



## **Position Statement**

### **Child Day Care Center Certification Regulations**

16 September 2016

Pennsylvania Department of Human Services Day Care Certification regulations provide standards to aid in protecting the health, safety and rights of children to reduce risks in child day care centers.

The purpose of PA Code Title 55 Chapter 3270 is to facilitate the safe and healthful care of a child in a “child day care center.” These regulations extend to care provided for a preschool child in private or public, profit or nonprofit facilities, which by certain legal interpretation, include municipal recreation and park services.

While the safety and security of children enrolled in day camps, swim lessons, nature play, and other indoor and outdoor recreation programs is always vitally important, (including strict legal and ethical standards in staff recruitment and training), municipal recreation agencies also legitimately provide emotional, cognitive, communicative, perceptual-motor, physical and social development of children outside the confines of a “child day care center.”

The Pennsylvania Recreation and Park Society (PRPS) is the statewide professional association providing industry leadership, advocacy, training and resources to those who work or volunteer in parks, recreation, athletics, aquatics, playgrounds, therapeutic recreation, trails, greenways, and other healthful indoor and outdoor quality-of-life opportunities and related essential community services.

PRPS affirms the tremendous personal and community value of (and popular demand for) safe and secure, developmentally appropriate, child-centered recreation services provided apart from certified child day care centers. However, the highly limiting restrictions imposed by the Code prevent most recreation providers from feasibly complying with such certification requirements in the outdoor settings of parks and the indoor multi-use amenities of recreation centers and other facilities.

On behalf of more than 2000 professional member practitioners, and parents, preschoolers and communities throughout the Commonwealth, PRPS advocates that public recreation and park programs be specifically exempted from complying with Child Day Care Center Certification regulations by the Department of Human Services.

## Issue

The Department of Human Services Day Care Certification regulations in 55 Pa. Code §§3270 provides 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. It 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:

- (1) Care provided to a child at the parent's work site when the parent is not present in the child care space.
- (2) Care provided in private or public, profit or nonprofit facilities.
- (3) Care provided before or after the hours of instruction in nonpublic schools and in private nursery schools and kindergartens.

It does not apply to care provided in a facility where the parent is present at all times child care is being provided. <http://www.pacode.com/secure/data/055/chapter3270/chap3270toc.html>

## Notification of compliance/noncompliance

The Delaware Valley Insurance Trust issued a memo on May 26, 2016 to its municipal members advising them to cease their preschool programming unless they can comply with the DHS regulations. This is not necessarily the interpretation of the law by other municipalities. Nonetheless, this advice is being taken seriously by recreation and park providers across the state.

The Department of Human Services has not contacted local governmental and recreation and park agencies concerning compliance with Chapter 3270 regulations.

However, when Chapter 3490 PA Child Protection Services Act was enacted, child programming providers were contacted so that they would be educated in the requirements and come into compliance with the law.

## Goal

Clarify or amend the law and regulations of DHS to exempt public recreation programming from compliance with child care certification requirements.

## Rationale

Recreational and educational programs for preschool-aged children provide unique opportunities outside the role and abilities of most child care facilities. Such popular and cost-effective methods utilize the both constructed recreation facilities as well as the natural features of outdoor park settings. These crucial learning and growing opportunities offer development in gross and fine motor skills, social interaction, connections to nature and healthy living, and contribute to prosperous and desirable communities.

It appears that the law is intended to regulate facilities used in traditional "child day care centers," but was not intended to be applied to parks and outdoor settings that have a legitimate and important recreational role for children. However, it appears that the wording of the law can be construed to demand the same compliance by recreation and park providers in conducting swim lessons, nature exploration, day camps, play sports and other indoor and outdoor activities for preschool children, which were not considered in the crafting of this law.

# Findings of the 2016 Park and Recreation Agency Survey

## regarding impacts of the PA Dept. of Human Services (DHS) Child Day Care Certification Regulations

### Statistical Findings

To determine the impact of this law and its interpretation, the Pennsylvania Recreation and Park Society polled recreation and park providers throughout the state. Following are some of the statistical findings:

- **Programming:** 68 percent of respondents conduct recreational or educational programs for preschoolers, many of them for more than 20 years, and in some cases, more than 40 and 50 years. Their long-term success and popularity speak to the desirability and demand for such programming by recreation and park agencies.
- **Facilities:** 96 percent of responding agencies conduct their preschool programs exclusively outdoors or in both indoor and outdoor settings. Just 6 percent of recreation and park facilities are certified for preschool use by the DHS.
- **Format:** 88 percent of the agencies provide preschool programming seasonally or year-round. 31 percent conduct programs that are 2 hours or less in duration per session; 69 percent provide more than 2 hours per session.
- **Enrollments:** Total enrollments in preschool programming by recreation and park agencies vary from a few as 6 to as many as 100. In 70 percent of the programs, parents do not participate with their children.
- **Revenues:** Many recreation and park preschool programs enroll multiple hundreds of children in structured activities per year, generating thousands of dollars in revenues. Some of the larger programs report over \$100,000 and even a few over \$200,000 annually.
- **Staffing:** 66 percent of preschool programs utilize paid staff. 32 percent augment paid staff with volunteers. Staff to child ratios range from 1:3 to 1:20. Most report within a range of 1 adult to 6-10 children.
- **Wages:** Recreation and park agencies annually hire and train staff specifically for their preschool programs, varying from one to as many as 34. These jobs generate several hundred to several hundred thousand dollars in wages paid annually per agency.

