Comment Response Document for Final-Form Rulemaking –

#14-545 - Subsidized Child Care Eligibility

As provided in the Preamble to this final-form regulation, the Department published public notice at 50 Pa.B. 6361 (November 14, 2020) of proposed rulemaking to replace the Department's current chapter, Chapter 3041, with a new chapter, Chapter 3042. The Department received comments from 18 commentators during the 30-day public comment period and 2 letters from commentators after the close of the public comment period. The comments came from 9 child care operators and 11 advocacy organizations. The Department notes that one commentator, the Pennsylvania Child Care Association, provided a comment that was received twice, and so they were duplicates. After close of the public comment period, the Department also received comments from the Independent Regulatory Review Commission (IRRC), some of which echoed the comments received from CJP as well as other commentators. Also following public comment, the Department met via video-conference with CJP on four occasions to discuss their feedback. Specifically, the Department met with CJP on March 9, March 18, March 30, and April 6, 2021, during which times the Department and CJP jointly reviewed and discussed all of CJP's written comments. Lastly, the Department received comments after the submission of its final-form regulatory package. In response to comments the department received, from both early learning advocates and providers, the Department requested IRRC to disapprove the final-form regulatory package at the public meeting on May 18, 2023. The Department revised the final-form rulemaking based on the IRRC disapproval order and comments from the regulated community and subsequently resubmitted the revised regulatory package.

The following is a breakdown of the comments received and the Department's responses to the received comments.

General Comments – Chapter 3042

Two commentators agreed generally with the proposed rulemaking and offered no further suggestions or commentary. One of these commentators stated they were in favor of the proposed regulations and believed they will make significant strides toward bringing stability and continuity of care for families and vulnerable children who are at socioeconomic risk. The commentator said they believed stability will be increased for providers, and that as a provider operating in a county that has among the lowest maximum child care allowances (MCCAs) in the state, fiscal stability is continually threatened with even marginal variations in enrollment and subsidy eligibility. The other commentator said they agreed "with all of the proposed changes that were listed."

One additional commentator requested a major rate increase to provider reimbursement to assist providers to offer quality child care while ensuring health and safety.

Response

The Department thanks the two commentators for their support. The Department acknowledges and reiterates the commentator's feedback that this final-form rulemaking will bring about stability for families who are receiving subsidized child care, as well as the providers who care for these children. The Department appreciates the importance of fiscal stability as well. Because the final-form rulemaking prescribes 12-month eligibility periods, which are consistent with CCDBG requirements, the longer eligibility periods may assist providers to stabilize enrollments and help ensure fiscal stability. The Department appreciates the commentator's observations that this final-form rulemaking promotes continuity of care, as consistent with CCDBG requirements.

Finally, the Department clarifies that payment rates were increased effective March 1, 2021, prior to this final-form rulemaking. Furthermore, the payment rate increased again on January 1, 2022, and again on March 1, 2023. Specifically, the rates were aligned on a regional basis and then increased to promote and better address concerns over equal access, as is consistent with requirements of the CCDBG. See 45 CFR § 98.45 (relating to equal access).

§ 3042.3 – Definitions – "caretaker" and "self-employment"

The same commentator provided feedback in support of the changes to the definitions of "caretaker" and "self-employment," and so the feedback is considered together here. Specifically, the commentator agreed with the expanded definition of "caretaker" to include the child's great-grandparent and a sibling who is 18 years of age or older. And similarly, the commentator agreed with removing the requirement from the definition of "self-employment" that self-employed parents or caretakers have earnings above the minimum wage.

Response

The Department thanks the commentator for their support and agreement with these definitions.

§ 3042.3 – Definitions – "education"

One commentator suggested changes to the definition of "education" that use the common abbreviation "GED" and that use the common terminology "High School Equivalency (HSE) degree, citing emails with between the commentator and Department staff.

Response

Following review of the feedback and after considering the changes that were made to the definitions of "training" as well as the additions of the terms "GED" and "HSE DEGREE" in section 3042.3, the Department agrees with the commentator's suggestion. The Department, therefore, added "GED" and "HSE degree" to this final-form definition because the programs may be considered training for purposes of the work requirement.

§ 3042.3 – Definitions – "family"

One commentator, citing to Section 658E(c)(2)(N)(i) of the CCDBG, suggested that every adult in the household be required to report their income, including live-in boyfriends and girlfriends. The commentator had several questions relating to several areas of the proposed rulemaking. For this area, the commentator asked, who determines which daycares are "high quality"? And are the children receiving any type of education while in this "high quality" daycare? Also, who is making sure the parents are actively looking for work they are qualified to do? And how hard do these parents have to look for work? And if they are not working, how are they paying their co-pay? And how is a job search proven? Is someone ensuring that the parent or caretaker is actively looking for jobs they are qualified to do or just submitting applications for any position whether or not they are qualified?

The Independent Regulatory Review Commission (IRRC) also inquired regarding revisions to the definition of "family," which as proposed in subparagraph (v) includes a child enrolled in post-secondary education. IRRC noted that subparagraph (v) does not encompass other types of education and instruction in the definition of "training." IRRC asked the Department to revise the definition to incorporate all types of training.

Response

The Department thanks the commentators for their responses. Live-in boyfriends or girlfriends, however, are not members of the family as prescribed either by the current regulations, this final-form rulemaking or the CCDBG. As such, the Department declines to make this suggested change.

In addition, consistent with CCDBG requirements, the Department determines quality, which is represented by the Department's Keystone STARS program, which supports all early childhood education programs to improve program quality. Children may receive varying levels of early childhood education depending on the program attended. Program selection, however, is the choice of the parent or caretaker. In response to the inquiry regarding eligibility, as provided in the Preamble and Annex, once eligibility is assessed and determined, the eligibility period is continuous for 12 months irrespective of any job loss.

As for the commentator's question about job searches, the Department clarified that job searches are contemplated in the final-form regulations as relates to presumptive eligibility and homelessness. See, e.g., section 3042.146 (relating to homelessness). The Department does not monitor or regulate day-to-day job searches, but instead, consistent with CCDBG requirements, the Department offers training and technical assistance to providers as well as the eligibility agency to identify and serve children experiencing homelessness and their families, and to conduct outreach with families experiencing homelessness. See 45 CFR § 98.51 (relating to services for children experiencing homelessness).

Finally, the Department thanks IRRC for their review and added the suggested language to subsection (v) under the final-form definition of "family" to include the other types of education and instruction. Specifically, the Department added "adult basic education," "English as a

second language," "GED program," "an HSE degree," "an internship," "clinical placement," "apprenticeship," and "lab work or field work required by a training institution" to incorporate all types of training into the definition.

§ 3042.3 – Definitions – "fraud"

IRRC requested clarification about whether a parent or caretaker commits fraud when income exceeding 85% of the state median income (SMI) is not reported during the eligibility period and a child continues to receive subsidized child care.

Response

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

§ 3042.3 – Definitions – "GED" and "HSE"

Following feedback from IRRC about the proposed definition of "period of presumptive eligibility," the Department reviewed the rulemaking and determined that the terms "GED" and "HSE" should be added to definitions section. Under the final-form rulemaking, the Department defines "GED" as a general educational development program approved by the school or district or the Department of Education; and similarly, "HSE" is defined as a high school equivalency degree approved by the school district or the Department of Education. The Department added the terms "GED" and "HSE" into the final-form regulation under section 3042.3.

§ 3042.3 – Definitions – "homelessness"

IRRC recommended revising the definition of "homelessness" to include parents and caretakers. IRRC also requested the Department amend "subtitle" in subsection (iv) of the definition to the appropriate division of the regulations.

Response

Following feedback from IRRC, the Department added parents and caretakers to the definition of "homelessness." Specifically, the Department added qualifying language referencing the child's parent or caretaker, and also added a subparagraph (v) to the final-form definition to clarify the inclusion of parents and caretakers who are experiencing homelessness. The inclusion of parents and caretakers in the definition is consistent with the CCDF's usage of homelessness because the

CCDF references homeless families, which includes the child and the child's parent or caretaker. *See* 45 CFR § 98.51. Finally, following IRRC's feedback regarding the proposed wording in subparagraph (iv), the Department changed the word "subtitle" to "chapter" in the final-form definition.

§ 3042.3 – Definitions – "maternity or family leave"

IRRC observed that the proposed definition here incorporated by reference the definition of the term in the Family and Medical Leave Act of 1993. IRRC noted that the statute does not clearly define the term "maternity or family leave." IRRC requested the Department to clarify the citation or define these types of leave. Finally, IRRC stated that their comment applied as well to sections 3042.19(c)(4) and 3042.147(a)(1) (relating to subsidy continuation; and presumptive continued eligibility at redetermination).

Response

Following feedback from IRRC and changes made to sections 3042.19(c)(4) and 3042.147(a)(1) (relating to subsidy continuation; and presumptive continued eligibility at redetermination), the Department removed the term "maternity or family leave" from the final-form rulemaking.

Following additional feedback from the commentators, the Department reorganized section 3042.19 and removed the term "maternity or family leave." Similarly, following feedback from IRRC, the Department made changes to the definition of "period of presumptive eligibility" such that the term "maternity or family leave" was removed from section 3042.147(a)(1). Further, because the term was removed in both of these instances and is used only once in the final-form rulemaking at section 3042.68(3) (relating to verification of circumstances relating to a decrease in co-payment) with its ordinary dictionary definition, the Department also removed the term from the definitions section.

§ 3042.3 – Definitions – "owner or operator of a child care facility"

Similar to the removal of "maternity or family leave," the Department also removed the term "owner or operator of a child care facility" from section 3042.3 since the term was neither codified in Chapter 3041, nor used in either the proposed rulemaking or this final-form rulemaking.

§ 3042.3 – Definitions – "period of presumptive eligibility"

IRRC recommended moving the substantive provisions of the proposed definition into the body of the regulations, noting that substantive provisions are prohibited in the definition section. IRRC also noted that the substantive definition prohibition also applies to the timeframes in the proposed definitions of "prospective work, education or training" and "self-declaration."

Response

The Department thanks IRRC and agrees. The Department made several changes to remove the substantive provisions from definitions. Specifically, the final-form rulemaking was changed to remove the substantive provisions and to clarify the definitions.

The Department notes that following the changes made under sections 3042.3 and 3042.146, the Department determined the section heading for section 3042.147 should be updated to reflect that it relates to presumptive continued eligibility at redetermination. Because of this change, the Department also made changes to update the cross-referenced citation in section 3042.161(1).

The Department also made changes to remove the timeframes in the definitions of "prospective work, education or training" and "self-declaration" as requested by IRRC. Specifically, the Department changed each of the final-form definitions. For "prospective work, education or training," the definition is clarified that it refers to future employment, education or training that has a begin date and is verified by the employer, school official or training official. For "self-declaration," the definition is clarified that it is a written statement that is signed and dated and provided by the parent or caretaker for the purpose of establishing financial or nonfinancial eligibility. Following changes made in section 3042.64 at final-form to ensure consistency with minimum 12-month eligibility periods, the Department further modified the definition to clarify that self-declaration can be used for purposes of establishing financial or nonfinancial eligibility pending verification as described in section 3042.64. The Department notes that the parent or caretaker is notified when the self-declaration is accepted and is provided a date by which time verification must be provided.

Furthermore, following this feedback from IRRC, the Department removed the definition for "owner or operator of a child care facility" from section 3042.3.

In addition, as stated previously, the Department added the acronyms "GED" and "HSE" to the definitions section because the acronyms are used in more than one section of the chapter.

§ 3042.3 – Definitions – "prospective work, education or training"

When providing comment on the proposed definition for "period of presumptive eligibility," IRRC stated the substantive timeframe should be removed and placed into the body of the regulations.

Response

The Department agrees. The Department removed the timeframe from the definition and clarified that it refers to future employment, education or training that has a begin date and is verified by the employer, school official or training official. The Department also clarified section 3042.34(a)(1) so that the 30-day time limit is stated with reference to the date the parent or caretaker signs and dates the application for subsidized child care.

Section 3042.34 permits parents or caretakers to be determined eligible if they have work, education or training that will begin no later than 30 days from the date the application was signed, only if the eligibility agency is provided with verification that the parent or caretaker has employment that will be starting. Further, section 3042.34 requires that subsidized child care will not begin until the parent or caretaker begins the work, education or training, and that the parent or caretaker must notify the eligibility agency of the actual income amount no later than 10 calendar days after receiving the first income from work.

The Department emphasizes that the requirements for prospective work, education and training are wholly separate from presumptive eligibility. Presumptive eligibility is available at the time of application for families dealing with homelessness. Separately, presumptive continued eligibility applies only at redetermination and applies to parents or caretakers who have already been determined eligible but who may not qualify because of a recent job loss or being employed seasonally. This presumptive eligibility contrasts with the requirement for prospective work, education and training because the requirement concerns establishing eligibility for families who have not already been determined eligible. As such, the Department determined that permitting self-declaration to satisfy the verification requirements under section 3042.34 must be prohibited because once eligibility has been determined, the eligibility period lasts a minimum of 12 months. The Department notes that although self-declaration requires follow-up documentation within 30 days, once eligibility has been determined, the eligibility must last a minimum of 12 months, and so permitting verification by self-declaration at all runs contrary to the requirement that work, education or training will begin no later than 30 days after signing and dating the application.

§ 3042.3 – Definitions – "self-declaration"

When providing comment on the proposed definition for "period of presumptive eligibility," IRRC stated the substantive timeframe included in the proposed definition of "self-declaration" should be removed from the definition and placed into the body of the regulations.

Response

The Department agrees. The Department removed the timeframe from the final-form definition and clarified that it refers to a written statement that is signed and dated and provided by the parent or caretaker for the purpose of establishing financial or nonfinancial eligibility pending verification as described in section 3042.64. The changes were made in response to IRRC's feedback and following the Department's review at final-form to ensure consistency with the required minimum 12-month eligibility periods. The Department notes that § 3042.67(6) was removed at final-form because self-declaration requires follow-up documentation within 30 days, and meanwhile, under this final-form rulemaking, once eligibility has been determined, the eligibility period lasts a minimum of 12 months, as consistent with the CCDF.

§ 3042.3 – Definitions – "training"

One commentator suggested changes to the proposed definition to include all forms of adult education, including the two most common – GEDs and HSEs.

IRRC also requested clarification about whether in the proposed definition of "training" it was necessary to specify the length of time of a postsecondary degree program, and whether subparagraph (ii) can be clarified to include additional types of adult education and postsecondary study. IRRC referenced the commentator's feedback observing the definition "includes some, but not all forms of adult education, including the two most common."

Response

The Department appreciates the feedback from IRRC and the commentator. After a careful review, the Department changed subparagraph (ii) to remove the timeframes for the postsecondary degree program and added the two most common forms of adult education to the definition – GED and HSE programs.

§ 3042.11 – Provision of subsidized child care

One commentator suggested adding clarifying language that aligns with the language used in 45 CFR § 98.20(a)(1)(ii), by inserting into subsection (d) here the words "physically or mentally."

Response

The Department agrees and adds the language under section 3042.11(d). The Department also clarified that this added language is consistent with the requirements under 45 CFR § 98.20(a)(1)(ii) as well as with the final-form definition of "disability" under section 3042.3 (relating to definitions).

§ 3042.12 – Parent choice

One commentator inquired if a relative provider is exempt from the inspection requirement, how is anyone ensuring the health and safety of the children if there are no inspections? The commentator stated that one cannot "bring a basic level of safety to all children whose care is supported with taxpayer funds if there are no inspections to ensure the home is habitable and there are no violent criminals living in the house."

IRRC further requested clarification on how the Department ensures that relatives who are providing care provide the required background checks, receive basic training in health and safety, and are monitored on a regular basis, with request for an explanation on how the Department implements the goals of quality of care and how the procedures ensure the protection of the public health, safety and welfare.

