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Repeal and Reenactment of Article 47 (Child Care Services) of the New York City Health Code

On March 6, 2008, the Board of Health of the Department of Health and Mental Hygiene (DOH) adopted a resolution to repeal and reenact Article 47 of the New York City Health Code (“Article 47”). Article 47 regulates child care services and programs in New York City. With the amendment Article 47 is now more closely aligned with comparable provisions of the New York State Social Services Law and the regulations of the Office for Children and Family Services (OCFS) applicable to child care services in other parts of New York State. *Revised Article 47 goes into effect on September 1, 2008.*

The entire text of the revised Article 47, along with explanatory notes, is available at <http://www.nyc.gov/html/doh/html/notice/notice.shtml>.

Below are highlights of some of the most significant changes to Article 47:

§47.01 Expanded Definition of “Child Care Services”.

§47.01 replaces the term “day care services” with “child care services” and expands the definition to include child care services with 3 or more children under 6 years of age instead of the previous requirement of 7 or more children under 6 years of age.

“Child Care Services” is now defined as “any program, day or night, that provides child care services for 3 or more children under six (6) years of age for five (5) or more hours per week, and that operates for more than 30 days during any 12-month period.” Any child care or day care service in New York City that meets this definition must obtain a permit from the DOH.

Programs excluded from the definition of “Child Care Services” and not subject to Article 47 regulation or permit requirements:

- Kindergarten and pre-kindergarten classes that are operated as part of, or are located within, any public or non-public elementary school. These programs may be located in buildings separate from the elementary school, but must be under identical ownership, operation, management and control.
- *Note, however,* that school programs that offer child care services for children under three (3) years of age are not excluded from the definition, and these programs must obtain a DOH permit.
- “Mommy and me” or similar programs where a child is accompanied by a parent or other adult who is not employed by the child care program.

§47.13, §47.15, §47.17 Changes to Teaching Staff Qualifications.

Revised Article 47 changes the qualification requirements for certain staff positions in a child care service. The following table summarizes the changes. If a position is not listed below, the qualification requirements have not changed for that position.

Note revised Article 47 does not address how a child care service should proceed if a current staff member does not have the additional qualifications. It is unclear if the staff member may retain the

employee on staff without the additional qualifications.

<u>Position</u>	<u>Qualifications</u>	<u>Change from Previous Law</u>
<p>Person in Charge of Group of Children</p>	<p>(1) B.A. in early childhood or related field <i>plus</i> certification from the State Education Dept as a teacher in early childhood; or</p> <p>(2) Equivalent Certification (reciprocity recognized by State Ed. Dept.); or</p> <p>(3) B.A. in early childhood or related field <i>plus</i> 5 years of supervised experience in a pre-school program if currently employed in a DOH permitted child care service; or</p> <p>(4) A DOH approved study plan for meeting the requirements of (1), (2), or (3)</p>	<p>- For certified teachers, no requirement of at least 150 hours of observation and supervised practiced teaching in kindergarten or pre-kindergarten</p> <p>- Allows current group teachers with a B.A. and 5 years experience to continue to hold their current positions</p> <p>- Persons eligible for certification, but not certified are no longer qualified on the basis alone of having 300 hours of observation or supervised practice teaching and semester hours of professional study in education</p>
<p>Assistant Teacher</p>	<p>(1) At least 18 years old; <i>and</i> a High School Diploma or equivalent (GED)</p>	<p>- Lowered age limit from 19 to 18 years of age</p> <p>- Only requirement is high school diploma or GED</p>
<p>Assistant Teacher in a Night-Care Service</p>	<p>(1) Compliance with all requirements for assistant teachers; <i>plus</i></p> <p>(a) 9 college credits in early childhood or child development <i>and</i> 2 years experience caring for children; or</p> <p>(b) 5 years of supervised experience in a DOH permitted child care service; or</p> <p>(c) A study plan approved by DOH leading to completion of 9 credits in early childhood or childhood development within 2 years</p>	<p>- Additional education and/or experience requirements</p>

<u>Position</u>	<u>Qualifications</u>	<u>Change from Previous Law</u>
Group Teacher for Infant-Toddler Child Care Services	<p>(1) At least 21 years old; <i>and</i></p> <p>(a) Associate’s degree in early childhood education; <i>or</i></p> <p>(b) Child Development Associate certification and a study plan leading to an associate’s degree in early childhood education within seven (7) years; <i>or</i></p> <p>(c) High school diploma (or equivalent); <i>plus</i> (i) 9 college credits in early childhood education/child development; 2 years experience caring for children; and a study plan leading to an associate’s degree in early childhood development within 7 years; or (ii) 5 years supervised experience in an infant/toddler classroom if currently employed in a DOH licensed child care service; <i>or</i> (iii) a DOH approved study plan leading to 9 credits in early childhood education/childhood development within 2 years; and a study plan leading to an B.A. in early childhood education within 7 years, if employed in a DOH licensed child care service</p>	<p>- An age requirement of at least 21 years of age</p> <p>- Additional 9 college credits requirement (or study plan leading to college credits) or 5 years supervised experience requirement in additional to a high school diploma or equivalent</p>
Educational Director for Infant-Toddler Child Care Services	<p>(1) B.A. in early childhood or related field of study; <i>and</i></p> <p>a. At least 1 year of experience as a group teacher or child care provider in a child care service for children under 24 months of age; or</p> <p>b. 6 college credits in infant-toddler coursework; or a study plan approved by DOH leading to 6 college credits in infant-toddler work</p>	<p>- Additional education/experience requirement</p>

§47.19, §47.21, Child Abuse and Criminal Justice Screenings; Employment of Persons with Criminal Histories; Corrective Action Plans.

