



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

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MEMORANDUM

DATE: July 25, 2013

TO: Ms. Elizabeth Timm, DFS
Office of Child Care Licensing

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 17 DE Reg. 62 [DFS Proposed Child Placing Agency Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Services for Children, Youth and Their Families/Division of Family Services (DFS)/Office of Child Care Licensing's (OCCL's) proposal to amend its regulations regarding the *Delacare Requirements for Child Placing Agencies*. The proposed regulation was published as 17 DE Reg. 62 in the July 1, 2013 issue of the Register of Regulations. SCPD has the following observations

1. In §5.0, definition of "Adoptive Parent", the word "means" is omitted. It should be inserted.
2. In §5.0, definition of "Child Appointed Special Advocate", substitute "litem" for "lite". SCPD also recommends substituting "neglected or dependent child" for "neglected and dependent child" since the terms are disjunctive, i.e. a child can be either abused, neglected, or dependent.
3. In §5.0, the definition of "Developmentally Appropriate" could be improved. The current definition only addresses age and omits any consideration of other characteristics, including disability. As a result, §73.0 would literally require a foster parent to provide a 10 year old child with severe cognitive limitations to use only a fifth-grade reading level book. In contrast, the child's service plan is expected to reflect disability-related considerations. See §§62.1.2 and 62.1.4. Consider the following revision: "Developmentally Appropriate" means...age, is consistent with the child's special needs, and encourages development..." The term "special needs" is defined in §5.0.
4. In §6.1.1, there is a dangling conjunction ("and").

5. Section 12.0 contemplates the posting of a license “at an Agency location”. Section 8.1 indicates that a license is issued “for the address of the Agency’s actual site where services are being provided.”. The Division could consider amending §12.0 so the license would be posted at the actual licensed site rather than any agency location.

6. Section 16.0 allows licensees to request a “variance” or waiver of specific standards. It would be preferable to include some provision for notice to affected individuals (e.g. foster and adoptive parents; foster children) to facilitate input. Compare 16 DE Admin Code 3310, §12.1.4; and 16 DE Admin Code 3301, §9.1.5.

7. In §18.0, it would be preferable to include a provision disallowing retaliation against individuals both initiating or cooperating with a complaint investigation. Compare analogous §44.3 and 16 DE Admin Code 3320, §19.2.

8. Section 18.3 requires DFS to categorically notify the licensee and agency that a complaint is being investigated. DFS may wish to reconsider this no-exceptions requirement. Such notice may prompt a wrongdoer to initiate “cover-up” action. Such notice could also compromise a criminal investigation initiated under §18.7. DFS may wish to consult the Attorney General’s Office concerning this provision.

9. In §19.0, DFS could consider requiring notice of incidents involving “exploitation” of a child. See §75.0. DFS could also review analogous regulations to broaden the scope of reportable incidents. See, e.g., 16 DE Admin Code 3320, §24.0; and 16 DE Admin Code 3225, §19.7, including elopement and attempted suicide as reportable incidents.

10. Section 19.2.6 and 101.10 allow facilities to maintain a temperature of 85 degrees. This standard is assessed “at floor level” (§101.10). Since hot air rises, this means that the ambient room temperature may be significantly hotter than 85 degrees. Moreover, Delaware’s high humidity levels exacerbate the effects of high temperatures. Query whether maintaining an infant in a high-humidity room with ambient room temperature between 85-90 degrees is a prudent regulatory standard. Compare 16 DE Admin Code 3225, §17.3 (maximum 81 degree temperature); 16 DE Admin Code 3310, §5.4 (temperature and humidity “provide a comfortable atmosphere”). In other contexts, the Regulation recognizes that children should be accorded some choice in “comfort” contexts. See, e.g., §77.5.4 (authorizing substitution of foods subjectively “disliked” or “unacceptable”) and §81.4 (allowing children to keep personally “special” belongings). DFS could incorporate analogous consideration of a child’s temperature tolerances as well. Compare 16 DE Admin Code 3225, §17.3 (“A resident with an individual temperature-controlled residential room or unit may heat and cool to provide individual comfort.”). At a minimum, the 85 degree standard should be lowered.

