

## Memorandum

**To: Licensed Center-Based Child Care Programs and Afterschool Programs**  
**From: Janet McLaughlin, Deputy Commissioner**  
**Re: Program Director Time On-site**  
**Date: July 11, 2023**

On June 20, 2023, the General Assembly passed Act 76 (H.217), which significantly impacts child care programs in Vermont. The law directs the Department for Children and Families to amend its licensing regulations for Center-Based Child Care and Preschool Programs (CBCCPP) and for Afterschool Child Care Programs (ASP). Specifically, the amended regulations must require program directors at CBCCPPs, and program administrators or designated site directors at ASPs, to be present at their child care facilities at least 40% of the time children are present.

Currently, CBCCPP rule 6.2.4.1 requires a program director to be present at the facility for at least 60% of the hours of operation. Similarly, ASP rule 5.24 requires a program administrator or a designated site director to be present at the facility more than 50% of the time children are present. The Department is currently revising its rules to incorporate the changes required by Act 76 as well as other changes. These revised rules will not become effective until sometime in 2024 after the rulemaking process is complete.

CBCCPP rule 2.7.1 and ASP rule 18.66 permit the Department to grant a variance to its rules in exceptional circumstances to alleviate unnecessary hardships on child care programs when the intent of the law can be achieved through other means. The Department has determined that the recent passage of Act 76, and the time needed to amend its rules to conform to the law, are an exceptional circumstance. The intent of Act 76 is to allow additional flexibility for program directors to fulfill their responsibilities by reducing the amount of time directors are required to be present while children are present at their programs. CBCCPPs and ASPs will be subjected to unnecessary hardship, contrary to the intention of the Legislature, if their directors are subject to the literal application of CBCCPP rule 6.2.4.1 and ASP rule 5.24, respectively.

Therefore, the Department is granting all CBCCPPs and ASPs a *variance* to these rules. For CBCCPPs, a program director must now be present at the child care facility for at least 40% of the time children are present. For ASPs, a program administrator or designated site director must now be present at the child care facility for at least 40% of the time children are present.

This variance is retroactively effective as of July 1, 2023. This variance expires for all CBCCPPs, current and future, when new CBCCPP rules become effective. This variance expires for all ASPs, current and future, when new ASP rules become effective. A violation of the terms of this variance will result in appropriate regulatory action as otherwise permitted in the applicable regulations. This variance does not apply to any Family Child Care Home.

Please call the licensor on duty at 1-800-649-2642 (option 3) with any questions.