Child Abuse and Criminal Justice Screenings

Any person who has, will have, or has the potential for *unsupervised contact with children in a child care service* must consent to and be subjected to (a) fingerprinting, (b) a criminal record review, and (c) a Statewide Central Register of Child Abuse and Maltreatment (SCRAM) review. The child care service must prohibit unsupervised contact with children by any person who has not received screening clearance for criminal convictions or by SCRAM and may not hire or retain a person as an employee without these clearances.

Note Article 47 now specifically includes **parent volunteers**, as well as bus drivers, student teachers, trainees or observers and employees of corporations or other types of entities providing services to the child care program. Employees of independent contractors or consultants providing maintenance, food, construction or other services to the child care program are also included, unless such person is working under the direct supervision and within the line of sight of a screened employee of the child care service.

Employment of Persons with Criminal Histories

Subject to Article 23-A of the NYS Correction Law (discussed below), child care services in New York City cannot hire or retain a person who:

- (i) has been convicted of a felony at any time;
- (ii) has been convicted of a misdemeanor within the past 10 years;
- (iii) has been arrested or charged with any felony or misdemeanor, where there has been no disposition of the action; or
- (iv) is the subject of a SCRAM indicated child abuse and maltreatment report, in accordance with a determination made after a fair hearing.

§47.19 both narrows and broadens the prohibitions against employing persons with criminal histories. Previously, §47.15 prohibited, subject to Article 23-A of the NYS Correction Law, employment or retention of any person with a criminal conviction (including *all* felonies and misdemeanors). Revised Article 47 now limits the convictions to felonies and *misdemeanors within the past 10 years*. However, Article 47.19 expands the prohibition to include a person who has been *arrested or charged with any felony or misdemeanor, where there has been no disposition of the action*. Previously, an arrest or charge of a felony was not a bar for employment in a New York City child care service.

Note, a child care service may not dismiss or permanently deny employment to current employees or applicants solely because they are defendants in pending criminal actions. Instead, the child care service may suspend current employees or defer employment decisions on applicants until the criminal action is decided. For all current and prospective employees who have not received screening clearance for criminal convictions or by SCRAM, the employer must prohibit the employee's unsupervised contact with children.

Article 23-A of the NYS Correction Law has not changed. Section 47 of the Health Code remains subject to the balancing test imposed by Article 23-A and thus, a previous criminal conviction is *not an absolute bar* to being hired or retained in a New York City child care service.

Corrective Action Plans

If a child care service wants to hire or retain an individual who is prohibited from employment under §47.19, then the child care service is required to submit a “corrective action plan” to the DOH. The DOH will provide model Corrective Action Plans to child care services upon request. The corrective action plan must assess the risk to children in the child care center if such individual is hired, and must clearly and convincingly demonstrate that the individual does not present a danger to children or other persons.

If the DOH approves the corrective action plan as adequately protecting the health and safety of the children in the center, the employer must implement the plan, subject to periodic monitoring by the DOH. If the DOH determines that the corrective action plan does not adequately protect the health and safety of children, the employer must revise and resubmit the plan and prevent the employee from having unsupervised contact with any children until the revised plan is approved by the DOH.

§47.31 Administration of Medication

A major change in Article 47 regulation is the addition of §47.13, which sets forth regulations for the administration of medication to children. The regulations under §47.13 are generally consistent with those of OFCS.

Opt In: All child care services must establish a policy as to whether it will or will not administer medication and incorporate the policy into the service’s health plan. Services should be aware, however, that if the child care service *opts not to administer medication*, this may raise concerns under the Americans with Disabilities Act (ADA), which applies to most child care services. The ADA requires that a child care service accommodate the needs of disabled children, including children with illnesses such as asthma, diabetes, ADHD and HIV/AIDS.

Health Care Consultant: Child care services that will offer administration of medications to children will be required to have a health care consultant of record who must review and approve of the service’s health care plan for administration of medications. Only a “health care provider”, defined in Article 47 as “a New York state licensed physician, physician’s assistant, nurse practitioner or registered nurse” may be a health care consultant.

Persons Authorized to Administer Medications: Child care services must designate the staff or caregivers who will be authorized to administer medications other than over-the-counter topical ointments such as sunscreen lotion and topical insect repellent. These staff members must be at least 18 years of age and have received an OCFS approved or administered training in medication administration training (MAT), CPR, and first aid.

Administration of Medication Procedures:

Designated staff and caregivers may administer prescription and over-the-counter medications with written administration instructions from the child’s health care provider and written permission from the child’s parent(s). The child care service must maintain a written log documenting administration of the medication to the child.

Designated staff and caregivers may not administer injections, except epinephrine auto-injector devices when necessary to prevent anaphylaxis for a child when the parent and child’s health care provider have indicated the treatment is appropriate.

Non-designated, non-certified staff and caregivers may administer over-the-counter topical ointment such as sunscreen and topical insect repellent upon written permission and instructions from the child’s parent. The written consent and instructions must be maintained in the child’s medical record file and a log of all

applications of ointments, sunscreens and insect repellants signed by the administering staff must be maintained.

Children may not independently self-administer medications or assist in the administration of their own medications except under the direct supervision of designated staff.

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