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Program/Division: DELLA / Family Child Care Homes

CDEC Tracking No: 2023-05-008

CCR Number(s): 8 CCR 1402-1 (CDHS: 12 CCR 2509-8)

SOS Tracking No: 2023-00761 / Updated

**RULEMAKING PACKET**

Reason and Justification of the proposed rule or amendment(s):

**Multiple/Other**

If there are "Multiple/Other" reasons, please explain:

With the creation of the Department of Early Childhood (Department), the Division of Early Learning Licensing & Administration (DELLA) is required to move child care licensing rules from the Colorado Department of Human Service rules to the new Department of Early Childhood rules. The department is statutorily required to review rules on a regular basis and is authorized to promulgate rules for child care programs providing less than twenty-four (24) hour care that create standards and regulations for these child care programs.

These revisions incorporate the Department's rule numbering, align with state and federal statutes, and make technical changes. In addition, this package seeks to expand qualification options, allow more flexibility in ages of children served or count in a provider's capacity, and decrease barriers to operating programs with outdoor space challenges. These rules expand health, safety, and professional development for providers and staff, and organize the rules into a consumer-friendly format.

This comprehensive draft rule package was developed as part of a broad stakeholder engagement that included the voices of parents, providers, early childhood professionals, advocates, the Governor's Office, state departments, and other partners over the last three years. This package also incorporates infant and family child care action plan recommendations.

Provide a description of the proposed rule or amendment(s) that is clearly and simply stated, and what CDEC intends to accomplish:

The Department is statutorily required to review rules on a regular basis and is authorized to promulgate rules for child care programs providing less than twenty-four (24) hour care that create standards and regulation for these child care programs.

This comprehensive draft rule package was developed as part of a broad stakeholder engagement conducted over a three-year period and incorporates infant and family child care action plan recommendations. The rules are intended to expand qualification options; decrease barriers to operating programs, including outdoor space requirements; and increase infant, toddler and school age spots in licensed Family Child Care Homes; and expand the health, safety, and professional development requirements

	<p>for providers. In order to help Family Child Care Homes identify all rules applicable to their license type, this package has also been reorganized into a more consumer-friendly format, and duplicative rules were removed.</p>
<p>Statutory Authority: (Include Federal Authority, if applicable)</p>	<p>These rules and regulations are adopted pursuant to the rulemaking authority provided in sections 26.5-1-105(1), 26.5-5-314(1), C.R.S.(2023). These rules are intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101 through 24-4-209, C.R.S. (2023) (the “APA”); the Anna Jo Garcia Haynes Early Childhood Act, Title 26.5 of the C.R.S.(the “Early Childhood Act”);the Child Care Licensing Act, sections 26.5-5-301 through 26.5-5-329, C.R.S. (2023); and the Child Care Development and Block Grant Act of 2014, 42 U.S.C. sec. 9858e, and section 26.5-4-110(3), C.R.S.</p>
<p>Does the proposed rule or amendment(s) impact other State Agencies or Tribal Communities?</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes, identify the State Agency and/or Tribal Community and describe collaboration efforts:</p>
<p>Does the proposed rule or amendment(s) have impacts or create mandates on counties or other governmental entities? (e.g., budgetary requirements or administrative burdens)</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes, provide description:</p>
<p>Effective Date(s) of proposed rule or amendment(s): (<u>E</u>mergency/<u>P</u>ermanent)</p>	<p><input type="checkbox"/> Mandatory <input checked="" type="checkbox"/> Discretionary</p> <p>(E) Effective Date: N/A (P) Effective Date: 3/16/2024</p> <p>(E) Termination Date: N/A</p>
<p>Is the proposed rule or amendment(s) included on the Regulatory Agenda?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If no, please explain:</p>
<p>Does the proposed rule or amendment(s) conflict, or are there inconsistencies with other provisions of law?</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes, please explain:</p>

