



District of Columbia
Office of the State Superintendent of Education



Summary and Overview:

FINAL RULEMAKING FOR THE LICENSING OF CHILD DEVELOPMENT FACILITIES



On Dec. 2, 2016, the Office of the State Superintendent (“OSSE”) published a Notice of Final Rulemaking in the D.C. Register (63 DCR 50) updating the regulations governing the licensure of child development facilities throughout the District of Columbia. The complete final rulemaking is available at: <http://bit.ly/2krnteR>. OSSE issued this Summary and Overview to highlight and summarize some of the key requirements and compliance dates set in the Final Rulemaking. However, this Summary and Overview does not capture the full extent of all requirements set forth in Chapter 1 of Title 5A in the District of Columbia Municipal Regulations. This publication is not inclusive of all the regulations and is not to be considered in the same light as official statements of position contained in 5A DCMR Chapter 1.

PURPOSE OF THE FINAL RULEMAKING:

The purpose of the Final Rulemaking is to ensure that care and education provided in a licensed child development facility in the District is not only safe, but also supports children’s healthy development, future academic achievement and success by establishing the minimum requirements necessary to protect the health, safety, welfare, and positive development of children in care. In addition, the Final Rulemaking updates the District’s regulatory framework for child development facilities to reflect current research and best practices in child development, to comply with the federal Child Care and Development Block Grant Act of 2014 (CCDBG Act), approved Nov. 19, 2014 (Pub. L. 113-186; 42 U.S.C. §§ 9858 et seq.), and regulations promulgated thereunder at 45 C.F.R. Parts 98 and 99, and incorporate relevant District laws and regulations that impact child development facilities.

BACKGROUND:

The CCDBG Act made sweeping statutory changes that required significant reforms to the District’s child development facility regulations to raise the health and safety standards of child care and enhance the consumer outreach and education for families. The final rulemaking aligns the District’s regulatory framework for child development facilities with the CCDBG Act of 2014 and its regulations, as well as with Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Early Care and Education Programs (Caring for Our Children), which strongly influenced the development of the CCDBG Act. As with the reauthorized CCDBG Act, this final rulemaking is intended to be an integral part of supporting families, promoting both the healthy development of children in the District of Columbia, and improving the overall quality of child care in the District.

RULEMAKING PROCESS:

The majority of the current regulations in Chapter 3 of Title 29 DCMR were last revised in 2007. Understanding that any changes to the licensing regulations would have a significant impact on a number of children, families and businesses in the District, OSSE issued an Advanced Notice of Proposed Rulemaking (ANPR) on Dec. 24, 2015 and a Notice of Proposed Rulemaking on Sept. 9, 2016 to solicit comments from public stakeholders. OSSE appreciates that so many public stakeholders had an interest in the proposed rulemaking and submitted their comments during the public comment periods. OSSE has reviewed and thoroughly considered all comments received and made changes accordingly. Overall, stakeholders provided valuable insights and feedback, enabling OSSE to refine and significantly improve its earlier proposed rule and draft revisions. Please note that OSSE did not make amendments to the final rule based on comments received if the commenter’s requested amendment conflicted with provisions in the CCDBG Act, District laws and regulations, or Caring for Our Children, the national health and safety performance standards guidelines for early care and education programs. Responses to comments received during the public comment period for the Notice of Proposed Rulemaking are available in the preamble of the Final Rulemaking.

EFFECTIVE DATES AND IMPLEMENTATION TIMELINE:

The final rulemaking became effective on Dec. 2, 2016. However, certain provisions have delayed compliance deadlines, including the following:

