



NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

NOTICE OF ADOPTION OF EMERGENCY RULES FOR THE NEW YORK CITY HEALTH CODE ARTICLE 47

The Department of Health and Mental Hygiene (“the Department”), pursuant to the authority granted by New York City Charter sections 556, 558, and 1043(i), hereby adopts amendments to sections 47.01, 47.11, 47.13, and 47.23 of Article 47 (Child Care Programs and Family Shelter-Based Drop-off Child Supervision Programs) of the New York City Health Code (“Health Code”). This rule will take effect immediately.

Statement of Basis and Purpose of Emergency Rule

New York City’s parents and guardians rely on safe, quality child care to be able to go to work, and without it, parents may have no choice but to leave their children with unregulated or illegal child care. All of this makes child care a necessary service that must meet standards to protect children’s health and safety. Unfortunately, New York City, like localities across the country, is facing a shortage of child care professionals. Many providers operating the 2,200 child care centers in New York City struggle to find qualified staff and, as a result, may close classrooms, suspend operation, or delay opening.

These amendments to Article 47 of the New York City Health Code are being promulgated as an emergency rule because they are necessary to address an imminent challenge: the consequences to child care center staffing in light of time-sensitive hiring currently being conducted by New York City Public Schools. In April, New York City announced that it would be hiring 3,700 additional teachers by September 2025 to meet a New York State mandate for smaller class sizes. This large hiring effort is anticipated to draw child care staff, many of whom are certified to teach elementary school students, away from child care centers and into employment with New York City Public Schools, exacerbating child care center staffing constraints. In order to preserve current child care staffing and promote the availability of future qualified child care center staff candidates, the Department is amending the Health Code immediately to remove hurdles for child care providers that burden hiring. The emergency rule is necessary to support uninterrupted provision of child care by providers offering this care in center-based programs to children under age six.

These amendments focus on providing flexibility to the programs, while maintaining the safety of the children in child care programs, because they enhance protections for children in center-based child care programs, provide staffing more appropriate for the child’s development, and clarify certain requirements to facilitate compliance.

It should also be noted that, in addition to the emergent circumstances noted above, the Department is proposing amendments to Article 47 of the Health Code at this time in response to a recent rulemaking petition it received and granted in accordance with Article 9 of the Health Code.

Definitions of Terms

The Department is amending section 47.01 of the Health Code by adding or expanding multiple definitions to clarify certain existing staff roles and expand roles.

The Department is adding a new term of “education director designee” to Article 47. The education director designee does not replace the role of education director, but instead provides a designation for a person who can provide temporary coverage for the education director position. While prior to these amendments, at a child care program, a certified group teacher could under certain conditions cover for an

education director, under this new term of “education director designee,” at a preschool, a person will be able to cover for an education director if they are a certified group teacher or a group teacher qualified by experience. At an infant/toddler program, the education director designee can be a preschool certified group teacher, or a preschool group teacher qualified by experience or by the education director qualifications under section 47.15 of the Health Code. The education director designee must also meet safety screening clearances required by section 47.19 of the Health Code.

The Department is also adding the term “core operating hours,” to define the period during the day when the education director must be present, even if the program operates for a longer period of time. Defining the core operating hours allows a program to operate with an education director designee for hours outside of the core operating hours when at least one child is present.

The Department is also amending section 47.01 to better describe the two types of child care programs regulated by Article 47, preschool child care programs and infant/toddler child care programs, by providing clearer language establishing the ages of children that are in each type of program. This is a necessary emergency change because the Department has frequently observed that child care programs have improperly enrolled a child in the infant/toddler child care program, causing the child care program to sustain violations, which may lead to fines, closure and interruption in child care service for the community. In clarifying the definitions, a child care program will more clearly understand whether a child should be enrolled in an infant/toddler child care program or if they have aged out. Accordingly, the term “preschool child care program” is added to section 47.01 to define child care programs for older children between the ages of two through five. The Department is amending the definition of “infant/toddler child care program” to better define the maximum age for children in this program. We believe the updated definition for “infant/toddler child care program” provides clarity on who should be enrolled, because under the current definition it is unclear about what date a child, who is between 24 months old and 36 months old, must no longer be enrolled in an infant/toddler program, but must instead be enrolled in a preschool program. Further, the amendment clarifies that a child may only enter an infant/toddler program when they are less than two years old, meaning they need to be less than 24 months old when they first enroll.

Written Safety Plan

The Department is amending section 47.11 to expand the information required to be included in the program’s safety plan to include documenting the program’s core operating hours and naming the education director designee. Having this information in the safety plan will ensure that all program staff know who is supervising operations at all times.

Qualifications and Duties of Staff

Section 47.13 addresses qualifications and duties of staff that are critical to promoting the health and development of children. The Department is proposing to amend this section to require either an education director or an education director designee to be on site whenever at least one child is present. The amendment also specifies that the education director and education director designee must be qualified pursuant to the requirements of section 47.13 and have screening clearance pursuant to section 47.19.

