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# Developing and Revising Child Care Licensing Requirements



NATIONAL CENTER ON  
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## Introduction

Ensuring the health and safety of children in child care is a priority for the Office of Child Care (OCC), an office of the Administration for Children and Families, U.S. Department of Health and Human Services. The reauthorization of the Child Care and Development Fund (CCDF) in 2014 significantly strengthened health and safety standards to provide a baseline of protection for children in out-of-home care.<sup>1</sup> Licensing helps prevent various forms of harm to children—for example, risks from the spread of disease, fire and other building safety hazards, injury, and inadequate supervision.

This document presents steps for developing and revising child care licensing requirements, based on several States' successful practices.

Having clearly written, research-based, measurable licensing requirements is the first step in protecting children from health and safety risks and promoting quality care. These requirements must be met by child care programs in order to be licensed and legally operate, and they also serve as the foundation for other programs, such as quality rating and improvement systems (QRISs) and the Child and Adult Care Food Program.

It is beneficial to involve all stakeholder groups affected by licensing requirements from the beginning of the requirement development process. This helps build consensus and strengthens the licensing system. Licensing requirements—supported by monitoring, enforcement, and technical assistance—provide protection through prevention and reduce risks to the health, safety, and well-being of children in care.

### Terminology

The terms, “requirement,” “rule,” “standard” and “regulation,” are generally used interchangeably, and the term varies based on the language found in the laws of the individual State. In this document, the term, “requirements,” is used to refer to rules, standards, and regulations. The term, “State,” is used broadly to refer to the jurisdiction that sets the child care licensing requirements and includes States, Territories, Counties, Cities, and Tribes.

## Getting Started

When it is time to develop or revise licensing requirements, planning is key, and a number of questions should be considered before beginning the process.

### **What are the statutory mandates for development or revision of the requirements?**

It is important to understand the statutory basis for requirements and any parameters for their promulgation. For example, a statute mandating the development of requirements for a new type of child care program may mandate that requirements be developed with stakeholders, consumers, families, and other interested parties. Also, the statute may specify that requirements regarding physical site, staff training, and staff education be developed. Understanding the reason for the statute and what is mandated will help ensure that the requirements

<sup>1</sup> The Child Care and Development Block Grant Act of 2014 and section 418 of the Social Security Act (42 USC 618), as amended, provide the statutory authority for implementation of the CCDF program as designated by the Administration for Children and Families. Retrieved from <http://www.acf.hhs.gov/programs/occ/resource/ccdf-law>.

are developed correctly with all the required elements. The paper *Contemporary Issues in Licensing: Elements of a Licensing Statute* provides common elements of licensing statutes, including the rationale for each element.<sup>2</sup>

### Why do the requirements need to be revised?

There are a number of reasons requirements would need to be revised, including the following:

- ◆ To incorporate new federal requirements or policy guidance; for example, the Child Care and Development Block Grant (CCDBG) Act of 2014 that reauthorized the Child Care and Development Fund (CCDF) Program<sup>3</sup>
- ◆ To strengthen protections in certain areas, sometimes following an injury or death in child care
- ◆ To respond to a statutory change, legislative initiative, or directive
- ◆ To complete scheduled revisions mandated by statute
- ◆ To address suggested revision by a stakeholder, such as a licensing consultant, provider, or advocacy group
- ◆ To respond to new research; for example, second-hand smoke or safe sleep
- ◆ To remove a requirement that is no longer needed
- ◆ To simplify or clarify language
- ◆ To update outdated requirements lagging behind national benchmarks or those of other States
- ◆ To align with other program standards
- ◆ To reflect culturally and linguistically responsive policy and practices
- ◆ To ensure that the requirements are appropriate for the type of care (for example, family child care homes or out-of-school-time care)

### Does the entire set of requirements need to be reviewed for revision, or just certain areas of the requirements?

Revisions to a specific section of the requirements may be needed, or it may be time to review the entire set of requirements for potential revisions. When specific requirements must be revised, States and Territories often use the review process as an opportunity to make broader revisions. It is ideal for licensing administrators to collect and maintain a list of recommended revisions for use at the appropriate time. However, some policymakers have found that proposing a large number of revisions at one time may make the process too challenging, lengthy, or difficult to complete.