- **Health and Safety Training:** Pursuant to the CCDBG Act, all licensed facilities shall be in compliance with health and safety training requirements for all current and new staff members by Sep. 30, 2017. Licensing specialists will issue a statement of deficiency if health and safety courses are not completed at time of licensing renewal and will monitor for compliance by Sept. 30, 2017.
- **Criminal background check requirements:** Pursuant to the CCDBG Act, facilities shall be in compliance with criminal background check requirements for all current and new staff members, and volunteers by Sept. 30, 2017.
- **Staff Qualifications:** The educational requirements for child development center directors, teachers, and assistant teachers, and for child care home providers have increased. Increased requirements are based on research indicating that teacher qualifications have an impact on early care and education quality. New staff qualifications have varying compliance deadlines depending on position:
 - **Center Directors:** Bachelor of Arts (BA) in early childhood education or a BA with at least 15 semester credit hours in early childhood by Dec. 2022.
 - **Teachers:** Associate of Arts (AA) in early childhood education or an AA with at least 24 semester credit hours in early childhood by Dec. 2020.
 - **Assistant Teachers:** Child Development Associate (CDA) by Dec. 2018.
 - **Home Caregivers:** Child Development Associate (CDA) by Dec. 2018.
 - **Home Associate Caregiver:** Child Development Associate (CDA) by Dec. 2018.
 - **Expanded Home Caregiver:** Associate of Arts (AA) in early childhood education or an AA with at least 24 semester credit hours in early childhood by Dec. 2019.

Any person who is employed as a center director or a qualified teacher in a licensed child development center in the District of Columbia on the effective date of these regulations, and who has continuously served in these positions for the past ten (10) years, may submit an application to OSSE for a waiver of the qualification requirements. The full requirements may be found in 5A DCMR §§ sections 164 through 172.

- **Application for Licensure:** Compliance with all other provisions in this final rulemaking will be determined through OSSE's review of applications for licenses. All initial and renewal licensing applications submitted prior to Dec. 2, 2016 will be evaluated under the prior regulations in Chapter 29 of Chapter 3 of the DCMR, and if compliance is determined, the license will be valid for one (1) year. For these programs, the licensing specialists will provide additional technical assistance and monitoring to help them meet the new requirements.

OSSE recognizes that implementing these updated licensing provisions may be challenging, but OSSE is committed to assisting facilities through technical assistance, communications, and effective monitoring. OSSE ensures that all licensing inspectors, who conduct pre-licensure inspections and monitoring visits, are qualified to inspect the facilities and have received training in related health and safety requirements appropriate to provider setting and age of children served. Additionally, OSSE is working with the Department of Consumer and Regulatory Affairs (DCRA), Fire Emergency and Medical Services (FEMS), Department of Energy and the Environment (DOEE), and the Department of Health (DOH) to help facilities identify supports and resources to achieve and maintain compliance.

ORGANIZATION OF THE 5A DCMR CHAPTER 1:

The Final Rulemaking sets forth the framework for obtaining and maintaining a license to operate a child development facility in the District, and the requirements and standards that apply to all licensed child development facilities including the new CCDBG requirements. In 2008, regulatory responsibility over child development facilities was transferred from the Department of Health (DOH) and Department of Human Services (DHS) to OSSE. Accordingly, the Final Rulemaking repeals Sections 300 to 379 in Chapter 3 (Child Development Facilities) of Title 29 (Public Welfare) of the DCMR and adds a new Chapter 1 (Child Development Facilities: Licensing) to Subtitle A (Office of the State Superintendent of Education) of Title 5 (Education) in the DCMR. The sections of Chapter 1 of Title 5-A DCMR are organized into the following subject areas accordingly:

- (1) General Licensure Provisions: §§ 100-102 and § 199
- (2) License Application and Maintenance: §§ 103-117
- (3) Requirements for All Licensees: §§ 118-121
- (4) Facilities, Supplies, Equipment and Environmental Health: §§ 122-126
- (5) Administration and Operation: §§ 127-131
- (6) Staffing: §§ 132-139
- (7) Program Activities for Healthy Development: §§ 140-141
- (8) Health Promotion and Protection: §§ 142-161
- (9) Additional Requirements for Licensed Centers: §§ 162-166
- (10) Additional Requirements for Licensed Child Development Homes: §§ 167-168
- (11) Additional Requirements for Licensed Expanded Child Development Homes: §§ 169-171
- (12) Additional Requirements for Out-of-School-Time Programs: §§ 172-176

Key shifts to the regulatory framework are discussed below. **If the change is required to comply with the CCDBG Act or its implementing regulations, it is noted with “***”.**

Key Changes to General Licensure Provisions:

Sections 100 through 102 provide the general provisions for child development licenses, including, but not limited to the applicability of the requirements, types of licenses and length of licenses.

