



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

**Notice of Public Hearing and Opportunity to Comment on the Proposed Amendment of
New York City Health Code Article 47**

What are we proposing? The Department of Health and Mental Hygiene (“the Department”) is proposing to amend sections 47.01, 47.11, 47.13, and 47.23 of Article 47 (Child Care Programs and Family Shelter-Based Drop-off Child Supervision Programs) of the New York City Health Code (“Health Code”) to update provisions regarding staff qualifications, the maximum age of a child allowed in a program, group teachers for younger children, and staff to child ratios.

When and where is the hearing? The Department will hold a public hearing on the proposed rule. The public hearing will take place from 10:00 a.m. to 11:00 a.m. on September 22, 2025. The hearing will be conducted by video conference accessible via internet or telephone:

- **Internet.** To participate in the public hearing, enter to register at this Zoom meeting: https://health-nyc.zoomgov.com/meeting/register/0VSCvLCLTYiQ7p-P2Sb_gA
If prompted to provide meeting ID and passcode, please enter the following:
Meeting ID: **161 744 8233**, Passcode: **582797**
- **Phone:** For access, dial: (646) 828-7666 or Toll-free (833) 568-8864; (833) 435-1820, then please enter the following Meeting ID: **161 744 8233**

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

- **Website:** You can submit comments to the Department through the NYC Rules website at <http://rules.cityofnewyork.us>.
- **Email:** You can email written comments to resolutioncomments@health.nyc.gov.
- **Mail:** You can mail written comments to:

New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, 14th Floor, CN 30
Long Island City, NY 11101-4132.

- **Fax:** You can fax written comments to the Department at 347-396-6087.
- **Speaking at the hearing:** Anyone who wants to comment on the proposed amendments at the public hearing must sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078 or by emailing resolutioncomments@health.nyc.gov before the hearing begins at 10 a.m. on September 22, 2025. While you will be given the opportunity during the hearing to indicate that you would like to comment, we prefer that you sign up in advance. 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? Written comments must be received on or before 5:00 p.m. on September 22, 2025.

What if I need assistance to participate in the hearing? You must tell the Department's Office of General Counsel if you need a reasonable accommodation of a disability at the hearing, including if you need a sign language interpreter. You can tell us by e-mail or by mail at the addresses given above. You may also tell us by telephone at 347-396-6078. Please give us advance notice to allow sufficient time to arrange the accommodation. Please tell us by 4:00 p.m. on September 8, 2025.

Can I review the comments made regarding the proposed rules? You may review the online comments made on the proposed rules at <https://rules.cityofnewyork.us/proposed-rules/>. 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 after the hearing by the Department's Office of General Counsel.

What authorizes the Department to make this rule? Sections 556, 558, and 1043(i) of the New York City Charter authorize the Board to make the proposed amendments.

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

What laws govern the rulemaking process? The Department must satisfy the requirements of Section 1043 of the Charter when amending the Health Code. This notice is made according to the requirements of Section 1043(b) of the Charter. These amendments were not included in the Department's most recent regulatory agenda because they were not contemplated when the Department published the agenda.

Statement of Basis and Purpose of Proposed Rule

New York City's parents and guardians rely on safe, quality child care to be able to go to work, and without it, parents may have no choice but to leave their children with unregulated or illegal child care. All of this makes child care a necessary service that must meet standards to protect children's health and safety. Unfortunately, New York City, like localities across the country, is facing a shortage of child care professionals. Many providers operating the licensed and regulated 2,200 child care centers in New York City struggle to find qualified staff and, as a result, may close classrooms, suspend operation, or delay opening.

These amendments to Article 47 of the New York City Health Code are being proposed to permanently replace the emergency rule and are the same as the amendments made in the emergency rule. The emergency rule shall remain in effect for an additional 60 days pursuant to Section 1043(i)(2) of the Charter to afford an opportunity for notice and comment to adopt a final rule.