11. Section 42.4 is somewhat “overbroad”. It bars employment “in any capacity” of “any person convicted of...offenses against a child”. This bar would apply to individuals with no contact with children (e.g. accountant). This bar would apply to convictions remote in time and irrespective of

rehabilitation. There is no definition of “offense against a child” which could be construed to include minor offenses and offenses not implicating child abuse/neglect. Although some discretion for exceptions is authorized by §42.6.6.1, that subsection ostensibly is only applicable to §42.6, not 42.4.

12. Section 42.6 would literally require the licensee to fire anyone “indicted” but not convicted of certain offenses. This is ostensibly inconsistent with federal guidance shared with DFS in connection with commentary on its proposed regulation published at 16 DE Admin Code (May 1, 2013). The Council included the following italicized commentary on that regulation:

Eighth, §7.0 is “overbroad”. For example, §7.1.1.1 contemplates consideration of arrest records without conviction. This is inconsistent with recent EEOC guidance. See attachments. Consistent with the EEOC Q&A document, Par. 7, the Enforcement Guidance preempts inconsistent state laws and regulations. In the analogous context of adult criminal background checks, the DLTCRP recently adopted the following regulatory standard deferring to the EEOC guidance:

8.3. DHSS adopts the guidance from the Equal Opportunity Commission, Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, 915.002, issued 4/25/2012.

16 DE Admin Code 3105, §8.3.

13. Section 44.4 categorically bars notification of parents of investigation of abuse or neglect in which their child was allegedly victimized: “Staff shall not contact the parent/guardian of a child who is the alleged subject victim to advise them that either a report has been made or that the Division or law enforcement officer is conducting an investigation of an allegation of abuse or neglect.” It is “odd” to bar notice to a parent of alleged abuse/neglect of a child. Indeed, the bar is “at odds” with §71.1 which requires the licensee to report to a parent any “incident involving serious bodily injury or any severe psychiatric episode involving the child”. Parents will be justifiably upset if agencies conceal information about abuse/neglect of their children.

14. DFS may wish to consider transferring the concepts embodied in §75.0 to §44.0.

15. Section 78.1.4 ostensibly authorizes “locking a child in a room” as long as not “for a long period of time”. This is highly objectionable. The Division should bar locking a child in a room.

16. Section 78.1.6 could be embellished with conduct (e.g. throwing child; hitting with closed fist) prohibited by Title 11 Del.C. §468(1)c.

17. Section 78.0 occasionally uses the terminology “is prohibited” (§78.1.9) but generally uses the terminology “shall be prohibited”. SCPD recommends generally using present tense, i.e., “is prohibited”. Otherwise, it appears that the conduct will be barred in the future.