Response

As a preliminary matter, the Department corrected the titles of the regulatory chapters cited under paragraphs (1) through (3). In response to the public commentator, relative providers are different from licensed CCDF child care providers. Specifically, relative providers are exempt from regulatory inspections. However, relative providers are required to enter into and follow the Department's Relative Provider Agreement (Agreement) with the eligibility agency if they want to receive payment of CCDF funds. The Agreement requires that relative providers must meet State Child Abuse, National Sex Offender Registry Check, and Federal and State Criminal History Requirements prior to approval and every 60 months thereafter, which aligns with requirements for providers at regulated child care facilities and the CCDBG.

Relative providers must obtain Federal criminal clearances at their own expense, which is approximately $23.00, and that costs of the other required clearances are addressed in the Agreement. Further, the costs relating to criminal history clearances are not new and are outside this final-form rulemaking. Pursuant to the Agreement, the relative provider must give the eligibility agency written notice no later than 72 hours after their or anyone in the household's arrest, conviction, or notification of being listed as a perpetrator of child abuse in the Central Register. Furthermore, the Agreement also requires compliance with health and safety practices relating to handwashing, diapering, toileting, and the preparation and handling of food.

Additionally, all relative providers must complete 3 hours of approved mandated reporter training prior to approval, and that such training must be completed every 5 years thereafter. The relative provider must submit the certificate of completion along with the results of the federal criminal history clearance to the eligibility agency at the personal interview.

The Agreement also requires that the relative provider's home have a working smoke detector on each level in which child care is provided, and that conditions in the home not pose a threat to the health and safety of children in care. Such requirement is consistent with the requirements of section 1016 of the act of June 13, 1967 (P.L. 31, No. 21) known as the Human Services Code (62 P.S. § 1016). The Agreement further requires that cleaning and toxic materials shall be stored in their original labeled containers or in a container that specifies the contents; kept in a locked area or in an area where children cannot reach them; and kept separate from food, the areas where food is prepared or stored, and the areas where child care takes place. Also, any weapon or firearm must be kept in a locked cabinet; any ammunition must be kept in a separate, locked area; and the relative provider must tell the child's parent or caretaker that weapons, firearms, or ammunition are in the provider's home.

The Agreement also requires that the relative provider not use any form of punishment, including spanking; and that the parent or caretaker be allowed to see their child at any time the provider is providing care. These requirements in the Agreement satisfy CCDF requirements, and are consistent with several of the prescribed requirements for child care providers at regulated facilities. These requirements also ensure that children receiving subsidized child care services from a relative provider receive at least the same quality of care as children enrolled at regulated child care facilities.

The use of an Agreement for relative providers has been in practice for over 15 years, for the purpose of the protection of the public health, safety, and welfare of children receiving subsidized child care services, both initially and on an ongoing basis, to require substantially the same standards for quality of care as are provided for at regulated child care facilities.

In addition, following feedback from IRRC about the requirements in section 3042.14 (relating to payment of provider charges), the Department made changes to section 3042.14(h), as well as section 3042.12, to clarify that the Department will suspend the subsidies and suspend payment for children who are receiving subsidized child care at facilities whose certificate of compliance has been revoked or refused to renew by the Department's Bureau of Certification Services, which is responsible for enforcing the Department's health and safety requirements. Specifically, section 3042.12 was restated as three subsections to more clearly articulate the requirements. Further, a subsection was added, subsection (b), to make clear that the Department will suspend subsidized child care enrollments if the provider a parent or caretaker is using has its certificate of compliance revoked or refused to renew. Regarding section 3042.14, the Department made changes and removed the word "new" from subsection (g) to better ensure that the Department is not permitting or paying for enrollments at a provider for whom the Department has issued a revocation or refusal to renew. The changes to sections 3042.12 and 3042.14 better ensure the protection of the health and safety of children receiving subsidized child care services by further ensuring that scarce public dollars are not being paid to facilities that are not meeting the baseline health and safety requirements of the Department. Importantly, the Department notes that the change in this section (3042.12) will suspend the subsidy and will not terminate the subsidy, and so there is no impact to a family's eligibility, which will continue for the balance of the 12-month period. The changes strike the appropriate balance between ensuring parent choice and ensuring that scare public dollars are not being paid to facilities that do not satisfy baseline health and safety requirements.

Because the subsidies will be suspended, providers who are not meeting baseline health and safety standards will no longer be paid subsidy dollars, and all enrollments for subsidized child care at that provider will be removed. Meanwhile, parent choice is ensured because parents are free to choose child care services at another provider who is meeting baseline health and safety requirements. The Department will assist these families with locating another provider to ensure continuity of care. The Department already assists families with locating another provider in cases where the Department's Bureau of Certification Services issues an emergency revocation to a facility because circumstances at the facility justify immediate closure and removal of the children from care.

As for the numbers of families these changes will impact, the Department conducted a review of the instances of revocations and refusals to renew for SFY 2021-2022, and after review, the Department noted there were approximately 31 revocations or refusals to renew that impacted on 447 enrollments. Notably, not all certified child care providers participate in the CCW program.

For SFY 2021-2022, the numbers of facilities issued revocations or refusals to renew were 20 child care centers, 3 group child care homes, and 8 family child care homes. The Department notes the bulk of the enrollments, 428, were located in child care centers, and the noted facilities

were located in various regions throughout the Commonwealth. The Department also notes that it upholds health and safety protections for children in care throughout this Commonwealth irrespective of the provider type, the provider regional location, and whether a provider participates in the CCW program.

The fiscal impacts to providers and the impacts on parent choice for families are outweighed by ensuring that public funds are directed to providers meeting basic health and safety requirements to ensure the protection of the health and safety of this Commonwealth's most vulnerable and disadvantaged children, as consistent with the CCDF. The Department reiterates that it will assist impacted families with locating another provider to ensure continuity of care and parent choice. Further, only providers whose certificate of compliance has been revoked or refused to renew by the Department's Bureau of Certification Services will be impacted because the Department will no longer pay for CCW program enrollments at these providers. The Department notes these providers can still provide services to private-pay families should the provider choose to appeal the Department's revocation or nonrenewal determination.

The Department reiterates the statements from the preamble of the federal regulation, that "we cannot in good conscience continue to use any federal taxpayer dollars to support sub-standard child care for our nation's most vulnerable and disadvantaged children." The change is also consistent with the methods of administration of funds by the Department under the American Rescue Plan Act, because subsidy funds are public dollars that should not be paid to providers who are not meeting baseline health and safety requirements. The Department notes that an eligible provider refers to a provider that is certified and that "meets applicable State and local health and safety requirements." *See* definition of "eligible child care provider," § 2201 of the American Rescue Plan Act of 2021, 15 U.S.C.A. § 9001. Further regarding any lost enrollments, the Department is clarifying that the cost is speculative and varies depending on the provider type as well as the numbers of enrolled children who are receiving subsidized child care services. In addition, any fiscal impact due to lost enrollments are the result of the facility's failure to comply with the Department's licensure regulations and not this final-form regulation.

§ 3042.13 – Subsidy benefits

Six commentators responded in agreement with the Department's efforts to remove barriers for parents or caretakers who work non-traditional hours, noting the change will allow more families to become eligible and receive care when they need it.

Response

The Department thanks these commentators for their support.

§ 3042.14(d) – Payment of provider charges

Three commentators commented on this section during the public comment period. Following submission of the final-form regulation, in response to comments received from early learning

advocates and providers, the Department requested a disapproval from IRRC at the public meeting on May 18, 2023, in order for the Department to revise the final-form regulation package. Following submission of the final-form regulation, and prior to the public meeting, the Department received four comments from two different commentators, and after the public meeting, the Department received an additional comment from one of these commentators following up to reiterate the provision should be modified.

Regarding the commentators who provided comment during the public comment period, one commentator requested that this proposed requirement be removed, while another commentator expressed reservations over providers being able to charge the difference between the published rate and the payment, in addition to the co-payment, saying they "encourage OCDEL to carefully consider the impact of health and safety guidelines on the childcare community." The third commentator requested clarification about whether child care programs can still charge the difference between what the eligibility agency pays and what the child care program actually charges.

The commentator who expressed reservations over this provision stated, "we understand the need to support childcare centers in ensuring financial stability and sustainability. While it has historically not been standard practice, at least in Philadelphia, charging families the difference between subsidy rates and current hourly enrollment dates could potentially become a challenge for families in the future." This commentator noted that the COVID-19 pandemic could cause child care centers to increase their rates to bring in more revenue to support the added cost of purchasing supplies and to compensate for fluctuating enrollments. This commentator continued, "if rates do increase and the proposed policy change requires families to make up the difference, some may then struggle to afford childcare. We encourage OCDEL to carefully consider the impact of health and safety guidelines on the childcare community."

The commentator who expressed disapproval, requested that the subsection should be removed because it purports to operate as a super co-payment, thereby causing costs to rise to the point of being unaffordable, which undermines parent choice. After follow-up discussions, the commentator suggested that balance billing is a factor in the quality-of-care gap between black children and white children. The commentator also stated that research indicates that average earnings of black individuals is substantially lower than those of white individuals. The commentator suggested that black families are therefore less able to afford higher quality care, which is made more costly by the balance billing practice. The commentator stated that these families may therefore be forced to use lower cost, lower quality care. This commentator concluded that revisiting the balance billing policy is a necessary step in racial equity effort. After submission of the final-form rulemaking package, this commentator provided four additional comments to the Department. In the first follow-up comment, the commentator wrote to reiterate its support for the Department's deletion of the provision permitting providers to charge the difference between their private pay rate and the Department's reimbursement rate.

In the second follow-up comment, the commentator reiterated they have opposed the provision since its inception and suggested that the appropriate solution is not to force low-income parents to make up the difference in payment amount. The commentator continued, noting they agree

with provider groups urging lawmakers to appropriate additional federal and state funds for subsidized child care services.

The commentator also asked IRRC to consider four points in connection with the balance billing issue. First, the commentator noted that the CCDBG does not grant states carte blanche permittance of balance billing, but that instead, the state is required to conduct an analysis of how the additional amounts charged beyond the copayment promote affordability and equal access. The commentator suggested that the Department could not certify that continuing to permit balance billing promotes affordability and equal access. Second, the commentator reiterated that balance billing renders access unaffordable, and noted that the differences between the Department's payment rate and provider's private pay rate "can be as much as $60 to $100 per week" in addition to the required co-payment. Continuing, the commentator noted that the exact additional charge amount is immaterial because the effect of the additional amounts, in the aggregate, results potentially in the family turning to "family day care or a relative caregiver, but in either case, their children will lose the benefit of the kind of educational and developmental programming they would receive in a high quality, center-based child care setting." Third, the commentator noted that the adverse impacts of additional charges are "even more pronounced for Black families. The commentator stated, "we believe that balance billing is a factor in the quality-of-care gap between Black children and white children" and that "the Department's decision to end balance billing is a commendable and necessary step in this effort." Fourth, the commentator noted that because the 2019 data indicates the prevalence of these charges is so low, then the concern that providers will not participate in the subsidized child care program is low. Further, the commentator noted that providers who serve significant numbers of subsidy families are unlikely to stop serving these families because the loss in revenue from dropping these families would far surpass the lost revenue from no longer being permitted to balance bill these families. The commentator also pointed to the Department's increase to the provider pay rate itself as a reason for balance billing being unnecessary since now "the private pay rate of 60% of providers is now equal to or less than the Department's payment rate." The commentator then reiterated that balance billing runs contrary to the principles of the CCDBG, and that maintaining the provision may "present a risk of fiscal sanction by the federal government."

In the third follow-up comment, the commentator provided suggestions to revise the charging provision to limit the ability to charge the difference between a provider's payment rate and the department's payment rate based on income of a parent and subject to limits established by the Department.

In the fourth follow-up comment, the commentator reiterated the provision should be modified to permit some or all of the difference between the two amounts, "subject to such reasonable limits as the Department may choose to establish in accordance with applicable federal law, following public review and comment."

Another commentator, who "supports high-quality care and education for young children by providing advocacy, community resources, and professional growth opportunities for the needs and rights of children, their families, and the individuals who interact with them" also wrote to express opposition to removal of the provision, echoing concerns that the child care sector is

under-resourced, and that some providers may elect to no longer serve children out of concern that "eliminating the ability to charge the difference will negatively impact Pennsylvania families, as well as child care programs." This commentator noted the CCDBG does not prevent providers from charging the difference between the two payment amounts.

On June 20, 2023, the Department received IRRC's disapproval order which cited concerns regarding reasonableness and economic and fiscal impacts of the regulation based on the deletion of the provision in the final-form regulatory package.

Response

The Department has revised the final-form rulemaking based on the IRRC disapproval order to ensure this final-form rulemaking meets all of the criteria of the Regulatory Review Act. Due to the complexity and financial impact regarding this provision, the Department has determined to maintain the status quo and preserve this provision at this time. Specifically, the Department edited this language to exactly mirror the existing language of Section 3041.15(c). In order to further examine this issue and obtain additional data regarding access and affordability, the Department intends to hold additional stakeholder meetings with both providers and early learning advocates and families to discuss the extent to which these additional charges are being utilized.

The Department acknowledges and thanks the stakeholders and advocates who have provided comments and suggestions regarding this provision. As noted above, in order to further examine this issue and obtain additional data regarding access and affordability, the Department intends to hold additional stakeholder meetings with both providers and early learning advocates and families to discuss this provision and its impacts on providers, families, and the two-generation approach articulated under the CCDF. More specifically, the Department intends to hold the meetings with each interest group individually, as well as collectively, to further discuss these charges in practice to better gauge how changes to this provision would impact each interested party. The Department will also continue to look at the provider rates and the sufficiency of reimbursement. Once additional information has been collected and examined, the Department will engage these parties to discuss the impact on affordability and equal access, as required by the CCDF. *See* 45 CFR 98.45.

Next, the Department acknowledges and thanks the commentator for submission of specific proposals. The Department notes that any revision invites the need for the collection, review and analysis of accurate data to support the revised language. Since the IRRC hearing on May 18, 2023, the Department has been advised by the federal Office of Child Care (OCC) there are no concerns over a fiscal penalty at this time because the Department has been collecting data to study the issue. That being the case, the Department has determined to maintain the status quo because any modification would be based on incomplete data and would result in a potential fiscal impact to the regulated community. Going forward, however, the Department intends to collect additional data to study this issue.

Finally, the Department reiterates its appreciation for all the comments received and the suggested revisions. The Department looks forward to engaging with all parties to find a balance that ensures affordability and equal access for CCDF families and improved financial solvency for providers.

§ 3042.14(h) – Payment of provider charges

Five commentators agreed with prohibiting new subsidy enrollments at facilities that have been issued revocation or denial of renewal orders by the Department. Four of the commentators suggested that the Department exercise its authority and temporarily prohibit subsidy enrollments at the Department's discretion in consideration of current complaint investigations involving the serious physical injury of a child, the sexual assault of a child, the death of a child, and any other egregious acts that put the safety of children into question. Specifically, the commentators stated that "we would support the Department having the authority to temporarily prohibit subsidy enrollments at their discretion in consideration of current complaint investigations involving the serious physical injury of a child, sexual assault of a child, death of a child, etc."

IRRC noted that "this section does not allow new enrollments 'when the Department determines the provider is not meeting health and safety requirements, and revokes or refuses to renew the provider's certificate of compliance.' The Department goes on to say that to 'provide continued stability and support already established staff and child relationships, the Department will continue to pay for children who are currently enrolled at the time of the sanction.' We ask the Department to explain in the Preamble to the final-form regulation the reasonableness of this subsection and how it protects the public health, safety and welfare of children currently receiving care at these facilities. We will review the Department's answer when determining if this regulation is in the public interest." IRRC also requested that the Department respond to the commentators asking for the Department to prohibit enrollments at facilities that are being investigated over complaints that put "children in harm's way."

