

# Memorandum

**To:** Licensed Afterschool Programs

**From:** Janet McLaughlin, Deputy Commissioner, DCF Child Development Division

**Date:** 09/24/2024

**Re:** Child Care Licensing Rule Changes for Afterschool Child Care Programs (ASP)

In November 2023, the Department of Health and Human Services, Administration for Children and Families, Office of Child Care (OCC) conducted a monitoring visit to determine Vermont's compliance with federal Child Care and Development Fund requirements. In April 2024, the Vermont Department for Children and Families, Child Development Division (CDD) agreed to an Implementation Plan with OCC to bring Vermont's child care licensing requirements into compliance with federal law, 45 C.F.R. Part 98.

This Memorandum modifies the Licensing Regulations for Afterschool Child Care Programs ("Rules"), which will be formally amended when the Rules are revised through the rulemaking process next year. In the meantime, the following Rules will be modified, as described below, pursuant to the legal authority cited in this Memorandum. These changes shall go into effect on October 1, 2024, and shall remain in effect until the rulemaking process is completed in 2025.

**Effective date:** 10/01/2024

**Impacted Licensing Rules:**

1. ASP 4.3 – Policies, Procedures, Records and Reports
2. ASP 5.36 – Personnel: Qualifications, Staffing and Staff Development
3. ASP 10.8 – Emergency Procedures
4. ASP 18.3 – Licensing Process and Procedures: Authority to Inspect



## Explanation of Changes

### **New Site Visit Report Practice – CDD Will Post Pre-Registration Reports Online**

Federal law requires CDD to post the results of monitoring and inspection reports on a website that is easily accessible to the public. See 45 C.F.R. § 98.33(a)(4). Additionally, CDD is required to encourage the development of a comprehensive child care services system and facilitate the development of child care facilities. See 33 V.S.A. § 3501(1), (2). CDD already posts site visit reports online to the BFIS public portal for licensed providers. From now on, CDD will also post all pre-registration site visit reports to the BFIS public portal.

### **Modification of Rule 4.3 – Immunization Grace Period for Certain Children**

Federal and state law, as well as Rule 4.3, require children to be age-appropriately immunized to receive child care services. See 45 C.F.R. § 98.41(a)(1)(i)(A); 18 V.S.A. § 1121(b). However, federal law also requires a grace period that allows children experiencing homelessness and children in foster care additional time to receive necessary immunizations. See 45 C.F.R. § 98.41(a)(1)(i)(C). Rule 18.66 allows CDD's Deputy Commissioner to issue a variance to a rule when literal application of a rule will result in unnecessary hardship for a licensee or for a child and family, and the intent of the rule can be achieved through other means. The Deputy Commissioner has determined that literal application of Rule 4.3 will cause unnecessary hardship to all licensees as well as children experiencing homelessness and children in foster care. Therefore, CDD is modifying Rule 4.3 to allow a grace period to provide proof of immunization for children experiencing homelessness and children in foster care. An additional bullet point will now be added to Rule 4.3, stating: "The Licensee shall allow a grace period of no more than six months for any child experiencing homelessness or any child in foster care to provide a record or certificate of immunization, issued by a licensed health care practitioner or a health clinic, showing that the child has received required immunizations appropriate to the child's age, as specified by the Department of Health."

### **Modification of Rule 5.36 – Training Requirements for Substitutes**

Federal law requires child care providers, including caregivers, teachers and directors, to receive ongoing professional development and health and safety training. See 45 C.F.R. § 98.44(b)(2)(i). Unlike CDD's licensing rules, federal law does not distinguish between regular staff and substitutes. Nevertheless, "substitutes" are "staff" under Rules 2.46 and 2.47, and substitutes must comply with all rules that staff are required to follow, unless substitutes are specifically exempted. Rule 5.32 requires licensees to ensure that all staff, including substitutes, are provided with annual opportunities for professional development consistent with each person's Individualized Professional Development Plan. Moreover, Rule 5.42 allows CDD to determine whether additional



training is needed in order to comply with the Rules. Licensees must comply with all federal laws pertaining to child care under Rule 3.1. Therefore, to comply with federal law, CDD is now imposing a minimum of four hours of annual professional development activities on substitutes, in addition to any requirements for infant/child CPR certification (or recertification) and first aid training, under Rule 5.36.

