

# Announcement C-21-01



Pennsylvania Office of Child Development and Early Learning  
Bureau of Certification Services and Bureau of Early Learning Policy and  
Professional Development

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**Expiration Date:** N/A

**Subject:** Waiver of Child Care Facility Regulations

**To:** Bureau of Certification Staff, Child Care Center, Group Child Care Home, and Family Child Care Home Operators

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**This announcement replaces Bulletin 00-11-01, Waiver of Child Care Facility Regulations.**

## PURPOSE

To inform child care center, group child care home, and family child care home operators of the procedures for requesting a waiver of the Department of Human Services (DHS) regulations (see 55 Pa. Code §3270.13, §3280.13, and §3290.25, relating to waivers).

## BACKGROUND

A waiver is a written statement from DHS that excuses an operator from meeting a specific regulation and substitutes another standard which the operator must meet. The substituted standard has the same legal effect as the regulatory standard. Granting a waiver is discretionary. A waiver is granted to a specific operator for a specific child care facility location and cannot be transferred to a different operator or location. A waiver is not a substitute for correcting regulatory noncompliance cited as the result of an inspection.

DHS regulations permit an operator to request a waiver of the following regulations:

- Child care centers (see 55 Pa. Code §3270.13(c)(1)-(4)):
  - Accreditation requirements which apply to §§3270.34—3270.36 (relating to director qualifications and responsibilities; group supervisor qualifications and responsibilities; and assistant group supervisor qualifications and responsibilities).
  - Physical site requirements in §§3270.61—3270.82 (relating to physical site).
  - Equipment requirements in §§3270.101—3270.108 (relating to equipment).
  - Program requirements in §§3270.111—3270.118 (relating to program).
  
- Group child care homes (see 55 Pa. Code §3280.13(c)(1)-(4)):
  - Accreditation requirements which apply to §3280.34 (relating to primary staff person qualifications and responsibilities).
  - Physical site requirements in §§3280.61—3280.81 (relating to physical site).
  - Equipment requirements in §§3280.101—3280.108 (relating to equipment).
  - Program requirements in §§3280.111—3280.118 (relating to program).
  
- Family child care home (see 55 Pa. Code §3290.25(c)(1)(2)):
  - Physical site requirements in §§ 3290.61—3290.78 (relating to physical site).
  - Equipment requirements in §§ 3290.101—3290.107 (relating to equipment).

An operator must submit a waiver request form (CD 357 – Request For Waiver of Child Care Facility Regulation) to the Regional Office of Child Development and Early Learning (OCDEL) Certification Representative responsible for certifying the facility. DHS staff evaluate the waiver request in accordance with the provisions of the regulation at 55 Pa. Code §3270.13(c) and (d), §3280.13 (c) and (d), or §3290.25(c) and (d), DHS policy, and health and safety factors. The following DHS staff evaluate the waiver request:

- The OCDEL Certification Representative assigned to the facility;
- The Certification Representative’s immediate Supervisor and/or Regional Manager;
- A staff person assigned to the Division of Regulatory Administration in OCDEL’s Bureau of Certification Services (BCS); and
- The BCS Director or the Director’s designee.

DHS determines whether to:

- grant the waiver as requested;
- grant a portion of the waiver request;
- deny the waiver request; or

- dismiss the waiver request without further action.

DHS may also impose stipulations regarding the granting of a waiver request.

The BCS Director sends written notification of the waiver decision to the operator. The written notification includes the basis for the decision, stipulations imposed upon a waiver, and the right to appeal if all or part of the waiver request is denied.

## DISCUSSION

### A. Operator's Responsibilities

An operator may submit a request for a waiver prior to the DHS inspection for an initial certificate of compliance or at any time during the certification period prior to the inspection for the renewal of a certificate of compliance. It is suggested that the operator submit a waiver request prior to inspection because a waiver cannot be used as a substitute for regulatory noncompliance.