Response

The Department thanks the commentators for their comments. After careful consideration and in response to feedback from IRRC and the public commentators, the Department made changes to sections 3042.12 and 3042.14(h). Specifically, section 3042.14(h) is amended in this final-form rulemaking to remove the word "new" from the requirement to clarify that the Department will not permit subsidy enrollments at a provider whose certificate of compliance has been either been revoked or been denied a renewal. This change was made in response to comments asserting the need to protect and maintain health and safety requirements and to ensure continued compliance with the requirements of the CCDF, most especially the provisions concerning affordability and equal access. See 45 CFR 98.45 (relating to equal access).

The Department reiterates the change made in section 3042.12 in response to this feedback as well. The change clarifies that the Department will suspend the subsidy when a parent is using a provider whose certificate of compliance has been revoked or denied renewal. The Department reiterates that these changes are consistent with the CCDF and the existing provisions under

Chapter 3041. The Department also reiterates the statement from the preamble, "we cannot in good conscience continue to use any federal taxpayer dollars to support sub-standard child care for our nation's most vulnerable and disadvantaged children." The added subsection under section 3042.12 makes clear the Department may suspend a subsidy benefit when a parent or caretaker uses a provider for whom the Department has revoked or refused to renew the certificate of compliance, and the removal of the word "new" from the requirement in section 3042.14(h) ensures that taxpayer dollars will not be paid to providers who are not meeting baseline health and safety requirements. As explained in the response under section 3042.12, the eligibility agencies will assist families impacted by a suspension to ensure the continuity of care of their children at providers who are meeting the Department's baseline health and safety requirements. The Department reiterates that its eligibility agencies already assist families with finding an alternate provider in cases where an emergency revocation has been issued to facilities that are violating health and safety standards leading to circumstances that endanger the health and safety of children in care.

Finally, the Department immediately initiates complaint investigations involving any and all allegations impacting on health and safety. Further, an emergency revocation sanction would be issued upon investigation, as legally warranted by the facts and circumstances. However, an investigation is not by itself a determination of wrongdoing or noncompliance. Due to the potential due process concerns, the Department declines to implement the prohibition suggested by some commentators because of potential due process concerns during the investigatory phase. The Department reiterates, however, that it would issue an emergency revocation sanction when legally supportable and needed to support the health and safety of all children in care.

§ 3042.15(b) – Subsidy limitations

Six commentators responded with agreement for allowing a kindergarten-age child one additional year of kindergarten at the parent's or caretaker's request.

Response

The Department thanks the commentators for their support.

§ 3042.15(c) – Subsidy limitations

One commentator disagreed with the prohibition of child care directors and their children enrolling in care at the same facility.

IRRC requested clarification about how the Department determines there is space available for a child of an operator under capacity standards in Chapters 3270, 3280 and 3290 (relating to child care centers; group child care homes; and family child care homes); and on how the Department will implement this section, how a facility will be economically impacted, and the reasonableness of this requirement.

Response

The Department thanks IRRC and the commentator for their feedback. The Department made several changes to restate and clarify this requirement. First, the Department removed the term "owner or operator of a child care facility" from section 3042.3 (relating to definitions) to avoid confusion and to better clarify the requirement.

Consistent with the definition of "child care", the Department amended this subsection to ensure that a child who is receiving care in a child care facility that is owned by the child's parent or caretaker is not eligible for subsidized child care services. The changes also removed references to the availability of space because the concern is only whether a parent or caretaker is being paid to care for their own child, which runs contrary to the definition of "child care." As defined under the final-form rulemaking under section 3042.3 (relating to definitions), "child care" is "care instead of parental care for part of a 24-hour day." To avoid confusion and better clarify this requirement, the Department has removed the term "owner or operator of a child care facility" from section 3042.3 because the term was not used this rulemaking. The changes ensure that child care staff, including a director at a child care center, are eligible for subsidized child care services at their work places.

In response to the inquiry regarding economic impact and implementation of this revised provision, the final-form subsection is narrowly tailored such that it pertains only to situations where a parent or caretaker is the owner of a certified child care facility. To the extent there is such an impact, the Department determines that the cost is outweighed by the fact that subsidy dollars are scarce, public funds, and so this final-form subsection prohibits only situations in which the owners of certified child care facilities are paid subsidy dollars to care for their own children, which is reasonable because such situations run contrary to the definition of "child care" in section 3042.3, which is, "care instead of parental care for part of a 24-hour day." Operators may still receive subsidy funding for children in care who are not their own children. Further, the final-form language expands eligibility because the subsidy limitation only relates to a child receiving care in a facility owned by an eligible child's parent or caretaker. If otherwise eligible, subsidized child care may be received at a different facility.

Further, the final-form regulation is narrowly tailored such that it pertains only to situations where a parent or caretaker is the owner of a certified child care facility. Regarding IRRC's inquiry on how a facility will be economically impacted, the Department determined that the cost is outweighed by the fact that subsidy dollars are scarce, public funds. The Department reiterates that subsidy dollars are taxpayer dollars, and further clarifies that this final-form rulemaking prohibits only situations in which the owners of certified child care facilities are paid subsidy dollars to care for their own children,

§ 3042.15(d) – Subsidy limitations; § 3042.57 – Waiting list; and § 3042.132 – Eligibility determination for Head Start

The regulatory requirements in these specific sections are similar to one another as were the comments received. As such, the Department is grouping these comments together. The similar requirements relate to enrollment requirements following the date the eligibility agency notifies the parent or caretaker that funding is available to enroll the child.

The primary differences between these requirements relate to timing. For section 3042.15(d), the requirements relate to a parent or caretaker who receives subsidized child care services following their application and notification that funding is available. For section 3042.57(c), the requirements relate to a parent or caretaker who has already been determined eligible; and has since been on the wait list and is awaiting notification that funding is available. The rationale for the requirements, however, is the same – for the child to enroll with an eligible child care provider within 30 calendar days of funding becoming available, unless the enrollment is verified by the eligibility agency as being delayed because of circumstances outside of a parent's or caretaker's control. Finally, one of the commentators asked about the prioritized waiting list with reference to sections 3042.57 (relating to waiting list) and 3042.132.

Seven commentators agreed with permitting families to postpone enrollment for more than 30 calendar days if the child does not immediately need care at the time funding becomes available. Six of the seven commentators suggested adding language that clearly states what exceptions will be considered for families wishing to delay enrollment beyond 30 days, noting the process to receive Department approval should be clear. Some commentators noted incongruity between the proposed section 3042.15(d) and section 3042.57(c). These commentators expressed concerns about whether a child can maintain eligibility if not enrolled within 30 calendar days because they are in a child care desert, or if a high-quality provider is not available or does not have a slot at the time. They noted that such a result would be contrary to parent choice. Two other commentators had requests for clarification, and they also suggested changes.

One commentator suggested that families should have the ability to add siblings to the wait list and be grouped together. The other commentator requested clarification about whether children born to families already receiving subsidy, as well as children enrolled in Head Start and Early Head Start, will be placed on a prioritized waiting list.

After follow-up discussions with the Department, the commentator further urged that a subsection be added to the effect that: (1) Acknowledge there is a priority waiting list; (2) Identify the groups; (3) Reference the website where the priority list will be maintained; and (4) Provide for some form of notice and public comment, which may be less formal than the regulatory review process to permit flexibility, via the website should the Department propose to change the list.

IRRC made several observations and had questions about section 3042.57(c), and they noted their feedback applied as well to the proposed section 3042.15(e). Specifically, IRRC asked two questions about the proposed subsection – "First, is 30 days a reasonable timeframe for a spot to be available at an eligible provider?" And second, "why is an exception based upon a

circumstance outside of a parent or caretaker's control a discretionary action? IRRC reiterated that commentators stated this subsection does not consider parent choice as provided for in section 3042.12 (relating to parent choice).

IRRC asked for the Department to explain why the 30-day requirement is reasonable; how parental choice is accommodated; and implementation procedures for granting exceptions. Finally, IRRC requested the Department make changes to ensure that a child maintains eligibility when circumstances beyond a parent or caretaker's control prevent enrollment in child care.

Response

The Department thanks the commentators and IRRC for their feedback. After a careful review, the Department made changes to both sections 3042.15(d) and 3042.57(c) for consistency and clarity to ensure that parent choice is accommodated. Under the final-form regulation, parent choice is accommodated in all cases, consistent with section 3042.12 of this final-form rulemaking and 45 CFR § 98.30 (relating to parent choice, and parental choice). The Department also removed the proposed language from section 3042.15(d) because the provision was obsolete since all regulated child care providers are required to be certified.

At the outset, the Department changed the proposed sections 3042.15(d) and 3042.57(c) to articulate the same requirements for consistency and to clarify that children must enroll with an eligible child care provider within 30 calendar days of funding becoming available, unless the eligibility agency determines that enrollment has been delayed because of circumstances outside of a parent's or caretaker's control. If a parent or caretaker fails to provide a circumstance outside of the parent's or caretaker's control, the child is ineligible. And further, if explanation is provided, the child will be temporarily eligible and, if applicable, may be added to the waiting list or may remain on the waiting list as specified under § 3042.57 (relating to waiting list), The language "temporarily eligible" is being used because under this final-form rulemaking, once eligibility has been determined, the eligibility can only be terminated prior to redetermination in the circumstances specified under 3042.22 (relating to subsidy termination). The Department reiterates that due to other families also needing care, the Department is unable to hold spots open in perpetuity if care is not needed or the parent or caretaker is not sure when it might be needed. The Department notes the 30-day requirement strikes a balance between offering parental choice and efficiently administering the program. Simply put, families are on the wait list who also need subsidized child care, and spots cannot be held open in perpetuity if care is not needed or the parent or caretaker is not sure when it might be needed. The Department reiterates that families are eligible for subsidized child care because they are working or enrolled in education or training and need child care.

Regarding the two commentators who requested clarification as well as changes, the Department amended the final-form regulation to clarify that the Department will post its methods for priority on its website. An order of priority may include: foster children; children who are enrolled in PA Pre-K Counts, Head Start, or Early Head Start who need wrap-around child care at the beginning or end of the program day; newborn siblings of children who are already enrolled; children experiencing homelessness; and teen parents. Otherwise, children are placed

on the waiting list on a first-come, first-serve basis with respect to the date for requesting care for a child. The Department clarified this prioritized waiting list in changes made to section 3042.57(a). Notably, this prioritized waiting list has been stated on all State Plans going back to at least 2019. The Department noted that its approach is consistent with the requirements of the CCDBG because the CCDBG requires that lead agencies give priority for services as stated in the final-form requirement. *See* 45 CFR § 98.46 (priority for child care services). Regarding IRRC's requested clarifications and changes, 30 days is generally a reasonable timeframe in most cases to enroll a child with a child care provider because a parent or caretaker is working or is enrolled in training or education and is in need of child care. In many instances, a family already has a provider that they are using, and they only need assistance paying for the case. In other situations, the family knows what provider they want to enroll the child with, but again, has not been able to do so because of financial circumstances. As discussed above, the Department clarified sections 3042.15(d) and 3042.57(c) so that children must enroll with an eligible child care provider within 30 calendar days of funding becoming available, unless the eligibility agency determines that enrollment has been delayed because of circumstances outside of a parent's or caretaker's control. If a family, however, needs assistance with finding a provider, the eligibility agency will assist the family with resource and referral. Further, the amendments accommodate parent choice by ensuring that parents have the time to select a provider of their choosing provided the delay is not excessive. Regarding implementation, if a parent or caretaker does not provide the eligibility agency with explanation that is outside of the parent's or caretaker's control for why enrollment is not possible, the child is ineligible. And further, if explanation is provided, the child will be eligible. These requirements were clarified under the final-form section 3042.15(d). The 30-day requirement strikes a balance between offering parental choice and efficiently administering the program. Simply put, families are on the wait list who also need subsidized child care, and spots cannot be held open in perpetuity if care is not needed or the parent or caretaker is not sure when it might be needed. Consistent with the feedback from IRRC, congruent changes with this amendment were made to section 3042.57(c), and so the two provisions, sections 3042.15(d) and 3042.57(c) are the same.

The Department reiterates that the final-form regulations accommodate parent choice and are consistent with section 3042.12 (relating to parent choice) as well as all CCDBG requirements.

§ 3042.18 – Absence

Nine commentators submitted comments regarding this section. Five commentators agreed with the Department's efforts to delink payment for child care from a child's occasional absences. These commentators approved of the changes to remove barriers for parents and caretakers and allow the eligibility agency to suspend enrollment if absent for more than 5 consecutive days. These commentators also noted approval with the increased number of total paid absences to 40 days, thereby allowing for parents and caretakers to maintain eligibility and for increased stability for the child and family.

Two other commentators agreed with the increase in permitted absences from 25 to 40 days but disagreed with the way that subsidy suspensions occurred. Specifically, one of these commentators disagreed with enrollment and payment being suspended on the sixth day of absence. This commentator said they would be expected to hold the spot open but not be paid, and that if a parent or caretaker withdrew their child in the hopes of returning later and the spot was gone, the facility is left looking like the bad guy and gets slandered on social media. The other commentator disagreed to the extent that notices of adverse action are required to satisfy due process concerns. After follow-up discussions, this commentator suggested using confirmation notices when the parent requests suspension and an adverse action notice when suspension is initiated unilaterally by the eligibility agencies.

Another commentator disagreed that a child care facility is not paid any tuition money if the child care is suspended. This commentator continued with their questions and asked if a provider could charge the full tuition before the 41st day of suspension? And, "how does the daycare financially afford to pay" their teachers, their utilities, and the like "if tuition cannot be depended on to remain constant?" Also, "do we have to hold the child's spot if their funding is suspended?" And if not, "how is this beneficial to the child's stability?"

Finally, a commentator disagreed with the increase in permitted absences from 25 to 40 days as unreasonable. This commentator observed that private pay families in many cases are afforded little to no compensation for absences or vacation time. The commentator also commented that the increased absences encourage families to not send their child to care, which interrupts their care routine and their establishment of positive relationships. The commentator said the benefit of the subsidized child care program is to provide high quality care to children and families who otherwise cannot afford it, and stated the increase is counter to that entire concept, noting finally that children cannot reap the benefits of high-quality programming if they do not attend.

Response

First, the Department thanks the commentators for their support and comments. The Department acknowledges and declines the suggestion that confirmation notices be sent when the parent requests suspension and that an adverse action notice be sent when the suspension is initiated by the eligibility agencies. The Department notes that due process is not offended or implicated because the Department is not disturbing eligibility or benefits. To the contrary, the Department is preserving the subsidy for periods when the child is in care and the subsidy is used. The Department also notes that its eligibility agencies send a confirmation notice along with a notice of appeal rights for all cases of subsidy suspension, irrespective of the reason for suspension.

Further, the Department clarifies that only payments for subsidized child care services are suspended during periods of suspension. Whether a provider continues to hold open a spot that remains in suspension is a private business decision between the provider and the parent or caretaker. Specifically, there is no regulatory requirement that compels a child care provider to hold open a child's spot in perpetuity or for any duration.

As for remaining concerns over absences, eligibility may be terminated upon the accrual of excessive, unexplained absences. The Department acknowledges the difficulty that child care

providers face with respect to overhead, whether that relates to teacher retention and compensation, utilities, or other incidental expenditures. The Department will conduct outreach with the child care community to help providers establish improved business practices that to improve continuity of care. Providers who wish to provide higher quality child care through the Commonwealth's quality rating and improvement system, Keystone STARS, may be eligible for assistance with related costs as well. Further, the lengthier 12-month eligibility periods prescribed by this final-form rulemaking may help providers stabilize enrollments and revenues.

As to the increased number of absences, the increase in the number of days of permitted absences is reasonable because the higher number permitted is in the context of the longer 12-month eligibility periods established under this final-form rulemaking and required by the CCDBG. Further, this increase is consistent with the CCDBG preference for delinking payment from a child's occasional absences. *See* 45 CFR § 98.15 (relating to assurances and certifications). In addition, the increase in permitted paid absences to 40 days represents 15 percent of the average child's expected absences from care and conforms to what the federal government believes is more reasonable for a child attending child care, which is 85 percent of the authorized days. See 45 CFR § 98.45(l)(2)(ii).