The emergency rule was necessary to prevent staffing shortages at child care centers caused by time-sensitive and increased hiring underway at New York City Public Schools to meet class size mandates. In April, New York City announced that it would be hiring 3,700 additional teachers by September 2025 to meet a New York State mandate for smaller class sizes. This large hiring effort is anticipated to draw child care staff, many of whom are certified to teach elementary school students, away from child care

centers and into employment with New York City Public Schools, exacerbating child care center staffing shortages. In order to preserve current child care staffing and promote the availability of future qualified child care center staff candidates, the Department amended the Health Code immediately via emergency rulemaking to remove hurdles for child care providers that burden hiring. The emergency rule was necessary to support uninterrupted provision of child care by providers offering this service in center-based programs to children under age six.

The emergency amendments provided flexibility to the child care programs while maintaining the safety of the children in child care by enhancing protections for children in center-based child care programs, providing staffing more appropriate for the child's development, and clarifying certain requirements to facilitate compliance.

The Department is proposing to make the amendments set forth in the emergency rule permanent because child care programs in New York City will continue to experience staff shortages that these amendments will address.

In addition to the circumstances noted above, the Department is proposing amendments to Article 47 at this time in response to a recent rulemaking petition it received and granted in accordance with Article 9 of the New York City Health Code.

Definitions of Terms

The Department proposes to amend section 47.01 of the Health Code by adding or expanding multiple definitions to clarify certain existing staff roles and expand roles including:

- Adding a new term of “education director designee” to Article 47. The education director designee would not replace the role of education director, but instead would provide a designation for a person who can provide temporary coverage for the education director position. Prior to these amendments a certified group teacher at a child care program could, under certain conditions, cover for an education director. Under this new term of “education director designee,” at a preschool, a person will be able to cover for an education director if they are a certified group teacher or a group teacher qualified by experience. At an infant/toddler program, the education director designee can be a preschool certified group teacher, or a preschool group teacher qualified by experience or by the education director qualifications under section 47.15 of the Health Code. The education director designee must also meet safety screening clearances required by section 47.19 of the Health Code.
- Adding the term “core operating hours,” to define the period during the day when the education director must be present, even if the program operates for a longer period of time. Defining the core operating hours allows a program to operate with an education director designee for hours outside of the core operating hours when at least one child is present.
- Amending section 47.01 to better describe the two types of child care programs regulated by Article 47, preschool child care programs and infant/toddler child care programs, by providing clearer language establishing the ages of children that are in each type of program. This is a necessary change because the Department has frequently observed that child care programs have improperly enrolled an older child in the infant/toddler child care program, causing the child care program to sustain violations, which may lead to fines, closure and interruption in child care service for the community. In clarifying the definitions, a child care program will more clearly understand whether a child should be enrolled in an infant/toddler child care program or if they have aged out. Accordingly, the Department proposes adding the term “preschool child care program” to section 47.01 to define child care programs for older children between the ages of

two through five. The Department is proposing to amend the definition of “infant/toddler child care program” to better define the maximum age for children in this program. The Department believes the updated definition for “infant/toddler child care program” provides clarity on who should be enrolled, because under the current definition it is unclear about what date a child, who is between 24 months old and 36 months old, must no longer be enrolled in an infant/toddler program, but must instead be enrolled in a preschool program. Further, the proposed amendment clarifies that a child may only enter an infant/toddler program when they are less than two years old, meaning they need to be less than 24 months old when they first enroll.

Written Safety Plan

The Department is proposing to amend section 47.11 to expand the information that must be included in the program’s safety plan to include documenting the program’s core operating hours and naming the education director designee. Having this information in the safety plan will ensure that all program staff know who is supervising operations at all times.

Qualifications and Duties of Staff

Section 47.13 addresses qualifications and duties of staff that are critical to promoting the health and development of children. The Department is proposing to amend this section to require either an education director or an education director designee to be on site whenever at least one child is present. The amendment also specifies that the education director and education director designee must be qualified pursuant to the requirements of section 47.13 and have screening clearance pursuant to section 47.19.

