



**NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

**Notice of Public Hearing and Opportunity to Comment on
Proposed Amendments to Chapter 3 of Title 24 of the Rules of the City of New York**

What are we proposing? The New York City Department of Health and Mental Hygiene (“Department”) is proposing to amend Chapter 3 (“Performance Summary Cards and Penalties for Child Care Programs”) of Title 24 of the Rules of the City of New York to modify the information that will be presented on performance summary cards (PSC) issued to child care providers by the Department pursuant to Section 390-j of the New York State Social Services Law.

When and where is the hearing? The NYC Health Department will hold a public hearing on the proposed rules. The public hearing will take place from 10 a.m. to 11 a.m. on March 27, 2025. The hearing will be conducted by video conference accessible via internet or telephone.

- **Internet.** To participate in the public hearing, please register at this Webex URL:
<https://nycdohmh.webex.com/nycdohmh/j.php?MTID=m6d4161ea4a1c49190cedd2d2ed93473b>
If prompted to provide an event number or password, please enter the following:
Event number: **2340 316 2188**
Password: **p3kM5sTTmn5** (73565788 when dialing from a phone or video system)
- **Phone:** For access, dial: (646) 992-2010 or (408) 418-9388 then please enter the following:
Access code: **234 031 62188**

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

- **Website.** You can submit comments to the NYC Health 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 the NYC Health Department at:
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, 14th floor, CN30
Long Island City, NY 11101-4132
Attn: Svetlana Burdeynik
- **Fax.** You can fax written comments to NYC Health Department at (347) 396-6087.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling the Secretary to the Department at (347) 396-6078 or (347) 396-6116. You can also sign up when you join the hearing on March 27, 2025. You can speak for up to three minutes. Please note that the hearing is for accepting oral testimony only and is not held in a “Question and Answer” format.

Is there a deadline to submit written comments? Yes, you must submit written comments by 5 p.m. on March 27, 2025.

What if I need assistance to participate in the hearing? You must tell the NYC Health Department 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 email or mail at the address given above. You may also tell us by telephone at (347) 396-6078 by March 13, 2025.

Can I review the comments made on the proposed amendments? You may review the comments made online at the website <http://rules.cityofnewyork.us/>. All written comments and a summary of the oral

comments received by the Department will be made available to the public within a reasonable period of time by the Department's Office of the General Counsel.

What authorizes the Department to make these amendments? 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 about the issuance of performance summary cards to child care programs. Sections 1043 and 556 of the New York City Charter ("Charter") give the Department the authority to make these proposed changes.

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

What laws govern the rulemaking process? This notice is made according to the requirements of Charter §1043. This proposal was not included in the Department's FY2025 regulatory agenda as it is the result of recent analysis.

Statement of Basis and Purpose

Social Services Law section 390-j (or "the Law") requires the Department to issue performance summary cards ("PSC(s)") to each child care program required to obtain a permit to operate in New York City and to adopt related regulations. The Law further requires that the PSC "summarize recent [health and safety] inspection violations and suspensions as required by rules promulgated by the department issuing such card." Effective January 28, 2018, the Department enacted such rules in a new Chapter 3 ("Performance Summary Cards and Penalties for Child Care Programs") of Title 24 of the Rules of the City of New York.

In December 2021, the Department amended Chapter 3 to modify the contents of the PSCs. Those amendments, which are reflected in the current rule, classified PSC violations into two categories: facility maintenance violations and program operations violations. Those amendments also distinguished violations within each category based on risk level (i.e., "Low" or "High" risk), and established display ratings (i.e., "Excellent", "Satisfactory", or "Needs Improvement") for each category of violations based on the number of violations a program received in that category and the risk level of such violations. The December 2021 amendments, however, provided for a level of detail in the PSC that proved unnecessary and presented complications. Specifically, the violation categories and risk levels were not easily understood by the public; the display ratings do not allow parents and caregivers to accurately compare child care facilities because such facilities are often assessed at different times; and technological constraints make implementation of Chapter 3 in its current form difficult.