The Department is further amending section 47.13 to allow a group teacher in a preschool child care program that cares for children younger than three years old to be determined as qualified under the requirements of section 47.15(b), which sets forth the group teacher qualifications for an infant/toddler child care program. This amendment to the qualifications for a group teacher in a preschool child care program is to allow child care programs more flexibility in hiring group teachers where the preschool child care program group teacher cares for children under three years old. The Department also believes this amendment for group teachers in preschool child care programs will be more responsive to the needs

of these younger children. Although a child under age three may be in a program classified as “pre-school,” their care better aligns with the care requirements of an infant/toddler child care program.

Constant Competent Supervision

Prior to this amendment, section 47.23 required a qualified group teacher or an education director of a child care program to supervise children in the program at all times and maintain staff to child ratios, with the exception of the time during breaks or lunch periods, an absence of the qualified group teacher or education director of no more than three days where an assistant teacher and teacher aide could be assigned to the classroom, so long as at least one assistant teacher is included for each group of children in attendance. If the qualified group teacher or education director was absent outside of any of those allowed exceptions under 47.23, then the child care program was not maintaining the required staff to child ratio. The Department amends this section to make clear the ratio applies to the number of staff and children in a classroom and to expand the number of days an assistant teacher and teacher aide’s presence may satisfy the required staff to child ratios in a classroom from 3 days to 5 days. This amendment is to assist child care programs in allowing flexibility for their staff and improve a child care program’s employee retention. This amendment to section 47.23 does not affect the requirement that an education director or an education director designee always be on premises.

This rule is authorized by sections 556, 558, and 1043 of the New York City Charter. Pursuant to New York City Charter § 1043(d)(4), this rule does not require analysis by the Office of Operations.

The amendments are as follows:

Underlined language is new.

Language in [brackets] is to be deleted.

Ellipses (***) indicate unamended text.

“Shall” and “must” denote mandatory requirements and may be used interchangeably unless otherwise specified or unless the context clearly indicates otherwise.

RESOLVED, that section 47.01 of Article 47 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended by adding new definitions of “core operating hours,” “education director designee,” and “preschool child care program” in alphabetical order and to amend the definition of “infant/toddler child care program” to read as follows:

§ 47.01. Definitions.

(e-1) Core operating hours means the time during a child care program’s daily schedule designated for activities, experiences and routines structured to promote physical, intellectual, and emotional learning, and excludes the time designated for dropping off and picking up children.

(i-1) Education director designee means a person designated by a child care program to temporarily cover for the child care program’s education director pursuant to the conditions set forth in section 47.13(c)(1).

(r) Infant/toddler child care program means a child care program that, during all or part of the day or night, provides care to children [younger than 24 months of age] who attend such program prior to

reaching two years of age and who are not older than three years of age.

(u-1) Preschool child care program means a child care program that, during all or part of the day or night, provides care to children between the ages of two through five years of age.

RESOLVED, that subdivision (b) of section 47.11 of Article 47 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 47.11 Written Safety Plan

(b) Scope and content. The written safety plan shall establish policies and procedures for safe operation, including a child care program's core operating hours; the name of the education director designee for a child care program, if applicable; teaching and other staff duties[,]; facility operation and maintenance, fire safety, general and activity-specific safety, and emergency management[,]; staff and child health and medical requirements[,]; staff training; and parent/child orientation. The written safety plan shall consist of, at a minimum, a table of contents and the following components:

RESOLVED, that the title and subdivision (c) of section 47.13 of Article 47 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended and a new subdivision (g) is added, to read as follows:

§ 47.13 Child Care Programs: Teaching Staff Qualifications and Coverage [in Child Care Programs].

(c) Education director, coverage, duties, qualification, hours. [Except as provided in Section 47.15 or 47.17, every] Every child care program must [designate a certified group teacher as the education director, who] have an education director who is qualified pursuant to the requirements of this section and screened in accordance with section 47.19 and is on site for no less than 8 hours per day during the program's core operating hours. The education director shall be in charge of staff training, educational and child development programs and shall supervise all teaching staff at each permitted child care program. An education director may serve in such capacity for a maximum of two programs, and only if such programs are co-located infant/toddler child care programs and preschool child care programs and operated by the same legal entity.

(1) Coverage for education director. [Except as provided herein, a] The education director or education director designee of a child care program must be on site [at all times while the program is caring for one or more children] whenever at least one child is present. [At any time when the education director is not on the premises to supervise a child care program, the permittee must designate an individual to act as education director. Except as provided in Section 47.15 or 47.17, such individual must be a certified group teacher or a group teacher whose application for certification is fully submitted and pending certification by the State Education Department or other accreditation organization, or whose application for certification is fully submitted and pending approval by the Department, provided that the permittee has complied with criminal justice and SCR screening requirements for staff set forth in this Article. In addition, the permittee must notify the Department in writing within 5 business days of the separation

from service of the education director. When the education director is separated from service or will be on leave for more than 5 business days, the permittee must notify teaching staff and the Department in writing of the certified teacher who has been designated as education director and make this written communication available to the Department for inspection upon request.]