Exemptions

To clarify which services are exempt from obtaining a license to operate a child development facility based on the definition of a child development facility, OSSE expanded the list of exempted services. For more information, reference 5A DCMR § 101 for the list of exempted child development services.

Types of Licenses

The prior regulations provided for a “provisional license.” In the final rulemaking, the provisional license was replaced with a “restricted license,” which is now the only license that will be issued with pending deficiencies. A restricted license may be issued by OSSE as an alternative to suspending or revoking an existing license when a facility has one or more deficiencies. For more information, reference 5A DCMR § 102.6.

Length of Licenses

The prior regulations provided for a one-year license. Under the new regulations, each license may be valid for a three-year period. The licensing period has been increased to align with national best practices, and is intended to shift the focus toward monitoring the quality, health, and safety of care. For more information, reference 5A DCMR § 102.7.

Quality Rating and Improvement System***

A Quality Rating and Improvement System (QRIS) helps measure and improve the quality of early care and education by rating the quality of child care programs and offering quality improvement supports. All licensed facilities that accept public funding are required to participate in OSSE’s QRIS. Any licensed facility that does not accept public funding has the option to participate in the Quality Rating and Improvement System. For more information, reference 5A DCMR §§ 102.8 and 102.9.

Key Changes to License Application and Maintenance:

5A DCMR §§ 103-117 describe how to obtain and maintain a license to operate a child development facility, including provisions regarding applications for an initial, renewal, and amended license, when OSSE will issue a restricted license, the process for seeking waivers from a licensing requirement, and a summary of the type of changes to a facility that would require a new license. In addition, these sections also provide the fees for obtaining a license, provisions regarding annual monitoring and inspections required by the CCDBG Act, and a description of the enforcement actions a child development facility may be subject to for failing to comply with the regulations.

Required Documentation for Application

5A DCMR § 103 includes the required documents a provider must submit with an initial application for a license to operate a child development facility, which includes proof of proper insurance and a valid building use agreement used to secure a contingency location. To ensure children's safety and stability, a licensee may relocate to its identified contingency location for no more than thirty days due to temporary closure. Securing a contingency location through a valid building use agreement is essential to providing stability to children and staff during an emergency situation by allowing a licensee to continue to provide care and education even if the facility's licensed premise is not usable.

Application for an Amended License

The Final Rulemaking clarifies the requirements for applying for an amended license. An application for an amended license shall be subject to the same review and requirements as an application for an initial or renewal license, including an on-site inspection if OSSE determines it would be necessary or useful. For more information, reference 5A DCMR § 105.

Waivers

Prior to the final rulemaking, the only flexibility available to licensees and applicants was a variance from regulations related to physical or structural requirements. 5A DCMR § 106, however, provides OSSE with authority to grant waivers for any licensing provision that does not jeopardize the health, safety, or welfare of children or staff. All new and existing facilities may apply for a waiver as set forth in 5A DCMR § 106. OSSE will use information gathered through the waiver process to inform future rulemaking.

Licensing Periods and Fees

OSSE has extended the licensing period from one year to three years for applicants submitting an initial or renewal application on or after Dec. 2, 2016. However, due to the longer licensing period, license fees have been increased. The new license fee is the amount a licensee normally pays for a yearly license multiplied by three. Additional fees to amend or replace a license are also applicable. OSSE recognizes the financial impact that shifting to a three (3) year license may have on facilities. In order to aid facilities with the cost of both the license and the application fee, OSSE will allow facilities to set up a payment plan agreement. Please reference 5A DCMR § 108 for more information.

Consumer Education***

As required by the CCDBG Act, 5A DCMR § 111.9 requires OSSE to make available to the public by electronic means, no later than Sept. 30, 2017; a list of all of the facilities licensed, including the following information for each licensed facility:

- Dates of monitoring and inspection;
- Results of monitoring and inspection reports;
- Any corrective or enforcement action taken;
- Substantiated complaint about failure to comply with the provision of this chapter or such amendment, and all applicable federal and local law and regulations; and
- The number of deaths, serious injuries, and instances of substantiated child abuse that occurred in each facility.