<p>Does the proposed rule or amendment(s) create duplication or overlapping of other rules or regulations?</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes, explain why:</p>
<p>Does the proposed rule or amendment(s) include material that is incorporated by reference<sup>1</sup>?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, provide source:</p> <ol style="list-style-type: none"> <li>1. Colorado Department of Public Health and Environment (CDPHE) certificate of immunization or on an "approved alternate" certificate of immunization as described in CDPHE regulations at 6 CCR 1009-2:VI(A), (May 15, 2023), no later editions or amendments are incorporated. These regulations are available from the Colorado Department of Public Health and Environment at no cost at <a href="http://www.sos.state.co.us/CCR">www.sos.state.co.us/CCR</a>.</li> <li>2. The Certificate of Nonmedical Exemption and Education Module are herein incorporated by reference, no later editions or amendments are incorporated. The Certificate and Education Module are available at no cost from the Colorado Department of Public Health and Environment at <a href="https://cdphe.colorado.gov/vaccine-exemptions">https://cdphe.colorado.gov/vaccine-exemptions</a>.</li> <li>3. American Academy of Pediatrics Recommendations for Preventive Pediatric Health Care ended schedule at <a href="https://downloads.aap.org/AAP/PDF/periodicity_schedule.pdf">https://downloads.aap.org/AAP/PDF/periodicity_schedule.pdf</a>, (4th ed. American Academy of Pediatrics; 2017) herein incorporated by reference. No later editions or amendments are incorporated. These recommendations are available at no cost from <a href="https://www.aap.org/">https://www.aap.org/</a>.</li> <li>4. Colorado Department of Public Health and Environment. The complete list of reportable communicable illnesses can be found in 6 CCR 1009-1 (Apr. 19, 2023), rules and regulations pertaining to Epidemic and Communicable Disease Control, herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the Colorado Department of Public Health and Environment at <a href="http://sos.state.co.us/ccr">http://sos.state.co.us/ccr</a>.</li> <li>5. United States Department of Agriculture (USDA) Child and Adult Care Food Program (CACFP) meal pattern guidance and requirements published by the USDA Food Nutrition Service at <a href="https://www.cacfp.org/meal-pattern-guidance/">https://www.cacfp.org/meal-pattern-guidance/</a> (April 2016) and 7 C.F.R. sections 210.10 and 226.20 (July 1, 2022), herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the USDA Food Nutrition Service at <a href="https://www.ecfr.gov">https://www.ecfr.gov</a>.</li> <li>6. United States Department of Agriculture's (USDA) child and adult care food program meal pattern for infants, found in "Feeding Infants in the Child and Adult Care Food Program guide (July 2021), herein incorporated by reference. This guide is available for no cost from the USDA at <a href="https://fns-prod.azureedge.us/sites/default/files/resource-files/FI_FullGuide_2021.pdf">https://fns-prod.azureedge.us/sites/default/files/resource-files/FI_FullGuide_2021.pdf</a>.</li> <li>7. Consumer Product Safety Commission (CPSC) at 16 CFR § 1218.2 (April 23, 2015); 16 CFR section 1219.2 (October 28, 2019); 16 CFR section 1220.2 (June 3, 2023); 16 CFR section 1221.2 (January 20, 2020); 16 CFR section 1222.2 (August 5, 2023); 16 C.F.R. § 1236.2 (June 23, 2022), and 16 C.F.R 1241.2 (February 15, 2022) herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the CPSC at <a href="https://www.ecfr.gov">https://www.ecfr.gov</a>.</li> </ol>

<sup>1</sup> Incorporation by Reference is all or any part of a code, standard, guideline, or rule that has been adopted by an agency of the United States, this state, or another state, or adopted or published by a nationally recognized organization or association, pursuant to section 24-4-103(12.5), C.R.S.

