

# RULES AND REGULATIONS

## Title 55—PUBLIC WELFARE

### DEPARTMENT OF PUBLIC WELFARE

[ 55 PA. CODE CHS. 3270, 3280, 3290 AND 3300 ]

#### Child Care Facilities

The Department of Public Welfare (Department), by this order, adopts a final-form rulemaking to read as set forth in Annex A under the authority of Articles IX and X of the Public Welfare Code (62 P.S. §§ 901—922 and 1001—1087). Notice of proposed rulemaking was published at 36 Pa.B. 2686 (June 3, 2006).

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

The child care facility regulations in Chapters 3270, 3280 and 3290 provide standards designed to protect the health, safety and rights of children and to reduce risks to children in child day care centers, group child day care homes (GDCH) and family child day care homes (FDCH). The regulations identify the minimum level of compliance necessary to operate a child day care center, GDCH or FDCH.

The final-form rulemaking is needed to update the minimum standards for child care facilities. The current regulations were published at 22 Pa.B. 1651 (April 4, 1992) and must be updated to reflect the current laws that directly impact the operation of child care facilities, to incorporate the Department's statements of policy issued since 1992, to implement developments in recommended health and safety practices and to reflect best practice in the field of child care.

#### *Affected Individuals and Organizations*

Children and families are directly affected by the final-form rulemaking. The minimum health and safety standards in Chapters 3270, 3280 and 3290 protect children who attend the more than 9,000 child care facilities in this Commonwealth. The cost of child care is of concern to families and directly affects the choices that families make regarding child care. The final-form rulemaking may result in decreased costs to parents due to the decreased costs associated with providing updated child health reports to the facility. The final-form rulemaking also will facilitate inclusion of children with special needs in child care facilities.

Child care facilities and staff also are affected by the final-form rulemaking. The final-form rulemaking may increase costs to some facilities. The effective date of the regulations provide 120 days from the publication date for facilities to assess and plan for increased costs. In addition, a facility has 2 years to comply with the requirements relating to playground surfacing. The delay in implementation of the final-form rulemaking will afford the Department time to provide information and tools to assist in understanding and complying with the final-form rulemaking to facilities. The final-form rulemaking relating to staff health appraisals and tuberculosis testing will decrease costs to facilities and staff.

#### *Accomplishments and Benefits*

The final-form rulemaking updates and codifies statements of policy. Since the child care service regulations were last published in April 1992, many changes have occurred that affect the regulations and operation of a child care facility. The Department published 12 state-

ments of policy clarifying or interpreting the regulations, including statements of policy regarding emergency plans, supervision of children, Syrup of Ipecac, release of children, posting inspection summaries, Departmental access and swimming pool accessibility. Laws that impact operating a child care facility have changed regarding certificate of occupancy, vehicle safety, childhood immunizations and children with special needs. New research has resulted in changes to health and safety recommendations regarding Sudden Infant Death Syndrome (SIDS) prevention, playground safety and tuberculosis testing. In addition, the Department noted areas in which facilities have difficulty complying with requirements and examined the reasons for noncompliance. The final-form rulemaking makes clarifications that will assist facilities to comply with the regulations and continue to ensure minimum health and safety at a facility.

The final-form rulemaking also addresses the child abuse and criminal history clearance requirements for household members in a family child care home enacted by Act 2006-179. (See 23 Pa.C.S. § 6344.1 (relating to information relating to family day-care home residents).) Act 179 amends the Child Protective Services Law (CPSL) and became effective on May 28, 2007. Act 179 requires that the operator of a family child care home shall submit along with the application for registration certificate child abuse and criminal history clearances as required by the CPSL for each individual 18 years of age and older who resides in a family child care home for at least 30 days in a calendar year. This change appears in § 3290.11(m) (relating to application for and issuance of a certificate of registration).

The final-form rulemaking also extends the prohibition against hazardous toys and equipment to FDCHs in § 3290.102(f) (relating to condition of play equipment). Children receiving care in FDCHs also need the protection afforded by the regulation.

#### *Fiscal Impact*

##### *Kindergarten Child as a Young School-Age Child*

The final-form rulemaking changes the definition of "young school-age child" to include a kindergarten child. A school-age child care center or GDCH that enrolls a kindergarten child will be able to maintain its status as a school-age facility and will result in cost savings for many child day care centers and GDCHs relating to staffing and physical site. (See §§ 3270.241 and 3280.221 (relating to requirements specific to school-age programs).) A facility that transports kindergarten and school-age children to and from school will be able to count the driver in the staff:child ratio and will no longer have to supply an additional staff person on the vehicle to comply with staff:child ratio requirements related to transporting preschool children. The staff:child ratio for young school-age children is 1:12 and for preschool children is 1:10.

Changing the definition of "young school-age child" to include kindergarten children may result in lower reimbursement rates for some facilities that participate in the child care subsidy program. On average, the subsidy reimbursement rate for a preschool child is \$2.73 higher per day than the reimbursement rate for a young school-age child. Using the average full-time child care center reimbursement rates of \$26.55 per day for preschool child and \$23.70 per day for young school-age child and the required staff:child ratio of 1:10 for preschool children and 1:12 for young school-age children, the income from

each group of children is \$265.50 for one group of 10 preschool children and \$284.40 for one group of 12 young school-age children.

The wages for child care staff often vary according to position. The majority of staff in child care facilities are qualified as assistant group supervisors (AGSs). An AGS is permitted to be alone with children. According to the Department of Labor and Industry (L&I) wage statistics, the average wage for a child care worker is \$8.90 per hour. Using an estimate of a 10-hour full day of care, the cost of a child care worker for 10 hours is \$89. The income produced from a group of 10 preschool children less the cost of the child care worker is \$176.50. The income produced from a group of 12 young children less the cost of the child care worker is \$195.40. The addition of two children to the staff:ratio offsets the lower rate for a young school-age child.

A child care center must have one group supervisor (GS) for every group of 45 enrolled children. A GS has more qualifications than an AGS, may supervise children alone and is often referred to as a "teacher." According to the L&I wage statistics, the average wage for a preschool teacher is \$10.44 per hour. If a GS is counted as a staff person, the cost of a GS for 10 hours is \$104.40. The income produced from a group of 10 preschool children less the cost of the GS is \$161.20. The income produced from a group of 12 school-age children less the cost of the child care worker is \$180. Again, the addition of two children to the staff:ratio offsets the lower rate for a young school-age child.

#### *Mandatory Orientation Training*

Mandatory orientation training may create costs to an individual who wants to open a child care facility. The training will require a full day including travel and training time. The individual's costs will vary depending on the distance the individual must travel to participate in training. Using the Commonwealth mileage rate, an individual who travels 200 miles round trip will incur a travel cost of \$97.

For individuals currently operating or working in child care facilities, attendance at orientation training will be part of their job duties.

An individual who operates a FDCH or GDCH and who wants to open a new facility may have to arrange for staff to work at the facility while the individual attends orientation training. According to L&I wage statistics, the average wage for a child care worker is \$8.90 per hour. If substitute staff must be hired to cover an 8-hour shift, the estimated cost is \$71.20.

An individual who is employed outside the child care field and who wants to open a facility may miss a day of work to attend orientation training and may lose wages for that day. Based on L&I's statistics regarding the average State wage for all workers in this Commonwealth, the individual may lose \$158 in wages to attend orientation training.

#### *Indoor Temperature of 82° F*

The final-form rulemaking requires mechanical air circulation at 82° F, instead of 85° F, which is the current standard. Many facilities already have a means of ventilation in place. Ventilation may be provided through using a fan. If a facility has to purchase a fan, the cost of a fan will vary depending on the type of fan, such as a standing fan, window fan, wall fan or ceiling fan. The estimated costs would be anywhere from \$15 to \$100 depending upon the type of fan chosen by the provider.

#### *Disposable, Nonporous Gloves in First Aid Kit*

The addition of disposable, nonporous gloves to the first aid kit represents increased cost to a facility. The use of gloves is a universal precaution to prevent the spread of disease transmitted by means of body fluids. The cost of a box of 100 gloves ranges from \$2.99 to \$8.99. The rate at which the gloves are used to administer first aid is unknown. The health and safety protection afforded to children and staff by using gloves outweighs the cost.

#### *Protective Surfacing Under Outdoor Play Equipment*

The final-form rulemaking relating to surface covering under outdoor embedded play equipment may result in increased costs for facilities. Many facilities already meet the United States Consumer Product Safety Commission (CPSC) recommendations. The current regulation requires at least 6 inches of loose-fill material under embedded play equipment. The CPSC recommendations state that 6 inches of uncompressed wood chips, the most common protective surface covering used at child care facilities, provides adequate protection from a fall height from 7 feet. Six inches of loose-fill material will be adequate for most child care facilities. If a facility must modify the protective surface to comply with the regulation, the cost will depend upon the fall height from the equipment, the type of surface covering used and the size of the area that must be covered.

A facility that has a unitary surface covering that meets the requirements in the Department's statements of policy in §§ 3270.102a, 3280.102a and 3290.102a (relating to condition of play equipment—statement of policy) at 27 Pa.B. 2827 is in compliance with the final-form rulemaking.

#### *Child's Service Report Form*

Facilities will incur added costs in preparing a service report form every 6 months for each infant, toddler and preschool child and for each school-age child who attends the facility more than 15 hours per week. The Department estimates that on average, a form will take 10 minutes to complete. The Department estimates the average costs of preparing service report forms to be as follows: child care center—\$345.95; GDCH—\$81.40; and FDCH—\$40.70.

#### *Staff Health*

The final-form rulemaking changes the requirement for annual health appraisals to health appraisals every 2 years and eliminates bi-annual tuberculosis testing. These changes will save each staff person \$75 to \$150 per year and an additional \$25 to \$75 every 2 years.

#### *Paperwork Requirements*

Facilities must complete a service report form every 6 months for each infant, toddler and preschool child and for each school-age child who attends the facility more than 15 hours per week. The Department will develop a form for facilities to use. The form will take approximately 10 minutes to complete.

Each child care facility must ensure that no hazardous equipment is used by children on the premises. The Department will provide an affirmation form to child day care center and GDCH operators for this purpose. The form will take no more than 10 minutes for the facility to complete. In a FDCH, the operator's self-certification of compliance with all applicable regulatory requirements at the time of initial and renewal application will serve as certification of compliance with the regulation relating to no hazardous equipment in the facility.

### Public Comment

Following publication of proposed rulemaking, the Department received 46 comments during the 30-day public comment period and three comments within 30 days after the close of the public comment period. The comments received during the public comment period came from 18 child care providers, 13 advocacy organizations, 7 medical professionals or organizations, 3 attorneys, 3 consumers, 1 Pennsylvania Key employee and 1 former Department employee.

The comments received within 30 days after the close of the public comment period came from two providers and one medical professional.

The Department also received comments from the House Children and Youth Committee and the Independent Regulatory Review Commission (IRRC).

Prior to publication of proposed rulemaking, the Department formed a regulation work group to gain input regarding the proposed rulemaking. Work group participants represent a variety of stakeholders interested in child care including providers from all types of child care facilities, advocates, medical professionals, early intervention professionals and representatives of the Departments of Education and Health. The work group met twice.

In February 2006, the Office of Child Development and Early Learning conducted leadership forums regarding initiatives for Fiscal Year 2006-2007. The forums were held in several locations across the State. Approximately 500 people attended the forums. Participants were provided the option of attending several topic-specific sessions regarding upcoming initiatives, including an overview and discussion of the proposed regulatory amendments.

Following publication of proposed rulemaking, the Department held two additional work group meetings. During the 30-day public comment period, the work group met once to discuss strategy to solicit comments regarding the proposed amendments. Following the close of the public comment period, the work group met to discuss the comments and possible revisions to the proposed rulemaking. In addition, Department staff contacted work group members who were unable to attend the meeting to get their input.

### Discussion of Comments and Major Changes

Following is a summary of the major comments received within the public comment period following publication of the proposed rulemaking and the Department's response to those comments. A summary of major changes from proposed rulemaking is also included.

### Statutory Authority

IRRC, citing the en banc Commonwealth Court's April 3, 2006 opinion and order in *St. Elizabeth's Child Care Center v. Department of Public Welfare*, 895 A.2d 1280 (Pa. CmLth. 2006), has questioned the Department's authority to "regulate" Article IX nonprofit child care facilities. In that case, the Court held that the Department lacked statutory authority under Article IX of the Public Welfare Code to promulgate regulations that require a nonprofit day care center to obtain a Certificate of Compliance to operate. The *St. Elizabeth's* case did not address the issue of whether the Department was authorized to issue regulations under the supervisory authority conferred by Article IX, apart from any requirement to obtain a certificate of compliance.

Under Article IX, the Department retains the statutory right to enter, visit, inspect and make and enforce rules in its supervision of all "children's institutions" and "supervised institutions" in this Commonwealth, which includes child care facilities, both before and after the facilities commence operation.

In response to the Commonwealth Court's ruling, the Department filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court. The Supreme Court granted the Department's Petition for Allowance of Appeal at 23 MAP 2007. See 591 Pa. 720, 919 A.2d 960 (Pa. 2007). The grant of the Petition for Allowance of Appeal operates as an automatic stay of the Commonwealth Court's order. Pa.R.A.P. 1736(b) (relating to exemption from security).

Despite the stay of the *St. Elizabeth's* order, the Department does not intend to take legal action to enforce its regulations that require Article IX nonprofit child care facilities to obtain a Certificate of Compliance, pending the disposition of the Supreme Court case at 23 MAP 2007. However, as provided in 62 P.S. § 911(b) under Article IX, these facilities shall continue to be subject to unannounced inspections by the Department and the Department will have free and full access to the facilities. If the Department, under inspections or access, finds conditions deemed in its opinion to be unlawful, unhygienic or detrimental, the Department will have the authority to pursue the statutory remedies set forth under 62 P.S. § 911(c).

### §§ 3270.4, 3280.4 and 3290.4. Definitions—Preschool and young school-age child.

Fifteen commentators responded to the changed definitions of "preschool child" and "young school-age child." Seven commentators supported the change. Commentators stated the change will reduce operating costs. Another commentator stated that the change will increase opportunities for kindergarten children to participate in school-age child care programs, especially school-based, school-age care programs and that kindergarten children's access to regulated care will increase as a result. Another commentator stated that the change makes sense because the needs of children attending kindergarten are more similar to those of a school-age child as opposed to a preschool child.

Eight commentators opposed the change. Seven of the commentators opposed the change because the child care subsidy reimbursement rate is lower in their counties for a young school-age child than for a preschool child.

The House Children and Youth Committee (Committee) opposed the change due to concerns that a lower child care subsidy reimbursement rate for young school-age children will negatively impact providers.

IRRC also stated that the Department should carefully examine the impact of this change on facilities that provide care primarily to preschool children and provides care for only a few kindergarten children. A facility may not benefit from the less stringent staff:child ratio for young school-age children but will receive less subsidy reimbursement.

### Response

The Department finds that including a kindergarten child in the definition of young school-age child will facilitate care for kindergarten children.

The majority of kindergarten children (63%) are participating in full-day kindergarten classrooms in this Commonwealth. School-age child care programs are established

to meet the needs of children who need child care only before and after school hours, including kindergarten children. The Department's regulation permits a child day care center or GDCH in which care is provided exclusively to school-age children to comply with fewer requirements than a facility that provides care for children of all age levels. (See §§ 3270.241 and 3280.221.) In addition, a school-age child care program located in a school building is exempt from physical site requirements in accordance with section 7-776.1 of the Public School Code of 1949 (24 P. S. § 7-776.1). A facility that enrolls a kindergarten child cannot be considered a school-age program under the current regulation because the facility is not providing care exclusively to school-age children. As a result, the facility must comply with all the requirements in Chapters 3270 and 3280 and will incur higher costs.

Some school-age child care programs transport children between school and the child care facility. The Department's current regulation relating to transportation of children states the driver may not be counted in the staff:child ratio when preschool children are transported but may be counted in the ratio when only school-age children are being transported. (See §§ 3270.173(b) and (c) and 3280.173(b) and (c) (relating to transportation ratios).) When a kindergarten child is being transported, the facility cannot count the driver as part of the staff:child ratio and must provide more staff on the vehicle to meet the preschool staff:child ratio of 1:10 rather than the young school-age ratio of 1:12. The cost of transporting a kindergarten child is, therefore, higher than the cost of transporting a school-age child.