Enforcement Actions

5A DCMR §§ 112 through 117 sets forth the overarching provisions for all enforcement actions a facility may be subject to, which remain consistent with the prior regulatory framework. OSSE added language to provide clarity around the uses of each action and added examples of imminent harm and a prohibition on reapplying for a license for three (3) years if a previous license was revoked. For more information, reference 5A DCMR §§ 112 through 117.

Key Changes to Requirements for All Licensees

5A DCMR §§ 118 to 121 set forth the overarching requirements for all licensed child development facilities, specifically for supervision and the adult-to-child ratios and group sizes.

Under the final rulemaking, any additional requirements specific to child development centers, homes and expanded homes, or out-of-school time programs may be found in their respective sections. For further information regarding additional requirements, reference the following sections:

- Child Development Centers: see 5A DCMR §§ 162 through 166
- Child Development Homes: see 5A DCMR §§ 167 through 168
- Child Development Expanded Homes: see 5A DCMR §§ 169 through 171
- Out-of-School Time Programs: see 5A DCMR §§ 172 through 176

Nap Time Ratio

To clarify ratio requirements during non-peak hours or during nap or rest periods, 5A DCMR § 121 requires that adult-to-child ratios shall be maintained; however, another adult staff member or adult volunteer may substitute for one (1) of the staff members specified, provided that at least one (1) teacher or assistant teacher supervises the group. Further, while children with varying ages anywhere from ages thirty (30) months and older are grouped together for napping, one (1) staff person shall be present within sight and sound of the children at all times. A second staff person or volunteer on duty shall also be present on the same floor of the facility and immediately available to assist in the event of an emergency.

Key Changes to Facilities, Supplies, Equipment and Environmental Health

5A DCMR §§ 122 through 126 set forth the health and safety standards for a child development facility's premises, specifically providing standards for lavatory space and equipment, the indoor environment to allow each child safe and adequate space for free movement and active play, the outdoor environment and play space, and the equipment, material and furnishing used during the operation of the facility.

Fire Safety Inspections

5A DCMR § 122.6 requires that all facilities must undergo fire safety inspections and receive annual certifications from FEMS that the facility conforms to all applicable fire safety and related codes. Previously, child development homes were not required to have an annual fire inspection. In addition, a facility should obtain a new fire inspection, and Certificate of Occupancy, if there was an increase in the number of children enrolled under 30 months of age as this would impact a facility's ability to safely serve the number of children and evacuate in an emergency. Please note that the cost of the initial inspections is covered by OSSE; however, child development facilities are responsible for any necessary repairs. Please reference 5A DCMR §§ 122.6 and 122.7 for more information.

Rodent and Pest Control

5A DCMR §§ 122.19 to 122.21 sets forth the requirements that a licensee shall ensure that the facility's premises remain clear of insects, rodents, and other pests and excrement of insects, rodents, and other pests. This new section was added to the new regulations to ensure that children receive care in a healthy and safe environment free of anything that could harm or sicken them. A licensee shall maintain preventative measures to control insects, rodents, and other pests to comport with best practices and to prevent and eliminate harborage, breeding, and infestation at the facility's premises. If a harboring, breeding, or infestation of insects, rodents, or other pest occurs on the premises of the facility, the licensee shall immediately report the infestation to OSSE as an unusual incident and take immediate steps to have the insects, rodents, or other pests eliminated from the facility. In addition, a licensee shall maintain at the facility a log documenting the use of extermination services, which shall be provided only by a licensed pest control professional. Children shall not be present while pesticides are being applied or within twenty-four (24) hours of application.

Helmets

As recommended by Caring for our Children, 5A DCMR § 126.22 requires that if children are riding wheeled equipment, then helmets must be worn to ensure the safety of children while in the care of child development facilities. Wheeled equipment qualifies as tricycles, bicycles, scooters, roller skates, roller blades, or skateboards, regardless of whether the equipment is being ridden indoors or outdoors. Helmets could be provided by the school, parents, or donated but should be maintained in accordance with 5A DCMR § 126.11.