### What is the State or Territory's process for promulgating requirements and how long does it take?

Understanding the State or Territory's regulatory review and promulgation process is important in determining what steps need to be taken and when the process should be started. A detailed workplan, including all the steps of the process and target dates for their completion, should be developed. The workplan should also identify the individuals responsible for completing each step and the individuals responsible for ensuring that the workplan stays on track (see the appendix for an example of one State's timeframe)

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<sup>2</sup> National Center on Child Care Quality Improvement. (2014). *Contemporary issues in licensing: Elements of a licensing statute*. Retrieved from <https://childcareta.acf.hhs.gov/resource/contemporary-issues-licensing-elements-licensing-statute>

<sup>3</sup> The Child Care and Development Block Grant Act of 2014 and section 418 of the Social Security Act (42 USC 618), as amended, provide the statutory authority for implementation of the CCDF program as designated by the Administration for Children and Families. Retrieved from <http://www.acf.hhs.gov/programs/occ/resource/ccdf-law>.

Knowing how long the process will take helps those leading the process determine when to begin in order to have the requirements in place within the desired timeframe.

## **What other sets of requirements could possibly affect the requirements being developed?**

It is important to identify any other requirements that apply to the licensed settings, and, when making revisions, take these requirements into account to avoid conflicts and duplication. Other requirements to consider include state and local building and fire requirements, the State or Territory's QRIS or prekindergarten program, and the federal Head Start Program Performance Standards.

## **Where, when, and how will the licensing requirements workgroup meet to review the requirements, and who will be involved?**

Using a workgroup to develop or revise licensing requirements provides the agency leading the process with multiple perspectives from the beginning, which is more effective than waiting for stakeholder feedback during the public hearing process. This approach typically helps with new rule implementation because stakeholders are involved from the beginning.

It is important to have a plan in place for the frequency and location of meetings, how they will take place (in person, telephone, web communication, etc.), and who will participate. Developing such a plan helps get the process started and ensure that all necessary individuals are included. It may also be necessary to determine the geographic locations of meetings to ensure that all areas of the State or Territory are included.

### **Stakeholder Engagement**

Develop a list of key stakeholders and make a point of involving them throughout the process. Key stakeholders include child care providers of all types and sizes, as well as parents and families. In addition, they may include partners in early childhood professional preparation and development, the QRIS and other quality improvement initiatives, and state prekindergarten and Head Start, as well as policy and research analysts and representatives of philanthropic, civic, and community organizations.

## **How and when will the proposed changes be communicated within the licensing agency and to partners in other state agencies in order to assure understanding and agreement?**

In addition to the important roles of the workgroup and other stakeholders, there should also be a plan to regularly update those within state government whose sign-off or input is needed. A process should be created and followed in order to assure that all internal decisionmakers are knowledgeable and up-to-date about the work.

## **How will the process be communicated to the public?**

It is essential to devise and implement a communication plan.<sup>4</sup> Revision of requirements provides an opportunity to educate and learn from stakeholders. A robust communication plan should include tailored approaches for different audiences, including policymakers, providers, advocates, communities, families, and the media. A communication plan also provides an opportunity to share information with and gain input from the full range of racially, ethnically, culturally, and linguistically diverse community representatives (providers, families, etc.). The plan should address the language needs of these audiences, with both outreach and communication available in the languages of target communities. In addition, stakeholders should be representative of all the State's geographic regions. A designated media representative can share consistent information and identify opportunities for outreach and building support.

<sup>4</sup> National Association for Regulatory Administration and National Center on Child Care Quality Improvement. (2015). *Best practices for human care regulation*. Retrieved from <http://www.naralicensing.org/assets/docs/Publications/BestPractices/nara%20best%20practices%20final.pdf>.

# The Licensing Requirement Review Process

## Conducting Research

Before reviewing requirements for potential revision, it is essential to conduct research to gather relevant information. It is recommended that the following types of information be gathered.

### Analysis of current requirements and their effectiveness

- ◆ Licensors' recommendations about the effectiveness of the requirements and suggested changes
- ◆ Any waivers granted
- ◆ Interpretations of the requirements that may demonstrate the need for more clarity
- ◆ Court decisions and legal opinions regarding challenges to or interpretation of the requirements
- ◆ Agency policies and procedures
- ◆ Compliance data, such as requirements that are rarely cited
- ◆ Complaint data

### Review of literature, including federal technical assistance resources, research studies, articles, and any other relevant information

It is important to stay up-to-date on early childhood education research, particularly research related to the health and safety of children. Requirements should be based on research and best practices even when they are in response to a recent high-profile or tragic event. For example, *Caring for Our Children Basics: Health & Safety Foundations for Early Care and Education*,<sup>5</sup> is based on current research and represents the minimum health and safety standards experts believe should be in place for all early childhood program settings.