The operator submits the waiver request to the appropriate regional office on a form provided by DHS. A [Request for Waiver of Child Care Facility Regulation form](#) may be obtained by contacting the regional office.

The operator must complete the [Request for Waiver of Child Care Facility Regulation form](#) to include the following information:

- The name and physical address of the facility for which the waiver is being requested;
- The name and mailing address of the legal entity;
- The name, title and telephone number of the person submitting the waiver request;
- The specific regulation for which the waiver is requested;
- The reason the operator is unable to comply with the regulation;
- The operator's plan to achieve the objective of the regulation;
- The operator's signed and dated statement certifying that the operator will meet regulatory standards related to the health, safety and rights of children; and
- Additional supporting documentation when requesting a waiver of a regulation as specified in Appendices A, B, and C. The supporting documentation is submitted as an attachment to the Request for Waiver of Child Care Facility Regulation form.

### B. Inspection While Waiver Request is Pending

A waiver request may be pending at the time of an inspection. If during an inspection noncompliance is noted regarding the regulation specified in the waiver request, the

operator may submit a plan of correction stating that a waiver request is pending. If DHS denies the waiver request, the operator is required to correct the noncompliance by complying with the regulation. If DHS grants the waiver request, the operator is required to correct the noncompliance by complying with the terms of the waiver.

### C. Monitoring Requirements

The Certification Representative will review each waiver granted to an operator/facility when conducting an inspection to renew the certificate of compliance in order to determine continuing need for the waiver and compliance with the terms of the waiver.

DHS may rescind a waiver when the condition for which the waiver was granted no longer exists or when the operator is not in compliance with the terms of the waiver. When the operator or the Certification Representative determines the waiver is no longer needed, the Certification Representative and/or Supervisor prepares a memorandum to the BCS Director regarding the need to rescind the waiver and the basis for rescission of the waiver.

If the Certification Representative observes noncompliance with the terms of a waiver, DHS affords the operator an opportunity to comply with the terms of the waiver. Noncompliance with the terms of a DHS waiver is cited in the same manner as noncompliance with a DHS regulation. The operator is required to submit a written plan of correction for review and approval by DHS. If the operator fails to correct the noncompliance, or fails to submit an acceptable plan to correct the noncompliance, the Certification Representative and/or Supervisor prepares a memorandum to the BCS Director regarding the need to rescind the waiver and the basis for rescission of the waiver.

The BCS director notifies the operator in writing of DHS' decision regarding rescission of a waiver. The operator is then required to comply with the regulation as written in 55 Pa. Code Chapter 3270, 3280, or 3290.

### D. Operator's Right of Appeal

The operator has the right to appeal the denial of a waiver request or the rescission of a waiver. In the appeal, the operator must specifically allege that by denying or rescinding the waiver, DHS acted in bad faith, acted fraudulently or committed an abuse of discretion. Appeals must be made in writing and be received by DHS within 30 days of the mailing date on the waiver denial letter or waiver rescission letter. Appeals are forwarded to the DHS Bureau of Hearing and Appeals at the following address:

Bureau of Hearings and Appeals  
Department of Human Services  
P.O. Box 2675  
Harrisburg, PA 17105-2675

## NEXT STEPS

Child care providers must:

- Read this announcement
- Direct questions to regional office

OCDEL staff must:

- Be familiar with this information and direct questions to a supervisor or regional manager.

COMMENTS AND QUESTIONS REGARDING THIS ANNOUNCEMENT SHOULD BE DIRECTED TO REGIONAL OFFICES OF CHILD DEVELOPMENT AND EARLY LEARNING:

Central Region, 800-222-2217  
Southeast Region, 800-346-2924  
Western Region, 800-222-2149  
Northeast Region, 800-222-2108

**APPENDIX A**  
**Request for Waiver of 55 Pa. Code § 3270.34-§3270.36 or §3280.34,**  
**Relating to Accreditation Requirements in Staff Qualifications**

In addition to the information on the Request for Waiver of Child Care Facility Regulation form, a request to waive accreditation requirements which apply to 55 Pa. Code §3270.34-§3270.36 or §3280.34 must include the following information:

1. The name of the individual for whom the waiver is requested; and
2. A college or university transcript for the individual referenced in the waiver request.

