**MEMO**

**TO:** The Board of Early Education and Care

**FROM:** Samantha Aigner-Treworgy, Commissioner of the Department of Early Education and Care

**Date:** 11/22/2021

**RE:** Summary of Public Comment Regarding Emergency Regulations for 606 CMR 7

**Background**

Due to the ongoing COVID-19 pandemic, the Department of Early Education and Care (EEC) required emergency revisions to its licensing regulations at 606 CMR 7.00 to protect the health and safety of children and staff in child care programs and to address the workforce shortages caused by the pandemic. On August 31, 2021, the Board of Early Education unanimously approved the following revisions on an emergency basis:

* 606 CMR 7.09(20) (new subsection): **(20) In the event the Commissioner of the Department determines there is a significant workforce shortage of early educators, and such shortages prevent programs from obtaining the appropriate staffing necessary to meet the health and safety needs of children, the Commissioner of the Department shall have the authority to revise and/or rescind any educator qualifications and professional development requirements under subsections 606 CMR 7.04 and 7.09 to address this need.**
* 606 CMR 7.11(1)(a)(2): **CPR must be renewed prior to the expiration date listed on the CPR course completion certificate (current regulation requires renewal annually).**
* 606 CMR 7.11(9): Management of Infectious Diseases (addition of new subsection (d):

(a) The program must follow exclusion policies for serious illnesses, contagious diseases, and reportable diseases in conformance with regulations and recommendations set by the Division of Communicable Disease Control, Department of Public Health.

(b) The licensee must notify all parents in accordance with Department of Public Health recommendations when any communicable disease or condition has been introduced into the program.

(c) Educators must follow the recommendations of the Department of Public Health regarding the use of insect repellents.

**(d) The program must follow all applicable Department policies and requirements pertaining to the prevention of serious illnesses, contagious diseases, and reportable diseases.**

Consistent with the emergency regulation requirements, the Department immediately initiated the public comment process to solicit feedback on the proposed revisions. The public comment period was open from September 1, 2021 until September 30, 2021. The Department received a total of 37 public comments during this period. Notably, none of the comments concerned the language of the regulations, and instead focused on policies that would result from the regulatory changes. The following memo summarizes the feedback that the Department received on the proposed revisions and how the Department responded to and incorporated this feedback into applicable policies. None of the public comments have resulted in a recommendation to change the regulatory language that the Board voted to approve in August. Accordingly, EEC is not recommending any further changes to the proposed regulatory language.

**Summary of Public Comment on 606 CMR 7.09(20)**

The Department received a total of 18 comments related to the proposed revisions to 606 CMR 7.09(20). None of the 18 comments specifically addressed the regulatory language, but instead, each comment provided feedback on proposed solutions to address the workforce shortage. Six comments addressed need for greater flexibility around documentation requirements, flexibility for teachers to become lead teachers, and an expedited and more streamlined certification process. Five comments addressed difficulties around hiring educators and outlined several proposals including: leniency on teacher qualifications at the beginning and end of the day; financial supports for educators, such as stipends, bonuses, etc.; and assistance with recruiting qualified teachers. Two comments requested additional flexibility on staff-to-child ratios. One comment requested alignment with the Department of Elementary and Secondary Education (DESE) that will allow for reciprocal licenses. One comment requested that Directors be able to work as an educator when needed to address staffing shortages. One comment expressed an overall support for the regulatory changes. While most comments were in support of policy revisions to address the workforce shortages, two comments addressed concern with relaxing restrictions on educator qualifications due to the resulting impact on child safety and the need to preserve high quality care.

Since none of the public comment addressed the regulatory language itself, the Department will not be making any changes to the proposed regulatory revisions; however, EEC used these comments to inform its development of workforce policies. To the extent possible, EEC incorporated flexibilities and reduced barriers, while still maintaining child safety and quality.

EEC has offered greater flexibility to programs in hiring by expanding the discretion of program directors in determining the applicable background of an individual, and the associated documents, that meet or exceed the minimum qualifications. The Minimum Hiring Requirements for Educator Requirements suggests expanded examples of the documents that can be used for verification of qualifications, including accepting unofficial transcripts, e-transcripts, written statements, and signed letters. The new policies also allow programs to give credit for all relevant education and work experience completed (e.g. work as a counselor in a camp setting may count towards experience). In response to comments that addressed the need for an expedited and more streamlined certification process, these policies that outline the minimum qualifications that programs must document and keep on file will allow EEC to eliminate the Teacher Qualification process that has caused many delays for programs seeking EEC approval prior to hiring new staff. These policies will serve as a comprehensive guide to the standards programs must meet when recruiting, reviewing, and verifying qualifications with updated and streamlined definitions.

To alleviate barriers to hiring, the policies will maintain the education and competency requirements for a specific role, but will allow for some of the qualifications to be completed after hire. For example, some roles may be hired with the expectation that there is progress towards completion of the educational requirements within 6 months of hire. While the policies will not address financial supports for educators, EEC is currently working to evaluate the costs of extending monthly operational grants to 12 months and developing a bonus payment structure to incentivize programs to make long term investments in their workforce.

**Summary of Public Comment on 606 CMR 7.11(09)**

The Department received a total of 18 comments on the proposed revisions to 606 CMR 7.11(09). 17 comments addressed the mask policy associated with the proposed regulation and one comment addressed the Department’s legal authority to implement such regulations. Of the 17 comments, 11 were against the mask policy; one comment requested an exemption from the mask policy for all pre-school children; and five were in support of the mask policy. Within those five comments, two requested that the mask policy be extended to children under 5.

The Department received one comment questioning whether the emergency regulation process was adhered to, whether the Department had legal authority to implement such regulations, and the medical basis for implementing a mask mandate. First, the Department followed all requirements outlined in 950 CMR 20 for implementing emergency regulations including: filing of the Registration Filing Form with the Secretary of State outlining the nature of the emergency; filing of a Small Business Impact Statement; and initiation of a public comment period. Having complied with these requirements, the Board-approved emergency regulations shall remain in effect for three (3) months from the date of approval (here, November 30, 2021). By November 30, 2021, EEC must file a Notice of Compliance with the Secretary of State adopting the regulations as permanent, file amended regulations with any proposed changes, or allow the regulations to expire, which would mean that the language would revert to what it was prior to the promulgation of the emergency regulations. As noted above, EEC is not proposing any changes to the language and instead recommends filing a Notice of Compliance that will result in permanent adoption of the regulations. Second, the Department has the legal authority to implement such regulations. The Department’s enabling statute states that “…[th]e board shall adopt regulations relative to the requirements for licensure and approval of school-aged child care programs, child care centers, family child care homes or large family child care homes…” and that “[t]hese regulations shall be appropriate for *the protection of the health, well-being and development of children*…” See G.L. c. 15D, Section 8A (emphasis added). Last, the mask mandate was based on consultation and guidance from a number of state and federal public health agencies, including the Massachusetts Department of Public Health (DPH) and the Center for Disease Control (CDC).

Since none of the public comment addresses the regulatory language itself, the Department will not be making any changes to the proposed regulatory revisions. The Department appreciates the feedback on the mask policy, and will consider this feedback as it continues to evaluate this policy in light of the current COVID-19 recovery landscape, and guidance from the Department of Public Health, the Center for Disease Control, and other public health experts.

**Summary of Public Comment on 606 CMR 7.11(1)(a)(2)**

The Department received one comment on the proposed revisions to 606 CMR 7.11(1)(a)(2). The comment requested that the regulation be adopted permanently to avoid further confusion around the CPR certification expiration date. The Department has no intent to make any revision to this regulation at this time.