Defining a kindergarten child as a preschool child under the Department's current regulation creates a disincentive for a school-age child care program to enroll a kindergarten child. By changing the definition of young school-age child to include a child in kindergarten, a school-age child care facility will be able to enroll a kindergarten child and continue to operate as a school-age program as provided in §§ 3270.241 and 3280.221. The facility will not incur the higher costs of providing care to a preschool child as discussed more fully in our fiscal impact analysis. The final-form rulemaking will facilitate before- and after-school care for kindergarten children.

The child care subsidy reimbursement rate was the basis for comments opposing changing the definition to make a kindergarten child a young school-age child. The subsidy reimbursement rate is a separate issue from the child care facility regulations and is outside the scope of this final-form rulemaking. Therefore, the Department made no changes to the final-form rulemaking.

*§§ 3270.4, 3280.4 and 3290.4. Definitions—Child with special needs.*

Nine commentators addressed the proposed definition of "child with special needs." Eight commentators supported the change in definition. One commentator made suggestions to include a reference to a service agreement under 22 Pa. Code Chapter 15 (relating to protected handicapped students) as a document that identifies that a child has a special need. The same commentator objected to the term "formal behavioral plan" and suggested that a behavioral plan written by a certified behavior analyst should be accepted as indication that the child has a special need.

IRRC commented that a service agreement under 22 Pa. Code Chapter 15 should be included as a document that identifies that a child has a special need. IRRC also

objected to the use of the word "formal" in reference to the behavioral plan and suggested adding a certified behavior analyst to the list of professionals who may write a behavioral plan.

*Response*

The Department agreed and incorporated the suggested changes into the final-form rulemaking. In addition, the Department made the editorial change of deleting "psychiatrist" from the definition in subparagraph (ii) since "physician" already includes a "psychiatrist". (See 1 Pa.C.S. § 1991 (relating to definitions).)

*§§ 3270.4, 3280.4 and 3290.4. Definitions—IEP, IFSP and service agreement.*

IRRC suggested that adding the following definitions to the regulation will provide clarity:

- Define "individualized education program (IEP)" as defined defined in 22 Pa. Code §§ 14.1 and 14.131—14.133 (relating to definitions; IEP).
- Define "individualized family service plan (IFSP)" as defined in Chapter 4226 (relating to early intervention services).
- Define "service agreement" as defined in 22 Pa. Code Chapter 15.

*Response*

The Department added these definitions to the final-form rulemaking.

*§§ 3270.17, 3280.16 and 3290.15. Service to a child with special needs—Overall comments.*

Six commentators made general comments regarding the proposed amendments to §§ 3270.17, 3280.16 and 3290.15 (relating to service to a child with special needs). Five supported the amendment. One commentator opposed the amendments based on concerns about the need for staff training specific to a child's special need and providing a program tailored to a child's special need without additional supports or funding.

*Response*

Training in numerous topic areas relating to children with special needs is available through the Pennsylvania Key Professional Development System, the Department's contracted comprehensive Statewide training system for child care providers. Over 70 training opportunities were offered Statewide in Fiscal Year 2005-2006. Individuals who provide specialized services to a child with special needs can come to the facility to provide those services. In addition, Federal and State laws provide guidance and parameters regarding reasonable accommodations that a facility may be required to make in caring for a child with a special need.

Changes to each section are discussed as follows.

*§§ 3270.17(a), 3280.16(a) and 3290.15(a). Service to a child with special needs.*

Four commentators supported the requirement to make reasonable accommodation to include a child with special needs but expressed concerns regarding the definition of "reasonable accommodation" and reference to the Americans With Disabilities Act (ADA) only.

*Response*

Federal and State laws establish requirements relating to reasonable accommodation. The requirements regarding reasonable accommodation are not identical for all child care facilities and the regulation cannot address

every situation. The Department changed the language to reference applicable Federal and State laws in general. Consistent with other rulemaking (35 Pa.B. 2499 (April 23, 2005)), the regulation does not provide an exhaustive list of applicable laws. A comprehensive list of laws is unnecessary because their applicability does not depend on this final-form rulemaking.

*§§ 3270.17(b), 3280.16(b) and 3290.15(b). Service to a child with special needs.*

Three commentators supported the requirement to permit service providers to come into the facility. One commentator suggested adding a reference to services specified in a service agreement under 22 Pa. Code Chapter 15 or by a licensed practitioner.

IRRC commented that some parents may not share the IEP or IFSP with the facility and the regulation should acknowledge this by instructing child care staff that it is up to the parent to provide the document. IRRC also asked whether early intervention must include a child care facility representative on an IFSP team under Chapter 4226.

*Response*

A service agreement applies only to a school setting; therefore, the Department did not add to the final-form rulemaking the suggested reference to a service agreement. The Department considers the reference to licensed practitioner to be covered by an IEP or IFSP and did not add to the final-form rulemaking the suggested reference to a licensed practitioner. At this time, the Department's regulation relating to early intervention does not require inclusion of a child care facility representative in development of the IFSP; however, participation of a child care facility representative is encouraged in Early Intervention policy. The Department will provide information to facilities regarding Early Intervention services and will include information that a parent is not required to provide a copy of an IEP or IFSP to the facility.

The Department made minor changes to this subsection to add clarity.

*§§ 3270.17(c), 3280.16(c) and 3290.15(c). Service to a child with special needs.*

Two commentators supported the requirement that the facility must provide information regarding resources for early intervention services to facility staff and to the parent of a child who staff believe may need an assessment for early intervention services. One commentator cautioned that child care staff should not make a diagnosis regarding whether a child has special needs.

The Committee commented that the proposed rulemaking places the facility director in a difficult situation in which the director must determine if parents have or have not had their child evaluated and if it is prudent to advise them to have the child evaluated. The Committee recommended changing this requirement to a suggestion.

IRRC also expressed concern about training for child care staff to complete the developmental checklist and to talk with a parent regarding a child who may need an assessment. IRRC recommended that child care staff should complete training before completing an observation of a child's development, assessing a child for a possible disability and approaching a parent with referral information.

*Response*

The Department changed the final-form language to require that the operator shall make staff persons and parents aware of community resources for the family of a child who may have special needs. The Department will provide to the operator information regarding community resources.

*§§ 3270.27, 3280.26 and 3290.24. Emergency plan.*

IRRC requested that the Department add a definition of emergency to the regulation and referred to the definition of "emergency" that appears in the child care emergency planning tool kit prepared by the Pennsylvania Emergency Management Agency. IRRC commented that the list of requirements regarding the information that must be included in the emergency plan is unclear and incomplete and cited the requirements regarding shelter of children during an emergency and evacuation of children during an emergency. IRRC also commented that the plans for evacuation during a fire should cross-reference the existing regulations regarding "evacuation routes" and "evacuation plans" in §§ 3270.94(f) and (g), 3280.94(f) and (g) and 3290.94(f) and (g) (relating to fire drills) to avoid conflict or confusion regarding evacuation routes.

*Response*

The Department incorporated into the final-form rulemaking the existing statements of policy in §§ 3270.21a, 3280.20a and 3290.18a (relating to emergency plan—statement of policy) requiring emergency plans that was published at 33 Pa.B. 6428 (December 27, 2003) and has been in effect since June 2004. The definition of "emergency" has never been questioned during that time period. The Department did not add a definition of "emergency" because the Department intends for "emergency" to retain its dictionary definition.

The Department revised the language relating to shelter and evacuation of children in an emergency as suggested by IRRC's comments.

*§§ 3290.31(a) and 3290.213. Age and training.*

The Department received 13 comments regarding the requirement that an FDCH operator submit to the Department at the time of first certificate renewal proof that the operator has a high school diploma or general educational development (GED) certificate. Twelve commentators supported the proposed rulemaking, including two family child care provider associations. Four of the twelve commentators suggested that the Department extend the time line to get a GED, provide financial assistance for an operator to get a GED and grandfather all current operators at any location.

The Committee stated that a FDCH operator does not need a high school diploma or GED to operate a quality family child care program and recommended deletion of the requirement.

*Response*

Currently, 97% of registered FDCH operators have a high school diploma or GED. As of the September 22, 2008 effective date of September 22, 2008, the final-form rulemaking, a newly registered FDCH operator who does not have a high school diploma or GED will have 2 years, which is one full registration period, to obtain the credential and must demonstrate compliance at the time of the first registration renewal. GED classes are offered free of charge Statewide in 150 locations. The cost of taking the examination to obtain a GED is \$40 to \$60. The Depart-

ment maintains that 2 years is sufficient time to obtain a GED and did not change the time line for compliance in the final-form rulemaking.

The FDCH registration system is a self-certification system. The applicant for a registration certificate submits to the Department a signed statement certifying that the applicant has read and is in compliance with the FDCH regulation. By requiring the operator to have a high school diploma or GED at the time of certificate renewal, the Department is requiring a minimum level of literacy sufficient to comply with these regulations and operate a small business. This requirement will increase the health and safety of children in FDCHs and will also codify what already is the minimal educational background of 97% of current FDCH operators.

Further, these final-form regulations align staffing requirements across all child care settings since primary staff in child care centers and GDCHs are required to have a high school diploma or GED. In fact, any staff in centers or GDCHs who do not meet this educational requirement must be supervised at all times by a staff person with the required educational background.

In the final-form rulemaking, the Department permanently grandfathered all currently registered FDCH operators even if the operator moves to a new location.

*§§ 3270.70, 3280.70 and 3290.68. Indoor temperature.*

One commentator opposed the proposed rulemaking as it does not address the heat index.

IRRC noted the comment regarding factoring in the heat index and the standard published in *Caring for Our Children: National Health and Safety Performance Standards: Guidelines for Out-of-Home Child Care, 2nd Edition* which references maintaining the humidity in a child care space at 30%–50%. IRRC suggested that the Department should review its policy concerning allowable high temperature.

#### *Response*

The Department researched the impact of referencing the heat index in the final-form rulemaking. The National Weather Service defines “heat index” as an accurate measure of how hot it really feels when the relative humidity is added to the actual air temperature. To determine the heat index, one must measure the relative humidity. Hygrometers are the instruments that measure relative humidity. The price for one hygrometer ranges from approximately \$30 to hundreds of dollars. To monitor relative humidity, the facility would need a hygrometer in each child care space and would incur significant costs.

The National Health and Safety Performance Standards represent state-of-the-art child care facility standards. The Department reviewed the child care facility regulations of the adjacent seven states which have climates similar to this Commonwealth. None of the seven states’ regulations reference indoor humidity. Only three of the seven states’ regulations establish a maximum indoor temperature and require ventilation above the maximum temperature.

The Department did not change the final-form rulemaking.

*§§ 3270.102(c), 3280.102(c) and 3290.102(c). Condition of play equipment; §§ 3270.233, 3280.215 and 3290.212. Play surfaces.*

Twenty-two commentators addressed the requirement that the surface covering under outdoor play equipment that requires embedded mounting must meet the guidelines for loose-fill or unitary playground protective surface covering established by the United States Consumer Product Safety Commission. Ten commentators supported the change.

Twelve commentators did not support the change. Eight commentators cited cost as the reason for opposing the change. Four commentators do not believe that FDCH and GDCH facilities located in residences should have to comply with the requirement. One commentator felt that 2 years was not sufficient time to come into compliance. Another commentator opposed the requirement because public schools are not required to comply.

#### *Response*

The CPSC guidelines for loose-fill and unitary surface coverings reflect the fall height of the equipment and the type and depth of surface covering required to protect a child from injury if the child falls from the highest point of the equipment. The CPSC standards state that 6 inches of uncompressed wood chips, the most common protective surface covering used at child care facilities, provides protection up to a fall height of 7 feet. The previous requirement for 6 inches of loose-fill material will be adequate for most child care facilities; thus, the majority of facilities are not likely to incur additional costs associated with implementation of the final-form rulemaking. Facilities that do not meet this requirement have 2 years to comply.

The Department did not change the final-form rulemaking.

*§§ 3270.119, 3280.119 and 3290.118. Program plan.*

Thirty-one commentators addressed the proposed rulemaking to require a program plan for each child in care. Five commentators supported the proposal. Twenty-six commentators opposed the proposal.

The Committee also commented on the proposed rulemaking. The Committee perceived a lack of clarity in the proposed rulemaking and were concerned about licensing repercussions if the plan was not followed, the burden of paperwork and costs to the provider, whether a provider is qualified to develop a program plan, the provider’s inability to access a child’s IEP or IFSP and have information regarding early intervention services being provided to the child, difficulty in writing program plans for school-age children who are in care for short periods of time and a complaint system for parents who disagree with the program plan.

IRRC expressed the same concerns as the House Children and Youth Committee with regard to lack of clarity, particularly regarding a child who has an IEP or IFSP and a child who does not. IRRC expressed concern regarding whether child care staff have sufficient experience, training and education to develop plans similar to IEPs and IFSPs. IRRC suggested that if the Department reduces the requirement and instead requires a semi-annual statement of the child’s use of child care services and the child’s developmental progress, then the Department should develop a form and prescribe the contents of the form.

*Response*

The Department changed the final-form rulemaking to require the completion of a service report form for each infant, toddler and preschool child and for each school-age child who attends the facility more than 15 hours per week. The form must be completed every 6 months and will address information about the child's growth and development within the context of the child care services provided by the facility. The form is referenced in amendments to §§ 3270.123(a)(3), 3280.123(a)(3) and 3290.123(a)(3) (relating to agreement). The Department will provide a form for the facility to use. The elements in the Department's form are based on the guidelines of the American Public Health Association, the American Academy of Pediatrics, and the Maternal and Child Health Bureau of the United States Department of Health and Human Services published in *Caring for Our Children: National Health and Safety Performance Standards: Guidelines for Out-of-Home Child Care, 2nd Edition*. The information on the form parallels the health and developmental information that pediatricians request during check up visits. The facility must give the child's parent a copy of each report.

§§ 3270.120, 3280.120 and 3290.119. *Infant sleep position (now designated as §§ 3270.119, 3280.119 and 3290.118. Infant sleep position).*

Fifteen commentators supported the proposed rulemaking to require infants be placed on their backs to sleep in accordance with the current American Academy of Pediatrics (AAP) policy relating to SIDS prevention. Three commentators wanted to expand the requirement to include the entire content of the AAP policy relating to items in a crib. Three commentators suggested changing the language to reference the current AAP recommendation regarding infant sleep position so that the regulation would not have to be amended if the policy changed.

IRRC suggested changing the language to reference the AAP recommendation for preventing SIDS and to inform providers how they may obtain copies of the AAP recommendation.

*Response*

The Department revised this section to require facilities to comply with the current AAP recommendation on infant sleep position. The Department also added language in §§ 3270.106(j), 3280.105(j) and 3290.105(j) (relating to rest equipment) to prohibit toys, bumper pads and pillows in a crib while an infant is sleeping in the crib as per the AAP recommendation. The Department previously provided facilities with information regarding SIDS prevention, including brochures and materials regarding the AAP recommendation, and will continue to do so.

§§ 3270.131(a)—(d), 3280.131(a)—(d) and 3290.131(a)—(d). *Health information.*

Nine commentators supported the proposed changes related to the frequency and content of child health reports. Five of those commentators were providers and three commentators represented advocacy organizations.

Twelve commentators opposed the changes regarding the frequency and content of child health reports. Seven of those commentators were medical professionals or representatives of medical organizations and two were providers. Six of the 12 commentators specifically opposed the deletion of the requirement that health reports must include a review of age-appropriate screenings according to the standards of the AAP.

IRRC commented that the Department should retain current requirements relating to the AAP recommended schedule for health examinations and screenings but should provide for exceptions when families cannot meet the requirement or have privacy concerns. IRRC further commented that by doing so, the Department can gather useful information, provide facilities with relief from enforcement complications and encourage families to obtain recommended screenings. IRRC also asked for further explanation of the benefits of the changed requirements. IRRC also noted that a commentator said that the changed requirements would be inconsistent with the policies for Head Start; the Early and Periodic Screening, Diagnosis and Treatment program in the Medical Assistance Program and the goals of the Department of Health.

*Response*

The Department added to the final-form rulemaking two requirements relating to the content of the child health report, which is to be completed by the child's health care professional. First, the health report must include specific information regarding abnormal results of vision, hearing and lead screenings. This will provide the facility with valuable information regarding the child's health that may impact on the child within the context of the child care program. Second, the health report must also include a statement indicating whether AAP recommended screenings were conducted since the date of the child's previous health report. This statement will serve as the requested reminder to parents and health care providers about AAP recommended screenings.

