



ANNOUNCEMENT: C-08 #01
OFFICE OF CHILD DEVELOPMENT AND EARLY LEARNING
BUREAU OF CERTIFICATION SERVICES

ISSUE DATE: April 8, 2008
EFFECTIVE DATE: April 8, 2008
SUNSET DATE: On-Going

SUBJECT:	Capacity on Certificate of Compliance
TO:	DPW Office of General Counsel; Human Services Licensing Management and Research; OCDEL Regional Directors, Regional Supervisors, Certification Representatives, Division of Regulatory Administration
FROM:	Harriet Dichter Deputy Secretary, Office of Child Development and Early Learning

Harriet Dichter

PURPOSE:

To share information and procedures regarding determining the maximum capacity of a facility when the certificate of occupancy identifies a capacity that is less than the capacity determined by applying the child care center or group child care home regulations.

BACKGROUND:

Some municipalities are issuing certificates of occupancy pursuant to the Uniform Construction Code (UCC) that identify a facility capacity. Sometimes, the capacity on the certificate of occupancy is less than the measured capacity of the facility per the applicable Department of Public Welfare (DPW) child care facility regulation.

OCDEL staff have not observed any pattern or consistency relating to a capacity appearing on a certificate of occupancy. In addition, this does not appear to be a statewide practice. Information obtained from providers reveals that the reason for the capacity appearing on the certificate of occupancy is inconsistent across the state.

DISCUSSION:

DPW's legal issue relating to maximum capacity on a certificate of occupancy is based on the provisions of the Public Welfare Code and 55 Pa. Code Chapter 20 which state that a certificate of compliance is issued when DPW is satisfied that the facility is in compliance with applicable statutes, ordinances and regulations (62 P.S. §1007; 55 Pa. Code §§20.53, 20.54(a), 3270.14 and 3280.14). Certificates of occupancy are issued pursuant to state law and local ordinance. Based on the provisions of Public Welfare Code and 55 Pa. Code Chapter 20, DPW should not issue a certificate of compliance that provides for a maximum capacity that is greater than the capacity specified on the certificate of occupancy.

DPW legal counsel is working with Human Services Licensing Management and Research to change the language that appears on the certificate of compliance by adding the bold text as follows:

The total number of persons which may be cared for at one time may not exceed ____ **or the maximum capacity permitted by the Certificate of Occupancy, whichever is smaller.**

OCDEL has already made the above change on the certificate of compliance that will be issued through PELICAN Provider Certification.

OCDEL also must change enforcement practices relating to the maximum capacity of a facility when the certificate of occupancy provides for a lesser capacity than the measured DPW capacity.

NEXT STEPS:

1. Regional directors should review with supervisors and certification representatives the attached document, "Facility Maximum Capacity".
2. Certification representatives should use the instructions in the attached document when conducting inspections and providing information to providers when the facility has a certificate of occupancy that identifies a maximum capacity and that capacity is less than the DPW capacity.
3. Supervisors are responsible for ensuring that certification representatives are aware of the instructions and following the instructions when conducting inspections.
4. All certification staff who conduct orientation training for prospective child care center and group child care home providers should stress to participants the method DPW will use to determine the facility's maximum capacity. We will take steps to add information will be added to the orientation curriculum for prospective child care center and group child care home operators.

Attachment

FACILITY MAXIMUM CAPACITY

Below are instructions relating to enforcing the maximum capacity of a child care center or group child care home when the facility's certificate of occupancy identifies a maximum capacity and the capacity is less than the capacity determined by applying the DPW regulations at 55 Pa. Code §3270.61(c) and §3280.61(c), relating to measurement and use of indoor child care space.