The Department is further proposing to amend section 47.13 to allow a group teacher in a preschool child care program that cares for children younger than three years old to be determined as qualified under the requirements of section 47.15(b), which sets forth the group teacher qualifications for an infant/toddler child care program. This amendment to the qualifications for a group teacher in a preschool child care program would allow child care programs more flexibility in hiring group teachers where the preschool child care program group teacher cares for children under three years old. The Department also believes this amendment for group teachers in preschool child care programs will be more responsive to the needs of these younger children. Although a child under age three may be in a program classified as “pre-school,” their care better aligns with the care requirements of an infant/toddler child care program.

Constant Competent Supervision

Prior to the emergency rule, section 47.23 required a qualified group teacher or an education director of a child care program to supervise children in the program at all times and maintain staff to child ratios, with the exception of the time during breaks or lunch periods, and limited an absence of the qualified group teacher or education director of no more than three days where an assistant teacher and teacher aide could be assigned to the classroom, so long as at least one assistant teacher is included for each group of children in attendance. If the qualified group teacher or education director was absent outside of any of those allowed exceptions under 47.23, then the child care program was not maintaining the required staff to child ratio. The Department proposes to amend this section to make clear the ratio applies to the number of staff and children in a classroom, instead of a program, and to expand the number of days an assistant teacher and teacher aide’s presence may satisfy the required staff to child ratios in a classroom from 3 days to 5 days. This amendment provides child care programs with flexibility for their staff and improves a child care program’s employee retention. This amendment to section 47.23 does not affect the requirement that an education director or an education director designee always be on premises.

This rule is authorized by Sections 556, 558, and 1043 of the New York City Charter.

The proposed amendments are as follows:

Underlined language is new.

Language in [brackets] is to be deleted.

Ellipses (***) indicate unamended text.

“Shall” and “must” denote mandatory requirements and may be used interchangeably unless otherwise specified or unless the context clearly indicates otherwise.

RESOLVED, that section 47.01 of Article 47 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended by adding new definitions of “core operating hours,” “education director designee,” and “preschool child care program” in alphabetical order and to amend the definition of “infant/toddler child care program” to read as follows:

§ 47.01. Definitions.

(e-1) Core operating hours means the time during a child care program’s daily schedule designated for activities, experiences and routines structured to promote physical, intellectual, and emotional learning, and excludes the time designated for dropping off and picking up children.

(i-1) Education director designee means a person designated by a child care program to temporarily cover for the child care program’s education director pursuant to the conditions set forth in section 47.13(c)(1).

(r) Infant/toddler child care program means a child care program that, during all or part of the day or night, provides care to children [younger than 24 months of age] who attend such program prior to reaching two years of age and who are not older than three years of age.

(u-1) Preschool child care program means a child care program that, during all or part of the day or night, provides care to children between the ages of two through five years of age.

RESOLVED, that subdivision (b) of section 47.11 of Article 47 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 47.11 Written Safety Plan

(b) Scope and content. The written safety plan shall establish policies and procedures for safe operation, including a child care program’s core operating hours; the name of the education director designee for a child care program, if applicable; teaching and other staff duties[,]; facility operation and maintenance, fire safety, general and activity-specific safety, and emergency management[,]; staff and child health and medical requirements[,]; staff training; and parent/child orientation. The written safety plan shall consist of, at a minimum, a table of contents and the following components:

RESOLVED, that the title and subdivision (c) of section 47.13 of Article 47 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended and a new subdivision (g) is added, to read as follows:

§ 47.13 Child Care Programs: Teaching Staff Qualifications and Coverage [in Child Care Programs].