### Provider Comments

Selected quotes from survey participants on how complying with DHS regulations to become certified day care facilities would impact recreation and park programming and related issues.

- Programs for children of preschool age have been part of the Township Parks and Recreation program for over 30 years and with great success... The loss of these programs to the community will create a void. Not only do the children benefit by participating in the many programs but the Department benefits by having the families introduced to what the department offers. The preschool programs feed the school age and even adult programs. The community will suffer an economic loss as well as staff who are hired to implement the programs.
- The Park-n-Tots program is a great, low-cost option for our residents to send their preschool aged children to summer camp. The kids learn, play, and spend much-needed time in the outdoors. Park-n-Tots is a precursor to our traditional day camp (most children participate in day camp once then age out of Park-n-Tots). This program keeps kids engaged in our programs over the years.
- Our swim lessons have introduced thousands of children to the water. We teach swimming and safety skills in each class held 6 times per year.

- The impact to our programs will be drastic. Instead of providing service to 60 preschool children each summer, we'll need to reduce the number to five preschool children per week. The associated expenses with certification are cost prohibitive.
- The Little Sprouts Pre-school and Pre-Kindergarten programs have provided a valuable resource for our community. The class is affordable and accessible for all. The Kindergarten teachers in our school district claim that Little Sprouts students are the most prepared for Kindergarten.
- We would need to restructure our entire program, by adding additional staff, possible other changes to be certified by DHS. This would increase our expenses and force us to raise the fee of the program for the participants. It will then be an unknown to how the higher fees will affect registration.
- This will restrict our ability to offer 1/2 day and full day Preschool programs at a reasonable price. By requiring parents to remain on site, will inconvenience and potentially affect the program outcomes. Some children of these ages, are very shy and have difficulty participating if mom or dad are in the room. It will impact the programming that we offer, the staff will not be rehired, supplies will not be purchased and entertainers will not be used.
- We have been running these programs at a high level for over a decade. A big impact this has is not only do we lose the Pre-K children, but their older siblings who participate in our programs as well. Parents want to be able to drop-off and pick-up their kids from the same location and time.
- Our program consists of 3 two weeks sessions of 3 hours / day. Staff has all required background checks. This program is an introduction to the camp experience. Activities include arts & crafts, story time, games and exploring in the park. In no way is our program designed to be a Day Care or take the place of Day Care. Recreation and recreation programming should not be regulated by DHS without representation from Park & Recreation professional representation.
- The impact across the state is going to be large. Providing recreational programming to preschoolers of all social economic classes, in the development of their child is their choice of provider. Programs that are introductory in the area of reading, physical motor skills, and social development skills, are imperative to the development of the child. The need for children to be outside, learning about the environment, is on the forefront of our children being linked to their surroundings, and the future of our state resources. The benefits of preschool programming and the development of a child needs to be in the hands of the parents, not the state.
- This would severely impact our ability to offer seasonal preschool programs. Compliance would be too cumbersome and not cost effective.
- Pre-School programs are the gateway to a lifetime of public parks and recreation programs. We have children who begin in "Mini" people camp and continue through until they're teenagers. They work at the programs. It is essential that Pre-School age children are allowed to continue in our programs. These are low cost, close to home options.
- The outdoor play program has been a staple of municipal recreation since the 1950s To force municipal departments to provide the kinds of facilities stipulated would not only be cost prohibitive but also negate the benefits of introducing preschoolers to the park system and to outdoor play.
- PA Code 3270 forced us to suspend our preschool program this year, to the dismay of many parents in the Township. We felt that we could not meet the requirements of the code, particularly the requirements for the staff's educational background. To meet those requirements, we would need to hire several additional employees and pay them substantially more than our current staff is making. Additionally, the school district allows us to use one of their buildings, and getting into the building prior to camp to make sure the building meets 3270's requirements is not possible, since school is still in session until days before camp begins. We hope that the requirements for Code 3270 can be waived for municipal recreation camps.