This increase also allows the Department to address concerns from families receiving subsidy around absences for children with verified, significant illnesses, injuries, and impairments. This number of paid absences also supports integration by aligning with the payment rules for PA Pre-K Counts. Lastly, this number of paid absences is modest in relation to those afforded by other states in Region III; which range from as low as 46 per year in Virginia up to eight absences per month in the District of Columbia.

§ 3042.19 – Subsidy continuation

Two commentators disagreed with this proposed section. One commentator asserted that situations where parents are without work for three months and continue to bring their child to daycare are unacceptable. This commentator inquired as follows: First, for situations involving a parent or caretaker who experiences a disability, does the child still attend daycare? Or is this a suspended care situation? Is the daycare still receiving the tuition for this child? This commentator also asked for how long the phase-out period lasts.

Regarding relatives who care for children without a court order, the commentator asked, how do you know the adult has custody of the child legitimately and was not kidnapped? And next, if parents regain custody, will the funding transfer to the parent monies or will the parent have to open their own file, thereby resulting in a loss of care and delaying continuation of care? Finally, the commentator asked, how can a provider be certified but not meeting basic health and safety requirements?

The other commentator disagreed to the extent that two important circumstances from 45 CFR § 98.21(a)(1)(i) and (ii)(G) were alleged to have been omitted from the proposed rulemaking; and that similarly, others from 45 CFR § 98.21(a)(5) were also omitted. The commentator suggested

additions to sections 3042.19(c) and suggested an added subsection (d). After follow-up discussions, the commentator stated that even if the provisions are stated elsewhere, that this subsection is confusing and misleading because it does not state all of the circumstances for which subsidy must continue. As it concerns the limited circumstances where early termination of subsidized child care eligibility is permitted, the commentator suggested they should be placed in a new suggested subsection (d).

Response

The Department thanks the commentators for their feedback and made several changes in response to their comments. After review of all feedback, the Department determined that a new section relating to termination was warranted to clarify the limited circumstances for which the subsidy might be terminated prior to the next re-determination. The newly-added final-form section regarding termination is at section 3042.22 (relating to subsidy termination).

The CCDBG promotes continuity of care based on research showing children have better educational and developmental outcomes when they have continuity in their child care arrangements. As provided previously, per CCDBG requirements, eligibility periods are now a minimum of 12 months. Further, instances involving early termination of subsidy because of failure to meet the work requirements are exceedingly rare. As such, the Department declines to make changes to reduce eligibility because the fiscal savings are *de minimis* and are substantially outweighed by the administrative costs of implementation as well as the adverse impacts on families and children.

The Department notes that distressed families often cycle in and out of poverty, which places additional stress on the children in these families. The final-form rulemaking ensures that families receiving subsidized child care services are provided uninterrupted services that support parental education, training, employment, and continuity of care that minimizes disruptions to children's learning and development. *See* 45 CFR § 98.1 (relating to purposes).

As for one of the commentator's queries, the Department clarifies that consistent with CCDBG requirements, if care is needed and eligibility has already been determined, a child in a situation in which a parent experiences a disability will continue to receive services as needed for the remainder of the eligibility period.

Regarding the graduated phase-out period, the Department clarifies that eligibility will not be disrupted during the eligibility period unless the family income exceeds 85% of the State Median Income (SMI). *See* section 3042.97(f) (relating to Use of the Federal Poverty Income Guidelines and State Median Income).

Furthermore, at redetermination, under this final-form rulemaking, eligibility would continue so long as income does not exceed 235% of the Federal Poverty Income Guidelines (FPIGs) or 85% of the SMI, whichever is lower. *See* section 3042.31(c). As for any possible changes to custodial arrangements, pursuant to subsection (b) of this final-form regulation, because the eligibility period is continuous for the child for 12 months, care will not be interrupted unless the substitute caretaker's income is above 85% of the SMI. Finally, a court order is not required in

order for a relative to care for children, and also, certified child care providers are required to satisfy all prescribed health and safety requirements at all times. *See* 55 Pa. Code Chapters 3270, 3280 and 3290 (relating to child care centers; group child care homes; and family child care homes)

Next, based on the comments received, the Department made changes to better state and clarify the requirements of this section. Specifically, the Department reworded subsection (c) to remove the listing of circumstances to avoid confusion and to clarify that the subsidy will continue during the eligibility period except for when income rises above 85% of the SMI.

Because the subsidy will continue as the commentator stated, the Department determined that adding requirements relating to circumstances where the subsidy would already continue is both redundant and misleading. The Department, therefore, reworded subsection (c) to clarify that subsidy will continue at the same level in nearly all cases unless family income exceeds 85% of the SMI, or the subsidy is suspended, or changes are reported that might increase the family's benefit.

The Department also removed paragraphs (c)(1)-(4) because, as already stated, such listing misstates and confuses the requirement. The Department replaced those provisions with paragraphs (c)(1)-(3). Specifically, the Department revised subsection (c)(1) to clarify that family income in excess of 85% of the SMI will cut short eligibility, which complies with 45 CFR § 98.21(a)(1)(i). Similarly, the Department revised subsection (c)(2) to clarify that the subsidy may be terminated as well during the eligibility period as specified in the newly-added provision in section 3042.22 (relating to subsidy terminations). Also, the Department revised subsection (c)(3) for consistency, because the subsidy could be increased, and the co-payment decreased as per section 3042.86 (relating to change reporting and processing) and as required by 45 CFR § 98.21(e)(4)(i).

Next, following feedback from the commentator, and after review of the feedback received for section 3042.20(c) (relating to subsidy suspension), the Department noted the provisions each concern termination prior to the next re-determination. As such, the Department declined to add a new subsection (d). Instead, the Department determined that a new section be added on final-form rulemaking to clearly articulate the limited circumstances for which the subsidy might be terminated prior to the next re-determination. The newly-added section regarding termination is at section 3042.22 (relating to subsidy termination).

§ 3042.20 – Subsidy suspension

Three commentators submitted comments to this section. One commentator agreed with permitting suspension but suggested adding "for any reason" to subsection (b) to make sure the requirement is clear, even though the commentator stated in their comment that it is implicit. Another commentator disagreed with the requirement that enrollment and payment are suspended on the sixth day of absence. This commentator said they would be expected to hold

the spot open for the family, and that if not, the facility looks like the bad guy and is slandered on social media.

The third commentator disagreed that a child care facility is not paid any tuition money if care is suspended. This commentator also asked for the following several more points of clarification: First, upon suspension, can the daycare charge the difference plus the weekly tuition when the eligibility agency stops paying? The commentator stated that daycares cannot be expected to hold a spot for a child for 40 days without receiving payment. Next, the commentator asked, what about other families on the waiting list that would start their child immediately? Would the money go to waiting families while the other family has postponed their need for monies?

IRRC requested clarification on how the Department will implement subsection (c) and requested for the Department to modify this subsection to state the number of days it considers to be excessive, so as to establish a standard that is predictable and enforceable, which IRRC explains is in line with the CCDBG provision at 45 CFR § 98.21(a)(5)(i)(A).

Response

The Department appreciates the review and feedback of the commentators and IRRC. First, the Department declines to add "for any reason" to subsection (b) because the requirement is already clear. Next, the Department clarifies that payment is an issue between the parent or caretaker and the provider and should not affect a family's eligibility for subsidy. Furthermore, as previously provided, whether a provider continues to hold open a spot that remains in suspension is a private business decision between the provider and the parent or caretaker. As provided above, there is no regulatory requirement that compels providers to keep open in perpetuity a spot for a child who is persistently absent from care. The Department reiterates that eligibility periods for child care subsidy are for 12 months, and that periods of suspension of subsidy do not by themselves operate to reduce eligibility.

Upon suspension, subsidy funds are not diverted away from the family, but instead, the funds are preserved until such time as the child returns to care and the suspension ends. Specifically, upon suspension, payment to the provider is suspended until the child has returned to care. Further, as provided above, the Department will conduct outreach with the child care community to assist with business practices that better ensure continuity of care.

Finally, the Department removed subsection (c) because the provision concerns termination. After review of all feedback for section 3042.19 (relating to subsidy continuation) and this section, the Department determined that a new section 3042.22 (relating to subsidy termination) is warranted for clarity. The newly-added section defines the number of unexplained absences that shall be considered excessive as 60 consecutive days of non-attendance in care. This new section further clarifies that termination is authorized prior to the next re-determination in limited circumstances where there have been excessive, unexplained absences; a change in residency outside the Commonwealth; substantiated fraud or intentional program violations that invalidate prior determinations of eligibility; or a voluntary request by the parent or caretaker for discontinuance of the subsidy.

§ 3042.21 – Subsidy disruption

IRRC requested the Department change the word "subsection" in paragraph (2) to "section."

Response

The Department thanks IRRC and changed "subsection" to "section".

§ 3042.22 – Subsidy termination

As provided previously, this newly-added section, consisting of two subsections, regarding subsidy termination is added in response to feedback received during the public comment period and to clarify the circumstances that may result in termination of the subsidy prior to the end of the 12-month eligibility period. Subsection (a) clarifies in four paragraphs the circumstances that may cause the eligibility agency to terminate subsidy prior to re-determination. Regarding the circumstances, paragraph (1) clarifies the number of unexplained absences that are excessive in response to IRRC's comment to clarify the number of days. Specifically, the paragraph clarifies the number of days as 60 consecutive days of unexplained non-attendance in care, provided the eligibility agency has attempted at least three times to contact the parent or caretaker regarding the child's absences. The Department also clarified in paragraph (2) that one of the circumstances is if a child no longer resides in the Commonwealth, and the Department clarified in paragraph (3) that one of the circumstances is if the parent or caretaker committed substantiated fraud or intentional program violations that invalidate prior determinations of eligibility. Subsection (4) clarifies that the subsidy will be terminated if the parent or caretaker voluntarily requests discontinuance of the subsidy.

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

Regarding implementation, to determine whether the absences are excessive, the Department explained that upon notification from the provider that a child has been absent more than 5 consecutive days, the eligibility agency will send to the parent or caretaker a notice confirming the suspension of the subsidy following the non-attendance in care. Importantly, the Department notes that upon suspension, subsidy funds are not diverted away from the family, but instead, the funds are preserved until such time as the child returns to care and the suspension ends. Upon suspension, payment to the provider is suspended until the child has returned to care. If the suspension continues for a period of 60 consecutive days of unexplained, nonattendance in care, the Department will proceed to terminate subsidy after ensuring the required outreach. The final-form rulemaking ensures that families receiving subsidized child care services are provided uninterrupted services that support parental education, training, employment, and continuity of

care that minimizes disruptions to children's learning and development. *See* 45 CFR § 98.1 (relating to purposes).

§ 3042.31 – Subsidy disruption; and § 3042.97 – Use of the Federal Poverty Income Guidelines and State Median Income

Due to the receipt of a combined comment for these sections, the Department is also combining its response. Specifically, IRRC stated that its comment for section 3042.31 also applies to section 3042.97. In addition, each section received comments from one commentator.

One commentator disagreed with the language under section 3042.31(c) because the proposed language of "or" would allow at redetermination the eligibility agencies to continue subsidies to families with income in excess of 235% of the Federal Poverty Income Guidelines (FPIGs). The commentator noted waiting lists are already long, and they suggested adding language to the end of subsection (c), "whichever is less," to resolve the ambiguity.

As for section 3042.97, after follow-up discussions with this commentator, the commentator suggested that the regulatory requirements mirror and provide authorization for practices already used in notices, and so they requested that, for this section (3042.97), that subsection (e) mirror subsection (d), and state "the eligibility agency shall explain that 85% of SMI and the specific dollar figure are the highest annual income amounts permitted in between redeterminations."

IRRC requested the Department address the commentator's concern that there is not an "option to continue subsidy for families whose income exceeds 235% of the FPIG at redetermination, except in the highly unlikely scenario that 85% of the State Median Income (SMI) should drop to less than 235% of the FPIG." IRRC requested clarification for how the Department will implement these income limits and why it is necessary to include both the FPIG and SMI requirements in this subsection.

As stated above, IRRC noted its comment applies to section 3042.97 (relating to use of the Federal Poverty Income Guidelines and State Median Income) as well.

Response

After review, the Department adopted the commentator's suggested revision to add "whichever is less" to clarify the requirement in section 3042.31(c), so that at redetermination, the family's annual income cannot exceed 235% of the FPIG or 85% of the SMI, whichever is less.

As for the Department's established system for assessing eligibility, the Department clarified that income is initially assessed at application, and at such time, it shall not exceed 200% of the FPIG. *See* section 3042.31(a). Next, if a family has already been determined eligible, the Department reiterated that changes in income do not impact on eligibility unless the family's annual income exceeds 85% of the SMI, as explicitly required by the CCDBG and subsection (b) of section 3042.31. *See* 45 CFR § 98.21(a)(1)(i). Third, at redetermination, the Department

assesses income to determine continued eligibility provided that the annual income does not exceed 235% of the FPIG or 85% of the SMI, whichever is lower. As stated above, the Department added language to the final-form section 3042.31(c) to clarify this requirement. Similarly, the Department changed language in section 3042.31(e) by removing "and" and replacing it with "or" to improve clarity.

The CCDBG prescribes the income limits in terms of the SMI. Meanwhile, as permitted by the CCDBG, the Department utilized a graduated phase-out approach that satisfies all CCDBG requirements, with the second tier set at an amount lower than 85% of the SMI for a family of the same size, but above the initial eligibility threshold. This approach comports with all federal requirements as stated in 45 CFR § 98.21(b). As for the need to include requirements stated with reference to both the FPIG and the SMI, the Department notes the federal requirements that agencies that establish family income eligibility at a level less than 85 percent of SMI must provide a graduated phase-out by implementing a two-tiered eligibility threshold with the second tier set at 85 percent of SMI or an amount lower than 85 percent SMI but is above the initial threshold for eligibility. *See* 45 CFR § 98.21(b)(1).

As stated by the commentator and referenced by IRRC, 235% of the FPIG is nearly always lower than 85% of the SMI, depending on the family size. Furthermore, the Department has utilized the FPIG as a standard for determining and redetermining eligibility for several years, and to reiterate, using the FPIGs provides a workable framework through which to implement the Department's graduated phase out approach, as consistent with CCDBG requirements. Because public monies are so scarce, the final-form regulations ensure that precious and scarce taxpayer dollars are used to the benefit of this Commonwealth's most economically-challenged families.

Next, with respect to the provisions in section 3042.97, the Department adopted the suggested change with modified wording to ensure that families receiving subsidized child care are informed of the actual dollar amount of 85% of the SMI. The Department changed section 3042.97(e) as requested with modified wording but did not delete the proposed provision. Instead, the Department moved the proposed provision from section 3042.97(e) to the newly-added provision, section 3042.97(f), to clarify that families are ineligible at any time if the annual income exceeds 85% of the SMI.

§ 3042.33 – Work, education and training

Five commentators submitted comments on this section: four commentators generally agreed and suggested changes, and one other commentator requested additional changes. One commentator suggested changing the requirement that a person must have a paystub or employment prior to getting child care and said that it would be helpful to offer a 2- to 4-week period for families to look for employment, and if not, then there would be no eligibility. The commentator noted that the suggested requirement would be helpful to parents in partial programs like addiction recovery or mental health treatment.

The second commentator who agreed suggested the need to highlight the needs of parents currently enrolled in treatment programs, such as for mental health services or drug and alcohol treatment. The third commentator also suggested that the children of working parents be provided the opportunity to learn in the most appropriate environment regardless of income. This commentator noted that "juggling work and school is a difficult task," and requested the lowest possible working hours requirement when considering the final-form regulations. The fourth commentator requested changes to subsection (c)(1) to include the most common education programs – GED and HSE.