18. In §78.1.12, insert ‘disability’ after “family”.
19. Section 78.0 could be improved by including a bar on chemical restraint. Compare recently enacted S.B. 100 . See also 16 DE Admin Code 3320, §20.11.11.
20. DFS should review both S.B. 100 and 16 DE Admin Code 3320, §20.11 for examples of limitations on behavior management that could be incorporated into §78.0.
21. In §80.2, substitute “places” for “place”.
22. In §80.5 or §72.0 , DFS may wish to address the use of bumper pads in cribs. See <http://pediatrics.about.com/od/babyproducts/a/crib-bumpers.htm>. (also attached).
23. In §86.4, DFS should consider insertion of the word “approaching” prior to “eighteen”. As reflected in §86.3, providing a list of community services as the individual is “walking out the door” on the individual’s 18th birthday is not prudent. DFS should also consider adding other preparation/orientation activities, including completion of selective service registration. SCPD recommends that DFS review the findings in the preamble to H.B. 163 for insight. For example, if 82% of males exiting foster care are arrested by age 21, and a high percentage of females become pregnant by age 21, doesn’t it make sense to address prevention activities?
24. Section 90.1 is somewhat “overbroad” since it does not address the passage of time or rehabilitation. If the substantiated neglect occurred 30 years ago, and the individual is now highly responsible, does it make sense to apply a categorical bar to serving as a foster parent?
25. Section 96.1 categorically bars anyone over sixty-five (65) years of age becoming a foster parent. If there is no State statute which imposes such a limit, any State regulation limiting eligibility in a federally-funded program may run afoul of the federal Age Discrimination Act. See <http://www.hhs.gov/ocr/civilrights/resources/factsheets/age.pdf> and <http://www.dol.gov/dol/topic/discrimination/agedisc.htm>. (also attached). It is also anomalous that the Regulation contains no age limit for prospective adoptive parents. See §140.0.
26. Although there is a brief treatment of “pets” in §112.0, potentially dangerous pets are not covered in §112.0 or in §101.0. Thus, a prospective foster parent could conceal ownership of multiple pit bulls or snakes. The regulatory standards do not contemplate any inquiry on the safety aspects of pets, only other household members (§§90.2 and 136.4)and visitors (§124.0). DFS may wish to add a standard addressing potentially dangerous pets.
27. The Council previously questioned the general ban on children wearing a helmet around playground equipment. See §103.2.4.3. SCPD continues to question the rationale for the general ban. Intuitively, if a child falls from a height, the helmet would provide some protection. from TBI.

28. Section 113.1 literally would not require someone driving a child in a pickup truck or van to have a driver's license and insurance. Consistent with §113.2, consider substituting "vehicle" for "automobile".

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations on the proposed regulations.

cc: Ms. Vicky Kelly
Mr. William Love
Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

P&I/17reg62 dscyf-dfs child placing registry 7-25-13

Dangers of Crib Bumper Pads

Crib Safety Basics

By Vincent Iannelli, M.D., About.com Guide Updated October 18, 2011
 About.com Health's Disease and Condition content is reviewed by the [Medical Review Board](#)

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Crib bumpers were made obsolete a long time ago, once infants could no longer fit their head through the wider gap of the slats on older cribs. They continue to be popular, though, and are used by many new parents, often because they continue to be sold as a part of baby bedding sets.



Before your baby is born, be sure her crib is safe by taking the blankets, pillows, stuffed toys, and the crib bumper out.

Photo by Vincent Iannelli, MD

But should you avoid crib bumpers?

Crib Bumpers

The Consumer Product Safety Commission (CPSC) says to avoid "pillow-like bumper pads."

Although the American Academy of Pediatrics used to say that "If bumper pads are used in cribs, they should be thin, firm, well secured, and not 'pillow-like,'" they now say that bumper pads are not recommended.

And even before they had a formal policy against the use of crib bumpers, there was advice on the AAP website that recommended that parents not use them because they are just decorative and may lead to rare, but preventable, deaths.

The AAP also warned that crib bumper pads should be removed once your baby begins to stand.

Dangers of Crib Bumper Pads

While the CPSC continues to investigate crib bumper pads, parents can decide if crib bumper pads are worth the risk. Originally designed to prevent babies from getting their head through the gap between crib slats, crib bumpers lost much of their real purpose when the crib safety regulations reduced the gap between slats in 1974.

Now they are purely decorative and are often sold as a part of crib bedding sets.

An article published in 2011 in *Pediatrics*, titled "Injuries Associated With Cribs, Playpens, and Bassinets Among Young Children in the US, 1990-2008," stated that "The use of crib bumper pads is strongly discouraged because the possibility for serious injury, including suffocation and strangulation, greatly outweighs any minor injury they may prevent."

Parents should also consider that a recent investigation by the *Chicago Tribune* suggests that deaths from crib bumper pads are likely under-reported.

Crib Bumper Safety

Why should crib bumpers be thin, firm, well secured, and not "pillow-like?"