Additional resources include the following:

- ◆ *Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Early Care and Education Programs*, 3rd edition (CFOC3), is a collection of national standards that represent best practices with respect to health and safety in early care and education settings. CFOC3 can help programs and providers implement *Caring for Our Children Basics*, understand rationale, and move to higher levels of quality in health and safety. CFOC3 is available at <http://cfoc.nrckids.org/>.<sup>6</sup>
  - See chapter 10, Licensing and Community Action, for standards about regulatory policy, licensing agencies, and facility licensing.
- ◆ The **Protecting Children's Health and Safety topic page** on the Child Care Training and Technical Assistance website includes issue briefs, research reports, and other resources. The page is available at <https://childcareta.acf.hhs.gov/topics/protecting-childrens-health-and-safety>. Highlights include three series of briefs:
  - Nine topical briefs about health and safety requirements

<sup>5</sup> Administration for Children and Families, U.S. Department of Health and Human Services. (2015). *Caring for our children basics: Health and safety foundations for early care and education*. Retrieved from <https://www.acf.hhs.gov/ecd/caring-for-our-children-basics>

<sup>6</sup> American Academy of Pediatrics, American Public Health Association, & National Resource Center for Health and Safety in Child Care and Early Education. (2011). *Caring for our children: National health and safety performance standards; Guidelines for early care and education programs*, 3rd edition. Retrieved from <http://cfoc.nrckids.org/>

- Three research briefs about national trends in child care licensing
- Eight issue briefs about contemporary issues in licensing

## Comparison of licensing requirements from other States and Territories

It may be helpful to choose States or Territories that are similar in size and demographics for comparison. It is also best to choose States that have recently revised their requirements. The following resources provide information on other states' requirements:

- ◆ The **National Database of Child Care Licensing Regulations** is a repository of state and territory licensing regulations and agency contact information. It is organized by State and Territory and allows users to access child care licensing regulations that apply to child care centers, family child care homes, school-age programs, infant care programs, and other specialized programs. In addition, website links are provided for other early childhood program standards, such as QRIS standards, prekindergarten program requirements, and state health and safety requirements for child care providers receiving payment from the federal Child Care and Development Fund. <https://childcareta.acf.hhs.gov/licensing>
- ◆ State-level data about licensing requirements are available in the **CCDF Data Explorer** tool on Child Care Training and Technical Assistance website. Child Care and Development Fund (CCDF) data include requirements about child-staff ratios and group sizes, criminal background checks, minimum preservice qualifications, ongoing training hours, and types and frequency of routine licensing inspections. <https://childcareta.acf.hhs.gov/data>
- ◆ Every three years, the National Association for Regulatory Administration (NARA) and the National Center on Early Childhood Quality Assurance (under current and previous contracts of the Office of Child Care) collect information about each State and Territory's licensing programs, policies, and regulations for child care centers and family child care homes and produce a **Child Care Licensing Study**. <http://www.naralicensing.org/child-care-licensing-study>

## Review of other requirements that affect child care programs

To reduce confusion and potential conflicts for child care programs that must meet varied regulations, it is helpful to align standards and use consistent terminology. Aligning monitoring policies and procedures across funding streams can support effective practices, reduce confusion and duplication for early childhood education (ECE) programs, and promote cost efficiencies. Resources to help with this review include the following:

- ◆ The **National Program Standards Crosswalk Tool** is prepopulated with national early childhood program standards (such as Head Start, accreditation, and *Caring for Our Children* standards). It is designed to help States that are developing and aligning program standards for licensing, QRIS, or prekindergarten programs search and compare the content of several sets of national standards. <https://occqrisguide.icfwebservices.com/index.cfm?do=crosswalk>
- ◆ The ***Caring for Our Children Basics Health and Safety Standards Alignment Tool*** is a resource that helps States and Territories compare their current early childhood program requirements and standards to the recommended health and safety standards in *Caring for Our Children Basics*. Users can indicate whether their standards reflect full, partial, or no alignment with each *Caring for Our Children Basics* standard.<sup>7</sup> <https://childcareta.acf.hhs.gov/resource/caring-our-children-basics-health-and-safety-standards-alignment-tool-child-care-centers>

<sup>7</sup> National Center on Early Childhood Quality Assurance. (2016). *Caring for our children basics: Health and safety standards alignment tool for child care centers and family child care homes*. Retrieved from <https://childcareta.acf.hhs.gov/resource/caring-our-children-basics-health-and-safety-standards-alignment-tool-child-care-centers>

## Review of licensing data on commonly and rarely cited requirements and enforcement actions

A State or Territory’s licensing program data can provide information about which requirements are often difficult for providers to comply with and frequently result in enforcement actions. This information could indicate a need to review the language of the requirement to determine whether it should be removed or clarified. It may also reflect the need for clarification of what is required for compliance.