Another commentator responded only with a suggestion to change this section to permit the pursuit of a recognized postsecondary credential as meeting compliance with the work requirement in subsection (a). This commentator's written comments cited to several research studies on the issue, noting that, despite "rising costs and other personal and systemic barriers, people with lower incomes continue enrolling in college at increasingly higher rates than those with higher incomes." The commentator noted that "this trend reflects the understanding that well-paying jobs require credentials beyond high school and that – in the long term – lifetime earning potential is higher for college graduates than for high school graduates."

The commentator continued and noted that "welfare reform" nationwide has "significantly decreased the likelihood of adult women enrolling in college by at least 20 percent," and it has "also reduced participation in full-time vocational and education training programs," with the effects "far worse for mothers of color." Furthermore, the commentator noted that "cutting off college as a path to economic security exposes low-income women and their children to greater harm during economic crises, including the current COVID-19 pandemic."

The commentator then noted a study conducted by the Institute for Women's Policy Research (IWPR) showing the "benefit of college completion to the state and to parenting residents, particularly for single mothers." Specifically, IWPR found that "for every dollar spent on a Pennsylvania-based single mother's college education, there is an $8.36 return over their lifetime for earning an associate degree; the return is just as significant for those earning a bachelor's degree, with a $6.42 return for every invested dollar." The commentator pointed out that these investments would likely increase the tax payments received by the state of Pennsylvania over the degree-earner's lifetime and would likely decrease the extent to which parents or caretakers rely on public assistance. The commentator then noted that "access to affordable and high-quality child care has been shown to play a significant role in student parents' ability to graduate successfully."

The commentator therefore suggested changing this regulation to treat "the pursuit of a recognized postsecondary credential as meeting any compliance, work participation, and core activity requirements for the child care subsidy program" by adding a new paragraph (3), into the proposed regulation. The proposed addition states, as a new paragraph (3), "the parent or caretaker is enrolled at least half-time in an institution of higher education (as defined in Title 20, Chapter 28 of the Higher Education Act). The time spent in an approved education program counts toward the 20-hour-per-week work requirement."

Concluding, the commentator noted a study from the Georgetown University Center on Education and the Workforce, which showed that "four out of five jobs lost during the 2008 Great Recession were held by workers with no credential beyond high school. Conversely, workers with at least a four-year college degree were largely protected against job losses and some even experienced job gains." Finally, the commentator said that "this proposed recommendation reflects the needs of a workforce increasingly reliant on postsecondary credentials", and that "as our workforce increasingly demands a more educated workforce, we must improve and increase pathways to college completion."

Response

The Department thanks all of the commentators for their thoughtful feedback. After review of all feedback, the Department made changes to paragraphs (c)(1) and (c)(2). First, the Department changed paragraph (c)(1) to include the two most common education programs – GED and HSE because these programs may be considered training for purposes of the work requirement. Next, the Department explained that eligibility requirements for parents or caretakers dealing with addiction recovery or mental health treatment are prescribed by section 3042.37 (relating to eligibility of households including a parent or caretaker with a disability). The Department notes that a parent or caretaker must provide verification with medical documentation. If a medical professional states the parent or caretaker is unable to work or care for the children, then they are exempt from work requirements in a two-parent household. The Department notes that section 3042.37(e)(3) makes clear that it applies to situations where a parent or caretaker has a need to attend treatment for a disability and is unable to care for the child.

In response to the suggestion that the Department no longer require a paystub or employment prior to getting child care, or at least provide a 2- to 4-week provisional period of eligibility, the Department declines to remove this requirement. The Department considered a similar approach previously but rejected it due to the scarcity of public funds and the demand for subsidized child care services. The Department declined to abolish or lower the prescribed work-hours requirement in subsection (a), which is unchanged from the current requirement.

The final-form rulemaking establishes a temporary period of presumptive eligibility for up to 92 calendar days at application for parents or caretakers who are dealing from homelessness. *See* section 3042.146 (relating to homelessness) and 45 CFR § 98.51 (relating to services for children experiencing homelessness). Similarly, the final-form rulemaking establishes a temporary period of presumptive continued eligibility at redetermination for parents or caretakers who have provided verification that they have work, education or training to return to that satisfies the work-hours requirement as specified in this final-form regulation and that begins prior to the expiration of the temporary, 92-day period specified in section 3042.147 (relating to presumptive continued eligibility at redetermination).

Next, the Department declines the request to reduce the work-hours requirement in subsection (a) because the requested change was not a part of the proposed rulemaking and is unchanged from the requirement in Chapter 3041.

Finally, the Department declines the request to permit substitution of attendance in training to satisfy the work requirement. Similar to the previous suggestion, the Department notes the request was not a part of the proposed rulemaking and is unchanged from the requirement in Chapter 3041.

§ 3042.35 – Immunization

IRRC responded and identified three areas of concern with this section. First, the proposed subsection (a) refers to the American Academy of Pediatrics, whereas the child care facilities regulations in 55 Pa. Code §§ 3270.131, 3280.131 and 3290.131 (relating to health information) cite to the Advisory Committee on Immunization Practices (ACIP) of the Centers for Disease Control and Prevention, United States Department of Health and Human Services. IRRC recommended revising the proposed regulation here to refer to the ACIP.

Second, IRRC noted the proposed subsection (a) requires that "immunizations shall be provided as specified in 3270.131, 3280.131 and 3290.131" for certified child care facilities. IRRC observed that the "exemptions for immunization requirements in this subsection appear to conflict with 55 Pa. Code §§ 3270.131, 3280.131 and 3290.131 (relating to health information), including requirements relating to the reasons for exemptions, documentation and recordkeeping. IRRC said, "this subsection should be revised to align with Sections 3270.131, 3280.131 and 3290.131 or the Department should explain why it is not necessary to do so."

And third, IRRC noted that the proposed subsection (b) allows a "parent or caretaker 90 calendar days to obtain immunizations for the child and self-certify that the child is up to date with immunizations or that the child is exempt from the immunization requirement." Meanwhile, under 55 Pa. Code §§ 3270.131(e), 3280.131(e) and 3290.131(e), IRRC noted that facilities cannot keep children in care for more than 60 days following the first day of attendance unless the parent provides written verification from a medical professional. As well, IRRC noted that the timetables each for the compliance and documentation requirements appeared to conflict with the same requirements prescribed in 55 Pa. Code §§ 3270.131, 3280.131 and 3290.131.

IRRC asked the Department to revise the proposed subsection (b) to align with the requirements of the child care facilities regulations at 55 Pa. Code §§ 3270, 3280 and 3290 to ensure the protection of the public health, safety and welfare; or explain why it is not necessary to do so.

Response

The Department thanks IRRC and changed subsection (a) to restate the requirement with reference to the ACIP and to state the exemption requirements consistently with the child care facilities regulations in §§ 3270.131, 3280.131 and 3290.131 (relating to health information), as in the final-form paragraphs (a)(1) and (a)(2). The added subsections (a)(1) and (a)(2) also make clear the statements must be signed, dated, and kept in the child's record.

For the provision in subsection (b) authorizing subsidy for up to 90 days, the language is changed to make clear that subsidy will be authorized for up to 60 days from the date of

enrollment, or, if the child is experiencing homelessness or is a foster child, then the subsidy is authorized for up to 90 calendar days to obtain up to date immunizations or provide documentation of exemption. The change ensures consistency with the child care facilities regulations as well as compliance with the CCDF and that a grace period is extended to families experiencing homelessness and foster children in recognition that these populations of children may struggle with providing timely documentation. The Department notes the requirement is not new and that Chapter 3041 provided for up to 90 calendar days. For further clarity, the Department reiterates that families have up to 30 days to enroll in child care, and so the authorization of eligibility for subsidized child care comports with health and safety requirements because children may not be enrolled in care upon authorization. The Department notes that once children are authorized and enroll in care, the 60-day period begins, and documentation of immunizations or exemption, as applicable, must be provided to satisfy the requirement. For children who are experiencing homelessness or are in foster care, as consistent with CCDF requirements, the Department authorizes subsidy for an extra 30 days, or 90 days total, to ensure that this vulnerable population of children maintain eligibility while awaiting enrollment.

§ 3042.36 – Citizenship

One commentator, who supported the vast majority of changes, responded that "we encourage the state to use language that ensures eligibility agencies do not use parent immigration status to determine a child's eligibility" and suggested language to make clear the requirement pertains only to the immigration status of the child.

Response

There are no changes here because the language of the requirement is clear. The Department clarified that the language of this requirement is stated only with reference to the child, and that the final-form requirement makes no reference to the child's parents.

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

One commentator disagreed with the proposed subsection (a) as contrary to 45 CFR § 98.21(a)(1)(ii)(e), stating, that requiring parents to verify that their disability precludes employment in order to continue to receive subsidy between redeterminations places a significant burden on them that parents who lose employment for other reasons do not have to meet, raises a serious issue of unlawful discrimination.

IRRC had three statements of clarification here. First, IRRC asked about whether the language referring to treatment for a disability in subsections (a)(2) and (b)(3) includes treatment programs like mental health services and drug and alcohol treatment. Second, IRRC asked for clarification about the eligibility standards for families with two parents or caretakers with disabilities. And

third, with reference to the proposed subsection (b)(4), IRRC asked if the Department intended to require a court order or safety plan as a condition of eligibility.

Response

This section was reorganized and restated following feedback from IRRC and from a public commentator requesting that to improve clarity, the requirements for verification of disability for a parent or caretaker should be stated without specifying the size of the family. Pursuant to the reorganization, the subsections were reordered. Specifically, requirements were stated for a single parent who is disabled, for a two-parent family who are both disabled, and requirements were stated for each for at application or redetermination or for following a determination of eligibility. The Department clarified that after eligibility has been determined, that subsidy will continue until the next scheduled annual redetermination in the event a parent or caretaker is unable to meet the work, education and training requirements. Finally, requirements were stated for families with one parent who is disabled and the other parent is working, and for two-parent families where one parent is working and there is a court order or safety plan that prohibits the other parent from caring for the child for whom the family has requested subsidy.

In response to IRRC's comment, the Department is clarifying that treatment for a disability includes treatment for mental health services and drug and alcohol treatment. The Department, by way of explanation, reiterates the final-form definition of disability as "a physical or mental impairment that precludes a parent or caretaker from participating in work, education or training." Further, families with two parents or caretakers with disabilities are not eligible for child care assistance under this chapter. However, children in this circumstance may still be eligible for child care through Head Start or Pre-K Counts. Similarly, the Department clarified in the final-form rulemaking that a single-parent household with a disability is not eligible for subsidized child care services either at application or redetermination.

Finally, paragraph (e)(4) was renumbered under a newly-added subsection (f). This paragraph was moved to clarify that a court order is not required in conjunction with the other listed requirements. The changes were made in response to feedback from IRRC requesting clarification of the subsection.

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

§ 3042.51 – Application

One commentator disagreed with requiring "wet signatures" because of their negative impact on burdensome paperwork requirements.

Response

Wet signatures are not required to complete and successfully submit an application for subsidized child care services. As provided in both the proposed and final-form regulation,

parents or caretakers may file an electronically signed online application for subsidized child care "on any day and at any time." *See* section 3042.51(b) (relating to application).

§ 3042.56 – Personal interview

Seven commentators responded with agreement for removing barriers to parents or caretakers who encounter hardships with participating in face-to-face meetings, and instead allowing telephone contact to satisfy the requirement.

Response

The Department thanks the commentators for their support for those who struggle to participate in the face-to-face meeting and allowing telephone contact to satisfy the requirement. The Department reiterates that telephone contact can satisfy the requirement. Further, the term is outdated and misleading. The Department made changes to further clarify the terminology and better state the requirements. Specifically, the Department added the term "personal interview" to section 3042.3 (relating to definitions), which refers to an informational meeting held between the eligibility agency and the parent or caretaker, which can take place either in person, by telephone, or by other means approved by the Department. The added term is consistent with terminology used in other departmental regulations. *See* 55 Pa. Code sections 123.22 and 133.23. The Department also removed all references to "face-to-face meeting" in the final-form rulemaking and replaced the term with "personal interview" to clarify the meeting can take place in person, by telephone, or by other means approved by the Department. The changes in terminology were made in sections 3042.56, 3042.114, 3042.115, and 3042.117. Following these changes, the proposed subsection (e) was removed because concerns over hardship are negated by the updated terminology, which permits flexibility with respect to satisfying the requirement. As well, subsection (d) was changed to remove "transportation problems" from the requirement because the change in terminology to personal interview alleviates concerns over difficulties with transportation. Finally, the title of this section was changed to "Personal interview" to reflect the updated terminology.

§ 3042.61 – General verification requirements; § 3042.62 – Collateral contact; §§ 3042.64-.68 (all relating to self-certification and verification); and §§ 3042.70-.71 (all relating to self-certification and verification)

Similar to in section 3042.35 (relating to immunization), the Department is combining its response for these above-stated sections. These sections received comments from one commentator, and the comments were all substantively similar and were about electronic data sources. The Department is, therefore, considering all the feedback and responding to these sections together. The Department is clarifying that IRRC responded with a comment about section 3042.70, but the comment was not about electronic data sources. As such, IRRC's comment about section 3042.70 is therefore considered separately as indicated below.

One commentator suggested language for all of these regulations that would account for the existence of electronic data sources. After review and discussion between the commentator and the Department, the commentator suggested changes because it makes sense for the Department to build authority for electronic verification into the regulations, so that as the Department continues to develop capacity for all of its eligibility agencies to conduct electronic verification, there will already exist the requisite, codified legal basis for verification.

Response

The Department appreciates the commentator's feedback and has carefully reviewed the suggested changes regarding electronic data sources in sections 3042.61, 3042.62, 3042.64-.68, 3042.70 and 3042.71. After review, the Department declined the suggested changes. First, the Department reiterates a part of this commentator's feedback, which said, "this should begin with a clear statement that eligibility agencies must attempt to obtain needed information from trusted electronic sources before asking the parent or caretaker to provide verification."

The electronic data sources necessary to permit the suggested changes are not at the time of this final-form rulemaking integrated with or accessible by either the Department or the Department's eligibility agencies. The Department declines to establish requirements regarding electronic data sources that are neither available nor accessible for purposes of determining eligibility for subsidized child care.

The Department, however, pledges to further explore avenues to better integrate and codify requirements relating to electronic data sources in a future rulemaking. The Department clarifies that there is nothing in this final-form rulemaking that precludes the Department from verifying information electronically. Finally, the Department thanks the commentator for their review and invitation and will follow up with the commentator after implementation of this final-form rulemaking to have continued discussions on areas of mutual interest.

§ 3042.63 – Self-certification

Two commentators agreed with allowing parents and caretakers to have additional options to self-certify information not likely to change during the eligibility period and when submitting acceptable eligibility verification.

IRRC disagreed with the proposed paragraph (b)(4) because it conflicts with the child care facility regulations in 55 Pa. Code §§ 3270.131, 3280.131 and 3290.131 (relating to health information).

Response

The Department thanks the commentators and agrees with allowing parents and caretakers additional options to self-certify information not likely to change during the eligibility period and when submitting acceptable eligibility verification.

Regarding IRRC's feedback on paragraph (b)(4), the Department notes there are distinctions between eligibility requirements for subsidized child care (and the related eligibility agencies,

parents and caretakes, and providers providing subsidized child care services) and health and safety requirements at regulated child care facilities. This section relates only to eligibility for subsidized child care, and it ensures that the timely provision of documentation does not act as a barrier to eligibility for subsidized child care. If a child is enrolled in a child care facility certified under 55 Pa. Code §§ 3270, 3280 or 3290 (relating to child care centers; group child care homes; and family child care homes), those regulations require additional verification beyond the requirements under this final-form rulemaking.