(A) Education director designee. A child care program must identify an education director designee to provide coverage for the education director during hours of service outside of such program's core operating hours, or during an absence of the education director that is not to exceed a total of 60 cumulative days in a 12-month period.

(i) An education director designee must have been screened in accordance with section 47.19. For a preschool child care program, an education director designee must have the qualifications set forth in sections 47.13(d)(1) or 47.13(d)(2). For an infant/toddler child care program, an education director designee must have the qualifications set forth in sections 47.13(d)(1), 47.13(d)(2) or 47.15(a).

(ii) When an education director is permanently separated from service at a child care program, the education director designee at such child care program may serve as the education director for no more than 60 days, provided that the permittee notifies the Department and all program staff in writing within 5 business days of such separation and makes such written communication to staff available to the Department for inspection upon request.

(iii) The person identified as the education director designee may only serve in that role under the permit for which they are employed, and they may be identified as the education director designee for only one child care program. The education director designee may have teaching duties regardless of the number of children in attendance at the program.

(g) Group teacher for children younger than 3 years old in a preschool child care program. A group teacher for children younger than 3 years old in a preschool child care program must, at minimum, meet the qualifications set forth in section 47.15(b).

RESOLVED, that subdivision (a) of section 47.23 of Article 47 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 47.23 Supervision; Staff/Child Ratios and Group Size.

(a) Constant competent supervision required. Staff included in the staff/child ratios set forth below shall maintain direct line of sight, constant competent supervision of all of the children in the program at all times. Children in a child care [program,] classroom shall be competently supervised by a qualified group teacher or education director at all times in each type of child care program for which a permit is issued, with the sole exception that in the event of breaks or lunch periods, absence of no more than [three] five days, the required staff/child ratio in a child care [program] classroom may be maintained with assistant teachers and teacher aides, so long as at least one assistant teacher is included for each group of children in attendance. Children in a family shelter-based drop-off child supervision program shall be competently supervised by shelter child supervision staff at all times.

(1) When any program is in operation, the number of qualified staff required by this Code shall be assigned and on duty to protect the health and safety of the children on the program's premises, and in the case of trips off-site the required number of staff shall accompany the children at all times wherever the children travel.

(2) Each program shall maintain a daily log, to be kept on site and provided to the Department upon request, reflecting the arrival and departure time of each member of the teaching staff or shelter child supervision staff.

Required Finding Pursuant to New York City Charter Section 1043(i)(1)

IT IS HEREBY CERTIFIED that the immediate effectiveness of this rule, which addresses staffing in New York City child care centers, is required to address an anticipated increase in staffing shortages at child care centers resulting from the time-sensitive additional hiring being conducted by New York City Public Schools.

New York City parents and guardians rely on safe, quality child care to be able to go to work, and without it, parents may have no choice but to leave their children with unregulated or illegal child care. All of this makes child care a necessary service and critical to children's health and safety. Unfortunately, New York City, like localities across the country, is facing a shortage of child care professionals. Many providers operating the 2,200 child care centers in New York City struggle to find qualified staff and as a result may close classrooms, suspend operation, or delay opening.

In April, New York City announced that it would hire 3,700 additional teachers by September 2025 to meet a New York State mandate for smaller class sizes. This large hiring effort is anticipated to draw child care staff, many of whom are certified to teach elementary school students, away from child care centers and into employment with New York City Public Schools, exacerbating child care staffing constraints.

In order to promote the availability of qualified child care staff, the New York City Department of Health and Mental Hygiene is amending the New York City Health Code immediately to remove hurdles for child care providers that further burden staff hiring.

The emergency rule is necessary to support uninterrupted provision of child care by providers offering care in centers to children under the age of six. These child care centers are regulated pursuant to New York City Health Code Article 47, which sets health and safety standards, including requirements for the types and qualifications of staff and ratios of staff to children.

Delaying implementation of these emergency rules would be detrimental to a necessary service and the public's health and safety because without this change, owners of child care centers may have insufficient qualified staff and be required to reduce enrollment. As a result, parents and guardians may have no choice but to leave their children in unregulated or illegal child care.

IT IS HEREBY CERTIFIED that the immediate effectiveness of this rule is necessary to address an imminent threat to child care, a necessary service, and the health and safety of children in child care.

Dated: August 13, 2025

Dated: August 13, 2025



Michelle Morse, MD, MPH
Acting Commissioner of Health



Eric Adams
Mayor