

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

Notice of Adoption of Amendments to Article 47 of the New York City Health Code

In compliance with section 1043(b) of the New York City Charter (“Charter”) and pursuant to the authority granted to the New York City Board of Health (“Board”) by section 558 of the Charter, a notice of public hearing and opportunity to comment on the proposed amendments to 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”) was published in the New York City Record on August 21, 2025. A public hearing was held on September 22, 2025, and ten people gave testimony. In addition, thirty-nine (39) written comments were submitted.

Most of the comments and testimony did not address the proposed amendments but rather offered suggestions for additional unrelated amendments to the Health Code and were therefore non-responsive to the proposed rule. The non-responsive comments were related to the use of foreign experience or foreign licenses for child care employees and expanding the eligible fields of study or experience that allow for qualification. Although these comments relate to child care staff qualification, these recommendations are outside the scope of the proposed amendments as the New York City Department of Health and Mental Hygiene (“Department”) is not proposing changes to foreign accreditation found in Health Code section 47.13 and the Department is not expanding related fields of study. Therefore, the Department is not making any changes recommended by the non-responsive comments. The Department will, however, continue to review the suggestions in the non-responsive comments for potential future proposed changes to Health Code Article 47.

The responsive comments concerned when a child must transition to a preschool classroom, whether a teacher holding a Child Development Associate (CDA) Certificate needs to also be on a study plan, extending the replacement period for an Education Director and extending the days a group teacher can be absent. Since the rule already clarifies the age of a child attending an infant/toddler child care program or a preschool program and that a CDA requires a study plan, the Department makes no changes for these comments and will provide additional guidance on these issues in the written materials to be provided with the rule. As to the suggestion that the Department extend the time period to replace an Education Director from 60 days to 90 days, the Department does not adopt this recommendation given the critical role the Education Director plays as the program leader, and therefore the Education Director should not be absent for a more extended period. However, the Department has provided in our guidance materials that child care programs are always welcome to contact the Department about their staffing circumstances so the Department can provide support and technical assistance. We believe this approach will serve child care programs that, despite best efforts at recruitment, need additional time for hiring. Concerning the comments that recommended amending section 47.23(a) to allow for ten days that a group teacher can be absent with appropriate coverage to align with the Department of Education, the Department declines to adopt this change as under the rule the group teacher can be absent for five days at different times of the year. Finally, the Department will provide in guidance that a child care that operates for less than eight hours must have an education director on premises at all times.

Following the hearing and review of the written comments, the Department made no changes to the proposed rule. At its meeting on November 13, 2025, the Board adopted the following resolution.

Statement of Basis and Purpose of 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. 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 to permanently replace the emergency rule, which went into effect on August 13, 2025, and are the same as the amendments made in the emergency 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 that burden hiring for child care providers. 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 making 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 making 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 amends section 47.01 of the Health Code by adding or expanding multiple definitions to clarify certain existing staff roles and expand roles including:

- Adds 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.

- Adds 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.
- Amends 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 adds 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 amends 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 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 amends 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 amends 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 amends 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 amends 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.

Statutory Authority

This rule is authorized by Sections 556, 558, and 1043 of the New York City Charter ("Charter"). Section 556 of the Charter provides the Department with jurisdiction to protect and promote the health of all persons in the City of New York. Sections 558(b) and (c) of the Charter empower the Board to amend the Health Code and to include all matters to which the Department's authority extends. Section 1043 grants the Department rule-making authority.

The 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 the definition of "infant/toddler child care program" contained in 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, and new definitions of "core operating hours," "education director designee," and "preschool child care program" are added in alphabetical order, to read as follows:

(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:

(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, are 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:

(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.

FINDING OF SUBSTANTIAL NEED FOR EARLIER IMPLEMENTATION

PURSUANT TO NEW YORK CITY CHARTER SECTION 1043(f)(1)(c)

I hereby find and represent to the Mayor that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Department Health and Mental Hygiene's (the "Department") amendments to Article 47 of the New York City Health Code ("Health Code"). The amendments are being made to assist New York City's child care programs in finding and maintaining staff. New York City, like localities across the country, is facing a shortage of child care professionals. Many providers operating the 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. 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. These amendments seek to provide flexibility in providing coverage for required staff and clarify staffing requirements.

These amendments to Article 47 of the Health Code were previously promulgated by emergency rule on August 13, 2025 and are set to expire on December 11, 2025. Therefore, there is a substantial need to make these amendments effective immediately as to not have a period where these changes are not in effect. Accordingly, I find that there is a substantial need for bringing these rules into effect immediately upon publication in The City Record.

This declaration is made pursuant to Section 1043, subdivision f, paragraph 1(c) of the City Charter.

Dated: November 13, 2025



Michelle Morse, MD, MPH
Acting Commissioner of Health

Dated: November 13, 2025

APPROVED:



Eric Adams
Mayor