This information can have other useful applications. For example, eliminating requirements that are rarely cited is one strategy for simplifying requirements. In addition, reviewing inconsistent enforcement actions associated with specific requirements may help the licensing agency better understand which requirements need to be written more clearly for licensing staff.

## Survey information from licensees, parents, and other stakeholders

Surveying providers and other stakeholders ahead of time to obtain their opinions about existing requirements and their suggested revision is important. In addition to collecting suggestions about necessary changes, this process helps ensure that those conducting the review are aware of any impact the proposed revisions may have. Some States actually request ongoing feedback as part of their licensing requirements. The first page of the Oklahoma requirements states, “In the interest of serving the public, comments are welcomed and will be considered for future revisions and development of new requirements.”<sup>8</sup> This statement is followed by a form to capture recommended revisions.

Obtaining input and perspectives from all interested parties should be done early in the process, before the writing process begins. As part of this work, it is critical to gain input from providers of all types, sizes, and locations, including the full range of racial, ethnic, cultural, and linguistic diversity in the State. This approach helps build trust with the child care community and its partners, which is critical in maintaining a good working relationship.

“Licensing rules are formulated through a democratic process of consensus building, using citizen groups that represent different interests. Rules cannot be formulated and implemented successfully without support from the community and active involvement of those being regulated.”

Source: National Association for Regulatory Administration. (2000). *NARA licensing curriculum*, chapter 2, p. 18. Minneapolis, MN: Author.

## Input received during open informational forums held throughout the State or Territory

It is important to meet with child care providers, parents, and other stakeholders across the State. Sessions should be held to provide them with information about the regulation revision process and allow them to share their recommendations for revising the requirements. To encourage as much participation as possible, it helps to have sessions during evenings and on weekends and to advertise via email, on the licensing agency’s website, and through advocacy associations, provider groups, and parent and consumer organizations. In addition, offering opportunities in the languages spoken by providers, parents, and other stakeholders may be critical to tapping into their perspectives and expertise.

## Focus group feedback

It is also important to meet with small focus groups that reflect the diversity of providers, families, and partners from other agencies. These types of meetings can produce ideas that would not emerge from surveys, questionnaires, or open forums, because they include opportunities to ask follow-up questions and delve deeper into a topic. Focus groups can help identify issues of concern to the child care community. To successfully include the full diversity of providers, families, and other partners, focus groups may need to be offered in multiple

<sup>8</sup> Oklahoma Department of Human Services. (2015). *Licensing requirements for child care programs*. Retrieved from <http://www.okdhs.org/OKDHS%20Publication%20Library/14-05.pdf>.

languages, with thoughtful consideration given to their location and timing. Focus groups may also help identify potential workgroup members.

## Creating a Collaborative Workgroup

A collaborative workgroup may be convened before or after completion of the initial research to recommend revisions. The individuals selected should be team players who are open to diverse opinions, willing to compromise, able to commit to attending all the meetings, and available to participate in the workgroup until the review is completed.

Individuals who should participate in the workgroup include the following:

- ◆ Licensing staff
- ◆ Licensing supervisors
- ◆ Licensing program and policy staff
- ◆ Individuals who will draft the requirements
- ◆ Licensing agency attorneys, as needed
- ◆ Staff of other relevant state and local agencies; for example, health, fire, and city planning
- ◆ Providers from each type and demographic of child care program affected, representing, for example, racial, ethnic, and geographic diversity
- ◆ Child care provider organizations
- ◆ Families
- ◆ Advocates, including the State Advisory Council on Early Childhood Education and Care and philanthropic organizations
- ◆ Professional experts; for example, medical experts, researchers, child care resource and referral (CCR&R) staff, and trainers
- ◆ Other agency partners, if applicable

Workgroup roles and responsibilities should be identified early (for example, chairperson, facilitator, recorder). It is best to select a chairperson who is trusted by participants and values the input of all stakeholders. It is also important to consider the chairperson's organizational affiliation. A chairperson from within the licensing agency may have a better understanding of the process and context of policy change, but someone from outside the agency brings a different perspective and may be viewed as more responsive to a broad group of stakeholders. Some States contract with a consultant to lead the workgroup in order to have an unbiased person guide the process and facilitate collaboration among the various stakeholders involved.