Key Changes to Administration and Operation

5A DCMR §§ 127 to 131 set forth the requirements for the administration and operation of a child development facility, including the required communication a facility must implement and provide to parents and guardians, requirements for reporting unusual incidents, and requirements for the facility's records, staff records and children's records.

Key Changes to Staffing:

5A DCMR §§ 132 through 139 address requirements for all staff members, including requirements for criminal background checks, traffic record checks, and drug and alcohol testing. 5A DCMR § 138 sets forth various requirements for aides and volunteers, including duties of a volunteer and background check requirements. Additionally, 5A DCMR §139 sets forth the professional development requirements for paid staff members.

Criminal Background Checks***

Section 133 sets forth the requirements for criminal background checks of all staff members and volunteers. The CCDBG Act, and its implementing regulations, requires all child care staff members (including prospective staff members) and volunteers of all licensed, regulated, or registered child care providers to have a comprehensive background check, unless they are related to all children in their care. OSSE also clarifies in this section that the renewal timeframe for all criminal background checks is three (3) years for paid staff members. Comprehensive background checks must be conducted prior to hiring and at least once during each 3-year license period.

As defined by the regulations, a volunteer is a person rendering services to a child development facility without compensation by the facility, including a person rendering services as part of an internship or otherwise under the auspices of an educational or training program. Volunteers do not include chaperones providing services for a field

trip, party, or special event. However, at no time shall a non-volunteer who has not undergone a criminal background check have unsupervised access to children. Volunteers are required to have a criminal background check conducted every two (2) years.

All background checks include a search of the National Crime Information Center (run by the FBI); FBI fingerprint check (using Next Generation Identification); the National Sex Offender Registry; State criminal and sex offender registries in every state the applicant has lived over the past five years; State child abuse and neglect registries in every state the applicant has lived over the past five years; and the Child Protection Register (run by the DC Child and Family Services Agency).

Additionally, staff members who drive a motor vehicle to transport children are also subject to traffic records checks. For more details, please reference 5A DCMR § 134.

Drug and Alcohol Testing

To clarify requirements set forth under District law, 5A DCMR § 136 requires drug and alcohol testing policies and procedures for all staff employed at child development facilities who have direct contact with children, directly care for children, and whose normal job duties may affect children's health, welfare, or safety, that include testing at the following times:

- Prior to employment;
- Upon reasonable suspicion; and
- As soon as reasonably possible following an accident or incident.

These provisions are not new requirements as they are required by the Child and Youth, Safety and Health (CYSHA) Omnibus Amendment Act of 2009; however, the final rulemaking sets forth the provisions to implement the requirements set forth in District law.

Staff Member Requirements

Each staff member of a licensed child development facility must be physically capable of caring for children, and must have an annual physical examination with a health care practitioner to document that the staff member does not have tuberculosis or other communicable diseases, and that he or she is physically capable of caring for children. A tuberculosis test is only required every other year. Please

reference 5A DCMR § 137 for more information.

Health and Safety Training and Professional Development***

5A DCMR § 139 sets forth the professional development requirements for paid staff members. All paid employees of licensed child development facilities whose duties or responsibilities include the care of enrolled children must participate in pre-service and orientation training, as well as ongoing annual health and safety training, and professional development.

Pre-service***

Within 30 days of being hired, staff whose duties or responsibilities include the care of enrolled children must receive health and safety training related to the following:

- Prevention, detection, and reporting of child abuse and neglect;
- Emergency preparation and response planning;
- Sudden infant death syndrome prevention and safe sleep practices (if applicable to the age of children being served by the child development facility);
- Shaken baby syndrome and abusive head trauma prevention (if applicable for the age of children being served by the child development facility; and
- First Aid and CPR.

Furthermore, the federal regulations require that staff members who provide direct care for children must be supervised until training is completed in pediatric first aid and CPR, standard precautions to prevent communicable diseases, poison prevention, and safe sleep practices and shaken baby syndrome/abuse head trauma, if applicable to the population of children served. This requirement is set

forth in 5A DCMR § 139.2.