### **Modification of Rule 10.8 – Additional Emergency Planning Requirements**

Rule 10.8 requires licensees to have an emergency response plan that addresses several circumstances and provides procedures for evacuations, notifications, and accounting for children, among other things. The rule also requires licensees to have in their emergency response plan a system for notifying the parents of an emergency. In addition to these requirements, federal law also requires child care providers to have emergency response plans addressing reunification of children with their families. See 45 C.F.R. § 98.41(a)(1)(vii). As mentioned above, licensees must comply with all applicable federal laws pertaining to the safety and well-being of children. See Rule 3.1. Therefore, Rule 10.8 is modified, and an additional bullet point is added to the rule that will now require licensees' emergency response plans to have: "A process for reunifying children with their families in the event of an emergency."

### **Clarification of Rule 18.3 – Annual Inspections**

State law permits CDD to inspect the premises of a person who is licensed by CDD or a person applying for a license. See 33 V.S.A. § 151(2), (4). Rules 18.2 and 18.3 require applicants and licensees to permit CDD to inspect their facilities, records, and property to ensure compliance with the Rules. Federal law requires at least one unannounced annual inspection of child care providers to ensure compliance with health, safety, and fire standards. See 45 C.F.R. § 98.42(b)(2)(i)(B). Accordingly, CDD is adding the following sentence to Rule 18.3: "The Division shall conduct an unannounced licensing visit at least once every 365 days at each facility."

**Child Care Licensing Rule Changes** (as incorporated within ASP rules. Strikethrough language removed, and additional language highlighted.)

### **ASP Section 4 – Policies, Procedures, Records and Reports**

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- 4.3 A child shall be admitted in an Afterschool Child Care Program when there is on file on the premises, either in hard copy or accessible and printable electronic format documentation in the child's file of each child's current immunization status.



- Immunization records shall include the immunization administered and the date of each immunization.
- If an enrolled child is in the process of complying with immunization requirements in accordance with the Vermont recommended immunization schedule, documentation in the child's file shall include the required Vermont Department of Health form.
- If a child has not had a required immunization due to a Vermont allowed exemption, documentation in the child's file shall include the required Vermont Department of Health form.
- The Licensee shall allow a grace period of no more than six months for any child experiencing homelessness or any child in foster care to provide a record or certificate of immunization, issued by a licensed health care practitioner or a health clinic, showing that the child has received required immunizations appropriate to the child's age, as specified by the Department of Health.

### **ASP Section 5 – Personnel: Qualifications, Staffing and Staff Development**

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5.36 The Program Administrator or designee shall ensure a minimum of 4 hours of annual Professional Development Activities for new and returning Afterschool Aides and Substitutes related to the attainable goals defined in each Aide's or Substitute's Individual Professional Development Plan (IPDP). This training is in addition to any infant/child CPR certificate or recertification and First Aid Training.

### **ASP Section 10 – Emergency Procedures**

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10.8 The licensee shall develop and maintain a written Emergency Response Plan to respond to a full range of emergencies both natural and man-made. A complete plan shall include how the licensee will address and manage the following situations and responsibilities:

- Evacuations of the building for fire or other emergencies such as lockdown situations and sheltering-in-place;
- Specific concerns related to the location of the program, such as proximity to a nuclear reactor, an area prone to flooding or power loss;
- Notifying the local authorities of the emergency;
- A system for notifying the parents of the emergency;
- Notifying the local emergency planning committee regarding the location of the Afterschool Child Care Program and using the committee as a resource in emergency planning for the program;



- A system of identifying the children and staff present at the time of the emergency and maintaining knowledge of their whereabouts;
- A plan for handling children with special needs;
- An established evacuation meeting location within walking distance of the Afterschool Child Care Program;
- Responsibility to account for all children and staff at the evacuation meeting place;
- An established plan for relocation if necessary including safe transportation; and
- Staff chain of command and individual staff roles and responsibilities, (if applicable) during emergencies; and
- A process for reunifying children with their families in the event of an emergency.

### ASP Section 18 – Licensing Process and Procedures

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18.3 The Licensee or applicant shall permit visits, inspections and examination of the licensed facility, its records, equipment and materials relevant to determining compliance with applicable provision of these rules at reasonable hours by representatives of the Division. Any records or reports required in these regulations shall be surrendered to a Division representative upon request. The Division shall conduct an unannounced licensing visit at least once every 365 days at each facility.