**APPENDIX B**  
**Request for Waiver of 55 Pa. Code §3270.61 - §3270.82 or §3280.61 - §3280.81**  
**Relating to Physical Site**

In addition to the information required on the Request for Waiver of Child Care Facility Regulation form, a request to waive a physical site requirement in 55 Pa. Code §3270.60 -§3270.82, §3280.61 - §3280.81 or §3290.61 - §3290.78 must include the following information:

1. A diagram showing the physical plan of the child care facility which designates the child care space(s) or the area(s) of the facility for which a waiver is being requested;
2. Information regarding the operator's efforts to meet the regulatory requirement; and
3. Supporting documentation relating to a waiver request for one of the following regulations:

- a. §3270.61 (c) and §3280.61 (c), relating to measuring indoor child care space within permanent stationary walls or partitions.

(1) The regional office must enclose documentation of:

- The measurement of the indoor child care spaces; and
- The resultant capacity of each space.

(2) The operator must provide the following information:

- The capacity of each child care space on the diagram showing the physical plan of the child care facility;
- The total capacity of the facility as it appears on the current certificate of compliance;
- The method of designating the boundaries of the indoor child care space(s); and
- The activities that will occur in the child care space(s) which are affected by the waiver request.

- b. §3270.62 and §3280.62, relating to play space - If the operator proposes to use a space that is owned by another entity and is located away from the facility as a substitute for providing indoor or outdoor play space on the facility premises, the operator must include the following information in the waiver request:

- (1) The method by which children will travel to the play space;
  - (2) Information regarding the equipment that the children will be permitted to use at the play space and how the equipment meets the requirements of 55 Pa. Code §3270.102 or §3280.102, relating to equipment. Photographs of the equipment are helpful and acceptable; and
  - (3) A copy of an agreement between the operator and the owner of the space in which the owner agrees to maintain the space and the equipment in accordance with §3270.102 or §3280.102.
- c. §3270.69 (b) and §3280.69 (b), relating to hot water temperature - The operator must provide the following information:
- (1) The current maximum temperature of the hot water; and
  - (2) The ages of the children who use the hot water.
- d. §3270.82 (j), relating to running water in diapering area – The operator must provide the following information:
- (1) A description of how the operator proposes to meet the requirements of:
    - §3270.134(a) and (d), relating to child hygiene; and
    - §3270.152, relating to adult hygiene.
  - (2) If the request involves use of a source of running water that is not located in an indoor child care space, the operator must provide a plan to guarantee compliance with the following requirements when a staff person leaves the room for hand washing purposes:
    - §3270.51, relating to staff to child ratio for similar age level;
    - §3270.52, relating to staff to child ratio for mixed age levels; and
    - §3270.113(a), relating to supervision of children

**APPENDIX C**  
**Request for Waiver of 55 Pa. Code §3270.101 - §3270.108 or §3280.101- §3280.108**  
**or §3290.101- §3290.107,**  
**Relating to Equipment**

In addition to the information required on the Request for Waiver of Child Care Facility Regulation form, a request to waive the requirements at 55 Pa. Code §3270.106(f) or §3280.105(f) or §3290.105(f), relating to placement of rest equipment, the operator must submit a diagram of the physical plan of the child care facility that designates the following information:

1. The child care space(s) or the area(s) of the facility for which the waiver is being requested;
2. The proposed placement of the rest equipment in each space;
3. The measurement of the space on every side of each piece of rest equipment except in situations where the rest equipment abuts a wall; and
4. The ages of the children who will use the rest equipment in each indoor child care space included in the waiver request.