	<ol style="list-style-type: none"> <li>8. The Colorado Primary Drinking Water Regulations (January 14, 2023), are herein incorporated by reference. No later editions or amendments are incorporated. These rules are available at no cost from the Colorado Department of Public Health And Environment, 4300 Cherry Creek Drive South Denver, CO 80246; or at <a href="http://www.sos.state.co.us">www.sos.state.co.us</a>.</li> <li>9. Federal Consumer Product Safety Commission standards published by the Consumer Product Safety Commission (CPSC) at 16 CFR sections 1112 and 1321 (June 19, 2019), herein incorporated by reference. No later editions or amendments are incorporated. These regulations are available at no cost from the CPSC at <a href="https://www.ecfr.gov">https://www.ecfr.gov</a>.</li> <li>10. of Colorado child passenger safety laws at sections 42-4-236 and 42-4-237, C.R.S.</li> <li>11. Colorado child passenger safety laws at sections 42-4-236 and 42-4-237, C.R.S.</li> </ol>
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<p>Does the proposed rule or amendment(s) align with the department’s rulemaking objectives?</p> <p>Choose all that apply.</p>	<input checked="" type="checkbox"/> Reduce the administrative burden on families and providers accessing, implementing, or providing programs and/or services.
	<input checked="" type="checkbox"/> Decrease duplication and conflicts with implementing programs and providing services.
	<input checked="" type="checkbox"/> Increase equity in access and outcomes to programs and services for children and families.
	<input checked="" type="checkbox"/> Increase administrative efficiencies among programs and services provided by the department.
	<input checked="" type="checkbox"/> Ensure that rules are coordinated across programs and services so that programs are implemented and services are provided with improved ease of access, quality of family/provider experience, and ease of implementation by state, local, and tribal agencies.

**Rulemaking Proceedings**

<p>Type of Rulemaking: Emergency or Permanent<sup>2</sup> [Permanent Tier I or Tier II]</p>	<p>Permanent</p> <p>Tier I</p>
<p>Stakeholder Engagement and Data/Research:</p> <p>Examples: Webinar recordings/transcripts, written stakeholder comments, material from small/large focus groups, written petitions/requests,</p>	<p>List of activities and dates:</p> <p><a href="#">Infant Care/FCCH Strategic Plan Legislation- January 10, 2019- 4:00-4:30</a></p> <p><a href="#">Family Child Care Reg &amp; Fire Safety February 23, 2021 March 19, 2021 June 16, 2021</a></p>

<sup>2</sup> Tier I is used for proposed rule or amendment(s) that have substantive changes, require substantial stakeholder engagement, and will be considered at two Public Rulemaking Hearings (PRH). The first PRH is held for discussion, and the second PRH is held to consider adoption. Tier II is used for proposed rule or amendment(s) that include technical changes, do not require substantial stakeholder engagement, and will be considered at only one Public Rulemaking Hearing (PRH) for adoption.

surveys, data, research, reports, published papers, and documents used to develop the proposed rule or amendment(s).

**Initial Revision Workgroup Meetings-**

January 27, 2020- 2:00-3:50  
February 10, 2020- 2:00-3:50  
February 24, 2020- 2:00-3:30  
March 10, 2020- 9:00-10:50  
March 23, 2020- 1:00-2:50  
March 30, 2020- 2:00-2:50  
June 20, 2020- 1:00-2:50  
July 13 2020- 1:00-2:50  
July 27 2020-1:00-2:50  
August 10 2020- 1:00-2:50  
August 24 2020- 1:00-2:50  
September 28 2020- 1:00-2:50  
October 12 2020- 1:00-2:50  
November 23 2020- 1:00-2:50  
December 12 2020- 1:00-2:50  
May 24, 2021- 12:45-1:50  
May 27, 2021- 11:00AM-12:20PM  
June 3, 2021- 12:30-1:50  
June 7 2021- 12:30-1:50  
June 10 2021 - 1:30-2:50  
June 14, 2021- 2:00-4:50  
June 16 2021- 11:-12:20  
June 22, 2021 10:30-12:20  
June 22, 2021- 1:00-1:30  
June 23, 2021- 2:45-3:30  
June 24 2021- 12:00-1:50  
July 12 2021- 2:00-2:50  
July 20, 2021- 11:11:50  
September 23, 2021- 9:00-9:50  
October 5, 2022- 10:00-12:00  
October 19, 2022- 9:30-12:00  
November 3, 2022- 3:00-5:00  
November 8, 2022- 12:30-3:00  
December 2, 2022- 11:00-1:30  
January 13, 2023- 12:00-3:30  
January 19, 2023- 9:00-11:30  
January 27, 2023- 1:00-4:00