The Department reiterates that historically, families have cycled in and out of the subsidized child care program. Parents or caretakers would find jobs, lose jobs, and then lose their eligibility and subsidy. Children would leave their early care and education program only to need services again in a few months, by which time they might be placed on a waiting list until funds became available. The Department, therefore, declines to make changes to section 3042.63(b)(4) because changing or removing the language would operate to establish an unnecessary barrier to eligibility to families who are already struggling to break the cycle of poverty and provide timely documentation, which is contrary to CCDF purposes and goals. The Department reiterates that families who enroll in certified child care facilities must provide the documentation as required in Chapters 3270, 3280 and 3290. Finally, the Department notes that self-certification as stated for section 3042.63(b)(4) is currently permitted under the Chapter 3041 regulations.

The Department further notes that subsection (b)(7) was changed to replace references to "face-to-face" with "personal interview" and to correct a citation and the title of a section following changes made in section 3042.56 (relating to personal interview).

§§ 3042.68, 3042.70, 3042.71, 3042.72, and 3042.73 – Regarding Self-Certification and Verification

The Department received several comments supporting the Department's efforts to remove barriers to eligibility, as well as the feedback from IRRC noting inconsistencies between the proposed rulemaking and the child care facilities regulations in Chapters 3270, 3280 and 3290.

After review, and to further address existing barriers to eligibility, the Department made changes to these sections to ensure the requirements are consistently stated and are not unnecessary barriers to eligibility. The Department noted that the proposed terminology was unnecessarily restrictive because medical records can be verified and provided by not only a physician, but also a physician's assistant, a CRNP, or a psychologist. Further, the Department notes this terminology is more restrictive than the terminology found in similar provisions in the child care facilities regulations. The Department determined the incongruities served no regulatory purpose and were unnecessary barriers to eligibility.

The Department, therefore, revised sections 3042.68, 3042.70, 3042.71, 3042.72, and 3042.73 to restate the requirements to make reference to "licensed physician, physician's assistant, CRNP or psychologist."

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

IRRC stated this section "explains verification of a disability in a two-parent or two-caretaker family." IRRC then noted this section is cross-referenced in the proposed section 3042.37(a)(1) (relating to eligibility of households including a parent or caretaker with a disability), regarding verification of a disability in a family with one parent or caretaker. IRRC asked the Department to "consider revising this section to address the verification of disability for a parent or caretaker without specifying the size of the family."

Response

Following changes made to section 3042.37 (relating to eligibility of households with a disability), the Department restated the requirements without specifying the size of the family, as requested by IRRC. The Department reiterates that families with two parents or caretakers with disabilities who are not able to meet the work, education and training requirements are not eligible for subsidized child care assistance under this chapter. The Department note, however, that children in this circumstance may still be eligible for care through Head Start or Pre-K Counts. Similarly, the Department clarified in section 3042.37 that a single-parent household with a disability who is not able to meet the work, education and training requirements is also not eligible for subsidized child care services under this chapter either at application or redetermination.

The Department also observed incongruity in terminology in this section and in sections 3042.68, 3042.71, 3042.72, and 3042.73. The Department determined that the proposed terminology was more restrictive than the terminology used in the other sections of this chapter and in the child care facilities regulations in Chapters 3270, 3280 and 3290, and that such differences served no regulatory purpose. The Department, therefore, made changes to this section to include references to a "licensed physician, physician's assistant, CRNP or psychologist."

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

IRRC requested correction of the cross-referenced citation here to cite to section 3042.11(d) and not to section 3042.11(c).

Response

The Department thanks IRRC for their careful feedback and corrected the cross-referenced citation from section 3042.11(c) to 3042.11(d). In addition, the Department observed incongruity in terminology in this section and in sections 3042.68, 3042.71, 3042.72, and 3042.73. The Department determined that the proposed terminology was more restrictive than the terminology used in the other sections of this chapter and in the child care facilities regulations in Chapters 3270, 3280 and 3290, and that such differences served no regulatory purpose. The Department, therefore, made changes to this section to include references to a "licensed physician, physician's assistant, CRNP or psychologist."

§ 3042.86 – Change reporting and processing

Two commentators disagreed with the proposed section for different reasons. One commentator disagreed with the requirements that no changes may occur during the eligibility period unless they inure to the family's benefit, unless first the Department addresses the cost-of-living increase to the amount paid per day, and the frequency of subsidy payments to providers.

The other commentator requested the Department make changes to every section of the proposed regulation to better ensure compliance with 45 CFR §§ 98.21(e)(2)(i) and (ii), and 98.21(e)(4)(i) and (ii), which relate, respectively, to changes that must be reported; the way in which parents may report changes; the requirement that the eligibility agency act upon reported changes that would result in a reduction to the co-payment; and the prohibition on agency action that would reduce or terminate subsidy based upon reported changes. The commentator also suggested that the title of this section be changed.

As for subsection (a), the commentator suggested changes to permit the same period of time for change reporting as for the TANF, SNAP, and MA programs – by the 10th day of the month following the month of the change. The commentator also suggested additional reporting requirements because "it is important for parents, eligibility agencies, and advocates to know what" changes must be reported in between redeterminations." These additions related to notification of a new address and a change in child care provider and purported to satisfy 45 CFR § 98.21(e)(2)(i).

The commentator also suggested a new subsection (b) be added to comply with 45 CFR § 98.21(e)(2)(ii) to ensure an office visit is not required to report a change. The commentator suggested changes to subsection (c) to state that if a parent or caretaker reports an increase in income in excess of 85% of SMI, the eligibility agency shall take the necessary steps to terminate the subsidy with proper notification, as specified. The commentator next suggested that subsection (d) state that "parents and caretakers may voluntarily report changes on an ongoing basis." This commentator suggested new subsections (d)(1) and (d)(2) to clarify when the eligibility must act on voluntarily reported changes, and when the eligibility agency is prohibited from acting on information, as is required by 45 CFR § 98.21(e)(4)(i) and (ii), respectively.

After follow-up discussions, the commentator reiterated their comment that the provisions should be clear and complete, and that changing the requirement to the 10th day of the month following the month of the change will enable families to know whether its income has exceeded 85% of the SMI. The commentator followed up later after all discussions were finished, remarking that "we seem to have reached consensus on many of the issues we raised."

IRRC reviewed the proposed subsections (b) and (c) and asked, first, whether "when determining that a family is no longer eligible", the eligibility agency considers if "the income is an irregular fluctuation or temporary increase that may not cause the parent's or caretaker's annual income to exceed the limit as required under 45 CFR § 98.21(e)." And second, whether the eligibility agency starts "processing the termination as soon as the income change is reported." IRRC asked the Department to explain the implementation procedures for this final-form regulation.

Finally, IRRC suggested that the Department consider revising subsection (b) to clarify how increases in income will be assessed.

Response

Following review of all feedback, the Department made changes to restate and reorganize the requirements. First, as for the other commentator's feedback here, the Department clarified that the restrictions in changes of the subsidy during the eligibility period are prescribed by the CCDBG and are in no way tied to a cost-of-living increase to the amount paid per day or the frequency of subsidy payments to providers. *See* 45 CFR § 98.21 (relating to eligibility determination processes). Further, as previously provided, payment rates were increased twice prior to this final-form rulemaking. Specifically, the rates were aligned on a regional basis, and then increased to promote and better address concerns over equal access, as is consistent with requirements of the CCDBG. *See* 45 CFR § 98.45 (relating to equal access).

Next, regarding IRRC's feedback, the Department evaluates reports of increases in income above 85% of the SMI for whether the reported increase is a fluctuation or a mere temporary increase, as required under 45 CFR § 98.21(e). Specifically, income that is not expected to continue, such as overtime or increased wages due to hazard pay, is disregarded in the income calculation. Second, an eligibility agency does not move to immediately terminate the subsidy but instead assesses the reported change to ensure the change in income is not temporary. As requested by IRRC, the Department made changes to clarify these requirements under paragraphs (b)(1) and (2). Regarding the time for the eligibility agency to act, once a parent or caretaker reports a change in income that would result in the family becoming ineligible, the eligibility agency immediately assesses the reported change to determine whether the reported change is an irregular fluctuation or a temporary increase. If the reported change is either an irregular fluctuation or a temporary increase, the eligibility agency will determine there is no change, and eligibility will continue for the remainder of the minimum 12-month eligibility period. If the change is determined to not be an irregular fluctuation or temporary increase, the eligibility agency will act to terminate the subsidy by issuing an adverse action notice, which states the information specified in section 3042.152 (relating to notice of right to appeal), including the date the family will become ineligible, which is 13 days from the date the notice was issued. Families may appeal an adverse action notice. *See* sections 3042.164 and 3042.165.

The Department also notes that instances whereby parents or caretakers report increases in income above 85% of SMI are scarce. Furthermore, following feedback from one of the commentators, the Department made changes to provide parents or caretakers with additional time to no later than the 10th day of the month following the month of the change to assess the increase in income, and if necessary, report the change as required.

Families receive notification of the specific amount of 85% of the SMI at the time of receiving their eligibility notice. Once the eligibility agency reviews a reported income change, if confirmed as above 85% of SMI, the eligibility agency proceeds with providing proper notification that the subsidy is being terminated, as required by the CCDBG and this final-form regulation.

Finally, regarding the commentator's several suggestions, after extensive follow-up meetings with the commentator, the Department accepted some of the suggestions and otherwise reorganized and clarified the requirements for this section. Specifically, for subsection (a), the Department accepted and adopted the suggestion that a parent or caretaker is not required to report a change in income above 85% of the SMI until the 10th day of the month following the month of the change in income. The Department agrees with the commentator's statement that "this allows parents to total their income for the entire month and determine whether the income has gone over the threshold for required reporting." As for the suggestions to add the same reporting requirements for a new address or a change in child care provider, such requirements were neither proposed nor are they prescribed requirements of the CCDBG, and so the Department declined to add them here. However, the substantive provisions of the proposed subsection (a) were moved to the final-form subsection (c).

The Department declined the commentator's suggestion to add a subsection to mirror 45 CFR § 98.21(e)(2)(ii), which stated that "an office visit is not required in order for the parent or caretaker to report a change. A change may be reported by phone, mail, hand-delivery, facsimile or electronically." To clarify, the notification requirements prescribed in the final-form regulation do not require an office visit in order to report a change, nor do the reporting requirements restrict the means through which notification can be provided. The Department declines to make this change since the final-form rulemaking satisfies the requirements of 45 CFR § 98.21(e)(2)(ii) and all other CCDBG requirements.

The Department accepted the suggestion for the final-form subsection (c) to make clear that changes can be reported at any time. The final-form language is substantially similar to the language in 45 CFR 98.21(e)(4).

The Department accepted the suggestions for new provisions under the now final-form subsection (c) to clarify that if a parent or caretaker reports a change, then the eligibility must act if it's to the family's benefit. Similarly, a new provision was added to clarify the eligibility agency is prohibited from acting on information that would reduce a family's subsidy unless the information indicated income was in excess of 85% of the SMI. These requirements are added to the final-form rulemaking under s (c)paragraphs (1) and (c)(2). Further, the wording of these requirements is substantially similar to the language in 45 CFR 98.21(e)(4)(i) and (ii).

There were no comments received about the proposed subsection (e), and so there were no substantive changes to that provision. Because of other changes made to this final-form regulation, the proposed subsection (e) is the final-form subsection (d). Finally, the Department acknowledged the commentator's suggestion to change the title of this section. Because of the changes made, the Department changed the title of this section to "Change reporting and processing" to describe this provision's content more accurately.

§ 3042.91 – General co-payment requirements

One commentator suggested adding language to this requirement to comply with 45 CFR 98.21(a)(3), to ensure the eligibility agency does not increase the family co-payment during the eligibility period. After follow-up discussions, the commentator stated they suggested clear language that expressly prohibits a co-payment increase during the eligibility period as per federal law.

Response

The Department acknowledges the commentator's thoughtful feedback and adopted in substance the suggested added provision as final-form subsection (f), to clearly state that eligibility agencies shall not increase the co-payment during the eligibility period.

§ 3042.94 – Parent or caretaker co-payment requirements; and § 3042.101 – Eligibility redetermination

The Department is combining its response for these two sections. Notably, the two commentators who disagreed with section 3042.94 also disagreed with section 3042.101.

Seven commentators agreed with removing the requirement that parents or caretakers pay the equivalent of the co-payment in advance. One commentator requested clarification about whether a registration fee and tuition payments that are due the Friday before care begins are considered an advance co-payment. Two commentators disagreed with the abolition of advanced co-payments as well as the expanded eligibility period to every year and not every 6 months. The commentators observed that parents could be redetermined eligible, lose their jobs without providing any notice to the Department, and then as a result be unable to afford to pay the copay, which itself causes a host of issues for child care providers.

One of the two commentators who disagreed with these provisions stated that parents should be held more accountable, and then observed that if a parent owes a large balance to a provider after incurring fees, the only consequence is to reconcile one week of co-payments. The commentator continued that such parent is then free to transfer to another site, which results in providers being left with large, unpaid balances. The commentator noted that this results in instability for the provider to manage bills, pay mortgages, and pay their payroll, which makes it more difficult to provide quality care, pay better salaries, hire more qualified staff, and stay up to date on the latest materials and supplies. This commentator suggested the Department require parents to settle their entire balances and collect proof of payment from the providers before approving any transfer, and that the Department also require that parents be redetermined eligible before a transfer is granted.

The commentator further suggested that the Department develop a Resolution Department, noting that parents have very little respect for what providers do. Similarly, the commentator suggested that a department be created to audit child care providers, noting possible fraud with

child care centers that do not collect co-payments despite the requirement to collect the co-payments pursuant to the provider agreement.

The other commentator who disagreed with this provision disagreed with the expanded eligibility period over concerns of fraud. This commentator suggested that calls or visits occur to the places of employment to verify they are still employed, the number of hours, the schedule, and the hourly wages. This commentator suggested verification of the child's enrollment and that facility records match the information submitted to the eligibility agencies, as well as home visits to the child's address to verify the address, the household, any verification of guardianship, and the safety of the dwelling.

Response

The Department is not changing this section because 12-month eligibility periods are prescribed by the CCDBG. See 45 CFR § 98.21 (relating to eligibility determination processes). Further, tuition and registration fees collected prior to the start of care do not constitute an advance co-payment, but instead, they would be considered an additional charge for care. In addition, providers cannot charge fees to parents receiving subsidized child care services that are in excess of the fees charged for private-pay families. As well, the Department reiterates, as was discussed in the proposed rulemaking, that instances involving termination of subsidy because of failure to meet the work requirements are exceedingly rare.

Next, the Department clarifies that the final-form regulation only removes the requirement for advanced copayments, rather than prohibits what had been a codified barrier to a parent or caretaker who is attempting to become more self-sufficient. The Department agrees that the advanced copayment requirements are and have been difficult to enforce. Since these payments are no longer required under the final-form rulemaking, these payments are an issue between the parent or caretaker and the child care provider. They do not affect a family's eligibility for subsidized child care.

Finally, termination for delinquent co-payments is permitted, and that families cannot transfer a child to a new provider if they are delinquent in their co-payment. If providers report the delinquency timely, by the last day of service for the week the co-payment was not paid, the eligibility agency will immediately send a notice of adverse action to the family. The family then has 13 days to pay the outstanding co-payment or subsidy will terminate at the end of the notification period. *See* section 3042.95 (relating to delinquent co-payment).

If providers do not report the delinquency timely, and wait, *e.g.*, several weeks to report it, the family is responsible to pay only the delinquent co-payment from the time it was reported to the time the notice of adverse action was sent. When the parent or caretaker makes a payment, the payment is applied to the current week's copayment first. Generally, in order to satisfy the entire delinquent copayment, the parent or caretaker would have to pay the current week's copayment as well as the amount of the delinquency. The Department reiterates that parents or caretakers can report changes that might result in lower co-payments at any time during the eligibility period. *See* section 3042.86 (relating to change reporting and processing). The Department otherwise declined the commentators' suggested changes for parents to settle their entire

balances and collect proof of payment from the providers before approving any transfer; for parents be redetermined eligible before a transfer is granted; for the Department to develop a Resolution Department and for the Department to audit child care providers to locate possible fraud with child care centers that do not collect co-payments despite the requirement to collect the co-payments; for the eligibility agencies to call or visit the places of employment to verify they are still employed, the number of hours, the schedule, and the hourly wages; and for requiring verification of the child's enrollment and for facility records to match the information submitted to the eligibility agencies, as well as home visits to the child's address to verify the address, the household, any verification of guardianship, and the safety of the dwelling. The Department declined the suggestions because the suggestions are not CCDBG requirements. The Department noted that its eligibility agencies already require verification consistent with CCDBG requirements, and that this final-form rulemaking requires that a subsidy will be terminated if the parent or caretaker has committed substantiated fraud or intentional program violations that invalidate prior determinations of eligibility.