1. **Application for New Facility** - When an applicant submits a application for certificate of compliance to operate a new facility along with a certificate of occupancy specifying a maximum capacity or conditions relating to capacity:
 - a) Advise the applicant that:
 - We will measure the indoor child care space at the facility to determine the facility capacity as per DPW regulation.
 - The maximum capacity of the facility will be the determined by whichever is the lesser capacity and the facility will be required to comply with the lesser capacity.
 - b) At the initial inspection, measure the facility in accordance with DPW regulation and share the DPW capacity with the applicant.
 - c) If the certificate of occupancy provides for a lesser capacity than the DPW capacity, advise the applicant that the building owner/applicant may pursue adjustment of the capacity established on the certificate of occupancy by:
 - Filing an appeal with the local authority that issued the certificate of occupancy; and/or
 - Filing a complaint with the Department of Labor and Industry. For information about the complaint process, please see the information at <http://www.dli.state.pa.us/landi/cwp/view.asp?a=310&q=210913>; the complaint form is available at <http://www.dli.state.pa.us/landi/lib/landi/ucc/forms/ucc-10.pdf>.
 - d) Prepare a recommendation for a certificate of compliance giving the DPW capacity as the numerical maximum capacity. When the certificate of compliance is printed, it will give the maximum capacity as follows:

The total number of persons which may be cared for at one time may not exceed (DPW measured capacity) or the maximum capacity permitted by the Certificate of Occupancy, whichever is smaller.
2. **Renewal of Existing Facility** - When issuing a renewal certificate to a facility with a certificate of occupancy identifying a maximum capacity or conditions relating to capacity that are **less than the capacity determined by DPW**:
 - a) Advise the provider that:
 - OCDEL measured the indoor child care space at the facility to determine the facility capacity as per DPW regulation.
 - The certificate of occupancy provides for a lesser capacity.
 - In accordance with the regulation at 55 Pa. Code §3270.14 or 3280.14, relating to pertinent laws and regulations, the maximum capacity of the facility will be the determined by whichever is the smaller number and the facility will be required to comply with the lesser capacity.

- The building owner/provider may pursue adjustment of the capacity established on the certificate of occupancy by:
 - Filing an appeal with the local authority that issued the certificate of occupancy; and/or
 - Filing a complaint with the Department of Labor and Industry. For information about the complaint process, please see the information at <http://www.dli.state.pa.us/landi/cwp/view.asp?a=310&q=210913>; the complaint form is available at <http://www.dli.state.pa.us/landi/lib/landi/ucc/forms/ucc-10.pdf>.
- b) Prepare a recommendation for a certificate of compliance giving the DPW capacity as the numerical maximum capacity. When the certificate of compliance is printed, it will give the maximum capacity as follows:

The total number of persons which may be cared for at one time may not exceed (DPW measured capacity) or the maximum capacity permitted by the Certificate of Occupancy, whichever is smaller.
- c) When the capacity on the certificate of occupancy is a lesser number than the DPW capacity and results in a decrease in facility capacity, the provider may appeal the decrease in capacity. The language regarding a decrease in capacity should be included in the transmittal letter issuing the certificate of compliance.

3. Inspecting a Facility with a Certificate of Occupancy Capacity Less Than the DPW

Capacity – This applies only to a facility in which the provider has received notice of the capacity limitation via issuance of a certificate of compliance (see #1 and #2 above). The total number of children on site at one time may not exceed the maximum capacity provided on the certificate of occupancy when the certificate of occupancy provides a capacity that is less than the DPW measured capacity. When inspecting the facility:

- a) The capacity of each indoor child care space is determined according to applicable DPW regulation.
- b) If the total number of children in care at the facility exceeds the capacity on the certificate of occupancy, cite noncompliance with 55 Pa. Code §§ 3270.14 and 3280.14, relating to pertinent laws and regulations. The citation should read:

The facility's certificate of occupancy pursuant to the Uniform Construction Code establishes a maximum capacity of _____. There were a total of ____ children in care on (date) at (time). The capacity exceeds the maximum capacity of the facility.

- c) Again, advise the provider that the building owner/provider may pursue adjustment of the capacity established on the certificate of occupancy by:
 - Filing an appeal with the local authority that issued the certificate of occupancy; and/or
 - Filing a complaint with the Department of Labor and Industry. For information about the complaint process, please see the information at <http://www.dli.state.pa.us/landi/cwp/view.asp?a=310&q=210913>; the complaint form is available at <http://www.dli.state.pa.us/landi/lib/landi/ucc/forms/ucc-10.pdf>