	<p><b>Large Stakeholder meetings-</b>  June 21, 2021- 12:00-2:00  July 21, 2021- 2:30-4:15</p> <p><b>Large Stakeholder meetings-</b>  March 18 2023 : 9-11  March 7 2023: 10-12  February 9 2023: 2:30-5</p> <p>The Department emailed all stakeholders with a link to provide public comment. Public comment feedback posted for 30 days. The Department responded to all comments received during the 30 days, updating rules to incorporate public comments if necessary.</p> <p>Request for public comment sent out June 20, 2023 through July 25, 2023.</p> <p><a href="https://cdec.colorado.gov/public-notice-information">https://cdec.colorado.gov/public-notice-information</a></p> <p><a href="https://docs.google.com/forms/d/1mYnrAyciqR-EpbTeblZNX7864yDtaFLoUWt4I2MnbwA/edit">https://docs.google.com/forms/d/1mYnrAyciqR-EpbTeblZNX7864yDtaFLoUWt4I2MnbwA/edit</a></p> <p>Location of public folder containing stakeholder engagement materials for public retention: (link)  <a href="#">2.300 FCCH PUBLIC COMMENT .docx</a></p> <p><a href="#">FCCH Public Comment- PUBLIC</a></p> <p><a href="https://docs.google.com/forms/d/1mYnrAyciqR-EpbTeblZNX7864yDtaFLoUWt4I2MnbwA/edit#responses">https://docs.google.com/forms/d/1mYnrAyciqR-EpbTeblZNX7864yDtaFLoUWt4I2MnbwA/edit#responses</a></p> <p><a href="#">8 - DELLA FCCH: CDEC No. 2023-05-008</a></p>
Assistant Attorney General Review:	Aug 9, 2023 - Oct 25, 2023
RAC County Subcommittee Review Date (if required):	Nov 2, 2023
Rules Advisory Council (RAC) Review Date:	Nov 9, 2023
Public Rulemaking Hearing Date(s): [Discussion/Adoption]	Nov 17, 2023 (Discussion) Jan 22, 2024 (Adoption)

## Regulatory and Cost Benefit Analysis

1. **Community Impact:** Provide a description of the stakeholders that will be affected by the proposed rule or amendment(s), and identify which stakeholders will bear the costs, and those who will benefit. How will the proposed rule or amendment(s) impact particular populations, such as those experiencing poverty, immigrant/refugee communities, non-English speakers, and rural communities?

With the creation of the Department, DELLA is required to move child care licensing rules from the Colorado Department of Human Service rule volumes to the new Department of Early Childhood rule volumes. These revisions incorporate Department rule numbering, align with state and federal statutes, and make technical changes.

This comprehensive draft rule package was developed as part of a broad stakeholder engagement conducted over a three-year period and incorporates infant and family child care action plan recommendations. Licensed Family Child Care Home Providers will benefit from the expanded qualification options, and the decreased barriers to operating programs, including outdoor space requirements, proposed in this rule package. Families and Licensed Family Child Care Home providers will benefit from the additional flexibility on the ages of children served, including reducing the age of the provider's own children that count toward capacity. Children will benefit from the expanded health and safety requirements proposed in this rule package. In order to help Family Child Care Homes identify all rules applicable to their license type, this package has also been reorganized into a more consumer-friendly format, and duplicative rules were removed.

The Department will translate the final version of the rules and regulations into Spanish. The Administrative Guides and resource documents that assist with compliance with these rules will also be translated into Spanish.

2. **Quality and Quantity:** Provide a description of the probable quantitative and qualitative impact on persons affected by the proposed rule or amendment(s), and comparison of the probable costs and benefits of implementation versus inaction. What are the short- and long-term consequences of the proposed rule or amendment(s).