§ 3042.95 – Delinquent co-payment

Two commentators disagreed with this section. One commentator disagreed with the way the Department conducts complaint investigations, noting that "parents express anger when they are approached with fees for arriving late to collect their children. Their recourse is to abruptly uproot their children and disenroll them from the center, leaving an unpaid balance other than a week's copayment." Continuing, this commentator noted that parents have threatened to report false complaints to the Department "when they don't get their way." The other commentator disagreed this provision because it allows no room for parents or caretakers to work out payment plans with the providers when they have been unable to make co-payments.

After follow-up discussions, the commentator suggested that flexibility be permitted in the regulations to allow for payment agreements between parents and their providers. The commentator stated the only flexibility at present is the circumstance where income decreases and the parent requests a corresponding reduction in the co-payment, and not the many other circumstances where a parent might have trouble making co-payments even though income has not changed. This commentator explained that their suggested revisions are intended to convey that parents and providers can negotiate agreements that would avoid this result.

Response

Although the Department appreciated the comments received, after careful consideration, the Department is maintaining the regulation as published on proposed rulemaking. First, the Department clarifies that complaint investigations are not prescribed by this rulemaking, but instead, are prescribed by the licensure regulations under 55 Pa. Code §§ 3270, 3280 and 3290 (relating to child care centers; group child care homes; and family child care homes). Next, the payment of incidental fees are issues between the parent or caretaker and the child care provider, and they do not affect a family's eligibility for subsidy.

Next, the Department acknowledges that payments can fall behind for several reasons, and the Department appreciates that financial crises can occur that makes payment of the co-payment difficult even though income has not changed. However, co-payments are required weekly payments. *See* section 3042.91 (relating to general co-payment requirements). Furthermore, pursuant to this final-form rulemaking, and as noted by the commentator, the family co-payment can be decreased at any time following the reporting of a change in the family's circumstances. *See* sections 3042.86 and 3042.94 (relating to change reporting and processing; and parent or caretaker co-payment requirements).

Finally, the Department carefully considered the commentator's suggestions, and after review, the Department declined the suggested changes to permit payment plans between providers and parents or caretakers because enforcement of such a plan would still have the same result, which is the potential loss of eligibility for failure to pay the co-payment. In addition, such a provision might unfairly burden or disadvantage the child care provider community because providers could be placed into situations where payment plans are expected as a matter of course.

The Department further reiterates that co-payments are required by the CCDBG as well as this final-form rulemaking, and that payment plans are not CCDBG requirements. The Department determined that maintaining this provision strikes the appropriate balance between improving stability and continuity of care for vulnerable families across this Commonwealth and addressing the concerns and challenges of the provider community.

§ 3042.98 – Co-payment determination

One commentator requested that the requirement under the proposed section 3042.98(a)(3) be changed to 7% to reflect the CCDF benchmark for affordable parent fees. Also, the commentator suggested the Department ensure that its eligibility agencies maintain timely communication with child care providers about changes in the status of children and families enrolled in the program with respect to eligibility, suspension or redetermination, so as not to increase the financial burden on providers.

IRRC requested clarification to change in proposed paragraph (a)(2) the cross-reference to section 3042.34(a), which appears to be incorrect.

Response

The Department thanks the commentator for the thoughtful feedback, and after review, the Department acknowledges that the federal benchmark is for co-payments to not exceed 7% of the family's income. The Department notes the federal benchmark is and has been set to 7% since 2016, and that the rate is based on data from the U.S. Census Bureau indicating that on average, between 1997 and 2011, the percent of monthly income families spent on child care was constant at around 7%. Consistent with CCDBG provisions relating to equal access, the federal benchmark states that as CCDF assistance is intended to offset the disproportionately high share of income that low-income families spend on child care in order to support parents in achieving economic stability, CCDF families should not be expected to pay a greater share of their income

on child care than reflects the national average. As well, the Department notes that this Commonwealth's announced approach to lower co-payments to 3-7 percent is consistent with the federal benchmark that co-payments do not exceed 7 percent. Subsection (a)(3) is therefore changed to ensure that co-payments for families under this rulemaking do not exceed 7% of the family's annual income, and to ensure consistency with subsection (a)(2).

Subsection (a)(4) was amended at final-form rulemaking to replace 8% with 5%, so that families with an annual income of 100% of FPIG or less do not pay co-payments that exceed 5% of the family's annual income. The change to 5% reflects a pro-rata adjustment for consistency with the change made in subsection (a)(3), and it is consistent with the federal benchmark and all CCDBG provisions, including those relating to equal access. The Department reiterates that there have been rate increases twice during the time of preparing this final-form rulemaking that have been made possible through funds from the American Rescue Plan Act of 2021. Finally, the Department notes that Pennsylvania was awarded $452 million in discretionary funding from the American Rescue Plan Act (ARPA), and that ACF provided to the Department recommendations on the use of those funds. Consistent with the recommendations, a total of $121.9 million is being used over 4 fiscal years to support the codified reduced family co-payments for the CCW program. This funding is projected for allocation for fiscal years 2021-2025. Federal discretionary dollars will cover the full cost of the change in State Fiscal Year (SFY) 23-24 and partially cover the cost in SFY 24-25, after which time CCDF funds or state funds, or both, will cover the full cost. Similarly, the increased subsidy base rates are funded through the same ARPA funding.

Further, according to the U.S. Census Bureau, the percent of monthly income American families spent on child care on average between the years 1997 and 2011 has stayed constant at around seven percent. In addition, the federal benchmark states that as CCDF assistance is intended to offset the disproportionately high share of income that low-income families spend on child care in order to support parents in achieving economic stability, CCDF families should not be expected to pay a greater share of their income on child care than reflects the national average. In addition to the federal benchmark, the Department reiterates that a core CCDBG purpose is to assist states in delivering high-quality, coordinated early childhood care and education services to maximize parents' options and support parents trying to achieve independence from public assistance. See 45 CFR § 98.2 (relating to purposes). Finally, the Department note that adoption of the federal benchmark is in line with this Commonwealth's announced approach to lower the copayments to 3-7 percent, which is in line with the federal recommendations for family obligations for subsidized child care. The Department therefore adopted the federal benchmark and changed the final-form subsection (a)(3) to ensure that a family's co-payment does not exceed 7% of the family's annual income. The Department reiterates that it made changes to the final-form subsection (a)(4) to ensure the co-payment does not exceed 5% of the family's annual income, which reflects a pro-rata adjustment for consistency with the change made in subsection (a)(3), and is consistent with the federal benchmark, its rationale, and all CCDBG provisions, including those relating to equal access. Next, the Department reiterates that the incorrect cross-referenced citation noted by IRRC has been removed at final-form.

Finally, regarding the commentator who requested for eligibility agencies to maintain timely communications with child care providers about changes in the status of children and families enrolled in the program with respect to eligibility, suspension or redetermination, so as not to increase the financial burden on providers, the Department explained that eligibility agencies are already advised to maintain timely communications with child care providers.

§ 3042.112 – General requirements for former TANF families

One commentator agreed with eliminating redeterminations for former TANF families on the 184th day after TANF ends.

IRRC requested the Department correct a citation under subsection (a)(3). IRRC stated the citation should be to section 3042.12 and not section 3042.12(a).

Response

The Department thanks the commentator for the support. Following feedback from IRRC, the Department changed and corrected the citation to reference to section 3042.12 and not section 3042.12(a).

§ 3042.131 – General provisions for Head Start

IRRC requested the Department correct a cross-reference in the proposed subsection (a) here, which appears incorrect.

Response

The Department thanks IRRC for their careful review and corrected the reference. Specifically, under subsection (a), the Department removed the language "subsection (d)" and replaced it with "§ 3042.132 (relating to eligibility determination for Head Start)."

§ 3042.145 – Domestic and other violence

One commentator requested clarification about suggested changes to ensure that domestic violence survivors are provided the same protection under this rulemaking as for domestic violence survivors under the TANF program, as well as domestic violence survivors under the current regulations. The commentator stated the proposed regulations would effectively reduce or eliminate the allowance for a partial waiver of the work-hours requirements for a parent who loses work within 6 months of redetermination, and so the protection afforded domestic violence victims is being reduced.

After follow-up discussions with this commentator, the commentator suggested the presumptive eligibility requirements be expanded, noting "Perhaps your experience is different, but our experience tells us that parents who lose their jobs, except for those going on leave of some kind,

very rarely have an assurance that they will be able to return to work with the same employer. We remain troubled that parents who experience domestic violence or the onset of a disability shortly before their redetermination will be worse off under the proposed regulations than they are under the current ones; expanded presumptive eligibility might help."

IRRC noted this section provides for a 92-day waiver period of verification requirements and the co-payment, but that this section does not address the redetermination process. IRRC requested the Department to explain how this waiver is implemented and to clarify this section as needed.

Response

First, the Department clarifies that a waiver for domestic violence is limited in scope, and that it only permits the parent or caretaker to waive verification of certain eligibility requirements as well as the copayment for up to 92 days. Unlike the TANF program, a waiver here does not allow for the waiver of eligibility requirements such as age, income limits, state residency, the minimum number of hours of work, education or training, citizenship, or the number of paid absences. After review, the Department declined the suggested language for subsection (b) because it was redundant and unnecessary. The language in subsection (b), in addition to the longer eligibility periods and the availability of presumptive continued eligibility at redetermination in this final-form rulemaking, all operate to ensure that domestic violence survivors are not penalized.

The Department next acknowledges the commentator's feedback that "there is still a problem here for parents who lose work due to domestic violence within 6 months of their determination." After suggesting modified language, the commentator insisted that without their suggested language, "those parents would no longer get the six months of protection they get under the current regulations."

The Department reiterates that the eligibility period under this new chapter is now 12 months and not 6 months. As well, the final-form rulemaking requires only that parents or caretakers satisfy the work requirement at the time of application or redetermination, with the exception being for parents or caretakers who are experiencing homelessness and who qualify for a period of presumptive eligibility or those who may qualify for a period of presumptive continued eligibility. If a parent or caretaker qualifies at application and then loses their job because of a domestic violence incident, then eligibility will continue until the next redetermination period. This result operates to provide greater protection to domestic violence survivors throughout the entire eligibility period. The Department thanks the commentator for their feedback applauding the Department for exercising this option.

Next, following changes made to the provisions in section 3042.147 (relating to presumptive continued eligibility at redetermination), the Department clarifies those parents or caretakers who are impacted by domestic violence may qualify for a period of presumptive continued eligibility at redetermination provided they have a verifiable job to return to within 92 days following the date of the redetermination. *See* section 3042.147(b). The Department notes that the eligibility period was previously 6 months, and so domestic violence waivers operated differently under shorter eligibility periods that are increased under this final-form rulemaking.

The Department acknowledges the concerns expressed by the commentator regarding parents impacted by domestic violence who might lose employment within 6 months of their redetermination date. Following this feedback from the commentator, the Department conducted a review of its data on waivers, and after review, the Department notes that these instances are exceedingly rare.

Nevertheless, the Department reiterates that the minimum eligibility periods are now 12 months, and so once eligibility is determined, the subsidy must be provided for the balance of the minimum eligibility periods in all cases. Further, the Department declines to further expand presumptive eligibility because the longer, 12-month eligibility period and the availability of presumptive continued eligibility at redetermination already operate to provide greater protection to domestic violence survivors because they permit the parent or caretaker to maintain eligibility for at least the balance of the initial eligibility period, up to 12 months, and because they permit a means for domestic violence survivors to maintain eligibility at redetermination, neither of which were possible under the previous requirements. Further, the addition of subsection (e), which makes clear that, except as specified in subsections (c) and (d), the eligibility agency will grant a domestic violence waiver for the balance of the 12-month eligibility period following verification being provided to the eligibility agency. The addition is consistent with the current section 3041.91(e). The added subsection (e) is therefore consistent with the current framework and ensures this class of vulnerable families is protected for the entirety of the eligibility period. Further, if a waiver under this section is requested at redetermination, then the provisions of the final-form section 3042.147 (relating to presumptive continued eligibility at redetermination) apply. And if those requirements are satisfied, eligibility will be redetermined at the end of the 92-day period, and the eligibility agency will reset the redetermination date.

The Department also added a new subsection (f) following the Department's review to clarify the process for establishing eligibility under this section. Specifically, the requirements in paragraph (1) make clear that if verification pursuant to the Department's form is not provided prior to expiration of the 92-day period specified in subsection (d), or if the family is determined ineligible, the eligibility agency will take the necessary steps to terminate the temporary eligibility with proper notification to the family as specified in section 3042.155 (relating to notice of adverse action). Next, the requirements in paragraph (2) make clear that if a family is determined ineligible or fails to provide the required verifications, any services received during the 92-day period are not considered an error or improper payment. The eligibility agency will pay any amount owed to a child care provider for services provided. The added requirements are consistent with the Department's current framework for waivers. The Department is clarifying then that as a result of these changes, and as consistent with CCDBG requirements, families experiencing domestic violence will receive 12 months of continuous eligibility following verification under this section.

Further, following feedback received noting confusion and clarity issues on the differences between waivers and presumptive eligibility, the Department reorganized sections 3042.141-3042.147 to improve clarity by stating all of the substantive waiver requirements first, and then listing the requirements for presumptive eligibility. Notably, the current Chapter 3041 permits

waivers for domestic violence only. The final-form rulemaking extends waivers to also apply for families experiencing homelessness. As such, waivers only apply under this final-form rulemaking to families experiencing domestic violence or homelessness.

Regarding implementation, granting a waiver excuses the parent or caretaker from meeting certain requirements for up to 92 days. Once the waiver period expires, the parent or caretaker must provide verification or be in compliance with the requirement that was waived. If verification is provided, eligibility and payment will continue for the rest of the 12-month eligibility period. If verification is not provided, or if the individual is determined ineligible, the Department's eligibility agency will take the necessary steps to terminate the subsidy and send a notice of adverse action as specified in section 3042.155 (relating to notice of adverse action). The family can provide the verification at any time before the subsidy is terminated, and once provided, the subsidy will continue for the remainder of the eligibility period. Further, if the parent or caretaker fails to pay the required co-payment, the Department's eligibility agency will take the necessary steps to terminate the subsidy and send a notice of adverse action as specified in section 3042.155 (relating to notice of adverse action).

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

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

§ 3042.146 – Homelessness

Six commentators responded, with five agreeing with waivers for parents or caretakers who are experiencing homelessness. The sixth commentator, who asked several questions about the proposed rulemaking, continued and asked, "If the family is homeless, isn't the daycare required to report this situation to Children and Youth Services?"

Response

The Department thanks the commentators for their support. As noted, reports about a family that is homeless may be referred to the county Children and Youth office for assessment as a general protection services case. Homelessness is not always unsafe, as it can entail situations when the child or the child's family has no stable place to live. This includes living in a car, on the street, or staying in a homeless or other temporary shelter.

