final-form rulemaking may also result in marginal savings to parents with children falling within the exemptions who will not have to purchase booster seats.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 5, 2004, the Department submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 4685, to IRRC and the Chairpersons of the House and Senate Transportation Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing

the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 29, 2006, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 30, 2006, and approved the final-form rulemaking.

#### *Sunset Date*

The Department is not establishing a sunset date for these regulations, as these regulations are needed to administer provisions required by the Vehicle Code. The Department will continue to closely monitor these regulations for their effectiveness.

#### *Contact Person*

The contact person for this final-form rulemaking is Lou Rader, Transportation Planning Manager, Bureau of Highway Safety and Traffic Engineering, Department of Transportation, Commonwealth Keystone Building, 400 North Street, 6th Floor, Harrisburg, PA 17120-0064, (717) 787-6853.

#### *Order*

The Department orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 102, are amended by deleting §§ 102.1—102.4 and by adding §§ 102.101—102.103 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to legality and form as required by law.

(c) The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

ALLEN D. BIEHLER, P.E.,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 7777 (December 16, 2006).)*

**Fiscal Note:** Fiscal Note 18-393 remains valid for the final adoption of the subject regulations.

### **Annex A**

## **TITLE 67. TRANSPORTATION**

### **PART I. DEPARTMENT OF TRANSPORTATION**

#### **Subpart A. VEHICLE CODE PROVISIONS**

#### **ARTICLE VI. OPERATION OF VEHICLES**

#### **CHAPTER 102. CHILD PASSENGER PROTECTION**

#### **§§ 102.1—102.4. (Reserved).**

#### **§ 102.101. Definitions.**

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

*Child booster seat*—A belt positioning seat designed and manufactured to meet Federal motor vehicle safety standards in 49 CFR 571.213 (relating to child restraint systems) to position a child to properly sit in a Federally-approved safety seat belt system.

*Child passenger restraint system—*

(i) A device or system to enhance the safety of children in motor vehicles which is designed and manufactured for use in motor vehicles equipped with a safety seat belt system and which meets the Federal motor vehicle safety standards in 49 CFR 571.213.

(ii) The term includes a child booster seat.

*Department—*The Department of Transportation of the Commonwealth.

*Safety seat belt system—*Any strap, webbing or similar device designed to secure a person in a motor vehicle to mitigate the results of any accident, including buckles, fasteners and all installation hardware as specified by 49 CFR 571.209 (relating to Standard No. 209; seat belt assemblies).

**§ 102.102. Physical criteria for use of child passenger restraint system.**

(a) *General criteria.* Children under 4 years of age shall be securely fastened in a safety seat belt system and a child passenger restraint system appropriate for their height and weight in accordance with the recommendations of the manufacturer. Children 4 years of age but younger than 8 years of age shall be securely fastened in a safety seat belt system and an appropriately fitting child booster seat in accordance with the recommendations of the manufacturer.

(b) *Exemption based on child's weight or height, or on vehicle characteristics.* Exemption from the general criteria in subsection (a) is as follows:

(1) Children 4 years of age but younger than 8 years of age who weigh less than 40 pounds may, in lieu of use of a booster seat, be securely fastened in a child passenger restraint system appropriate for their height and weight in accordance with the recommendations of the manufacturer.

(2) Children 4 years of age but younger than 8 years of age riding in a passenger position in the vehicle which was not originally equipped with a shoulder safety seat belt shall be fastened in the safety seat belt system without the use of a child booster seat or may be fastened in a child passenger restraint system appropriate for their height and weight in accordance with the recommendations of the manufacturer.

(3) Children 4 years of age but younger than 8 years of age who weigh more than 80 pounds or who are of a height of 4 feet 9 inches or taller may be fastened in the safety seat belt system without the use of a child booster seat.

(c) *Integrated child restraint or booster seat.* The requirements of this chapter may be satisfied by securing a child, in accordance with the recommendations of the manufacturer, in a child passenger restraint system or vehicle seat designed to accommodate children under 80 pounds, which is integrated into the design of the vehicle by the vehicle manufacturer.

**§ 102.103. Medical exemption from use of child passenger restraint system.**

(a) Exemption from the use of a child passenger restraint system for medical reasons may be obtained upon written certification by a physician that use of a child passenger restraint system is impractical. The certification must be made on a form developed by the Department which will require the following information:

- (1) The physician's name and practice address.
- (2) The date the form was completed.
- (3) The name, age and weight of the child.

(4) The medical or physical reasons that the use of a particular child passenger restraint system or systems is impractical.

(5) A recommendation of the type of passenger restraint the child should be fastened into or a statement that no appropriate passenger restraint system is known.

(6) A recommendation regarding the length of time the exemption should extend, or a statement of the conditions under which the exemption should be lifted.

(7) Other information deemed relevant by the physician, such as whether the child can be fastened into the child passenger restraint system but for only limited periods of time.

(b) The completed form must be in the possession of the vehicle operator or other adult traveling with the child whenever the child is being transported.

[Pa.B. Doc. No. 06-2555. Filed for public inspection December 29, 2006, 9:00 a.m.]