(c) Education director, coverage, duties, qualification, hours. [Except as provided in Section 47.15 or 47.17, every] Every child care program must [designate a certified group teacher as the education director, who] have an education director who is qualified pursuant to the requirements of this section and screened in accordance with section 47.19 and is on site for no less than 8 hours per day during the program's core operating hours. The education director shall be in charge of staff training, educational and child development programs and shall supervise all teaching staff at each permitted child care program. An education director may serve in such capacity for a maximum of two programs, and only if such programs are co-located infant/toddler child care programs and preschool child care programs and operated by the same legal entity.

(1) Coverage for education director. [Except as provided herein, a] The education director or education director designee of a child care program must be on site [at all times while the program is caring for one or more children] whenever at least one child is present. [At any time when the education director is not on the premises to supervise a child care program, the permittee must designate an individual to act as education director. Except as provided in Section 47.15 or 47.17, such individual must be a certified group teacher or a group teacher whose application for certification is fully submitted and pending certification by the State Education Department or other accreditation organization, or whose application for certification is fully submitted and pending approval by the Department, provided that the permittee has complied with criminal justice and SCR screening requirements for staff set forth in this Article. In addition, the permittee must notify the Department in writing within 5 business days of the separation from service of the education director. When the education director is separated from service or will be on leave for more than 5 business days, the permittee must notify teaching staff and the Department in writing of the certified teacher who has been designated as education director and make this written communication available to the Department for inspection upon request.]

(A) Education director designee. A child care program must identify an education director designee to provide coverage for the education director during hours of service outside of such program's core operating hours, or during an absence of the education director that is not to exceed a total of 60 cumulative days in a 12-month period.

(i) An education director designee must have been screened in accordance with section 47.19. For a preschool child care program, an education director designee must have the qualifications set forth in sections 47.13(d)(1) or 47.13(d)(2). For an infant/toddler child care program, an education director designee must have the qualifications set forth in sections 47.13(d)(1), 47.13(d)(2) or 47.15(a).

(ii) When an education director is permanently separated from service at a child care program, the education director designee at such child care program may serve as the education director for no more than 60 days, provided that the permittee notifies the Department and all program staff in writing within 5 business days of such separation and makes such written communication to staff available to the Department for inspection upon request.

(iii) The person identified as the education director designee may only serve in that role under the permit for which they are employed, and they may be identified as the education director designee for only one

child care program. The education director designee may have teaching duties regardless of the number of children in attendance at the program.

(g) Group teacher for children younger than 3 years old in a preschool child care program. A group teacher for children younger than 3 years old in a preschool child care program must, at minimum, meet the qualifications set forth in section 47.15(b).

RESOLVED, that subdivision (a) of section 47.23 of Article 47 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 47.23 Supervision; Staff/Child Ratios and Group Size.

(a) Constant competent supervision required. Staff included in the staff/child ratios set forth below shall maintain direct line of sight, constant competent supervision of all of the children in the program at all times. Children in a child care [program,] classroom shall be competently supervised by a qualified group teacher or education director at all times in each type of child care program for which a permit is issued, with the sole exception that in the event of breaks or lunch periods, absence of no more than [three] five days, the required staff/child ratio in a child care [program] classroom may be maintained with assistant teachers and teacher aides, so long as at least one assistant teacher is included for each group of children in attendance. Children in a family shelter-based drop-off child supervision program shall be competently supervised by shelter child supervision staff at all times.

(1) When any program is in operation, the number of qualified staff required by this Code shall be assigned and on duty to protect the health and safety of the children on the program's premises, and in the case of trips off-site the required number of staff shall accompany the children at all times wherever the children travel.

(2) Each program shall maintain a daily log, to be kept on site and provided to the Department upon request, reflecting the arrival and departure time of each member of the teaching staff or shelter child supervision staff.

**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 Child Care and Child Supervision Programs

REFERENCE NUMBER: 2025 RG 071

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: August 8, 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 Child Care and Child Supervision Programs

REFERENCE NUMBER: DOHMH-166

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/ Francisco X. Navarro
Mayor's Office of Operations

August 8, 2025
Date