There are wide variations in the source of a child's health care coverage, and in some instances, a lack of health care coverage. Thus, requiring the facility to have on file child health reports and health screening information that comply with the AAP recommendations may far exceed the scope of the health care coverage available to the family. If the facility does not comply, the Department will cite the facility for noncompliance with the regulation and require the facility to correct the violation.

Parents may incur added costs to comply with the AAP schedule if their health care coverage does not cover all the examinations and screenings included in the AAP schedule. In addition, some physicians charge parents to complete the health report required by regulation. In some areas of this Commonwealth, facilities report that parents must wait months for well-child appointments and cannot meet the time lines due to lack of availability of qualified physicians.

The Department is concerned about creating a regulation that provides for exceptions whereby a parent can simply document that the parent cannot get health information or has a privacy concern. The result is a lack of health information that is necessary to protect all children in care or to deal with a medical emergency involving a child.

The final-form rulemaking provides for submission of health information on a regular schedule, requires the child care facility to know if the AAP recommendations have been fulfilled, and focuses on submission of information that the facility needs to protect the health and safety of the child and all other children in the facility. The modifications in the final-form rulemaking also serve as a reminder and incentive to parents to have their children receive primary pediatric care in accordance with the AAP recommendations.

§§ 3270.131(e), 3280.131(e) and 3290.131(e). *Health information.*

Eight commentators specifically addressed the proposed immunization requirements which match the Department of Health requirements in 28 Pa. Code § 27.77 (relating to immunization requirements for children in child care group settings). Seven commentators supported the change. One commentator did not support the requirement to exclude a child who did not get immunizations within the time prescribed in the regulation.

*Response*

The immunization requirements in the Department's current regulations differ from the Department of Health's immunization requirements. The current differing requirements create confusion to providers and parents. The final-form rulemaking creates consistency in immunization requirements by adopting the Department of Health's immunization requirements for children who attend child care facilities. (See 28 Pa. Code § 27.77.)

The Department did not change the final-form rulemaking.

§§ 3270.133, 3280.133 and 3290.133. *Child medication and special diets.*

Eleven commentators supported the proposed rulemaking. One commentator stated the Department should reference other laws regarding disability discrimination that may impact on providing medication related to child's special need. Two commentators supported adding a requirement for medication administration training.

IRRC recommended that the Department add a requirement for medication administration training like that required for staff in Personal Care Homes in § 2600.190 (relating to medication administration training) and include a citation to the pertinent section of the ADA requiring reasonable accommodation. IRRC also noted that the language of the regulation could be interpreted to require administration of any and all medications or special diets to a child with a special need rather than only medications or special diets related to a child's special need. If this is not the Department's intent, the final-form rulemaking should be reworded to clearly state the intent.

*Response*

The ADA is not the only statute regarding disability discrimination. The Department changed the final-form rulemaking to reference all applicable Federal and State laws. The Department also changed the final-form rulemaking to specify that the requirement to administer medication or a special diet pertains only to a medication or special diet related to a child's special need.

The Department will not require medication administration training. Medication administration training is currently available to providers through the Pennsylvania Keys to Professional Development system. At this time, the Department does not know how many children with special needs will require medication during the time they are in care. Child care is provided for only a portion of the day; thus, medication schedules may not include the hours a child is in care. To meet the needs of some children with special needs, staff persons may need specialized training or instruction in administration that can be provided by the child's parent or a service provider or medical professional who works with the child. In

addition, service providers who come onsite to provide services to the child may be responsible for administering medication. The Department will monitor medication administration in child care facilities to determine whether it is necessary to require medication administration training for facility staff persons.

In addition to the major changes discussed previously, the Department made several changes in preparation of the final-form rulemaking including reformatting to enhance readability, revising language to enhance clarity and conforming to the changes previously discussed.

*Regulatory Review Act*

Under section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), on March 10, 2008, the Department submitted a copy of this final-form rulemaking to IRRC and to the Chairpersons of the House Committee on Children and Youth and the Senate Committee on Public Health and Welfare (Committees). In compliance with the act the Department also provided the Committees and IRRC with copies of all public comments received, as well as other documentation.

In preparing the final-form rulemaking, the Department reviewed and considered comments received from the Committees, IRRC and the public.

In accordance with § 5.1 (j.1) and (j.2) of the Regulatory Review Act, this final-form rulemaking was deemed approved by the Committees on March 30, 2008. IRRC met on April 17, 2008, and approved the final-form regulation.

In addition to submitting the final-form 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.

*Findings*

The Department finds that:

(1) The public notice of intention to amend the administrative regulation by this order has been given under section 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations in 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of this final-form rulemaking regulation in the manner provided by this Order is necessary and appropriate for the administration and enforcement of the Public Welfare Code.

*Order*

The Department acting under the authority of Articles IX and X of the Public Welfare Code orders that:

(a) The regulations of the Department, 55 Pa. Code Chapters 3270, 3280 and 3290 are amended by amending §§ 3270.4, 3270.11, 3270.15, 3270.17, 3270.24, 3270.25, 3270.31, 3270.52, 3270.61, 3270.70, 3270.75, 3270.82, 3270.102, 3270.104, 3270.106, 3270.113, 3270.115, 3270.117, 3270.122—3270.124, 3270.131, 3270.133, 3270.135, 3270.151, 3270.175, 3270.176, 3270.182, 3270.233, 3270.241, 3280.4, 3280.11, 3280.15, 3280.16, 3280.23, 3280.24, 3280.31, 3280.52, 3280.61, 3280.70, 3280.75, 3280.102, 3280.105, 3280.108, 3280.113, 3280.115, 3280.117, 3280.122—3280.124, 3280.131, 3280.133, 3280.135, 3280.151, 3280.151, 3280.175, 3280.176, 3280.182, 3280.215, 3280.221, 3290.4, 3290.11, 3290.14, 3290.15, 3290.21, 3290.22, 3290.31, 3290.68, 3290.73, 3290.102, 3290.105, 3290.113, 3290.115, 3290.116, 3290.122—3290.124, 3290.131, 3290.133, 3290.135, 3290.151, 3290.173, 3290.174, 3290.182, 3290.212 and



3290.213; adding §§ 3270.27, 3270.119, 3280.26, 3280.119, 3290.24 and 3290.118; and by deleting §§ 3270.201—3270.210; 3280.201—3280.209, 3290.201—3290.208, 3300.1—3300.4, 3300.11—3300.13, 3300.31—3300.36, 3300.51—3300.54, 3300.101, 3300.102, 3300.111—3300.113, 3300.121 and 3300.131 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(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 September 22, 2008, except for §§ 3270.102(c) and (e) and 3280.102(c) and (e) (relating to condition of play equipment) which shall take effect September 22, 2010. See 38 Pa.B. 2469 (May 24, 2008).

ESTELLE B. RICHMAN,  
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 2132 (May 3, 2008).)

**Fiscal Note:** Fiscal Note 14-506 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 55. PUBLIC WELFARE**

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

**Subpart D. NONRESIDENTIAL AGENCIES,  
FACILITIES AND SERVICES**

**ARTICLE I. LICENSING/APPROVAL**

**CHAPTER 3270. CHILD DAY CARE CENTERS**

**GENERAL PROVISIONS**

**§ 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 Code (62 P. S. §§ 101—1411).

*Age level*—The grouping category appropriate for the child's age.

(i) *Infant*—A child from birth to 1 year of age.

(ii) *Young toddler*—A child from 1 to 2 years of age.

(iii) *Older toddler*—A child from 2 to 3 years of age.

(iv) *Preschool child*—A child from 3 years of age to the date the child enters kindergarten in a public or private school system.

(v) *Young school-age child*—A child who attends kindergarten to the date the child enters the 4th grade of a public or private school system.

(vi) *Older school-age child*—A child who attends the 4th grade of a public or private school system through 15 years of age.

\* \* \* \* \*

*Child with special needs*—A child who has one or more of the following:

(i) A disability or developmental delay identified on an IEP, an IFSP or a service agreement.

(ii) A written behavioral plan that has been determined by a licensed physician, licensed psychologist or certified behavior analyst.

(iii) A chronic health condition diagnosed by a licensed physician, physician's assistant or CRNP that requires health and related services of a type or amount beyond that required by children generally.

\* \* \* \* \*

*IEP*—Individualized education program as defined in 22 Pa. Code §§ 14.101 and 14.131—14.133 (relating to definitions; and IEP).

*IFSP*—Individualized family service plan as defined in §§ 4226.5 and 4226.71—4226.77 (relating to definitions; and IFSPs).

*Inspection summary*—A document prepared by an agent of the Department describing each regulatory noncompliance item confirmed as a result of a facility inspection.

\* \* \* \* \*

*Service agreement*—A service agreement as defined in 22 Pa. Code §§ 15.2 and 15.7 (relating to definitions; and service agreement).

\* \* \* \* \*

**GENERAL REQUIREMENTS**

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

(a) A legal entity shall obtain a valid certificate of compliance to operate at a specific location. The certificate of compliance will be issued by the Department to a legal entity prior to commencement of operation at a specified location.

(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 hours of child care training required in § 3270.31(e) (relating to age and training).

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

(d) 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.

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

(g) 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) A facility whose certificate of compliance is current as of September 22, 2008, will not be inspected under this chapter until the current certificate of compliance is due to be renewed or when a regulatory violation is alleged and the Department responds to the alleged violation with an inspection.

**§ 3270.15. Building codes.**

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

**§ 3270.17. Service to a child with special needs.**

(a) The operator shall make reasonable accommodation to include a child with special needs in accordance with applicable Federal and State laws.

(b) The operator shall permit an adult individual who provides specialized services to a child with special needs to provide those services on the facility premises as specified in the child's IEP, IFSP or written behavioral plan.

(c) The operator shall make staff persons and parents aware of community resources for the family of a child who may have special needs. The Department will provide to the operator information regarding community resources.

**§ 3270.24. Departmental access.**

(a) A staff person shall provide to agents of the Department immediate access to the facility and, upon request, to the children and the files and records.

(b) An inspection will be conducted during normal business hours except when there is reasonable cause to believe that inspections at other times are necessary to detect violations of applicable laws and regulations.

(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.

**§ 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, with instructions for contacting the appropriate regional day care office posted at the same location.

(b) The operator shall post a copy of each inspection summary issued by the Department in a conspicuous location used by parents. The inspection summary must remain posted until an agent of the Department verifies that each regulatory noncompliance item cited on the inspection summary has been corrected.

**§ 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.

(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.

(c) Each facility person shall receive training regarding the emergency plan at the time of initial employment, on an annual basis and at the time of each plan update. The date of each training and the name of each facility person who received the training shall be documented in writing and kept on file at the facility.

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

(e) 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) The operator shall send a copy of the emergency plan and subsequent plan updates 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 guidelines in this section are met.

(d) Child care professional credentials are equivalent to the staff qualifications:

(1) A Child Development Associate (CDA) credential or a Certified Childcare Professional (CCP) credential is equivalent to 9 credit hours from an accredited college or university in early childhood education or child development and 1 year of experience with children.

(2) A Pennsylvania school-age professional credential is equivalent to 9 credit hours from an accredited college or university in elementary education or child development and 1 year of experience with children.

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

(1) Acceptable training is conducted in one or more of the following settings:

(i) By a secondary or postsecondary institution approved by the Department of Education and accredited by an accrediting agency recognized by the United States Department of Education or the Council of Postsecondary Accreditation and acceptable to the Department of Education.

(ii) By an entity that is licensed or certified professionally competent in the training topic.

(iii) In conferences or workshops.

(iv) With audio-visual materials recognized by child care professionals.

(2) Acceptable training topics include the following:

(i) Child or staff health.

(ii) Child development, early childhood education and special education.

(iii) Supervision, discipline and guidance of children.

(iv) Nutrition for children.

- (v) Child care program development.
- (vi) Child care staff person or volunteer professional development.
- (3) Other training topics may be submitted for the Department's review and approval.
- (4) Depending on the provisions of the appropriate regulation, training may be required for certain staff persons. The following constitutes competence in training areas:
  - (i) *First-aid training.* Competence is the completion of training by a professional in the field of first-aid. First-aid training will be renewed on or before expiration of certification or every 3 years, as applicable.
  - (ii) *Firesafety training.* Staff persons shall participate, at least annually, in firesafety training conducted by a fire protection professional. Staff persons and volunteers shall receive training in maintenance of smoke detectors, the duties of facility persons during a fire drill and during a fire and the use of the facility's fire extinguishers, not including discharge of the fire suppressant agent.
  - (iii) *Lifeguard training.* Competence is the completion of lifeguard training, including first-aid training and cardiopulmonary resuscitation (CPR) for child and infant.
  - (iv) *Water safety instruction.* Competence is the completion of basic instruction in water safety from a certified lifeguard.
  - (f) Completion of training shall be documented by the signature and title of a representative of the training entity and include the date training was completed. Documentation shall be retained in the facility person's file.

**STAFF:CHILD RATIO**

**§ 3270.52. Mixed age level.**

When children are grouped in mixed age levels, the age of the youngest child in the group determines the staff:child ratio and maximum group size in accordance with § 3270.51 (relating to similar age level).

**PHYSICAL SITE**

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

- (a) A facility shall provide indoor child care space for individual and group small muscle activity.
- (b) Indoor child care space may not be used simultaneously as play space.
- (c) Indoor child care space is measured within permanent stationary partitions or walls. The allowable number of children in a space is determined by dividing the total square feet in a space by 40.
- (d) Measured indoor space includes space occupied by cupboards, shelves, furniture and equipment.
- (e) Measured indoor space excludes space occupied by halls, bathrooms, offices, kitchens and locker rooms.
- (f) Indoor space in which children are receiving care may not be used simultaneously for other business, commercial, social or another purpose unrelated to the child care being offered.
- (g) Preschool and school-age children may not be involved in small or large muscle activity in the same group space in which children are sleeping or resting.
- (h) The capacity established for an indoor space may not be exceeded except in the following situations:

(1) At naptime, when toddler or preschool children are resting on rest equipment described in § 3270.106 (relating to rest equipment) if the following conditions are met:

- (i) At naptime, the capacity is determined by the requirement for placement of rest equipment described in § 3270.106(f).
- (ii) At naptime, the capacity may be exceeded for a period not longer than 2 1/2 consecutive hours, no more than twice in a program day.

(2) When older toddler, preschool or school-age children are participating in a program activity if the following conditions are met:

- (i) The capacity of the indoor child care space may be exceeded for no more than two separate 1/2 hour time periods daily.
- (ii) Each time period shall be designated on the facility's schedule of daily activities.
- (iii) The space may not be occupied by children of the infant or young toddler age levels during a time period when the capacity is exceeded.
- (iv) The number of children present in the space may not be more than twice the measured capacity of the space.

(3) When a meal is served in a space designated and measured as indoor child care space if the following conditions are met:

- (i) The capacity of a space may be exceeded when children are eating for no more than 1 hour daily.
- (ii) The meal time shall be designated on the facility's schedule of daily activities.
- (iii) The number of children present in the space may not be more than twice the measured capacity of the 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.

**§ 3270.70. Indoor temperature.**

- (a) The indoor temperature must be at least 65° F.
- (b) If the indoor temperature exceeds 82° F in a child care space, a means of mechanical air circulation must be operating.

**§ 3270.75. First-aid kit.**

- (a) A first-aid kit must be in a child care space.
- (b) A first-aid kit must be inaccessible to children.
- (c) A first-aid kit must contain the following: soap, an assortment of adhesive bandages, sterile gauze pads, tweezers, tape, scissors and disposable, nonporous gloves.
- (d) One first-aid kit per child care group must accompany children and facility persons on excursions from the facility. Each first aid kit taken on an excursion must contain a bottle of water in addition to the items specified in subsection (c).

**§ 3270.82. Toilet areas.**

- (a) The following ratio of flushing toilets to toilet-trained children applies:

<i>Similar Age Levels</i>	<i>Number of Toilet-Trained Children</i>	<i>Toilets</i>
Young or older toddler and preschool	15	1
School-age	20	1

(b) The following ratio of sinks to children applies:

<i>Similar Age Levels</i>	<i>Number of Toilet-Trained Children</i>	<i>Sinks</i>
Young or older toddler and preschool	25	1
School-age	30	1

(c) A sink must be located in or near a toilet area.

