



PRPS/PAEE Conference & Expo

New Legal Challenges Facing Municipal Recreation Programs

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Introduction

- Certification of Pre-School Municipal Recreation Programs
- Act 87 of 2019 and Proposed Constitutional Amendment
- Provisional Hiring under Act 47 of 2019



Certification of Pre-School Municipal Recreation Programs

The PA Public Welfare Code

- Pennsylvania Public Welfare Code – Articles IX and X, 62 P.S. §§901-922, 1001-1088
- Neither Title mentions municipal youth programs of any kind and plainly do not contemplate the regulation of municipal pre-school recreation programs as “child day care centers”



Certification of Pre-School Municipal Recreation Programs

- **“Children’s institutions”** are broadly defined in Title IX as *“any incorporated or unincorporated organization, society, corporation or agency, public or private, which may receive or care for children, or place them in foster family homes, either at board, wages or free; or any individual who, for hire, gain or reward, receives for care a child, unless he is related to such child by blood or marriage within the second degree; or any individual, not in the regular employ of the court or of an organization, society, association or agency, duly certified by the department, who in any manner becomes a party to the placing of children in foster homes, unless he is related to such children by blood or marriage within the second degree, or is the duly appointed guardian thereof. The term shall not include a family child care home or child day care center operated for profit and subject to the provisions of Article X”*



Certification of Pre-School Municipal Recreation Programs

- Titles IX and X (62 P.S. §901; §1001) define “**child day care**” as *“care in lieu of parental care given for part of the 24 hour day to a child under 16 years of age, away from the child’s home but does not include child day care furnished in a place of worship during religious services”*
- Although not found in Title IX, a “**child day care center**” is defined in Title X (62 P.S. §1001) as *“any premises operated for profit in which child care is provided simultaneously for seven or more children who are not relatives of the operator, except such centers operated under social service auspices”*
- It therefore appears that Title X of the Pa. Public Welfare Code applies only to *privately* run child daycare centers



Certification of Pre-School Municipal Recreation Programs

- The definition of “**Facility**” – which is the regulated entity in Title X of the Pa. Public Welfare Code - is as follows:

“[A]n adult day care center, child day care center, family child care home, boarding home for children, mental health establishment, personal care home, assisted living residence, nursing home, hospital or maternity home, as defined herein, except to the extent that such a facility is operated by the State or Federal governments or those supervised by the department or licensed pursuant to the act of July 19, 1979 (P. L. 130, No. 48), known as the “Health Care Facilities Act”. See 62 P.S. §1001

- It does not mention any municipal youth programs



Certification of Pre-School Municipal Recreation Programs

DHS Child Daycare Center Regulatory Regime

- The stated purpose of the child day care center regulations is to *“provide standards to aid in protecting the health, safety and rights of children and to reduce risks to children in child day care centers. This chapter identifies the minimum level of compliance necessary to obtain the Department’s certificate of compliance”*. See 55 Pa. Code §§ 3270 *et seq.*
- The chapter expressly applies to facilities in which out-of-home care is provided, at any one time, for part of a 24-hour day to seven or more children, 15 years of age or younger, including:
 - * * *
 - (2) Care provided in private or public, profit or nonprofit facilities

See 55 Pa. Code §3270.3 (a) (2)



Certification of Pre-School Municipal Recreation Programs

- A “legal entity” seeking to operate a child day care facility as defined in this chapter shall apply for an initial or renewal certificate of compliance in accordance with the requirements established in Chapter 20 (relating to licensee or approval of facilities and agencies. See 55 Pa. Code §3270.3(c)
- Any “legal entity” must obtain a valid certificate of compliance to operate at a specific location. The certificate of compliance will be issued by the Department to a legal entity prior to commencement of operation at a specific location. See 55 Pa. Code §3270.11
- A “legal entity” is defined as “a person, society, corporation, governing authority or partnership that is legally responsible for the administration of one facility or several facilities, or one type of facility or several types of facilities”. See 55 Pa. Code §3270.4



Certification of Pre-School Municipal Recreation Programs

- “**Child day care center**” is broadly defined as “*The premises in which care is provided at any one time for seven or more children unrelated to the operator*”. See 55 Pa. Code §3270.4
- Subject to certain exceptions, “part-day school age programs for children who attend kindergarten or older but are under 16 years of age” are expressly exempt from the regulations if they operate less than 90 consecutive days per calendar year. See 55 Pa. Code §3270.3a
- Whereas a “**child**” is defined as “*any person 15 years of age or younger*”, a “**preschool child**” is defined as “*a child from 3 years of age to the date the child enters kindergarten in a public or private school system*”
See 55 Pa. Code §3270.4



Certification of Pre-School Municipal Recreation Programs

- Part-day programs for *pre-school children* are not mentioned in the regulations
- None of the defined terms in the definitional section of the regulations mention any municipalities, authorities or other public entities, thereby making the application of these regulations to municipal summer camps questionable



Certification of Pre-School Municipal Recreation Programs

- On their face the child day care center operational requirements and facility specifications in the DHS regulations are arguably inapplicable and unworkable when applied to municipal pre-school recreation programs, including summer day camps
- DHS has taken a hard line on pre-school municipal recreation programs



Certification of Pre-School Municipal Recreation Programs

The DHS Certificate of Compliance Application Process

- Compliance certificates are good for 12 months, subject to renewal upon annual inspections
- Appeals may be taken from application denials
- Waivers may be requested subject to certain conditions but may not “alter the applicability or purpose of a regulation”



Certification of Pre-School Municipal Recreation Programs

Certificate of Compliance Requirements

- **Staff Accreditation**

(55 Pa. Code §§ 3270.34 to 3270.36)

- **Physical Site**

(55 Pa. Code §§ 3270.61 to 3270.82)

- **Equipment**

(55 Pa. Code §§ 3270.101 to 3270.108)

- **Program**


(55 Pa. Code §§ 3270.111 to 3270.118)



Certification of Pre-School Municipal Recreation Programs


Need for Legislative Relief

- Findings of 2016 PRPS Survey re: Impact of Child Day Care Regulatory Requirements
- PRPS Recommendation for Remedial Legislation



Raising the Stakes: Act 87 of 2019

- New Sexual Abuse Immunity Exception
 - No Damage Cap
 - Ordinary Negligence Liability Standard
 - Covers Broad Range of Sexual Offenses
- Extended Statute of Limitations for Sexual Abuse Claims and Retroactive Impact on the Immunity Exception
- Impact on Municipal Recreation Programs



Raising the Stakes: Act 87 of 2019

- Proposed Constitutional Amendment
 - Earliest Estimated Effective Date: May 2021
 - “Two-Year Window” for Filing Lapsed Childhood Sexual Abuse Claims
- Potential Impact of the Proposed Constitutional Amendment on Municipal Recreation Programs



Provisional Hiring Ban Under Act 47 of 2019

- Until Act 47 of 2019, 90 day waivers were allowed for 14 to 17 year old summer camp employees in direct contact with children
- Now those waivers are reduced to 45 days and limited to licensed day care centers
- Remedial legislation has been proposed

Questions ?