If you do use crib bumpers, this can help to avoid the most common ways that crib bumper pads lead to injuries and death:

- strangulation by crib bumper pad ties
- suffocation against the crib bumper pads
- entrapment against the crib bumper pads and another object, such as the crib slats or crib mattress

Even these crib bumper safety tips won't prevent all injuries, as babies can get entrapped with a firm crib bumper, too.

Would a mesh crib bumper be a safer alternative to traditional crib bumpers? Most likely it would, but so would simply removing or never putting crib bumpers in your baby's crib in the first place.

Crib Bumpers - What You Need To Know

Making sure your baby's crib is safe is an important part of [baby proofing](#) your home.

Don't make your baby's crib less safe by adding an unsafe crib bumper to your baby's crib.

To recap, important things to know about crib bumpers include:

- The use of crib bumpers is now discouraged by most safety experts.
- If you do choose to use crib bumpers for decorative purposes, make sure that they are not pillow-like and that they are thin, firm, and well secured to your baby's crib.
- Be sure to remove crib bumpers once your baby is able to stand, so that he can't use them to help climb out of his crib.
- Many people think that deaths from crib bumpers are under-reported.
- The Canadian Paediatric Society and Health Canada have had a formal recommendation against using crib bumpers since 2004.

Parents should also keep in mind that crib bumpers are not thought to be needed to prevent serious injury from infants or toddlers getting their arms or legs caught between crib slats, which is one of the main reasons that they use crib bumpers in the first place.

Sources:

American Academy of Pediatrics Policy Statement. The Changing Concept of Sudden Infant Death Syndrome: Diagnostic Coding Shifts, Controversies Regarding the Sleeping Environment, and New Variables to Consider in Reducing Risk. *Pediatrics* 2005 116: 1245-1255.

Canadian Paediatric Society, Community Paediatrics Committee. Recommendations for safe sleeping environments for infants and children. *Paediatr Child Health*. 2004;9:659-663

Thach BT, Rutherford GW, Harris K. Deaths and injuries attributed to infant crib bumper pads. *J Pediatr*. 2007;151:271-274

Yeh, Elaine S. Injuries Associated With Cribs, Playpens, and Bassinets Among Young Children in the US, 1990-2006. *Pediatrics*, Mar 2011; 127: 479 - 486.

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OFFICE FOR CIVIL RIGHTS

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The Age Act does not cover employment discrimination, which is enforced by the Equal Employment Opportunity Commission (EEOC).

The Office for Civil Rights (OCR), at the U.S. Department of Health and Human Services (HHS), ensures that entities that receive federal financial assistance comply with this law.

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Office for Civil Rights

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- Name and address of the institution or agency you believe discriminated.
- When, how and why you believe discrimination occurred.
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**Office for Civil Rights
U.S. Department of Health and Human Services
200 Independence Avenue, SW.
H.H.H. Building, Room 509-F
Washington, D.C. 20201**

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The [Age Discrimination Act of 1975](#) prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance. The Act, which applies to all ages, permits the use of certain age distinctions and factors other than age that meet the Act's requirements. The Age Discrimination Act is enforced by the [Civil Rights Center](#).

The Age Discrimination in Employment Act of 1967 (ADEA) protects certain applicants and employees 40 years of age and older from discrimination on the basis of age in hiring, promotion, discharge, compensation, or terms, conditions or privileges of employment. The ADEA is enforced by the [Equal Employment Opportunity Commission \(EEOC\)](#).

Section 188 of the [Workforce Investment Act of 1998 \(WIA\)](#) prohibits discrimination against applicants, employees and participants in WIA Title I-financially assisted programs and activities, and programs that are part of the One-Stop system, on the ground of age. In addition, WIA prohibits discrimination on the grounds of race, color, religion, sex, national origin, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I-financially assisted program or activity. Section 188 of WIA is enforced by the [Civil Rights Center](#).

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