

**INDEPENDENT REGULATORY REVIEW COMMISSION
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held May 18, 2023

George D. Bedwick, Chairman
John F. Mizner, Esq., Vice Chairman
John J. Soroko, Esq.
Murray Ufberg, Esq.
Dennis A. Watson, Esq.

Order Issued June 20, 2023
Regulation No. 14-545 (#3275)
Department of Human Services
Subsidized Child Care Eligibility

On October 22, 2020, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of Human Services (Department). This rulemaking deletes 55 Pa. Code Chapter 3041 and adopts 55 Pa. Code Chapter 3042. The proposed regulation was published in the November 14, 2020 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on March 23, 2023.

This final-form rulemaking is a comprehensive revision and reorganization of the regulations utilized by the Department to administer the subsidized child care program. The purpose of the final-form rulemaking is to ensure alignment with the Federal Child Care and Development Block Grant of 2014 in order to continue receiving federal funding. 42 U.S.C.A. §§ 9857 – 9858r.

On May 12, 2023, Acting Secretary of Human Services Valerie A. Arkoosh, MD, MPH, submitted a letter to this Commission requesting disapproval of the final-form regulation due to the potential financial impact of deleting proposed 55 Pa. Code § 3042.14(d). The Department made a subsequent request for disapproval at this Commission's meeting on May 18, 2023, in response to comments from the regulated community on the potential unanticipated consequences of the final-form regulation. This request was made so that the Department may consider revising this provision to the status quo and resubmit a final-form regulation with revisions.

Proposed 55 Pa. Code § 3042.14(d) permitted child care providers to charge parents and caretakers receiving subsidized child care the difference between the provider's private pay rate and the state subsidy reimbursement. Child care providers may currently charge this difference under 55 Pa. Code § 3041.15(c). As explained by the Department in this final-form regulation package, the removal of this charge option has an estimated fiscal impact on child care providers in the form of lost potential revenue of approximately \$16.5 million annually. In addition, the Department reported that over 3,600 of 5,100 regulated child care providers are small businesses. Public commentators expressed concerns regarding the deletion of proposed 55 Pa. Code § 3042.14(d). They explained that the potential financial impacts on child care providers may lead to a reduction in the number of subsidy families accepted, and program and classroom closures.

The Regulatory Review Act directs this Commission to determine if a regulation is in the public interest by considering the criteria in 71 P.S. § 745.5b(b). For the following reasons, we find that this regulation is not in the public interest.

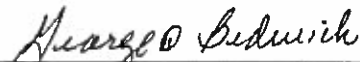
First, given the disapproval requests from the Department, this final-form regulation does not meet the reasonableness criterion in 71 P.S. § 745.5b(b)(3).

Second, the economic or fiscal impacts of this final-form regulation may result in lost revenue to the regulated community, of which 70% are small businesses. Therefore, this final-form regulation does not meet the criteria related to economic or fiscal impacts, and effects on small businesses in 71 P.S. § 745.5b(b)(1) and (8), respectively.

We have determined this regulation is consistent with the statutory authority of the Department (62 P.S. §§ 201(2), 403(b) and 403.1) and the intention of the General Assembly. However, after considering all of the other criteria of the Regulatory Review Act discussed above, we find promulgation of this regulation is not in the public interest.

BY ORDER OF THE COMMISSION:

This regulation is disapproved.


George D. Bedwick, Chairman