(d) A training chair is not a flushing toilet. A training chair shall be emptied and sanitized after each use. An acceptable sanitizing solution is 1/4 cup of bleach combined with 1 gallon of water. A sanitizing solution shall be treated as a toxic. See § 3270.66 (relating to toxics).

(e) Toilets and sinks must be at proper heights for children using them or must be easily approached by means of platforms or steps.

(f) Toilets and training chairs may not be located in an area used for cooking or eating.

(g) Toilet areas and fixtures shall be cleaned daily and be in good repair.

(h) A facility person and an able child shall wash their hands after toileting and before eating. A sign on which this requirement is written shall be posted at each toilet, training chair, diapering area and sink in the facility.

(i) A toilet area, training chair area, diapering area and sink area shall be equipped with a clean, lidded waste receptacle.

(j) A source of running water for handwashing must be present in infant and toddler diapering areas. If the running water does not flow directly into a drain that is connected to a sewage system, a receptacle shall be provided to contain the water used for washing. The receptacle shall be emptied into an approved sewage system at least once a day.

#### **EQUIPMENT**

##### **§ 3270.102. Condition of play equipment.**

(a) Toys, play equipment and other indoor and outdoor equipment used by the children must be clean, in good repair and free from rough edges, sharp corners, pinch and crush points, splinters and exposed bolts.

(b) Toys soiled by secretion or excretion shall be cleaned with soap and water, rinsed and sanitized before being used by a child.

(c) Outdoor equipment that requires embedded mounting must be mounted over a loose-fill or unitary playground protective surface covering that meets the recommendations of the United States Consumer Product Safety Commission. The equipment must be anchored firmly and be in good repair.

(d) Slides that are over 4 feet high must have guards along both sides of the ladder.

(e) Pea gravel and other materials with a diameter of less than 1 inch may not be used in spaces where infants or toddlers receive care.

(f) Indoor play equipment for climbing shall be installed or used over a protective surface covering which does not interfere with the stability of the equipment.

(g) Children's toys and equipment, including furniture and rest equipment, described as hazardous by the United States Consumer Product Safety Commission may not be used by children at the facility and may not be on the premises at the facility. At the time of inspection, the operator shall submit to the Department written affirmation on a form provided by the Department stating that the facility is in compliance with this requirement.

##### **§ 3270.104. Furniture.**

(a) Furniture must be durable, safe, easily cleaned and appropriate for the child's size, age and special needs.

(b) Study space, tables, chairs, paper and pencils shall be provided for school-age children in care, if necessary for the program offered by the facility.

##### **§ 3270.106. Rest equipment.**

(a) Individual, clean, age-appropriate rest equipment shall be provided for preschool, toddler and infant children as agreed between the child's parent and the operator. The rest equipment must be labeled for the use of a specific child and used only by the specified child.

(b) Bed linens may not be used alone as age-appropriate rest equipment.

(c) Stacked cribs may not be used.

(d) Crib and playpen slats may be no more than 2 3/8 inches apart.

(e) Seasonal, appropriate covering, such as sheets or blankets, shall be provided as agreed between the child's parent and the operator.

(f) At least 2 feet of space is required on three sides of a bed, cot, crib or other rest equipment while the equipment is in use.

(g) Linens, blankets and rest equipment shall be cleaned monthly, at a minimum. The operator shall arrange a cleaning schedule with the parent.

(h) Soiled bedding shall be cleaned before it is reused.

(i) The upper level of double-deck beds may not be used for children 8 years of age or younger.

(j) Toys, bumper pads or pillows may not be present in a crib while an infant is sleeping in the crib.

#### **PROGRAM**

##### **§ 3270.113. Supervision of children.**

(a) Children on the facility premises and on facility excursions off the premises shall be supervised by a staff person at all times. Outdoor play space used by the facility is considered part of the facility premises.

(1) Each staff person shall be assigned the responsibility for supervision of specific children. The staff person shall know the names and whereabouts of the children in his assigned group. The staff person shall be physically present with the children in his group on the facility premises and on facility excursions off the facility premises.

(2) The requirement for supervision on and off the facility premises includes compliance with the staff:child ratio requirements in §§ 3270.51—3270.55 (relating to staff:child ratio).

(b) A facility person may not use any form of physical punishment, including spanking a child.

(c) A facility person may not single out a child for ridicule, threaten harm to the child or the child's family and may not specifically aim to degrade the child or the child's family.

(d) A facility person may not use harsh, demeaning or abusive language in the presence 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.

**§ 3270.115. Water activity.**

(a) *Swimming.*

(1) A swimming pool must conform to 28 Pa. Code Chapter 18 (relating to public swimming and bathing places).

(2) An in-ground swimming pool accessible to children must be fenced with a locked gate.

(3) An aboveground swimming pool which is not in use must be made inaccessible to children in accordance with the swimming pool barrier guidelines of the United States Consumer Product Safety Commission.

(4) An indoor swimming pool which is not in use must be made inaccessible to children.

(5) The following staff:child ratios apply while children are swimming:

<i>Similar Age Level</i>	<i>Staff</i>	<i>Children</i>
Infant	1	1
Young or older toddler	1	2
Preschool	1	5
Young school-age	1	6
Older school-age	1	8

(6) When children are swimming, supervision shall include one person certified in lifeguard training, as described in § 3270.31(e)(4)(iii) (relating to age and training).

(7) The person certified in lifeguard training may not be included in the staff:child ratio.

(8) A facility person who is counted in the staff:child swimming ratio shall annually complete water safety instruction.

(b) *Wading.*

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

(2) A sanitizing solution shall be added to water in a wading pool. An acceptable sanitizing solution is 3/4 teaspoon of bleach added to 50 gallons of water.

(3) A wading pool shall be emptied daily.

(c) *Water play tables.* A water play table or a container used for water play that contains unfiltered water shall be emptied daily.

**§ 3270.117. Release of children.**

(a) A child shall be released only to the child's parent or to an individual designated in writing by the enrolling parent. A child shall be released to either parent unless a court order on file at the facility states otherwise.

(b) In an emergency, a child may be released to an individual upon the oral designation of the parent, if the identity of the individual can be verified by a staff person.

(c) If a child is released upon the oral designation of the parent, the following information shall be logged in the child's record:

(1) The name of the parent making the request.

(2) The date and time of the request.

(3) The name of the individual to whom the child is to be released.

(4) The name of the staff person taking the call.

(5) The name of the staff person releasing the child.

**§ 3270.119. Infant sleep position.**

Infants shall be placed in the sleeping position recommended by the American Academy of Pediatrics unless there is a medical reason an infant should not sleep in this position. The medical reason shall be documented in a statement signed by a physician, physician's assistant or CRNP and placed in the child's record at the facility.

**PROCEDURES FOR ADMISSION**

**§ 3270.122. Admission interview.**

A child shall be interviewed or observed by the operator and when possible shall have the opportunity to visit the facility prior to being admitted for care. The child shall be told as much about the service being planned as he can understand. If the parent indicates that the child has a special need, the operator shall discuss the condition with the parent, refer to § 3270.4 (relating to definitions), and comply with §§ 3270.17, 3270.124 and 3270.131 (relating to service to a child with special needs; emergency contact information; and health information).

**§ 3270.123. Agreement.**

(a) An agreement signed by the operator and the parent must specify the following:

(1) The amount of the fee to be charged per day or per week.

(2) The date on which the fee is to be paid.

(3) The services to be provided to the family and the child, including the Department's approved form to provide information to the family about the child's growth and development in the context of the services being provided. The operator shall complete and update the form and provide a copy to the family in accordance with the updates regarding emergency contact information in § 3270.124(f) (relating to emergency contact information).

(4) The child's arrival and departure times.

(5) The persons designated by a parent to whom the child may be released as specified in § 3270.117 (relating to release of children).

(6) The date of the child's admission.

(7) The services which are to be considered as extra.

(b) A parent shall receive the original agreement. The facility shall retain a copy of the agreement.

**§ 3270.124. Emergency contact information.**

(a) Emergency contact information is required for each enrolled child. Emergency contact information must reference who shall be contacted in an emergency.

(b) Emergency contact information must include the following:

- (1) The name and birth date of the child.
- (2) The name, address and telephone number of the child's physician or source of medical care.
- (3) The home and work addresses and telephone numbers of the enrolling parent.
- (4) The written consent signed by a parent for emergency medical care.
- (5) Information on the child's special needs, as specified by the child's parent, physician, physician's assistant or CRNP, which is needed in an emergency situation.
- (6) Health insurance coverage and policy number for a child under a family policy or Medical Assistance benefits, if applicable.
- (7) The name, address and telephone number of the individual designated by the parent to whom the child may be released.
- (c) When children are in the facility, emergency contact information must be present in a child care space for children receiving care in the space.
- (d) When children leave the facility on walking and riding excursions, emergency contact information specific to each child on the excursion accompany a staff person on the excursion.
- (e) A written plan identifying the means of transporting a child to emergency care and staffing provisions in the event of an emergency shall be displayed conspicuously in every child care space and accompany a staff person who leaves on an excursion with children.
- (f) The parent shall update in writing emergency contact information once in a 6-month period or as soon as there is a change in the information.

#### **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 days following the first day of attendance at the facility.
- (1) The initial health report for an infant must be dated no more than 3 months prior to the first day of attendance at the facility.
  - (2) The initial health report for a young toddler must be dated no more than 6 months prior to the first day of attendance at the facility.
  - (3) The initial health report for an older toddler or preschool child must be dated no more than 1 year prior to the first day of attendance at the facility.
  - (4) The initial health report for a school-age child must be dated in accordance with the requirements for medical examinations for school attendance in 28 Pa. Code § 23.2 (relating to medical examinations).
- (b) The operator shall require the parent to provide an updated health report in accordance with the following schedules:
- (1) At least every 6 months for an infant or young toddler.
  - (2) At least every 12 months for an older toddler or preschool child.
  - (c) A health report must be written and signed by a physician, physician's assistant or a CRNP. The signature must include the individual's professional title.

(d) The health report must include the following information:

- (1) A review of the child's health history.
- (2) A list of the child's allergies.
- (3) A list of the child's current medication and the reason for the medication.
- (4) An assessment of an acute or chronic health problem or special need and recommendations for treatment or services, including information regarding abnormal results of screening tests for vision, hearing or lead poisoning.
- (5) A review of the child's immunized status according to recommendations of the ACIP.
- (6) A statement of the child's medical information pertinent to diagnosis and treatment in case of emergency.
- (7) A statement that the child is able to participate in child care and appears to be free from contagious or communicable disease.
- (8) A statement that age-appropriate screenings recommended by the American Academy of Pediatrics were conducted since the time of the previous health report required by this section.
- (e) The facility may not accept or retain an infant 2 months of age or older, a toddler or a preschool child at the facility for more than 60 days following the first day of attendance at the facility unless the parent provides written verification from a physician, physician's assistant, CRNP, the Department of Health or a local health department of the dates (month, day and year) the child was administered immunizations in accordance with the recommendations of the ACIP.

(1) The facility shall require the parent to provide updated written verification from a physician, physician's assistant, CRNP, the Department of Health or a local health department of ongoing vaccines administered to an infant, toddler or preschool child in accordance with the schedule recommended by the ACIP.

(2) Exemption from immunization must be documented as follows:

(i) Exemption from immunization for religious belief or strong personal objection equated to a religious belief must be documented by a written, signed and dated statement from the child's parent or guardian. The statement shall be kept in the child's record.

(ii) Exemption from immunization for reasons of medical need shall be documented by a written, signed and dated statement from the child's physician, physician's assistant or CRNP. The statement shall be kept in the child's record.

(3) The facility shall implement dismissal policies in accordance with the Department of Health regulation in 28 Pa. Code § 27.77 (relating to immunization requirements for children in child care group settings).

(4) The facility shall comply with the annual immunization reporting requirements in accordance with the Department of Health regulation in 28 Pa. Code § 27.77.

##### **§ 3270.133. Child medication and special diets.**

The operator shall make reasonable accommodation in accordance with applicable Federal and State laws to facilitate administration of medication or a special diet that is prescribed by a physician, physician's assistant or CRNP as treatment related to the child's special needs.

Facility persons are not required to administer medication or special diets which are requested or required by a parent, a physician, a physician's assistant or a CRNP but are not treatment related to the child's special needs. When medication or special diets are administered, the following requirements apply:

(1) A prescription or nonprescription medication may be accepted only in an original container. The medication must remain in the container in which it was received.

(2) A staff person shall administer a prescription medication only if written instructions are provided from the individual who prescribed the medicine. Instructions for administration contained on a prescription label are acceptable.

(3) The label of a medication container must identify the name of the medication and the name of the child for whom the medication is intended. Medication shall be administered to only the child whose name appears on the container.

(4) Medication shall be stored in a locked area of the facility or in an area that is out of the reach of children.

(5) Medication shall be stored in accordance with the manufacturer's or health professional's instructions on the original label.

(6) A parent shall provide written consent for administration.

(7) An operator is responsible to establish and maintain a medication log if prescription or nonprescription medication is administered. A log must include the following minimum information:

- (i) The name of the medication.
- (ii) The name of the child receiving the medication.
- (iii) A requirement for refrigeration.
- (iv) The amount of medication administered.
- (v) The date of administration.
- (vi) The time of administration.
- (vii) The initials of the staff person who administered the medication.
- (viii) Special notes related to problems of administration.

(8) If a special diet is prescribed for a child and if the diet is administered to the child, written instructions and the parent's written consent shall be retained in the child's file.

**§ 3270.135. Diapering requirements.**

(a) When children are diapered, the facility shall use disposable diapers, a diaper service or arrange with the parent to provide a daily diaper supply.

(1) If nondisposable diapers are provided by a parent, a soiled diaper shall be placed in an individual, securely-tied plastic bag and returned to the parent at the end of the day.

(2) If nondisposable diapers from a diaper service are provided by a facility, a soiled diaper shall be placed in the container provided by the service or in a securely-tied plastic bag.

(3) If disposable diapers are provided by a parent or by a facility, a soiled diaper shall be discarded by immediately placing the diaper into a plastic-lined, hands-free covered can.

(4) A soiled diaper that is not in a tied bag may not be placed in an unlined outdoor trash container.

(b) Diaper changing surfaces shall be cleaned after each use by wiping the surface with a sanitizing solution or by changing a pad or other surface covering.

(c) The diapering area may not be used for food preparation or food service.

(d) Cloth and paper materials used as diapering aids shall be stored in a manner that prevents cross-contamination from a soiled diaper, contaminated hands or other changing materials.

(e) A staff person shall check a child's diaper at least every 2 hours and whenever the child indicates discomfort or exhibits behavior that suggests a soiled diaper. A staff person shall change a child's diaper when the diaper is soiled.

**ADULT HEALTH**

**§ 3270.151. 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 conducted within 12 months prior to providing initial service in a child care setting and every 24 months thereafter. A health assessment is valid for 24 months following the date of signature, if the person does not contract a communicable disease or develop a medical problem.

(b) A health assessment shall be conducted and a report shall be written and signed by a physician, physician's assistant or CRNP. The signature must include the individual's professional title.

(c) The health assessment must include the following:

- (1) A physical examination.
- (2) Tuberculosis screening by the Mantoux method at initial employment. Subsequent tuberculosis screening is not required unless directed by a physician, physician's assistant, CRNP, the Department of Health or a local health department.
- (i) If a person's medical record demonstrates a positive tuberculin skin test, that record shall be placed on file at the facility.
- (ii) A record of a person with a positive tuberculin skin test must include the results of a chest X-ray and evaluation for chemoprophylaxis.
- (iii) A person with a positive tuberculin skin test and a negative x-ray is not required to have further tuberculosis testing, unless one of the following occurs:

(A) The person is exposed to an active case of tuberculosis.

(B) The person develops a productive cough which does not respond to medical treatment within 14 days.

(3) Examination for communicable diseases and the results of that examination.

(4) Information on medical problems that might threaten the health of the children or prohibit a staff person from providing adequate care to children.

(5) The physician's or CRNP's assessment of the person's suitability to provide child care.

(d) An adult individual who is employed by a facility and who provides children with social, medical, psychological or psychiatric services in addition to this chapter is required to have a current health assessment on file at the facility. An adult individual or an employe of an

agency who provides those services by contract with the child's parent or the facility is not required to have a current health assessment on file at the facility.

