

Memorandum

To: Center Based Child Care and Preschool Programs
From: Janet McLaughlin, Deputy Commissioner, DCF Child Development Division
Date: 09/24/2024
Re: Child Care Licensing Rule Changes for Center Based Child Care and Preschool Programs (CBCCPP)

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 Center Based Child Care and Preschool 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 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. CBCCPP 3.7 – Emergency Preparedness
2. CBCCPP 5.1 – Child Health Promotion and Protection
3. CBCCPP 7.4 – Annual Professional Development
4. CBCCPP 8.1 – Non-Recurring Care Services.



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 3.7.1.1 – Additional Emergency Planning Requirements

Rule 3.7.1.1 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). Under Rule 2.3.11.5, licensees must comply with all applicable state and federal laws even if they are more stringent than CDD's licensing rules. Therefore, Rule 3.7.1.1 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."

Modification of Rule 5.1.3 – Immunization Grace Period for Certain Children

Federal and state law, as well as Rule 5.1.3, 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 2.7.1 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 5.1.3 will cause unnecessary hardship to all licensees (including providers of non-recurring care services) as well as children experiencing homelessness and children in foster care. Therefore, CDD is modifying Rule 5.1.3 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 5.1.3, 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 7.4.4 – 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 2.2.53 and 2.2.54, and substitutes must comply with all rules that staff are required to follow, unless substitutes are specifically exempted. All child care staff, including substitutes, are required to have training in CPR and first aid, and this training is separate from other annual professional development requirements in the rules. See Rules 7.1.2.2 and 7.4.7. Moreover, while Rule 7.4.4 exempts substitutes from the 15 hours of annual professional development activities required of other staff, this rule is not intended to exempt substitutes from complying with any other training requirement. As mentioned above, licensees must comply with federal laws even if they are more stringent than CDD's licensing rules. See Rule 2.3.11.5. Therefore, to comply with federal law, CDD is now imposing a minimum number of hours of annual professional development on substitutes under Rule 7.4.4: Substitutes shall complete four (4) hours of annual professional development activities in addition to any requirements for infant/child CPR certification (or recertification) and first aid training.

Rule 8.1.8 is Repealed – Non-Recurring Care Services Providers Must Maintain Immunization Information

Federal law requires children receiving child care services, funded in part through OCC, to be age-appropriately immunized in accordance with the latest recommendation for childhood immunizations by the Vermont Department of Health. See 45 C.F.R. § 98.41(a)(1)(i)(A). Furthermore, under state law, no child may be enrolled in a child care facility unless the facility has a record showing the child has received age-appropriate immunizations as specified by the Department of Health. See 18 V.S.A. § 1121(b). And all CBCCPPs, including non-recurring care services providers, are already required to submit a Vermont Child Care Immunization Report to the Department of Health as least once a year in accordance with Rule 5.1.4 and 18 V.S.A. § 1121(c)(1). (There is no exemption to Rule 5.1.4 under Section 8 of the Rules.) Under Rule 2.3.11.5, all licensees, including providers of non-recurring care services, must comply with all applicable state and federal laws even when they are more stringent than CDD's licensing rules. Therefore, all non-recurring care services providers must now comply with Rule 5.1.3 and maintain up-to-date immunization information in each child's file.



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

CBCCPP Section 3 – Administration and Operation

3.7 Emergency Preparedness

3.7.1 Emergency Planning

3.7.1.1 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 or other emergencies such as leaving the premise and lockdown situations;
- 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 CBCCPP 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 system for handling infants, toddlers, and children with special needs;
- An established evacuation meeting location within walking distance of the CBCCPP;
- A system to account for all children and staff at the evacuation meeting place;
- A process for relocation if necessary, including safe transportation;
- A system for shelter in place if the staff and children present need to remain in the CBCCPP for an extended period; ~~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.

CBCCPP Section 5 – Health, Safety and Nutrition

5.1 Child Health Promotion and Protection

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5.1.3 Immunizations:



The licensee shall maintain 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. The immunization record should be updated after each additional immunization has been received.
- 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.

CBCCPP Section 7 – Program Personnel/Staffing

7.4 Annual Professional Development

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7.4.4 All staff shall complete fifteen (15) clock hours of annual professional development activities as required in the rule 7.4.2 of these regulations, **except-** ~~Substitutes filling a staff position for less than thirty (30) consecutive days within a 365 day period shall be exempt.~~ **substitutes who shall complete four (4) hours of annual professional development activities in addition to any requirements for infant/child CPR certification (or recertification) and first aid training.**

CBCCPP Section 8 – Exceptions for Specially Designated Programs

8.1 Non-Recurring Care Services

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8.1.8 ~~The CBCCPP is exempt from the rules in section 5.1.3 of these regulations which require immunization information be obtained.~~ **[Deleted]**

(All non-recurring care service providers must comply with Rule 5.1.3 and maintain up-to-date immunization information in each child's file.)