Orientation Training***

Additionally, staff are those whose duties or responsibilities include the care of enrolled children and are required to receive additional health and safety training within 90 days of being hired. This additional training includes:

- Developmentally appropriate programming for infants, toddlers, preschool, and/or school-age children, as applicable;
- Prevention and control of infectious diseases, including immunization;
- Administration of medication, consistent with standards for parental or guardian consent;
- Prevention of and response to emergencies due to food and allergic reactions;
- Building and physical premises safety, including identifying and protecting children from hazards such as electrical hazards, bodies of water, and vehicular traffic; and
- Handling and storage of hazardous materials, and the appropriate disposal of biocontaminants.

Ongoing annual health and safety training, and professional development***

Staff shall participate in annual professional development, including annual training that maintains and updates the health and safety standards***, as follows:

- Child development center staff shall participate in at least 21 hours of professional development annually;
- Center directors are expected to participate in 12 hours of training in program management, business operations, and evaluation;
- Child development home caregivers and staff shall participate in at least 12 hours of professional development annually; and
- Expanded home caregivers and staff shall participate in at least 15 hours of professional development annually.

For more information about professional development

requirements, please reference 5A DCMR §§ 139, and 164 through 171.

Key Changes to Health Promotion and Protection:

5A DCMR §§ 142 through 161 set forth the basic health standards that must be in place to protect children, no matter what type of facility they attend, this includes requirements for, among other requirements, hand hygiene, diapering, safe sleeping and resting practices, how to prevent child abuse, emergency preparedness, first aid and CPR, exclusion due to illness, immunization standards, medication administration, responding to food allergies, food service and infant feeding. Requirements during swimming and water play, transportation, interaction with pets and animals, care in a nontraditional setting, and care for children with special needs are also addressed in 5A DCMR §§ 142 through 161.

Emergency Preparedness and Response Planning***

As required by the CCDBG Act, 5A DCMR § 148 sets forth expanded requirements for licensed child development facilities to have emergency and disaster plans. The emergency and disaster plan must be posted in a conspicuous place at the facility's premises, and must be reviewed and updated annually. Additionally, each year, staff must receive training related to the plan, and parents and guardians must receive information and updates on the plan. OSSE will develop and provide this training for all providers on an annual basis. Additional information may be found in 5A DCMR § 148.

Immunization***

As required by the CCDBG Act, 5A DCMR § 152.2 provides a 60-day grace period for children experiencing homelessness and children who are wards of the District in foster care to submit immunization documentation.

Medication Administration

As recommended by Caring for our Children, 5A DCMR § 153 sets forth new requirements prohibiting a licensee from administering medication to a child in care unless the parent provides permission, the administration of medication is approved by a licensed health care

practitioner, and the staff member has completed an approved medication administration training program. Additional information may be found in 5A DCMR § 153.

Requirements for a Child Development Facility during Swimming and Water Play

As recommended by Caring for our Children, 5A DCMR § 157 sets forth the requirements for swimming and water play. The ratios were clarified to distinguish requirements for proper supervision during various water activities.

A licensee shall ensure when children are swimming or playing in water, including baby pools, wading pools, and full-depth pools, the licensee shall maintain the adult-to-child ratios and comply with the water safety requirements set forth in 5A DCMR § 157.

Storage of Licensed Weapons and Ammunition- Child Development Home and Expanded Home

5A DCMR §§ 167.7 to 167.8 set forth the requirements that a child development home licensee shall ensure that licensed firearms, shotguns, rifles or other licensed weapons and ammunition are inaccessible to children served in a child development home or expanded home, unloaded, secured with an appropriate trigger locking device, and stored in a safe storage depository which, when locked, is incapable of being opened without the key, combination or other unlocking mechanism and is capable of preventing an unauthorized person from obtaining access to and possession of the weapon or ammunition contained therein. A licensee shall ensure that parent(s) or guardian(s) of children served are provided notice that licensed firearms, shotguns, rifles or other licensed weapons and ammunition are on the premises of the child development home or expanded home.

For the full text of the regulations and additional information, visit: <http://bit.ly/2krnteR>

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