#### TRANSPORTATION

##### § 3270.175. Safety restraints.

(a) A child 7 years of age or younger shall be transported in accordance with the requirements for parents and guardians as set forth in 75 Pa.C.S. § 4581 (relating to restraint systems).

(b) Safety restraints installed in the vehicle at the time of manufacturing shall be used by all occupants.

(c) Manufacturers' instructions for use of safety restraints shall be kept in the vehicle at all times.

(d) A school bus with a seating capacity of 16 or more children used in transporting preschool or school-age children is exempt from the requirements established under subsections (a)—(c).

##### § 3270.176. Vehicles.

(a) A vehicle shall be insured in accordance with 75 Pa.C.S. §§ 1701—1799.7 (relating to the Motor Vehicle Financial Responsibility Law).

(b) The doors on a vehicle shall be locked whenever the vehicle is in motion.

(c) No more than three persons may occupy the front seat of an automobile.

(d) The back of a pick-up truck may not be used to transport children.

(e) The cargo area of a station wagon may not be used to transport children.

(f) In accordance with 67 Pa. Code Chapter 171 (relating to school buses and school vehicles), the facility may not transport a child in an 11—15 passenger van.

#### CHILD RECORDS

##### § 3270.182. Content of records.

A child's record must contain the following information:

- (1) Initial and subsequent health reports.
- (2) The dates of application, admission and withdrawal of the child.
- (3) Signed parental consent for emergency medical care for the child. Written consent is required prior to admission.
- (4) Signed parental consent for administration of medications or special dietary needs.
- (5) Signed parental consent for administration of minor first-aid procedures by facility staff. Written consent is required prior to admission.
- (6) Signed parental consent for transportation, walking excursions, swimming and wading.
- (7) Reports of accidents, injuries and illnesses involving a child in care at the facility. The original report shall be given to the parent on the day of the incident. The second copy of the report shall be retained at the facility in an accident file. The third copy of the report shall be retained at the facility in the child's file.
- (8) A copy of the initial agreement and subsequent written agreements between the parent and the operator. The parent shall receive the original agreement.

§ 3270.201. (Reserved).

§ 3270.202. (Reserved).

§ 3270.203. (Reserved).

§ 3270.204. (Reserved).

§ 3270.205. (Reserved).

§ 3270.206. (Reserved).

§ 3270.207. (Reserved).

§ 3270.208. (Reserved).

§ 3270.209. (Reserved).

§ 3270.210. (Reserved).

#### SPECIAL EXCEPTIONS

##### § 3270.233. Play surfaces.

(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.

\* \* \* \* \*

(b) A facility or a space in a facility in which care is provided exclusively to school-age children shall comply only with the following sections:

(1) *General provisions.* Sections 3270.1—3270.4 (relating to general provisions).

(2) *General requirements.* Sections 3270.11—3270.27 (relating to general requirements).

(3) *Staff persons and volunteers.* Sections 3270.31, 3270.32 and 3270.33(a), (b) and (d) (relating to age and training; suitability of persons in the facility; and general requirements for facility persons). Special requirements for director, group supervisor and assistant group supervisor are set forth in subsection (c).

(4) *Staff-child ratio.* Sections 3270.51, 3270.53 and 3270.54 (relating to similar age level; children of an operator or a staff person; and minimum number of facility persons in the child care facility).

(5) *Physical site.*

(i) Physical site requirements do not apply for a school-age program located in a school building that is under section 776.1 of the Public School Code of 1949 (24 P. S. § 7-776.1); specifically, a program operated for school-age children in a public or private school building, a building used by an intermediate unit, or an area vocational-technical school building which meets the physical site requirements acceptable to the Department of Education.

(ii) A school-age program not located in a school building referenced in subparagraph (i) must comply with requirements in §§ 3270.61, 3270.62, 3270.64, 3270.67, 3270.69, 3270.72(a), 3270.73, 3270.74, 3270.76, 3270.78, 3270.79 and 3270.82(a), (b) and (h).

(6) *Fire safety.* Sections 3270.91(a), 3270.92—3270.94 (relating to fire safety).

(7) *Equipment.* Sections 3270.101, 3270.102(a)—(c) and (g), 3270.104, 3270.107 and 3270.108.



(8) *Program.* Sections 3270.111, 3270.113, 3270.115(a) and (b), 3270.116 and 3270.118.

(9) *Procedures for admission.* Sections 3270.121—3270.124 (relating to procedures for admission). When a school-age child attends the facility 15 hours or less per week, the operator is not required to complete the Department's approved form to provide information to the family about the child's growth and development in the context of the services being provided referenced in § 3270.124(a)(3).

(10) *Child health.* Sections 3270.131—3270.134(a) and 3270.136—3270.138. An equivalent health report completed by a school is acceptable as documentation of child health for a school-age child.

(11) *Adult health.* Sections 3270.151—3270.154(a) and 3270.155.

(12) *Nutrition.*

(i) In a facility operating a school-age program for fewer than 4 consecutive hours, none of the nutrition requirements applies.

(ii) If a program operates for 4 or more consecutive hours or if a program provides meals or snacks, the facility director shall comply with §§ 3270.161—3270.165.

(13) *Transportation.*

(i) A facility is exempt from transportation requirements when children attending care at the facility are transported in vehicles owned and operated by the school district in which the facility is located.

(ii) A facility not operating under the provisions referenced in subparagraph (i) shall comply with §§ 3270.171—3270.178 (relating to transportation).

(14) *Child records.* Sections 3270.181—3270.185 (relating to child records).

(15) *Adult records.* Sections 3270.191—3270.193 (relating to adult records).

(16) *Special exemptions.* Sections 3270.231—3270.233 (relating to staff qualifications; indoor and outdoor space and capacity; and play surfaces).

(17) *Telephone.* Staff persons shall have immediate access to a working telephone on the facility premises. If a land-line telephone is not accessible to staff persons during the hours of facility operation, a wireless telephone is acceptable.

(c) Special requirements for staff persons in school-age programs or in school-age spaces.

(1) *Director.*

(i) In a program operating 30 or fewer hours a week, a director or director/group supervisor shall be present at a facility as required at § 3270.34 (relating to director qualifications and responsibilities) at least 20% of the program's operational hours.

(ii) In a program operating 31 to 45 hours a week, a director or director/group supervisor shall be present at a facility site at least 35% of the program's operational hours.

(iii) In a program operating 46 or more hours a week, a director or director/group supervisor shall be present at a facility site as described at § 3270.34(c) and (d).

(iv) A responsible designee shall be appointed by a director as described at § 3270.34.

(2) *Group supervisor.* In a program in which 46 or more school-age children are enrolled, a group supervisor shall be present at a facility site as described at § 3270.35 (relating to group supervisor qualifications and responsibilities).

(3) *Assistant group supervisor.*

(i) In a program in which 45 or fewer school-age children are enrolled, assistant group supervisors shall be present at a facility site during the program's operational hours.

(ii) In a program in which 45 or fewer school-age children are enrolled, one assistant group supervisor is required to be present at a facility site for each group of 12 young school-age or 15 older school-age children in attendance.

(iii) In a program of 45 or fewer enrolled children, an assistant group supervisor is responsible for the following minimum duties:

(A) Planning and implementing, with the director, daily program activities.

(B) Coordinating activities with other assistant group supervisors.

(C) Assisting the director as needed.

(4) *Aides.* In a program in which 46 or more school-age children are enrolled, the responsibility of an aide is described at § 3270.37 (relating to aide qualifications and responsibilities).

**CHAPTER 3280. GROUP CHILD DAY CARE HOMES  
GENERAL PROVISIONS**

**§ 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 Code (62 P. S. §§ 101—1411).

*Age level*—The grouping category appropriate for the child's age.

(i) *Infant*—A child from birth to 1 year of age.

(ii) *Young toddler*—A child from 1 to 2 years of age.

(iii) *Older toddler*—A child from 2 to 3 years of age.

(iv) *Preschool child*—A child from 3 years of age to the date the child enters kindergarten in a public or private school system.

(v) *Young school-age child*—A child who attends kindergarten to the date the child enters the 4th grade of a public or private school system.

(vi) *Older school-age child*—A child who attends the 4th grade of a public or private school system through 15 years of age.

\* \* \* \* \*

*Child with special needs*—A child who has one or more of the following:

(i) A disability or developmental delay identified on an IEP, an IFSP or a service agreement.

(ii) A written behavioral plan that has been determined by a licensed physician, licensed psychologist or certified behavior analyst.

(iii) A chronic health condition diagnosed by a licensed physician, physician's assistant or CRNP that requires health and related services of a type or amount beyond that required by children generally.

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*IEP*—Individualized education program as defined in 22 Pa. Code §§ 14.101 and §§ 14.131—14.133 (relating to definitions; and IEP).

*IFSP*—Individualized family service plan as defined in §§ 4226.5 and 4226.71—4226.77 (relating to definitions; and IFSPs).

*Inspection summary*—A document prepared by an agent of the Department describing each regulatory noncompliance item confirmed as a result of a facility inspection.

\* \* \* \* \*

*Service agreement*—A service agreement as defined in 22 Pa. Code §§ 15.2 and 15.7 (relating to definitions; and service agreement).

\* \* \* \* \*

**GENERAL REQUIREMENTS**

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

(a) A legal entity shall obtain a valid certificate of compliance to operate at a specific location. The certificate of compliance will be issued by the Department to a legal entity prior to commencement of operation at a specified location.

(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 hours of child care training required in § 3280.31(e) (relating to age and training).

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

(d) 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.

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

(g) 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) A facility whose certificate of compliance is current as of September 22, 2008, will not be inspected under this chapter until the current certificate of compliance is due to be renewed or when a regulatory violation is alleged and the Department responds to the alleged violation with an inspection.

**§ 3280.15. Building codes.**

A certificate of compliance will not be granted by the Department until the legal entity provides a certificate of occupancy as proof of compliance with the applicable

requirements of the Department of Labor and Industry in 34 Pa. Code § 403.23 (relating to child day care facilities).

**§ 3280.16. Service to a child with special needs.**

(a) The operator shall make reasonable accommodation to include a child with special needs in accordance with applicable Federal and State laws.

(b) The operator shall permit an adult individual who provides specialized services to a child with special needs to provide those services on the facility premises as specified in the child's IEP, IFSP or written behavioral plan.

(c) The operator shall make staff persons and parents aware of community resources for the family of a child who may have special needs. The Department will provide to the operator information regarding community resources.

**§ 3280.23. Departmental access.**

(a) A staff person shall provide to agents of the Department immediate access to the facility and, upon request, to the children and the files and records.

(b) An inspection will be conducted during normal business hours except when there is reasonable cause to believe that inspections at other times are necessary to detect violations of applicable statutes and regulations.

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

**§ 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, with instructions for contacting the appropriate regional day care office posted at the same location.

(b) The operator shall post a copy of each inspection summary issued by the Department in a conspicuous location used by parents. The inspection summary must remain posted until an agent of the Department verifies that each regulatory noncompliance item cited on the inspection summary has been corrected.

**§ 3280.26. 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 § 3280.94(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.

(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.

(c) Each facility person shall receive training regarding the emergency plan at the time of initial employment, on an annual basis and at the time of each plan update. The date of each training and the name of each facility person who received the training shall be documented in writing and kept on file at the facility.

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

(e) 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) The operator shall send a copy of the emergency plan and subsequent plan updates 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 guidelines in this section are met.

(d) Child care professional credentials are equivalent to the following staff qualifications:

(1) A Child Development Associate (CDA) credential or a Certified Childcare Professional (CCP) credential is equivalent to 9 credit hours from an accredited college or university in early childhood education or child development and 1 year experience with children.

(2) A Pennsylvania school-age professional credential is equivalent to 9 credit hours from an accredited college or university in elementary education or child development and 1 year experience with children.

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

(1) Acceptable training is conducted in one or more of the following settings:

(i) By a secondary or postsecondary 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 Post-secondary Accreditation and acceptable to the Department of Education.

(ii) By an entity that is licensed or certified professionally competent in the training topic.

(iii) In conferences or workshops.

(iv) With audio-visual materials recognized by child care professionals.

(2) Acceptable training topics include the following:

(i) Child or staff health.

(ii) Child development, early childhood education and special education.

(iii) Supervision, discipline and guidance of children.

(iv) Nutrition for children.

(v) Child care program development.

(vi) Child care staff person or volunteer professional development.

(3) Other training topics may be submitted for the Department's review and approval.

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

(i) *First-aid training.* Competence is completion of training by a professional in the field of first-aid. First-aid training shall be renewed on or before the expiration of certification of every 3 years, as applicable.

(ii) *Lifeguard training.* Competence is completion of lifeguard training, including first-aid training and cardiopulmonary resuscitation (CPR) for child and infant.

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

(f) Completion of training shall be documented by the signature and title of a representative of the training entity and include the date training was completed. Documentation shall be retained in the facility person's file.

**STAFF:CHILD RATIO**

**§ 3280.52. Ratio requirements.**

(a) The minimum number of facility persons is as follows:

(1) A primary staff person shall be present in a facility when six or fewer children are in care, unless the staff:child ratio specified in subsection (b) or (c) requires a second or third staff person.

(2) At least two facility persons shall accompany any number of children on an excursion away from a facility.

(b) When children are grouped in similar age levels, the following child group sizes and ratios of staff persons apply:

	<i>Staff</i>	<i>Children</i>	<i>Maximum Group Size</i>	<i>Total Number of Staff Required for the Maximum Group Size</i>
Infant	1	4	12	3
Young toddler	1	5	12	3
Older toddler	1	6	12	2
Preschool	1	10	12	2
Young school-age	1	12	12	1
Older school-age	1	15	15	1

(c) When children are grouped in mixed age levels, the age of the youngest child in the group determines the staff:child ratio and maximum group size in accordance with the requirements in subsection (b).

#### PHYSICAL SITE

##### § 3280.61. Measurement and use of indoor child care space.

(a) A facility shall provide indoor child care space for individual and group small muscle activity.

(b) Indoor child care space may not be used simultaneously as play space.

(c) Indoor child care space is measured within permanent, stationary partitions or walls. The allowable number of children in a space is determined by dividing the total square feet in a space by 40.

(d) Measured indoor space includes space occupied by cupboards, shelves, furniture and equipment.

(e) Measured indoor space does not include space occupied by halls, bathrooms, offices, kitchens and locker rooms.

(f) Indoor space in which children are receiving care may not be used simultaneously for other business, commercial, social or another purpose unrelated to the child care being offered.

(g) Preschool and school-age children may not be involved in small or large muscle activity in the same group space in which children are sleeping or resting.

(h) The capacity established for an indoor space may not be exceeded except in the following situations:

(1) At naptime, when toddler or preschool children are resting on rest equipment described in § 3280.105 (relating to rest equipment) if the following conditions are met:

(i) The capacity is determined by the requirement for placement of rest equipment described in § 3280.105(f).

(ii) The capacity may be exceeded for no longer than 2 1/2 consecutive hours and no more than twice in a program day.

(2) When older toddler, preschool or school-age children are participating in a program activity if the following conditions are met:

(i) The capacity of the indoor child care space may be exceeded for no more than two separate 1/2 hour time periods daily.

(ii) Each time period shall be designated on the facility's schedule of daily activities.

(iii) The space may not be occupied by children of the infant or young toddler age levels during a time period when the capacity is exceeded.

(iv) The number of children present in the space may not be more than twice the measured capacity of the space.

(3) When a meal is served in a space designated and measured as indoor child care space if the following conditions are met:

(i) The capacity of a space may be exceeded when children are eating for no more than 1 hour daily.

(ii) The meal time shall be designated on the facility's schedule of daily activities.

(iii) The number of children present in the space may not be more than twice the measured capacity of the space.

##### § 3280.70. Indoor temperature.

(a) The indoor temperature must be at least 65° F.

(b) If the indoor temperature exceeds 82° F in a child care space, a means of mechanical air circulation must be operating.

##### § 3280.75. First-aid kit.

(a) A first-aid kit shall be kept in a facility.

(b) A first-aid kit must be inaccessible to children.

(c) A first-aid kit must contain the following: soap, an assortment of adhesive bandages, sterile gauze pads, tweezers, tape, scissors and disposable, nonporous gloves.

(d) One first-aid kit per child care group must accompany children and facility persons on excursions from the facility. Each first aid kit taken on an excursion must contain a bottle of water in addition to the items specified in subsection (c).