These revisions incorporate Department rule numbering, align with state and federal statute changes, and make technical corrections. These changes must be incorporated to renumber rules consistent with the move to the Department's rule volumes and comply with state and federal statutes. This package incorporates stakeholder feedback that includes the voices of parents, providers, early childhood professionals, advocates, the Governor's Office, state agencies, and other partners. This package also incorporates infant and family child care action plan recommendations.

The short- and long-term consequence of not promulgating these rules is that the Department would be out of compliance with federal and state requirements, and family child care homes would not receive the benefits of the flexibility allowed by these revisions.

3. **Potential Economic Benefits/Disadvantages:** What are the anticipated economic benefits of the proposed rule or amendment(s), such as: economic growth, creation of new jobs, and/or increased economic competitiveness? Are there any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness?

This rule package is an economic benefit for both families and family child care home businesses as it ensures that parents have safe child care options for their child and can continue to work, and family child care homes have the ability to care for more children, including infants and toddlers, and to remain in operation. The benefits included in this package that support this effort are the additional infant and toddler spots in Family Child Care homes with decreasing age from 24 months to 18 months, additional school-age spots with decreasing the age of the provider's own children that

count in the licensed capacity, adding the outdoor space hardship will allow for potential providers that could not meet outdoor space requirements to become licensed.

The additional health and safety requirements and training may be a barrier to programs operating due to the cost. In the few areas where additional requirements have been proposed, the Department has tried to minimize the impact by providing required training free of cost and allowing them to count for both required ongoing professional development and quality rating and improvement requirements.

4. **Fiscal Impacts:** What are the anticipated direct and indirect costs for the state/department to implement, administer, and enforce the proposed rule or amendment(s)? What are the direct and indirect costs to each of the following entities to comply with the proposed rule or amendment(s)? For each, describe the impact or indicate “not applicable.”

Department	None because there are no costs to the Department for implementing these rules.
Local Governments/ Counties	None because nothing in the rule revision creates costs for counties.
Providers	Licensed family child care homes are governed by these rules and will both benefit from and bear the burden of these rules. There will be minimal cost to child care providers as the additions to the package are training requirements in compliance with state and federal statutes. Training is available for free online in the Professional Development Information System.
Community Partners (e.g., School Districts, Early Childhood Councils, etc.)	None because nothing in the rule revision creates cost for community partners.
Other State Agencies	None because nothing in the rule revision creates cost for other State Agencies.
Tribal Communities	None because nothing in the rule revision creates cost for Tribal Communities.

5. **Evaluation:** How will implementation of the proposed rule or amendment(s) be monitored and evaluated? Please include information about measures and indicators that CDEC will utilize, including information on specific populations (identified above).



The Department will annually monitor programs for compliance with these regulations and allow for a 6-month consultation period for rules not related to children's health and safety for providers to come into compliance with.

6. **Comparative Analysis:** Provide at least two alternatives to the proposed rule or amendment(s) that can be identified, including the costs and benefits of pursuing each of the alternatives.
- a. The department considered leaving the rules as already promulgated, but the Department is required to move these rules from the Colorado Department of Human Services rule volumes to the Department of Early Childhood rule volumes.
  - b. The Department considered seeking legislative changes to reflect some of the requirements in this rule package, it was determined that the appropriate level to make the necessary revisions is at the Department Executive Director rule-making level. In addition, the Department must move these rules to the Department's rule volumes.
  - c. There are no alternatives because these rules are considered minimum requirements for health and safety. Requirements deemed unnecessary were removed from the rule package.
7. **Comparative Analysis:** Are there less costly or less intrusive methods for achieving the purpose of the proposed rule or amendment(s)? Explain why those options were rejected.

With the creation of the Department, DELLA is required to move child care licensing rules from the Colorado Department of Human Service rules to the new rules. These rule revisions incorporate Department rule numbering, comply with state and federal statutes, make technical changes, and incorporate stakeholder feedback on expanding the availability of care options in family child care homes. The Department is statutorily required to review rules on a regular basis and is authorized to promulgate rules for child care programs providing less than twenty-four (24) hour care that create standards and regulations for these child care programs. There is no other option to achieve the objective of these revisions.