Given these complications, the Department is now proposing to amend Chapter 3 to adhere to Social Services Law section 390-j in a manner that is consistent with the information displayed on the Department's Child Care Connect website. Providing consistent information on the website and PSC will help caregivers and providers assess the performance of their child care programs.

The proposed amendments are as follows:

Underlined language is new.

Language in [brackets] is to be deleted.

Ellipses (***) indicate unamended text.

Section 1. Section 3-02 of chapter 3 of Title 24 of the Rules of the City of New York is amended to read as follows:

§ 3-02 Definitions.

When used in this Chapter, the following terms have the following meanings:

["**Adjudicated violation**" means a cited violation of the Health Code or Department rules sustained following a hearing or default, 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 violation" also includes cited violation 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.

"**Facility maintenance violation**" means a violation of the Health Code or Department rules related to the physical space of the child care, reflecting an environmental hazard or other physical deficiency in the real property covered by the permit, including but not limited to a violation of requirements related to internal and external spaces, physical plant, equipment and structural maintenance, sanitation, egress, fire and general safety, lighting, ventilation, plumbing, food safety or pest control.

"**Higher risk violation**" means a violation, other than a violation of this Chapter, with a penalty amount fixed by the Health Code or Department rules at over \$200.

"**Initial inspection**" means an inspection conducted other than for the purpose of ascertaining whether a prior violation has been abated, or in response to a complaint.

"**Lower risk violation**" means a violation with a penalty amount fixed by the Health Code or Department rules at \$200, or a violation of this Chapter.]

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

"**Permit suspension**" means a [suspension] closure 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 that is subsequently vacated].

["**Program operations violation**" means a violation of the Health Code or Department rules related to permitting, written safety plan, staff qualifications, clearances, training, child supervision, child and staff health requirements, personal hygiene, child development policies, performance summary cards, records or documentation, Department inspections, or any other violation of the Health Code or Department rules that does not constitute a facility maintenance violation.]

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

["**Teaching staff**" means the education directors, group teachers, assistant teachers, and teacher aides of a child care program.]

§ 2. Subdivision b of section 3-03 of chapter 3 of Title 24 of the Rules of the City of New York is amended to read as follows:

(b) A performance summary card issued to a child care program 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 more than 10 years of operation shall be indicated by "10+" and less than one year of operation shall be indicated by "<1";

(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] a summary of inspection results for the 12 months preceding issuance of the card; and

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

§ 3. Subdivision c of section 3-03 of chapter 3 of Title 24 of the Rules of the City of New York, relating to information from the prior year required to be included in performance summary cards, is REPEALED.

§ 4. Section 3-05 of chapter 3 of Title 24 of the Rules of the City of New York is amended to read as follows:

§ 3-05 Updated Performance Summary Cards.

Upon request from a child care program, [based on a change to the number of adjudicated violations for the prior calendar year that would change either of the program's ratings,] 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 [adjudicated] violations that were cited by the Department in the prior [calendar year] 12 months and permit suspensions imposed in the [36] 12 months prior to the date of issuance. Upon receipt of an updated performance summary card, the child care program shall post [the] such updated card and dispose of the prior performance summary card in a manner that prevents its reuse.

§ 5. Subdivision a of section 3-06 of chapter 3 of Title 24 of the Rules of the City of New York is amended to read as follows:

(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] the Office of Administrative Trials and Hearings 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 Section 3-04(a) of this Chapter for operating without posting a performance summary card issued to the program: \$500; and

[(3)] (2) For a violation of any other requirement of this Chapter: [\$500] \$200.

**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: Amendment of Rules Relating to Performance Summary Cards for Child Care Programs

REFERENCE NUMBER: 2025 RG 001

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
Senior Counsel

Date: February 5, 2025

**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: Amendment of Rules Relating to Performance Summary Cards for Child Care Programs

REFERENCE NUMBER: DOHMH-154

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 a cure period is not practicable under the circumstances.

/s/ Lisa Taapken
Mayor's Office of Operations

February 5, 2025
Date