#### EQUIPMENT

##### § 3280.102. Condition of play equipment.

(a) Toys, play equipment and other indoor and outdoor equipment used by the children must be clean, in good repair and free from rough edges, sharp corners, pinch and crush points, splinters and exposed bolts.

(b) Toys soiled by secretion or excretion shall be cleaned with soap and water, rinsed and sanitized before being used by a child.

(c) Outdoor equipment that requires embedded mounting must be mounted over a loose-fill or unitary playground protective surface covering that meets the recommendations of the United States Consumer Product Safety Commission. The equipment must be anchored firmly and be in good repair.

(d) Slides that are over 4 feet high must have guards along both sides of the ladder.

(e) Pea gravel and other materials with a diameter of less than 1 inch may not be used in spaces where infants or toddlers receive care.

(f) Children's toys and equipment, including furniture and rest equipment, described as hazardous by the United States Consumer Product Safety Commission may not be used by children at the facility and may not be on the premises at the facility. At the time of inspection, the operator shall submit to the Department written affirmation on a form provided by the Department stating that the facility is in compliance with this requirement.

##### § 3280.105. Rest equipment.

(a) Individual, clean, age-appropriate rest equipment shall be provided for preschool, toddler and infant children as agreed between the child's parent and the operator. The rest equipment must be labeled for the use of a specific child and used only by the specified child.

(b) Bed linens may not be used alone as age-appropriate rest equipment.

(c) Stacked cribs may not be used.

(d) Crib and playpen slats may be no more than 2 3/8 inches apart.

(e) Seasonal, appropriate covering, such as sheets or blankets, shall be provided as agreed between the child's parent and the operator.

(f) At least 2 feet of space is required on three sides of a bed, cot, crib or other rest equipment while the equipment is in use.

(g) Linens, blankets and rest equipment shall be cleaned monthly, at a minimum. The operator shall arrange a cleaning schedule with the parent.

(h) Soiled bedding shall be cleaned before it is reused.

(i) The upper level of double-deck beds may not be used for children 8 years of age or younger.

(j) Toys, bumper pads or pillows may not be present in a crib while an infant is sleeping in the crib.

**§ 3280.108. Furniture.**

(a) Furniture must be durable, safe, easily cleaned and appropriate for the child's size, age and special needs.

(b) Study space, tables, chairs, paper and pencils shall be provided for school-age children in care, if necessary for the program offered by the facility.

**PROGRAM**

**§ 3280.113. Supervision of children.**

(a) Children on the facility premises and on facility excursions off the premises shall be supervised by a staff person at all times. Outdoor play space used by the facility is considered part of the facility premises.

(1) Each staff person shall be assigned the responsibility for supervision of specific children. The staff person shall know the names and whereabouts of the children in his assigned group. The staff person shall be physically present with the children in his group on the facility premises and on facility excursions off the facility premises.

(2) The requirement for supervision on and off the facility premises includes compliance with the staff:child ratio requirements in §§ 3280.51—3280.53 (relating to staff:child ratio).

(b) A facility person may not use any form of physical punishment including spanking a child.

(c) A facility person may not single out the child for ridicule, threaten harm to the child or the child's family and may not specifically aim to degrade the child or the child's family.

(d) A facility person may not use harsh, demeaning or abusive language in the presence 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.

**§ 3280.115. Water activity.**

(a) *Swimming.*

(1) A swimming pool must conform to 28 Pa. Code Chapter 18 (relating to public swimming and bathing places).

(2) An in-ground swimming pool accessible to children must be fenced with a locked gate.

(3) An aboveground swimming pool which is not in use must be made inaccessible to children in accordance with the swimming pool barrier guidelines of the United States Consumer Product Safety Commission.

(4) An indoor swimming pool which is not in use must be made inaccessible to children.

(5) The following staff:child ratios apply while children are swimming:

<i>Similar Age Level</i>	<i>Staff</i>	<i>Children</i>
Infant	1	1
Young and older toddler	1	2
Preschool	1	5
Young school-age	1	6
Older school-age	1	8

(6) When children are swimming, supervision shall include one person certified in lifeguarding training, as described in § 3280.31(e)(4)(iii) (relating to age and training).

(7) The person certified in lifeguard training may not be included in the staff-child ratio.

(8) A facility person who is counted in the staff-child ratio shall annually complete water safety instruction.

(b) *Wading.*

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

(2) A sanitizing solution shall be added to water in a wading pool. An acceptable sanitizing solution is 3/4 teaspoon of bleach added to 50 gallons of water.

(3) A wading pool shall be emptied daily.

(c) *Water play tables.* A water play table or a container used for water play that contains unfiltered water shall be emptied daily.

**§ 3280.117. Release of children.**

(a) A child shall be released only to the child's parent or to an individual designated in writing by the enrolling parent. A child shall be released to either parent unless a court order on file at the facility states otherwise.

(b) In an emergency, a child may be released to an individual upon the oral designation of the parent, if the identity of the individual can be verified by a staff person.

(c) If a child is released upon the oral designation of the parent, the following information shall be logged in the child's record:

- (1) The name of the parent making the request.
- (2) The date and time of the request.
- (3) The name of the individual to whom the child is to be released.
- (4) The name of the staff person taking the call.
- (5) The name of the staff person releasing the child.

**§ 3280.119. Infant sleep position.**

Infants shall be placed in the sleeping position recommended by the American Academy of Pediatrics unless there is a medical reason an infant should not sleep in this position. The medical reason shall be documented in a statement signed by a physician, physician's assistant or CRNP and placed in the child's record at the facility.

**PROCEDURES FOR ADMISSION**

**§ 3280.122. Admission interview.**

A child shall be interviewed or observed by the operator and, when possible, shall have the opportunity to visit the facility prior to being admitted for care. The child shall be told as much as he can understand about the service being planned. If the parent indicates that the child has special needs, the operator shall discuss the condition

with the parent, refer to § 3280.4 (relating to definitions), and comply with §§ 3280.16, 3280.124 and 3280.131 (relating to service to a child with special needs; emergency contact information; and health information).

**§ 3280.123. Agreement.**

(a) An agreement signed by the operator and the parent must specify the following:

- (1) The amount of fee to be charged per day or per week.
- (2) The date on which the fee is to be paid.
- (3) The services to be provided to the family and the child, including the Department's approved form to provide information to the family about the child's growth and development in the context of the services being provided. The operator shall complete and update the form and provide a copy to the family in accordance with the updates regarding emergency contact information in § 3280.124(f) (relating to emergency contact information).
- (4) The child's arrival and departure times.
- (5) The individuals designated by the parent to whom the child may be released as specified in § 3280.117 (relating to release of children).
- (6) The date of the child's admission.
- (7) The services which are to be considered as extra.

(b) A parent shall receive the original agreement. The facility shall retain a copy of the agreement.

**§ 3280.124. Emergency contact information.**

(a) Emergency contact information is required for each enrolled child. Emergency contact information must reference who shall be contacted in an emergency.

(b) Emergency contact information must include the following:

- (1) The name and birth date of the child.
- (2) The name, address and telephone number of the child's physician or source of medical care.
- (3) The home and work addresses and telephone numbers of the enrolling parent.
- (4) The written consent signed by a parent for emergency medical care.
- (5) Information on the child's special needs, as specified by the child's parent, physician, physician's assistant or CRNP, which is needed in an emergency situation.
- (6) Health insurance coverage and policy number for the child under a family policy or Medical Assistance benefits, if applicable.
- (7) The name, address and telephone number of individual designated by the parent to whom the child may be released.

(c) When children are in the facility, emergency contact information must be present in a child care space for children receiving care in that space.

(d) When children leave the facility on walking and riding excursions, emergency contact information specific to each child on the excursion must accompany a staff person on the excursion.

(e) A written plan identifying the means of transporting a child to emergency care and staffing provisions in the event of an emergency shall be displayed conspicuously in every child care space and accompany a staff person who leaves on an excursion with children.

(f) The parent shall update in writing emergency contact information once in a 6-month period or as soon as there is a change in the information.

**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 days following the first day of attendance at the facility.

(1) The initial health report for an infant must be dated no more than 3 months prior to the first day of attendance at the facility.

(2) The initial health report for a young toddler must be dated no more than 6 months prior to the first day of attendance at the facility.

(3) The initial health report for an older toddler or preschool child must be dated no more than 1 year prior to the first day of attendance at the facility.

(4) The initial health report for a school-age child must be dated in accordance with the requirements for medical examinations for school attendance in 28 Pa. Code § 23.2 (relating to medical examinations).

(b) The operator shall require the parent to provide an updated health report in accordance with the following schedules:

(1) At least every 6 months for an infant or young toddler.

(2) At least every 12 months for an older toddler or preschool child.

(c) A health report must be written and signed by a physician, physician's assistant or a CRNP. The signature must include the individual's professional title.

(d) The health report must include the following information:

(1) A review of the child's health history.

(2) A list of the child's allergies.

(3) A list of the child's current medication and the reason for the medication.

(4) An assessment of an acute or chronic health problem or special needs and recommendations for treatment or services, including information regarding abnormal results of screening tests for vision, hearing or lead poisoning.

(5) A review of the child's immunized status according to recommendations of the ACIP.

(6) A statement of the child's medical information pertinent to diagnosis and treatment in case of emergency.

(7) A statement that the child is able to participate in child care and appears to be free from contagious or communicable disease.

(8) A statement that age-appropriate screenings recommended by the American Academy of Pediatrics were conducted since the time of the previous health report required by this section.

(e) The facility may not accept or retain an infant 2 months of age or older, a toddler or a preschool child at the facility for more than 60 days following the first day of attendance at the facility unless the parent provides written verification from a physician, physician's assis-

tant, CRNP, the Department of Health or a local health department of the dates (month, day and year) the child was administered immunizations in accordance with the recommendations of the ACIP.

(1) The facility shall require the parent to provide updated written verification from a physician, physician's assistant, CRNP, the Department of Health or a local health department of ongoing vaccines administered to an infant, toddler or preschool child in accordance with the schedule recommended by the ACIP.

(2) Exemption from immunization must be documented as follows:

(i) Exemption from immunization for religious belief or strong personal objection equated to a religious belief must be documented by a written, signed and dated statement from the child's parent or guardian. The statement shall be kept in the child's record.

(ii) Exemption from immunization for reasons of medical need must be documented by a written, signed and dated statement from the child's physician, physician's assistant or CRNP. The statement shall be kept in the child's record.

(3) The facility shall implement dismissal policies in accordance with the Department of Health regulation in 28 Pa. Code § 27.77 (relating to immunization requirements for children in child care group settings).

(4) The facility shall comply with the annual immunization reporting requirements in accordance with the Department of Health regulation in 28 Pa. Code § 27.77.

**§ 3280.133. Child medication and special diets.**

The operator shall make reasonable accommodation in accordance with applicable Federal and State laws to facilitate administration of medication or a special diet as prescribed by a physician, physician's assistant or CRNP as a treatment related to the child's special needs. Facility persons are not required to administer medication or special diets which are requested or required by a parent, a physician, a physician's assistant or a CRNP but are not treatment related to the child's special needs. When medication or special diets are administered, the following requirements apply:

(1) A prescription or nonprescription medication may be accepted only in an original container. The medication must remain in the container in which it was received.

(2) A staff person shall administer a prescription medication only if written instructions are provided from the individual who prescribed the medication. Instructions for administration contained on a prescription label are acceptable.

(3) The label of a medication container must identify the name of the medication and the name of the child for whom the medication is intended. Medication shall be administered to only the child whose name appears on the container.

(4) Medication shall be stored in a locked area of the facility or in an area that is out of the reach of children.

(5) Medication shall be stored in accordance with the manufacturer's or health professional's instructions on the original label.

(6) A parent shall provide written consent for administration.

(7) An operator is responsible to establish and maintain a medication log if prescription or nonprescription medication is administered. A log must include the following minimum information:

- (i) The name of the medication.
- (ii) The name of the child receiving the medication.
- (iii) A requirement for refrigeration.
- (iv) The amount of medication administered.
- (v) The date of administration.
- (vi) The time of administration.
- (vii) The initials of the staff person who administered the medication.
- (viii) Special notes related to problems of administration.

(8) If a special diet is prescribed for a child and if the diet is administered to the child, written instructions and the parent's written consent shall be retained in the child's file.

**§ 3280.135. Diapering requirements.**

(a) When children are diapered, the facility shall use disposable diapers, a diaper service or arrange with the parent to provide a daily diaper supply.

(1) If nondisposable diapers are provided by a parent, a soiled diaper shall be placed in an individual, securely-tied plastic bag and returned to the parent at the end of the day.

(2) If nondisposable diapers from a diaper service are provided by a facility, a soiled diaper shall be placed in the container provided by the service or in a securely-tied plastic bag.

(3) If disposable diapers are provided by a facility or a parent, a soiled diaper shall be discarded by immediately placing the diaper into a plastic-lined, hands-free covered can.

(4) A soiled diaper that is not in a tied bag may not be placed in an unlined outdoor trash container.

(b) Diaper changing surfaces shall be cleaned after each use by wiping the surface with a sanitizing solution or by changing a pad or other surface covering.

(c) The diapering area may not be used for food preparation or food service.

(d) Cloth and paper materials used as diapering aids shall be stored in a manner that prevents cross-contamination from a soiled diaper, contaminated hands or other changing materials.

(e) A staff person shall check a child's diaper at least every 2 hours and whenever the child indicates discomfort or exhibits behavior that suggests a soiled diaper. A staff person shall change a child's diaper when the diaper is soiled.

**ADULT HEALTH**

**§ 3280.151. 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 conducted within 12 months prior to providing initial service in a child care setting and every 24 months thereafter. A health assessment is valid for 24 months following the date of signature, if the person does not contract a communicable disease or develop a medical problem.

(b) A health assessment shall be conducted and a report shall be written and signed by a physician, physician's assistant or CRNP. The signature must include the individual's professional title.

(c) The health assessment must include the following:

- (1) A physical examination.
- (2) Tuberculosis screening by the Mantoux method at initial employment. Subsequent tuberculosis screening is not required unless directed by a physician, physician's assistant, CRNP, Department of Health or local health department.

(i) If a person's medical record demonstrates a positive tuberculin skin test, that record shall be placed on file at the facility.

(ii) A record of a person with a positive tuberculin skin test must include the results of a chest x-ray and evaluation for chemoprophylaxis.

(iii) A person with a positive tuberculin skin test and a negative x-ray is not required to have further tuberculosis testing, unless one of the following occurs:

(A) The person is exposed to an active case of tuberculosis.

(B) The person develops a productive cough which does not respond to medical treatment within 14 days.

(3) Examination for communicable diseases and the results of that examination.

(4) Information on medical problems which might threaten the health of the children or prohibit a staff person from providing adequate care to children.

(5) The physician's or CRNP's assessment of the person's suitability to provide child care.

(d) An adult individual who is employed by a facility and who provides children with social, medical, psychological or psychiatric services in addition to this chapter is required to have a current health assessment on file at the facility. An adult individual or an employe of an agency who provides those services by contract with the child's parent or the facility is not required to have a current health assessment on file at the facility.

### TRANSPORTATION

#### § 3280.175. Safety restraints.

(a) A child 7 years of age or younger shall be transported in accordance with the requirements for parents and guardians as set forth in 75 Pa.C.S. § 4581 (relating to restraint systems).

(b) Safety restraints installed in the vehicle at the time of manufacturing shall be used by occupants.

(c) Manufacturer's instructions for use of safety restraints shall be kept in the vehicle at all times.

(d) School buses with a seating capacity of 16 or more children used in transporting preschool or school-age children are exempt from subsections (a)—(c).

#### § 3280.176. Vehicles.

(a) A vehicle shall be insured under 75 Pa.C.S. §§ 1701—1799.7 (relating to the Motor Vehicle Financial Responsibility Law).

(b) The doors on a vehicle shall be locked whenever the vehicle is in motion.

(c) No more than three persons may occupy the front seat of an automobile.

(d) The back of a pickup truck may not be used to transport children.

(e) The cargo area of a station wagon may not be used to transport children.

(f) In accordance with 67 Pa. Code Chapter 171 (relating to school buses and school vehicles), the facility may not transport a child in an 11-15 passenger van.

### CHILD RECORDS

#### § 3280.182. Content of records.

A child's record must contain the following information:

(1) Initial and subsequent health reports.

