



NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Public Hearing and Opportunity to Comment on Proposed Amendment to Rules

What are we proposing? The Department of Health and Mental Hygiene (the "Department") is proposing to add a new Chapter 3 ("Performance Summary Cards and Penalties for Child Care Programs") to Title 24 of the Rules of the City of New York to implement the performance summary card requirements set forth in Section 390-j of the New York Social Services Law.

When and where is the hearing? The Department will hold a public hearing on the proposed rule from 9 a.m. to 11 a.m. on December 18, 2017. The hearing will be at:

New York City Department of Health and Mental Hygiene
Gotham Center
42-09 28th Street, Room 14-31
Long Island City, NY 11101-4132
(This is an accessible location.)

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Department through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to resolutioncomments@health.nyc.gov.
- **Mail.** You can mail comments to:
New York City Department of Health and Mental Hygiene
Office of General Counsel
Attn: Svetlana Burdeynik
42-09 28th Street, 14th Floor
Long Island City, NY 11101-4132
- **Fax.** You can fax comments to the New York City Department of Health and Mental Hygiene at 347-396-6087.
- **Speaking at the hearing.** Anyone who wants to comment on the proposal at the public hearing must sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078. You can also sign up in the hearing room before the hearing begins on December 18, 2017. You can speak for up to three minutes.

Is there a deadline to submit comments? Written comments must be received on or before 5:00 p.m. on December 18, 2017.

What if I need assistance to participate in the hearing? You must tell us if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 347-396-6078. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by December 4, 2017.

Can I review the comments made on the proposed amendment? You may review the comments made online at <http://rules.cityofnewyork.us/> on the proposed amendments by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, a transcript of the hearing and copies of the written comments will be available for review by the public at the Department's Office of the General Counsel.

What authorizes the Department to make this amendment? Sections 1043 and 556 of the New York City Charter ("Charter") authorize the Department to make this proposed rule. Section 390-j of the New York State Social Services Law, as enacted by Chapter 513 of the Laws of 2016, requires the Department to adopt rules pertaining to the issuance of performance summary cards to child care programs.

Where can I find the Department's rules? The Department's rules are in Title 24 of the Rules of the City of New York.

What laws govern the rulemaking process? The Department must meet the requirements of Section 1043 of the Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the Charter.

Statement of Basis and Purpose

Background

Pursuant to amendments to Social Services Law Section 390-j that take effect on December 31, 2017, the Department is required to issue performance summary cards to child care programs, and to adopt related regulations. These amendments were enacted by Chapter 513 of the Laws of 2016.

Proposed Changes

The Department is proposing to add a new Chapter 3 to Title 24 of the Rules of the City of New York to provide for the issuance of performance summary cards to child care programs, to provide parents with information they may wish to consider in selecting a child care provider. In order to provide for consistency of fines, Chapter 3 also specifies fixed penalties applicable to certain violations of the Chapter or of Article 47 of the New York City Health Code.

Statutory Authority

This amendment to Title 24 of the Rules of the City of New York is promulgated pursuant to Sections 556 and 1043 of the New York City Charter, and Section 390-j of the New York Social Services Law, as enacted by Chapter 513 of the Laws of 2016. Section 556 of the Charter authorizes the Department of Health and Mental Hygiene ("the Department") to regulate all

matters pertaining to the health in the City. Section 1043 of the Charter authorizes the Department to adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to a State law. Section 390-j of the Social Services Law requires the Department to adopt rules regarding the issuance of performance summary cards to child care programs.

The proposed changes are as follows:

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this Department, unless otherwise specified or unless the context clearly indicates otherwise.

Title 24 of the Rules of the City of New York is amended by adding a new Chapter 3 (“Performance Summary Cards for Child Care Programs”) to read as follows:

CHAPTER 3

PERFORMANCE SUMMARY CARDS AND PENALTIES FOR CHILD CARE PROGRAMS

§3-01 Scope and applicability. This Chapter applies to any child care program holding a permit to operate in New York City pursuant to Article 47 of the Health Code.

§3-02 Definitions. When used in this Chapter, the following terms have the following meanings:

Adjudicated violations. “Adjudicated violations” means cited violations sustained pursuant to a decision by a hearing officer at the Office of Administrative Trials and Hearings (“OATH”), or pursuant to a settlement agreement between the Department and a child care program, to the extent that such decision or settlement agreement remains in effect. “Adjudicated violations” also means cited violations for which a hearing has not been held but for which the hearing date has been rescheduled at the request of the child care program more than one time.

Initial inspection. “Initial inspection” means an inspection conducted other than for the purpose of ascertaining whether a prior violation has been abated or of responding to the receipt of a complaint.

Permit. “Permit” means a permit issued by the Department pursuant to Article 47 of the Health Code.

Permit suspension. “Permit suspension” means a suspension of a child care program’s permit to operate due to a violation of the Health Code or any rule promulgated by the Department, other than a suspension based on a cited violation that is subsequently dismissed.