## Resolutions of this issue by other states

### **California** CHAPTER 3.4. California Child Day Care Act [1596.70 - 1596.895] 1596.792.

This chapter, Chapter 3.5 (commencing with Section 1596.90), and Chapter 3.6 (commencing with Section 1597.30) do not apply to any of the following:

(g) Any public recreation program. "Public recreation program" means a program operated by the state, city, county, special district, school district, community college district, chartered city, or chartered city and county that meets either of the following criteria:

(1) The program is operated only during hours other than normal school hours for kindergarten and grades 1 to 12, inclusive, in the public school district where the program is located, or operated only during periods when students in kindergarten and grades 1 to 12, inclusive, are normally not in session in the public school district where the program is located, for either of the following periods:

(A) For under 20 hours per week.

(B) For a total of 14 weeks or less during a 12-month period. This total applies to any 14 weeks within any 12-month period, without regard to whether the weeks are consecutive.

In determining "normal school hours" or periods when students are "normally not in session," the State Department of Social Services shall, when appropriate, consider the normal school hours or periods when students are normally not in session for students attending a year-round school.

(2) The program is provided to children who are over the age of four years and nine months and not yet enrolled in school and the program is operated during either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

(3) The program is provided to children under the age of four years and nine months with sessions that run 12 hours per week or less and are 12 weeks or less in duration. A program subject to this paragraph may permit children to be enrolled in consecutive sessions throughout the year. However, the program shall not permit children to be enrolled in a combination of sessions that total more than 12 hours per week for each child.

### **Delaware** Part I. General Provisions

3. The following facilities which operate for less than twenty-four (24) hours per day are not included in the definition of day care center:

D. Pre-school, kindergarten and school age programs operated independently for no more than four (4) hours per day and such preschool or kindergarten programs which operate two (2) schedules of no more than four (4) hours each week with each session admitting different children.

### **Iowa** Programs that are not required to be licensed (page 6 of Iowa rules):

7. A program administered by a political subdivision of the state that is primarily for recreational or social purposes and is limited to children who are five years of age and older and attending school.

9. A special activity program that meets less than four hours per day for the sole purpose of the special activity. Music, dance, art classes, athletics, recreational programs, etc.

### **Maryland** Chapter 17.01

B. Exemptions: (3) A program that operates for 6 weeks or less in any calendar year.

**New Jersey** 10:122-1.2

(c) The term, child care center, shall not include the following programs, since they do not meet the definition of a child care center:

1. A program serving fewer than six children who are below 13 years of age;
2. A program, such as that located in a bowling alley, health spa or other facility, in which:
  - i. Each child attends on a drop-in basis for no more than two hours; and
  - ii. The parent of each child attending the program is in the same building, is readily accessible at all times on an on-call basis, and is able to resume control of the child immediately;

(d) The following programs are exempt from licensure pursuant to the laws specified in N.J.A.C. 10:122-1.1(a):

To qualify for an exemption from licensure under this provision, a center or special class must:

4. Programs of specialized activities or instruction for children that are not designed or intended for child care purposes, including, but not limited to: Boy Scouts, Girl Scouts, 4-H Clubs, Junior Achievement, and commercial indoor playground/sports centers where parents remain with pre-school children; and single activity programs, such as: athletics, gymnastics, hobbies, art, music, dance and craft instruction, which are supervised by an adult, agency or institution. To qualify for an exemption from licensing under this provision, a program must:

- i. Provide activities that are supervised on a full-time basis by an adult; and
- ii. Provide only a single instruction or activity program. For children under six years of age, such single instruction or activity programs shall be limited to not more than two hours on any day;

**New York** Part 413.2

(a)(2) Child day care does not refer to care provided in:

- (i) a summer day camp, traveling summer day camp or children's overnight camp as defined in the State Sanitary Code;

**Utah** R430-8-5

(4) A license is not required for care provided by an organization that qualifies for tax exempt status under Section 501(c)(3) of the Internal Revenue Code, if:

- (a) the care is provided pursuant to a written agreement with a local municipality or a county;
- (b) the local municipality or county provides oversight of the program; and
- (c) all of the children in care are over age four.

**Virginia** 22VAC 40-185-10

Exemptions (§ 63.2-1715 of the Code of Virginia)

4. Programs of instructional or recreational activities wherein no child under age six attends for more than six hours weekly with no class or activity period to exceed 1.5 hours, and no child six years of age or above attends for more than six hours weekly when school is in session or 12 hours weekly when school is not in session. Competition, performances and exhibitions related to the instructional or recreational activity shall be excluded when determining the hours of program operation;

5. A program that operates no more than a total of 20 program days in the course of a calendar year provided that programs serving children under age 6 operate no more than two consecutive weeks without a break of at least a week.

# Proposed Pennsylvania exemption language

## 55 PA. Code §§3270 Exemption:

1. Any public recreation program. "Public recreation program" means a program or series of programs that is primarily for recreational or social purposes administered by a political subdivision of the state, or is operated pursuant to a written agreement with a political subdivision of the state that provides oversight, and that meets the following criteria:

- (a) Participation is limited to children who are two years of age and older,
- (b) The program or series of programs operates for an average of 30 hours or less per week in a calendar year.