(2) The dates of application, admission and withdrawal of the child.

(3) Signed parental consent for emergency medical care for the child. Written consent is required prior to admission.

(4) Signed parental consent for administration of medications or special dietary needs.

(5) Signed parental consent for administration of minor first-aid procedures by facility staff. Written consent is required prior to admission.

(6) Signed parental consent for transportation, walking excursions, swimming and wading.

(7) Reports of accidents, injuries and illnesses involving a child in care at the facility. The original report shall be given to the parent on the day of the incident. The second copy of the report shall be retained at the facility in an accident file. The third copy of the report shall be retained at the facility in the child's file.

(8) A copy of the initial agreement and subsequent written agreements between the parent and the operator. The parent shall receive the original agreement.

#### §§ 3280.201—3280.209. (Reserved).

### SPECIAL EXCEPTIONS

#### § 3280.215. Play surfaces.

(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.

(b) A facility or a space in a facility in which care is provided exclusively to school-age children shall comply only with the following:

(1) *General provisions.* Sections 3280.1—3280.4 (relating to general provisions).

(2) *General requirements.* Sections 3280.11—3280.26 (relating to general requirements).

(3) *Staff persons and volunteers.* Sections 3280.31—3280.34.



(4) *Staff:child ratio.* Sections 3280.51, 3280.52(b) and 3280.53 (relating to staff:child ratio).

(5) *Physical site:*

(i) Physical site requirements do not apply for a school-age program located in a school building that is under section 776.1 of the Public School Code of 1949 (24 P. S. § 7-776.1); specifically, a program operated for school-age children in a public or private school building, a building used by an intermediate unit, or an area vocational-technical school building which meets the physical site requirements acceptable to the Department of Education.

(ii) A school-age program not located in a school building referenced in subparagraph (i) must comply with requirements located in §§ 3280.61, 3280.62, 3280.64, 3280.67, 3280.69, 3280.72(a), 3280.73, 3280.74, 3280.76, 3280.78, 3280.79 and 3280.81(a) and (c).

(6) *Firesafety.* Sections 3280.91(a) and 3280.92—3280.94 (relating to firesafety).

(7) *Equipment.* Sections 3280.101, 3280.102(a)—(c) and (g), 3280.107 and 3280.108.

(8) *Program.* Sections 3280.111, 3280.113, 3280.115(a) and (b), 3280.116 and 3280.118.

(9) *Procedures for admission.* Sections 3280.121—3280.124 (relating to procedures for admission). When a school-age child attends the facility 15 hours or less per week, the operator is not required to complete the Department's approved form to provide information to the family about the child's growth and development in the context of the services being provided referenced in § 3280.124(a)(3).

(10) *Child health.* Sections 3280.131—3280.134(a) and 3280.136—3280.138. An equivalent health report completed by a school is acceptable as documentation of child health for a school-age child.

(11) *Adult health.* Sections 3280.151—3280.153, 3280.154(a) and 3280.155 (relating to adult health).

(12) *Nutrition:*

(i) In a facility operating a school-age program for fewer than 4 consecutive hours, the nutrition requirements do not apply.

(ii) If a program operates for 4 or more consecutive hours or if a program provides meals or snacks, the primary staff person shall comply with §§ 3280.161—3280.165.

(13) *Transportation:*

(i) A facility is exempt from transportation requirements when children attending care at the facility are transported in vehicles owned and operated by the school district in which the facility is located.

(ii) A facility not operating under the provisions referenced in subparagraph (i) shall comply with requirements located in §§ 3280.171—3280.178 (relating to transportation).

(14) *Child records.* Sections 3280.181—3280.185 (relating to child records).

(15) *Adult records.* Sections 3280.191—3280.193 (relating to adult records).

(16) *Special exceptions.* Sections 3280.211—3280.213 and 3280.215.

(17) *Telephone.* Staff persons shall have immediate access to a working telephone on the facility premises. If

a land-line telephone is not accessible to staff persons during the hours of facility operation, a wireless telephone is acceptable.

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

**§ 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 Code (62 P. S. §§ 101—1411).

*Age level*—The grouping category appropriate for the child's age.

(i) *Infant*—A child from birth to 1 year of age.

(ii) *Young toddler*—A child from 1 to 2 years of age.

(iii) *Older toddler*—A child from 2 to 3 years of age.

(iv) *Preschool child*—A child from 3 years of age to the date the child enters kindergarten in a public or private school system.

(v) *Young school-age child*—A child who attends kindergarten to the date the child enters the 4th grade of a public or private school system.

(vi) *Older school-age child*—A child who attends the 4th grade of a public or private school system through 15 years of age.

\* \* \* \* \*

*Child with special needs*—A child who has one or more of the following:

(i) A disability or developmental delay identified on an IEP, an IFSP or a service agreement.

(ii) A written behavioral plan that has been determined by a licensed physician, licensed psychologist or certified behavior analyst.

(iii) A chronic health condition diagnosed by a licensed physician, physician's assistant or CRNP that requires health and related services of a type or amount beyond that required by children generally.

\* \* \* \* \*

*IEP*—Individualized education program as defined in 22 Pa. Code §§ 14.101 and 14.131—14.133 (relating to definitions; and IEP).

*IFSP*—Individualized family service plan as defined in §§ 4226.5 and 4226.71—4226.77 (relating to definitions; and IFSPs).

\* \* \* \* \*

*Inspection summary*—A document prepared by an agent of the Department describing each regulatory noncompliance item confirmed as a result of a facility inspection.

*Legal entity*—A person, corporation or partnership that is legally responsible for the administration of the facility.

\* \* \* \* \*

*Service agreement*—A service agreement as defined in 22 Pa. Code §§ 15.2 and 15.7 (relating to definitions; and service agreement).

\* \* \* \* \*

**GENERAL REQUIREMENTS****§ 3290.11. Application for and issuance of a certificate of registration.**

(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.

**§ 3290.14. Building codes.**

A certificate of registration 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).

**§ 3290.15. Service to a child with special needs.**

(a) The operator shall make reasonable accommodation to include a child with special needs in accordance with applicable Federal and State laws.

(b) The operator shall permit an adult individual who provides specialized services to a child with special needs to provide those services on the facility premises as specified in the child's IEP, IFSP or written behavioral plan.

(c) The operator shall make staff persons and parents aware of community resources for the family of a child who may have special needs. The Department will provide to the operator information regarding community resources.

**§ 3290.21. Departmental access.**

(a) A staff person shall provide to agents of the Department immediate access to the facility and, upon request, to the children and the files and records.

(b) An inspection will be conducted during normal business hours except when there is reasonable cause to believe that inspections at other times are necessary to detect violations of applicable laws and regulations.

(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.

**§ 3290.22. Availability of certificate of registration and applicable regulations.**

(a) The facility's current certificate of registration and a copy of the applicable regulations under which the facility is certified 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.

(c) The operator shall post a copy of each inspection summary issued by the Department next to the facility's certificate of registration 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.

**§ 3290.24 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 § 3290.94(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.

(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.

(c) Each facility person shall receive training regarding the emergency plan at the time of initial employment, on an annual basis and at the time of each plan update. The date of each training and the name of each facility person who received the training shall be documented in writing and kept on file at the facility.

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

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

**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.

(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:

(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 accreditation and acceptable to the Department of Education.

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

(4) A representative of the training institution certifies in writing that the individual has completed the required classroom training and is currently enrolled in the curriculum.

(5) The written certification required in paragraph (4) shall be retained in the staff file at the facility.

(e) Child care professional credentials are equivalent to the following staff qualifications:

(1) A Child Development Associate (CDA) credential or a Certified Childcare Professional (CCP) credential is equivalent to 9 credit hours from an accredited college or university in early childhood education or child development and 1 year of experience with children.

(2) A Pennsylvania school-age professional credential is equivalent to 9 credit hours from an accredited college or university in elementary education or child development and 1 year experience with children.

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

(1) Acceptable training is conducted in one or more of the following settings:

(i) By a secondary or postsecondary 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 Accreditation and acceptable to the Department of Education.

(ii) By an entity that is licensed or certified professionally competent in the training topic.

(iii) In conferences or workshops.

(iv) With audio-visual materials recognized by child care professionals.

(2) Acceptable training topics include the following:

- (i) Child or staff health.
- (ii) Child development, early childhood education and special education.
- (iii) Supervision, discipline and guidance of children.
- (iv) Nutrition for children.
- (v) Child care program development.
- (vi) Child care staff person or volunteer professional development.

(3) Other training topics may be submitted for the Department's review and approval.

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

(i) *First-aid training.* Competence is completion of training by a professional in the field of first-aid. First-aid training shall be renewed on or before expiration of certification or every 3 years, as applicable.

(ii) *Lifeguard training.* Competence is completion of lifeguard training, including first-aid training and cardiopulmonary resuscitation (CPR) for child and infant.

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

(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.

#### PHYSICAL SITE

##### § 3290.68. Indoor temperature.

- (a) The indoor temperature must be at least 65° F.
- (b) If the indoor temperature exceeds 82° F in a child care space, a means of mechanical air circulation must be operating.

##### § 3290.73. First-aid kit.

- (a) A facility must have a first-aid kit.
- (b) A first-aid kit shall be kept in a place inaccessible to children.
- (c) A first-aid kit must contain the following: soap, an assortment of adhesive bandages, sterile gauze pads, tweezers, tape, scissors and disposable, nonporous gloves.
- (d) One first-aid kit must accompany children and facility person on excursions from the facility. The first aid kit taken on an excursion must contain a bottle of water in addition to the items specified in subsection (c).

#### EQUIPMENT

##### § 3290.102. Condition of play equipment.

- (a) Toys, play equipment and other indoor and outdoor equipment used by the children must be clean, in good repair and free from rough edges, sharp corners, pinch and crush points, splinters and exposed bolts.
- (b) Toys soiled by secretion or excretion shall be cleaned with soap and water, rinsed and sanitized before being used by a child.

(c) Outdoor equipment that requires embedded mounting must be mounted over a loose-fill or unitary playground protective surface covering that meets the recommendations of the United States Consumer Product Safety Commission. The equipment must be anchored firmly and be in good repair.

(d) Slides that are over 4 feet high must have guards along both sides of the ladder.

(e) Pea gravel and other materials with a diameter of less than 1 inch may not be used in spaces where infants or toddlers receive care.

(f) Children's toys and equipment, including furniture and rest equipment, described as hazardous by the United States Consumer Product Safety Commission may not be used by children at the facility.

##### § 3290.105. Rest equipment.

(a) Individual, clean, age-appropriate rest equipment shall be provided for preschool, toddler and infant children as agreed between the parent and the operator. The rest equipment must be labeled with the child's name and used only by the named child while enrolled in the program.

(b) Bed linens may not be used alone as age-appropriate rest equipment.

(c) Stacked cribs may not be used.

(d) Crib and playpen slats may be no more than 2 3/8 inches apart.

(e) Seasonal, appropriate covering, such as sheets or blankets, shall be provided as agreed between the parent and the operator.

(f) At least 2 feet of space is required on three sides of a bed, cot, crib or other rest equipment while the equipment is in use.

(g) Linens, blankets and rest equipment shall be cleaned monthly, at a minimum. The operator shall arrange a cleaning schedule with the parent.

(h) Soiled bedding shall be cleaned before it is reused.

(i) The upper level of double-deck beds may not be used for children 8 years of age or younger.

(j) Toys, bumper pads or pillows may not be present in a crib while an infant is sleeping in the crib.

#### PROGRAM

##### § 3290.113. Supervision of children.

(a) Children on the facility premises and on facility excursions off the premises shall be supervised by a staff person at all times. Outdoor play space used by the facility is considered part of the facility premises. The requirement for supervision on and off the facility premises includes compliance with the staff:child ratio requirements in §§ 3290.51 and 3290.52 (relating to staff:child ratio).

(b) A facility person may not use any form of physical punishment including spanking a child.

(c) A facility person may not single out a child for ridicule, threaten harm to the child or the child's family and may not specifically aim to degrade the child or the child's family.

(d) A facility person may not use harsh, demeaning or abusive language in the presence 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.

**§ 3290.115. Water activity.**

- (a) *Swimming or wading.*
- (1) An in-ground swimming pool accessible to children must be fenced with a locked gate.
- (2) An aboveground swimming pool which is not in use must be made inaccessible to children in accordance with the swimming pool barrier guidelines of the United States Consumer Product Safety Commission.
- (3) An indoor swimming pool which is not in use must be made inaccessible to children.
- (4) A staff person shall be physically present with a child who is wading or swimming.
- (5) Swimming and wading ratios shall be maintained as follows:

	<i>Staff</i>	<i>Children</i>
Infant	1	1
Young or older toddler	1	2
Preschool	1	5
Young school-age	1	6
Older school-age	1	6

- (6) When children are swimming, supervision shall include at least one person who has completed lifeguard training as described in § 3290.31(c)(4)(ii) (relating to age and training).
- (7) The person certified in lifeguard training may not be included in the staff:child ratio.
- (8) A facility person who is counted in the staff:child ratio shall annually complete water safety instruction.
- (9) A sanitizing solution shall be added to water in a wading pool. An acceptable sanitizing solution is 3/4 teaspoon of bleach added to 50 gallons of water. A sanitizing solution shall be handled as a toxic. See § 3290.64 (relating to toxics).
- (10) A wading pool shall be emptied daily.

(b) *Water play table.* A water play table or a container used for water play that contains unfiltered water shall be emptied daily.

**§ 3290.116. Release of children.**

- (a) A child shall be released from care only to the child's parent or to an individual designated in writing by the enrolling parent. A child shall be released to either parent unless a court order on file at the facility states otherwise.
- (b) In an emergency, a child may be released to an individual upon the oral designation of the parent, providing the identity of the person can be verified by the operator or a staff person.
- (c) If a child is released upon the oral designation of the parent, the following information shall be logged in the child's record:
  - (1) The name of the parent making the request.
  - (2) The date and time of the request.

- (3) The name of the individual to whom the child is to be released.
- (4) The name of the staff person taking the call.
- (5) The name of the staff person releasing the child.

**§ 3290.118. Infant sleep position.**

Infants shall be placed in the sleeping position recommended by the American Academy of Pediatrics unless there is a medical reason an infant should not sleep in this position. The medical reason shall be documented in a statement signed by a physician, physician's assistant or CRNP and placed in the child's record at the facility.

**PROCEDURES FOR ADMISSION**

**§ 3290.122. Admission interview.**

A child shall be interviewed or observed by the operator and when possible shall have the opportunity to visit the facility prior to being admitted for care. The child shall be told as much about the service being planned as the child can understand. If the parent indicates that the child has a special need, the operator shall discuss the condition with the parent, refer to § 3290.4 (relating to definitions), and comply with §§ 3290.15, 3290.124 and 3290.131 (relating to service to a child with special needs; emergency contact information; and health information).

**§ 3290.123. Agreement.**

- (a) An agreement signed by the operator and the parent must specify the following:
  - (1) The amount of fee to be charged per day or per week.
  - (2) The date on which the fee is to be paid.
  - (3) The services to be provided to the family and child, including the Department's approved form to provide information to the family about the child's growth and development in the context of the services being provided. The operator shall complete and update the form and provide a copy to the family in accordance with the updates regarding emergency contact information in § 3290.124(e) (relating to emergency contact information).
  - (4) The child's arrival and departure times.
  - (5) The individuals designated by the parent to whom the child may be released as specified in § 3290.116 (relating to release of children).
  - (6) The date of the child's admission.
  - (7) The services which are to be considered as extra.

(b) A parent shall receive the original agreement. The facility shall retain a copy of the agreement.

**§ 3290.124. Emergency contact information.**

- (a) Emergency contact information shall be present in a child care facility for each enrolled child. Emergency contact information must reference who shall be contacted in an emergency.
- (b) Emergency contact information must include the following:
  - (1) The name and birth date of the child.
  - (2) The name, address and telephone number of the child's source of medical care.
  - (3) The home and work addresses and home and work telephone numbers of the enrolling parent.
  - (4) A written consent signed by a parent for emergency medical care.

(5) Information on the child's special needs, as specified by the child's parent, physician, physician's assistant or CRNP, which is needed in an emergency situation.

(6) Health insurance coverage and policy number for the child under a family policy or Medical Assistance (MA) benefits, if applicable.