Public health hazard. “Public health hazard” has the same meaning as “imminent or public health hazard,” as such term is defined in Article 47 of the Health Code.

Site. “Site” means the location, specified in a permit, where child care services are provided.

Teaching staff. “Teaching staff” means the educational directors, group teachers, and assistant teachers of a child care program.

§3-03 Performance summary cards.

(a) The Department shall issue a performance summary card to each child care program at each site at least once every 12 months.

(b) A performance summary card issued in 2018, or issued at any time to a child care program that has held a permit to operate at a site for less than one year shall include the following information, as known as of the date such card is issued:

(1) the number of full years the child care program has been permitted to operate at the site, except that for a child care program that has been permitted to operate at a site for more than 10 years, such number shall be indicated by “10+”;

(2) the number of children permitted to be cared for by the child care program at the site at any time;

(3) the number of teaching staff employed by the child care program at the site;

(4) the number of permit suspensions of the child care program's permit at the site during the previous three years; and

(5) information on how to find the child care program's inspection record for the site online.

(c) A performance summary card issued after 2018 to a child care program that has held a permit to operate at a site for at least one year shall include, as of the date such card is issued, the following information, as known as of the date such card is issued:

(1) the number of full years the child care program has held a permit to operate at that site, except that for a child care program that has been permitted to operate at a site for more than 10 years, such number shall be indicated by "10+";

(2) the number of children permitted to be cared for by the child care program at the site at any time;

(3) the number of teaching staff employed by the child care program at the site;

(4) the number of permit suspensions of the child care program's permit at the site during the previous three years;

(5) the total number of public health hazard violations at the site adjudicated in the previous year;

(6) the average number of public health hazard violations per inspection at the site adjudicated in the previous year;

(7) the average number of violations of the Health Code or rules of the Department, other than public health hazard violations, at the site adjudicated in the previous year;

(8) the Citywide averages for the numbers of violations specified in paragraphs (6) and (7) of this subdivision for all child care programs, as calculated by the Department for the prior calendar year; and

(9) information on how to find the child care program's inspection record for the site online.

§3-04 Posting.

(a) Upon receipt of a performance summary card, a child care program shall post it in a conspicuous location within two feet of the front door or other main entrance to the site, between four and six feet above the ground or floor. The performance summary card shall not be defaced, marred, camouflaged, or hidden from public view, or posted in a manner that permits it to be damaged by exposure to weather.

(b) A child care program that has a permit suspension reflected on its posted performance summary card shall also conspicuously post any additional document provided by the Department reflecting the reason for such suspension.

(c) Upon receipt of a new performance summary card, a child care program shall post the new card and dispose of the prior performance summary card in a manner that prevents its reuse.

(d) A child care program shall immediately remove a posted performance summary card upon a permit suspension.

(e) Except as provided in subdivision (d), a child care program may not remove or obscure a posted performance summary card except to replace it with an updated card, or as otherwise authorized by the Department.

(f) A child care program site that is permitted to reopen following a permit suspension shall post the applicable performance summary card in accordance with subdivision (a) of this section before reopening.

(g) If a child care program's performance summary card is damaged or stolen, the child care program shall immediately contact the Department to request a replacement card.

§3-05 Updated performance summary cards.

Upon request from a child care child care program, the Department shall provide such program with an updated performance summary card. The Department may also provide an updated performance summary card to reflect a new permit suspension. Updated performance summary cards shall reflect a child care program's violations adjudicated in the 12 months prior to the date of issuance and permit suspensions imposed in the 36 months years prior to the date of issuance. The issuance of an updated performance summary card shall not require the Department to provide revised Citywide averages for the numbers of violations specified in §§3-03(c)(5) and (6). Upon receipt of an updated performance summary card, the child care program shall post the updated card and dispose of the prior performance summary card in a manner that prevents its reuse.

§3-06 Penalties.

(a) The holder of a permit of a child care program or any other person found to be in violation of any of the following provisions by a hearing officer at OATH or a successor tribunal must pay the following penalties for each such violation sustained:

(1) For a violation of any provision of Article 47 of the Health Code for which a fixed penalty is not established by the Health Code or any other rule of the Department: \$200;

(2) For a violation of §§3-04(a) for operating without posting the required performance summary card: \$1,000; and

(3) For a violation of any requirement of §3.04 not listed in paragraph (2) of this subdivision: \$500.

(b) To the extent permitted by law, if a person is found to be in default, the penalty imposed for a violation of Health Code Article 47 or of this Chapter must be twice the amount set forth in subdivision (a) of this section.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Performance Summary Cards for Childcare Programs

REFERENCE NUMBER: DOHMH-84

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Stephen Narloch
Mayor's Office of Operations

November 16, 2017
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Performance Summary Cards for Childcare Programs

REFERENCE NUMBER: 2017 RG 098

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: November 16, 2017