Next, because of changes made to the definition of presumptive eligibility under section 3042.3 (relating to definitions), the Department made changes to add back in the substantive provisions removed from the proposed definition of presumptive eligibility. Furthermore, to better clarify the differences between waivers and presumptive eligibility, the Department reorganized this section's provisions and added subsections to more fully state the requirements of this section. Specifically, subsection (a), which was based on the proposed subsection (d), was revised to clarify that at the time of application, the eligibility agency may grant a period of presumptive eligibility to a parent or caretaker who is experiencing homelessness for a temporary period not to exceed 92 calendar days. Next, subsection (b) was added using language that was proposed under the definition of "period of presumptive eligibility." The additional subsection makes clear that a parent or caretaker who is experiencing homelessness may be permitted to substitute job search activities to meet the work requirement specified in section 3042.33 (relating to work, education and training) for the duration of the period of presumptive eligibility for a temporary period not to exceed 92 calendar days. Subsection (c), also a new subsection, clarifies that a parent or caretaker may be permitted to self-certify their status as experiencing homelessness as specified in section 3042.63 (relating to self-certification) to qualify for and be granted a period of presumptive eligibility for a temporary period not to exceed 92 calendar days. The Department notes the remainder of the subsections concern the waiver requirements.

New subsection (d) establishes that, except as specified in subsections (e) and (f), the eligibility agency will grant a waiver to families who are experiencing homelessness for the balance of the 12-month eligibility period following verification being provided to the eligibility agency. The Department reiterates that the minimum eligibility periods are now 12 months under this final-form rulemaking. This added requirement is consistent with the required minimum 12-month eligibility periods and with the final-form waiver requirement for families dealing with domestic violence at section 3042.145(e) (relating to domestic and other violence). Subsection (e), meanwhile, restates the proposed subsection (b) and adds a paragraph to clarify that the work requirement is waived only during the initial period of presumptive eligibility. The paragraphs were reordered for congruence with the ordering of the same paragraphs in section 3042.145(c). Subsection (f) restates the proposed subsection (c). There were no changes other than to conform to citation standards.

New subsection (g) clarifies that the eligibility agency will use and accept the Department's form providing for verification by documentary evidence, third party statement or self-certification as acceptable verification of homelessness. The Department notes the congruity of this requirement with the requirement stated in § 3042.145(f) for families who are experiencing domestic or other violence. The added subsection is also consistent with section 3042.143 (relating to general

verification requirements for waivers) and was added to emphasize the verification requirement for homelessness and to state the requirements for eligibility for families experiencing homelessness more completely.

Finally, subsection (h), which is based on the proposed subsection (e), was changed to ensure accuracy and consistency with the Department's process and to state the requirement more completely.

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

§ 3042.147 – Presumptive continued eligibility at redetermination

One commentator agreed with allowing a 92-day period of presumptive eligibility for parents or caretakers who are on maternity, family or disability leave at the time of redetermination; have experienced the onset of a disability; or have had a break in work, education or training.

IRRC requested clarification for what appears to be a conflict between subsection (a)(3) here and the proposed definition of period of presumptive eligibility, noting that the proposed definition requires that a parent or caretaker either be experiencing homelessness or be on leave approved by the Department with verified work to begin within 92 days.

Response

The Department thanks the commentator for their support and thanks IRRC for their careful review. Similar to section 3042.146 (relating to homelessness), to better clarify the differences between waivers and presumptive eligibility, the Department reorganized this section's provisions and added subsections to state the requirements of this section more completely, and corrected all cross-references. Following changes made to the definition of "period of

presumptive eligibility" under section 3042.3 (relating to definitions), the Department made changes to the title to clarify that these requirements relate to presumptive continued eligibility at redetermination. Specifically, the Department restates the requirement in subsection (a) to clarify that a period of presumptive eligibility may not exceed 92 calendar days from the date of the redetermination.

Next, the Department removed the proposed requirements in paragraphs (a)(1)-(3) due to incongruity and confusion because the minimum eligibility periods are 12 months. The Department notes the timing provisions from the proposed definition of "period of presumptive eligibility" were added in response to IRRC's request to remove the timing provisions from the definition into the body of the regulations to make clear that a period of presumptive eligibility is temporary and shall not exceed 92 calendar days from the date of the redetermination. The changed terminology to "period of presumptive continued eligibility" better describes the eligibility because this section concerns eligibility at the time of the redetermination, and so the parent or caretaker has already been determined eligible and is already receiving subsidized child care services based on eligibility from the previous period. This section prevents families from needless cycling on and off from services, and the changed terminology better reflects the purpose of the requirement. The Department reiterates that "period of presumptive continued eligibility" was added to the definitions section under section 3042.3 (relating to definitions), so it is clear the term refers to a temporary period of eligibility that is established at redetermination as provided for in this section.

Next, new subsection (b) establishes that in order for a parent or caretaker to be granted a period of presumptive continued eligibility at redetermination, the parent or caretaker is required to submit verification of work, education or training that satisfies the work-hour requirement as specified in section 3042.33 (relating to work, education and training) that is set to begin prior to the expiration of the temporary 92-day period specified in subsection (a), unless the provisions in section 3042.146 (relating to homelessness) apply. Subsection (c), which is based on the proposed subsection (b), was changed to clarify that the eligibility agency must verify prior to the expiration of the temporary period that the parent or caretaker has begun work, education or training and is in compliance with the work-hours requirement. The change clarifies and states the requirement more consistently with the Department's current process by changing the language to reference action prior to expiration and not at the time of expiration.

New subsection (d) clarifies that temporary eligibility will be terminated in cases where the parent or caretaker has not begun work, education, or training prior to expiration of the temporary period. New subsection (e) establishes that if a family is determined ineligible at any time during a temporary period of presumptive continued eligibility, any services received during the 92-day period are not considered an error or improper payment. The eligibility agency will pay any amount owed to a child care provider for services provided during the temporary period of presumptive continued eligibility. The added requirement is consistent with the provisions in sections 3042.145(f)(2) and 3042.146(g)(2) (relating to domestic and other violence; and homelessness). Subsection (f), which is based on the proposed subsection (c), was changed to clarify that at the end of a 92-day temporary period of presumptive continued

eligibility, the eligibility agency will complete a redetermination to establish the 12-month eligibility period and reset the redetermination due date.

The amendments for this section were made because of feedback received from IRRC noting ambiguity in the proposed sections, because of changes made to the definition of "period of presumptive eligibility," and to state the requirements more completely and consistently as was done with the requirements in sections 3042.145 and 3042.146.

§ 3042.151 – General notification requirements; and § 3042.165 – Eligibility agency responsibilities regarding appeal

The Department is combining its responses for these two sections. For each regulation, there was one commentator who responded with similar feedback. As such, the Department is considering and responding to the feedback together.

One commentator responded and suggested for each of these regulations that the Department expand the period between notice and action on the case to 13 days from 10 days, as it did with the Medical Assistance, SNAP, and TANF programs, in recognition of significant mailing delays. After follow-up discussions, the commentator suggested that the requirements mirror and provide authorization for the 13-day period that is programmed into PELICAN.

Response

The Department acknowledged the commentator's feedback. After review, the Department adopted the commentator's suggested changes to expand the period from 10 calendar days to 13 calendar days for each of sections 3042.151(a) and 3042.165(d) and (e). The Department clarified that the requirements are prescribed with reference to action by the eligibility agency and so not the parent or caretaker. After follow-up discussions with this commentator, the commentator requested the regulations mirror and provide for the authorization that is programmed into the Department's system that is used for the subsidized child care program, Pennsylvania's Enterprise to Link Information for Children Across Networks (PELICAN). To further address these concerns, and to ensure the requirement is stated for consistency as requested by the commentator, the Department deleted the phrase "in writing" and added the language "issue written notification" in section 3042.151(a) to ensure the requirement is clear and is consistent with the Department's process for sending notifications.

§§ 3042.155 – Notice of adverse action; 3042.157 – Notice confirming a change in benefits; 3042.158 – Notice confirming a change in co-payment; and 3042.177 – Co-payment increase related to overpayment

The Department is combining its responses for these sections. For each regulation, there was one commentator who responded with feedback. As such, the Department is considering and responding to all of the feedback together.

One commentator suggested that each of these sections would strip families of the right to an adverse action notice for suspension and changes to the family co-payment. The commentator suggested changed language for each section. After follow-up discussions, the commentator suggested that due process requires an adverse action notice whenever subsidy is reduced, which is what happens effectively when a co-payment is increased. The commentator reiterated that a confirming notice is appropriate for suspension requested by the family but not when imposed unilaterally by the eligibility agency, again because of due process concerns.

Response

After careful consideration, the Department is maintaining the language of these sections. The Department reiterates that family co-payments can only increase at redetermination, and so such an increase would only ever occur for a new eligibility period. Furthermore, when the co-payment amount for a new eligibility period does change, the eligibility agency sends a confirmation notice with appeal rights regardless of whether the change is an increase or a decrease.

Further, all notices of suspension are sent as confirmation notices and include appeal rights regardless of the reason for suspension. Finally, the notification requirements under this final-form rulemaking ensure due process protections for all families across the Commonwealth.

§ 3042.161 – Appealable actions

IRRC requested that a citation be changed in Paragraph (1) to correct the reference to section 3042.146(c), which appears incorrect.

Response

The Department thanks IRRC for their review and made changes under paragraph (1) to correct the reference to proposed section 3042.146(c) (relating to homelessness) as well as to correct the stated title of the proposed section 3042.147 (relating to presumptive continued eligibility at redetermination) following changes made in this final-form rulemaking. Also, because of the addition of section 3042.22 (relating to subsidy termination) on final-form, the Department added a paragraph (8) to clarify that subsidy terminations under section 3042.22 may be appealed.

§ 3042.162 – Discontinuation of subsidy during the appeal process

One commentator suggested a new subsection here to allow for the resumption of subsidy pending a hearing decision if the parent catches up on co-payments. After follow-up discussions, the commentator reiterated their suggestion.

Response

The Department thanks the commentator for the feedback and adopted the suggested change to add a new subsection to clarify that following a suspension, a subsidy will be reinstated pending a hearing decision if co-payments are brought up to date.

§§ 3042.163 – Subsidy continuation during the appeal process; 3042.164 – Parent or caretaker rights and responsibilities regarding appeal; 3042.166 – Hearing procedures; and 3042.173 – Delaying recoupment

The Department is combining its responses for these sections. The Department notes that IRRC's feedback applies to each of the sections 3042.163 and 3042.166, and furthermore, only one commentator provided feedback and made suggestions for sections 3042.163, 3042.164, and 3042.173. As such, the Department is considering and responding to the feedback received for these sections together.

One commentator responded and suggested for each of sections 3042.163, 3042.164 and 3042.173, that the Department expand the period between notice and action on the case to 13 days as it did with the Medical Assistance, SNAP, and the TANF programs.

IRRC requested clarification on whether the wording "or received" under either sections 3042.163(a)(1) or 3042.166(b) refers to the date a parent or caretaker hand delivers an appeal. IRRC requested that the requirements establish a procedure that the parent or caretaker is able to comply with.

Response

The Department appreciates the commentator's feedback, but declines to change the requirements from 10 to 13 calendar days. The Department explained that unlike for sections 3042.151 or 3042.165 above, the requirements under sections 3042.163, 3042.164 and 3042.173 are with reference to action by the parent or caretaker and not the Department or eligibility agency. Further, the 10-day period is consistent with the time period for administrative action filings under the General Rules of Administrative Practice and Procedure. 1 Pa. Code § 35.20 (relating to appeals from actions of the staff).

Next, the Department clarified that the wording "or received" refers to the date the eligibility agency receives the appeal. The Department also noted that appeals can be sent via U.S. mail, hand-delivery, facsimile or electronically.

The Department thanks IRRC for their review and concurred that the wording "or received" is vague. As such, the Department removed the word "received" and replacing it with "delivered" to clarify that the appeal must be either postmarked by such date when sent via the mail or delivered by such date when sent via hand-delivery, facsimile or electronically. Pursuant to this feedback from IRRC, the Department made the same changes in section 3042.166(b) (relating to hearing procedures) and section 3042.163(a)(1) (relating to subsidy continuation during the appeal process).

§ 3042.171 – Overpayment

One commentator suggested added language to this regulation to comply with 45 CFR § 98.21(a)(4) to ensure that payments received by families during the eligibility period are not considered an overpayment due to a change in the family's circumstances during that period of time. The commentator also suggested that parents may inadvertently fail to comply with one or more regulations, and so changes were suggested to require that the failure to comply be intentional, and that no overpayment would be required if the appeal was filed in "good faith." In follow-up discussions, the commentator reiterated their concerns and asked, "what's wrong with giving families a break where the overpayment is due to inadvertent error"?

Response

After careful consideration, the Department is maintaining the language of this section. First, the provision at 45 CFR § 98.21(a)(4) concerns error rate reporting requirements "under subpart K," and it does not concern requirements for eligibility. See 45 CFR § 98.21(a)(4) as well as 45 CFR Subpart K (relating to error rate reporting).

Next, the Department appreciates the concerns of the commentator. After review, the Department determined that the commentator's suggested language is broad and vague. Specifically, the Department declined the suggested language because the meanings of "intentional" and "good faith" are so broad and vague they could arguably encapsulate any case, thereby rendering the entire provision inoperative. As well, the suggested changes are not required by the CCDBG. Further, this section mirrors the existing requirements under the Chapter 3041 regulations.

Finally, the Department reiterates that subsidy dollars are public funds, and that such funds are scarce. Further, the final-form rulemaking represents a regulatory simplification with respect to application, verification, and the reporting of changes, when either required or requested.

§ 3042.176 – Collection

One commentator suggested changes to this requirement because overpayments in many cases can be very large, and so it is unreasonable to think it is feasible for a family receiving subsidized child care services to pay the amount in full at one time. The commentator continued that its suggested changes would permit a reasonable payment plan agreed upon by the parent or caretaker and the eligibility agency, and they would also permit the eligibility agency to waive collection.

Response

The Department acknowledges the concerns of the commentator but declined the suggested changes. After review, the suggested added language in (b)(1)(i) is functionally redundant to (b)(1)(ii) and (iii). Specifically, the requirement in (b)(1) relates to repayment options, which are as follows: (i) a one-time payment of the full amount owed (and so not a payment plan); (ii) a one-time partial payment and an increase in the co-payment to be paid until repayment is

complete (a plan of repayment); and (iii) an increase in the co-payment until the repayment is complete (again, a plan of repayment).

The commentator's suggestion would require the Department and parent or caretaker to negotiate a "reasonable payment plan" above and beyond what is required in either of (b)(1)(ii) or (iii), or in section 3042.177 (relating to co-payment increase related to overpayment). Specifically, sections 3042.175 (relating to repayment) and 3042.177 already require that "the parent or caretaker shall repay the eligibility agency or Department the full amount of the overpayment," and which restrict the Department from raising the co-payment in cases of overpayment above 5% of the family's gross monthly income.

Notably, section 3042.177(a) states that if "the parent or caretaker indicates to the eligibility agency that an increase to 5% would cause hardship to the family, the family and the eligibility agency may agree to a lesser amount." Similarly, section 3042.177(b) states that "a parent or caretaker may choose to increase the co-payment beyond the amount specified in subsection (a) to repay an overpayment in a shorter period of time." After consideration of these requirements, the Department determined that any "reasonable" payment plan would necessarily be limited in scope, as the provisions in sections 3042.176(b)(1)(ii) and(iii) already prescribe partial payments and one-time payments until the repayment is complete.

The Department declined the suggested changes because the suggestions are either redundant or they establish a new process that is not required by the CCDBG, and so the Department declines to add them here.

Statement of Policy

One commentator suggested that the Department's Policy Communication #08-03 be elevated to a Statement of Policy and codified in this rulemaking to better ensure that eligibility agencies follow the *Juras* Principle, as already instructed by the Policy Communication.

Response

The Department has reiterated the *Juras* Principle through its communications to its eligibility agencies. Furthermore, Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings) already applies to subsidized child care appeals. Lastly, a statement of policy is distinct from a regulation and may not be added as part of a rulemaking. Because the suggested change to add a Statement of Policy is unnecessary, redundant, and not part of the rulemaking process, the Department declines this suggestion.