(7) The name, address and telephone number of the individual designated by the parent to whom the child may be released.

(c) When children leave the facility on walking and riding excursions, emergency contact information specific to each child on the excursion shall accompany a staff person on the excursion.

(d) A written plan shall be conspicuously posted which identifies the means of transporting a child to emergency care and the facility staffing provisions in the event of an emergency. The plan must accompany a staff person who leaves the facility on an excursion with children.

(e) Emergency contact information shall be updated in writing by the parent once in a 6-month period or as soon as there is a change in the information.

### 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 days following the first day of attendance at the facility.

(1) The initial health report for an infant must be dated no more than 3 months prior to the first day of attendance at the facility.

(2) The initial health report for a young toddler must be dated no more than 6 months prior to the first day of attendance at the facility.

(3) The initial health report for an older toddler or preschool child must be dated no more than 1 year prior to the first day of attendance at the facility.

(4) The initial health report for a school-age child must be dated in accordance with the requirements for medical examinations for school attendance in 28 Pa. Code § 23.2 (relating to medical examinations).

(b) The operator shall require the parent to provide an updated health report in accordance with the following schedules:

(1) At least every 6 months for an infant or young toddler.

(2) At least every 12 months for an older toddler or preschool child.

(c) A health report must be written and signed by a physician, physician's assistant or a CRNP. The signature must include the individual's professional title.

(d) The health report must include the following information:

(1) A review of the child's health history.

(2) A list of the child's allergies.

(3) A list of the child's current medication and the reason for the medication.

(4) An assessment of an acute or chronic health problem or special needs and recommendations for treatment or services, including information regarding abnormal results of screening tests for vision, hearing or lead poisoning.

(5) A review of the child's immunized status according to recommendations of the ACIP.

(6) A statement of the child's medical information pertinent to diagnosis and treatment in case of emergency.

(7) A statement that the child is able to participate in child care and appears to be free from contagious or communicable disease.

(8) A statement that age-appropriate screenings recommended by the American Academy of Pediatrics were conducted since the time of the previous health report required by this section.

(e) The facility may not accept or retain an infant 2 months of age or older, a toddler or a preschool child at the facility for more than 60 days following the first day of attendance at the facility unless the parent provides written verification from a physician, physician's assistant, CRNP, the Department of Health or a local health department of the dates (month, day and year) the child was administered immunizations in accordance with the recommendations of the ACIP.

(1) The facility shall require the parent to provide updated written verification from a physician, CRNP, the Department of Health or a local health department of ongoing vaccines administered to an infant, toddler or preschool child in accordance with the schedule recommended by the ACIP.

(2) Exemption from immunization must be documented as follows:

(i) Exemption from immunization for religious belief or strong personal objection equated to a religious belief must be documented by a written, signed and dated statement from the child's parent or guardian. The statement shall be kept in the child's record.

(ii) Exemption from immunization for reasons of medical need must be documented by a written, signed and dated statement from the child's physician, physician's assistant or CRNP. The statement shall be kept in the child's record.

(3) The facility shall implement dismissal policies in accordance with the Department of Health regulation in 28 Pa. Code § 27.77 (relating to immunization requirements for children in child care group settings).

(4) The facility shall comply with the annual immunization reporting requirements in accordance with the Department of Health regulation in 28 Pa. Code § 27.77.

#### § 3290.133. Child medication and special diets.

The operator shall make reasonable accommodation in accordance with applicable Federal and State laws to facilitate administration of medication or a special diet that is prescribed by a physician, physician's assistant or CRNP as treatment related to the child's special needs. Facility persons are not required to administer medication or special diets which are requested or required by a parent, a physician, a physician's assistant or a CRNP but are not treatment related to the child's special needs. When medication or special diets are administered, the following requirements apply:

(1) A prescription or nonprescription medication may be accepted only in an original container. The medication must remain in the container in which it was received.

(2) A staff person shall administer a prescription medication only if written instructions are provided from the individual who prescribed the medicine. Instructions for administration contained on a prescription label are acceptable.

(3) The label of a medication container must identify the name of the medication and the name of the child for whom the medication is intended. Medication shall be administered to only the child whose name appears on the container.

(4) Medication shall be stored in a locked area of the facility or in an area that is out of the reach of children.

(5) Medication shall be stored in accordance with the manufacturer's, health professional's or pharmacist's instructions on the original label.

(6) A parent shall provide written consent for administration.

(7) An operator is responsible to establish and maintain a medication log if prescription or nonprescription medication is administered. A log must include the following minimum information:

- (i) The name of the medication.
  - (ii) The name of the child receiving the medication.
  - (iii) A requirement for refrigeration.
  - (iv) The amount of medication administered.
  - (v) The date of administration.
  - (vi) The time of administration.
  - (vii) The initials of the staff person who administered the medication.
  - (viii) Special notes related to problems of administration.
- (8) If a special diet is prescribed for a child and if the diet is administered to the child, written instructions and the parent's written consent shall be retained in the child's file.

**§ 3290.135. Diapering requirements.**

(a) When children are diapered, the facility shall use disposable diapers, a diaper service or arrange with the parent to provide a daily diaper supply.

(1) If nondisposable diapers are provided by a parent, a soiled diaper shall be placed in an individual, securely-tied plastic bag and returned to the parent at the end of the day.

(2) If nondisposable diapers from a diaper service are provided by a facility, a soiled diaper shall be placed in the container provided by the service or in a securely-tied plastic bag.

(3) If disposable diapers are provided by a facility or a parent, a soiled diaper shall be discarded by immediately placing the diaper into a plastic-lined, hands-free covered can.

(4) A soiled diaper that is not in a tied bag may not be placed in an unlined outdoor trash container.

(b) Diaper changing surfaces shall be cleaned after each use by wiping the surface with a sanitizing solution or by changing a pad or other surface covering.

(c) The diapering area may not be used for food preparation or food service.

(d) Cloth and paper materials used as diapering aids shall be stored in a manner that prevents cross-contamination from a soiled diaper, contaminated hands or other changing materials.

(e) A staff person shall check a child's diaper at least every 2 hours and whenever the child indicates discomfort or exhibits behavior that suggests a soiled diaper. A staff person shall change a child's diaper when the diaper is soiled.

**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.

(2) A health assessment is valid for 24 months following the date of signature, if the person does not contract a communicable disease or develop a medical problem.

(b) A health assessment shall be conducted and a report written and signed by a physician, physician's assistant or CRNP. The signature must include the individual's professional title.

(c) The health assessment must include the following:

(1) A physical examination.

(2) Tuberculosis screening by the Mantoux method at initial employment. Subsequent tuberculosis screening is not required unless directed by a physician, CRNP, the Department of Health or a local health department.

(i) If a person's medical record demonstrates a positive tuberculin skin test, that record shall be placed on file at the facility.

(ii) A record of a person with a positive tuberculin skin test must include the results of a chest x-ray and evaluation for chemoprophylaxis.

(iii) A person with a positive tuberculin skin test and a negative x-ray is not required to have further tuberculosis testing unless one of the following occurs:

(A) The person is exposed to an active case of tuberculosis.

(B) The person develops a productive cough which does not respond to medical treatment within 14 days.

(3) Examination for communicable diseases and the results of that examination.

(4) Information on medical problems which might threaten the health of the children or prohibit a staff person from providing adequate care to children.

(5) The physician's or CRNP's assessment of the person's suitability to provide child care.

**TRANSPORTATION**

**§ 3290.173. Safety restraints.**

(a) A child 7 years of age or younger shall be transported in accordance with the requirements for parents and guardians as set forth in 75 Pa.C.S. § 4581 (relating to restraint systems).

(b) Safety restraints installed in the vehicle at the time of manufacturing shall be used by occupants.

(c) Manufacturer's instructions for use of safety restraints shall be kept in the vehicle at all times.

**§ 3290.174. Vehicles.**

(a) A vehicle shall be insured under 75 Pa.C.S. §§ 1701—1799.7 (relating to the Motor Vehicle Financial Responsibility Law).

(b) The doors on a vehicle shall be locked whenever the vehicle is in motion.

(c) No more than three persons may occupy the front seat of an automobile.

(d) The back of pick-up trucks may not be used to transport children.

(e) The cargo area of a station wagon may not be used to transport children.

(f) In accordance with 67 Pa. Code Chapter 171 (relating to school buses and school vehicles), the facility may not transport a child in an 11-15 passenger van.

**CHILD RECORDS**

**§ 3290.182. Content of records.**

A child's record must contain the following information:

- (1) Initial and subsequent health reports.
- (2) The dates of application, admission and withdrawal of the child.
- (3) Signed parental consent for emergency medical care for the child. Written consent is required prior to admission.
- (4) Signed parental consent for administration of medications or special dietary needs.
- (5) Signed parental consent for administration of minor first-aid procedures by facility staff. Written consent is required prior to admission.
- (6) Signed parental consent for transportation, walking excursions, swimming and wading.
- (7) Reports of accidents, injuries and illnesses involving a child while in care at the facility. The original report is given to the parent on the day of the incident. The second copy of the report is retained at the facility in an accident file. The third copy of the report is retained at the facility in the child's file.

(8) A copy of the initial and subsequent written agreement between the parent and the operator. The parent shall receive the original agreement.

**§§ 3290.201—3290.208. (Reserved).**

**SPECIAL EXCEPTIONS**

**§ 3290.212. Play surfaces.**

(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 § 3290.102(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.

**CHAPTER 3300. (Reserved)**

**§§ 3300.1—3300.4. (Reserved).**

**§§ 3300.11—3300.13. (Reserved).**

**§§ 3300.31—3300.36. (Reserved).**

**§§ 3300.51—3300.54. (Reserved).**

**§ 3300.71. (Reserved).**

**§ 3300.101. (Reserved).**

**§ 3300.102. (Reserved).**

**§§ 3300.111—3300.113. (Reserved).**

**§ 3300.121. (Reserved).**

**§ 3300.131. (Reserved).**

**§ 3300.161. (Reserved).**

**§ 3300.171. (Reserved).**

[Pa.B. Doc. No. 08-1011. Filed for public inspection May 23, 2008, 9:00 a.m.]



# STATEMENTS OF POLICY

## DEPARTMENT OF PUBLIC WELFARE

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

#### Child Day Care Centers; Group Child Day Care Homes; Family Child Day Care Homes

##### *Purpose*

The purpose of this Statement of Policy (SOP) is to rescind SOPs issued to child care facility operators from 1995 through 2005.

##### *Discussion*

From 1995 through 2005, the Department of Public Welfare (Department) published SOPs to clarify or interpret the child care facility regulations in Chapters 3270, 3280 and 3290 (relating to child day care centers; group child day care homes; and family child day care homes).

Simultaneous to the publication of this SOP, the Department is publishing final-form child care facility regulations that incorporate the SOPs into the regulations and therefore render the SOPs obsolete. The effective date of this SOP coincides with the effective date of the final-form regulations. See 38 Pa.B. 2437 (May 24, 2008).

##### *Effective Date*

This statement of policy is effective September 22, 2008.

##### *Comments and Questions*

Comments and questions regarding this SOP should be directed to Jennifer Lau, Bureau of Certification Services, Office of Child Development and Early Learning, (717) 346-9320.

##### *Obsolete Bulletins*

The Department is rescinding the following SOPs:

- Children, Youth and Families Bulletin #3001-95-01, Certified Childcare Professional Credential; §§ 3270.31a, 3280.31a and 3290.31a (relating to age and training—statement of policy) at 25 Pa.B. 4708 (November 4, 1995).
- Children, Youth and Families Bulletin #3001-96-01, Supervision of Children; §§ 3270.113a and 3280.113a (relating to supervision of children—statement of policy) at 26 Pa.B. 3552 (July 27, 1996).
- Children, Youth and Families Bulletin #3001-96-02, Posting Department inspection Summaries; §§ 3270.25a, 3280.24a and 3290.22a (relating to availability of certificate of compliance and applicable regulations—statement of policy) at 26 Pa.B. 3554 (July 27, 1996).
- Children, Youth and Families Bulletin #3001-96-03, Inaccessibility of Above-Ground Swimming Pools; §§ 3270.115a, 3280.115a and 3290.115a (relating to water activity—statement of policy) at 26 Pa.B. 3553 (July 27, 1996).
- Children, Youth and Families Bulletin #3001-96-04, Departmental Access; §§ 3270.24a, 3280.23a and 3290.21a (relating to departmental access—statement of policy) at 26 Pa.B. 3552 (July 27, 1996).
- Children, Youth and Families Bulletin #3001-97-01, Exemption from Immunization Requirements; §§ 3270.131a, 3280.131a and 3290.131a (relating to exemption from immunization—statement of policy) at 27 Pa.B. 1579 (March 29, 1997).

- Children, Youth and Families Bulletin #3001-97-02, Ground Surface Requirements; §§ 3270.102a, 3280.102a and 3290.102a (relating to condition of play equipment—statement of policy) at 27 Pa.B. 2827 (June 14, 1997).

- Children, Youth and Families Bulletin #3001-99-01, Release of Children; §§ 3270.117a, 3280.117a and 3290.117a (relating to release of children—statement of policy) at 29 Pa.B. 6341 (September 7, 1999).

- Children, Youth and Families Bulletin #3001-00-01, Overpopulation of Indoor Child Care Space; §§ 3270.61a and 3280.61a (relating to overpopulation of indoor child care space—statement of policy) at 30 Pa.B. 4641 (September 1, 2000).

- Children, Youth and Families Bulletin #3001-03-01, Emergency Plan; §§ 3270.21a, 3280.20a and 3290.18a (relating to emergency plan—statement of policy) at 33 Pa.B. 6428 (December 27, 2003).

- Office of Child Development and Early Learning Bulletin #3001-05-01, Supervision of Children in Child Day Care Facilities; §§ 3270.113b, 3280.113b and 3290.113a (relating to supervision of children off premises—statement of policy) at 35 Pa.B. 3665 (July 2, 2005).

- Office of Child Development and Early Learning Bulletin #3001-05-02, Syrup of Ipecac; §§ 3270.75a, 3280.75a and 3290.73a (relating to syrup of ipecac—statement of policy) at 35 Pa.B. 6662 (December 10, 2005).

ESTELLE B. RICHMAN,  
*Secretary*

**Fiscal Note:** 14-BUL-076. No fiscal impact; (8) recommends adoption.

#### Annex A

#### TITLE 55. PUBLIC WELFARE

#### CHAPTER 3270. CHILD DAY CARE CENTERS

#### GENERAL REQUIREMENTS

§ 3270.21a. (Reserved).

§ 3270.24a. (Reserved).

§ 3270.25a. (Reserved).

#### FACILITY PERSONS

§ 3270.31a. (Reserved).

#### PHYSICAL SITE

§ 3270.61a. (Reserved).

§ 3270.75a. (Reserved).

#### EQUIPMENT

§ 3270.102a. (Reserved).

#### PROGRAM

§ 3270.113a. (Reserved).

§ 3270.113b. (Reserved).

§ 3270.115a. (Reserved).

§ 3270.117a. (Reserved).

#### CHILD HEALTH

§ 3270.131a. (Reserved).

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

**GENERAL REQUIREMENTS**

- § 3280.20a. (Reserved).
- § 3280.23a. (Reserved).
- § 3280.24a. (Reserved).

**FACILITY PERSONS**

- § 3280.31a. (Reserved).

**PHYSICAL SITE**

- § 3280.61a. (Reserved).
- § 3280.75a. (Reserved).

**EQUIPMENT**

- § 3280.102a. (Reserved).

**PROGRAM**

- § 3280.113a. (Reserved).
- § 3280.113b. (Reserved).
- § 3280.115a. (Reserved).
- § 3280.117a. (Reserved).

**CHILD HEALTH**

- § 3280.131a. (Reserved).

**CHAPTER 3290. FAMILY CHILD DAY CARE HOMES**

**GENERAL REQUIREMENTS**

- § 3290.18a. (Reserved).
- § 3290.21a. (Reserved).
- § 3290.22a. (Reserved).

**FACILITY PERSONS**

- § 3290.31a. (Reserved).

**PHYSICAL SITE**

- § 3290.73a. (Reserved).

**EQUIPMENT**

- § 3290.102a. (Reserved).

**PROGRAM**

- § 3290.113a. (Reserved).
- § 3290.115a. (Reserved).
- § 3290.116a. (Reserved).

**CHILD HEALTH**

- § 3290.131a. (Reserved).

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