Regardless of whether the chair of the committee is internal or external to the state agency, it is recommended that only one person be designated to draft the requirements in order to maintain consistency throughout the document.

When the workgroup is created, it is important to determine the frequency of the meetings and the timeframe for completion of the review process. It can also be helpful to have a charter that identifies the workgroup's goals and scope of work. This will help the workgroup stay on track. During the first meeting, the workgroup should establish ground rules for the review process. The workgroup chairperson should develop and disseminate detailed agendas to make sure the meetings are focused and productive and the results are documented.

All workgroup members should be encouraged to participate in person, which is the most effective means of communication. However, if videoconference technology is available, establishing meeting sites in multiple locations will allow more people to participate.

## National Guidelines from *Caring for Our Children*, 3rd Edition

### Standard 10.3.1.3: Community Participation in Development of Licensing Rules

State licensing rules should be developed with active community participation by all interested parties including parents/guardians, service providers, advocates, professionals in medical and child development fields, funding and training sources.

Regulations formulated through a representative citizen process should come before the public at well-publicized public hearings held at convenient times and places in different parts of the state. The licensing rules should be re-examined and revised at least every five years, to assure that the rules can be informed by new relevant research findings and significant social data. The regulatory development process should include many opportunities for public debate and discussion as well as the ability to provide written input.

American Academy of Pediatrics, American Public Health Association, & National Resource Center for Health and Safety in Child Care and Early Education. (2011). *Caring for our children: National health and safety performance standards; Guidelines for early care and education programs*, 3rd edition. Retrieved from <http://cfoc.nrckids.org/StandardView/10.3.1.3>

## Establishing Review Criteria

Before the review process begins, it is important to determine the scope of what the workgroup will be addressing and communicate that to the participants. Some areas of focus to consider include the following:

- ◆ Is the requirement written in plain language?

Plain language is communication your audience can understand the first time they read or hear it. Language that is plain to one set of readers may not be plain to others. Are any technical words used? If so, are they explained?

According to federal plain language guidelines, written material is in plain language if your audience can

- find what they need;
- understand what they find; and
- use what they find to meet their needs.<sup>9</sup>
- ◆ What is the purpose of the requirement? Does it protect children in care?
- ◆ Does the requirement reflect common values, striking a balance between adequately protecting children and over regulation?
- ◆ Is the requirement culturally, geographically, religiously, or socially biased in any way?
- ◆ Is the requirement clear and understandable? Does it make sense? Can it be interpreted in more than one way?
- ◆ Is the requirement appropriate for the type of care and ages served?

<sup>9</sup> Plain Language Action and Information Network. (2011). *Federal plain language guidelines*. Retrieved from <http://www.plainlanguage.gov/>

- ◆ Is the requirement reasonable and achievable? Is the cost reasonable relative to the protection gained? Licensing requirements should not place an unnecessary burden on licensees, and any fiscal impact should be considered.
- ◆ Is the requirement observable, measurable, and enforceable? If the requirement cannot be measured by onsite observation, interview, or record review, the rule should not be used or should be revised. Specific, measurable language should be used as opposed to vague terms such as “sufficient,” “adequate,” and “suitable.”
- ◆ Is the requirement commonly waived?
- ◆ Is the requirement never or rarely cited?

Members of the workgroup should review existing requirements against those criteria within their scope, identify any areas that need improvement, and make recommendations for improvement. Additionally, they should be provided with the results of the initial national research to ensure that they have all the necessary information to do a complete review.

## Formatting Licensing Requirements

Requirements should be arranged in a user-friendly format that is logical and functional, with similar subjects grouped together in sections. This helps the requirements flow and makes finding specific requirements easier.

The *NARA Licensing Curriculum* recommends the following sections:

### General

- ◆ Legal authority
- ◆ Purpose
- ◆ Scope, applicability, and exemptions
- ◆ Definitions (only terms that have special meaning in the context of the requirements or are not commonly understood by the general public should be defined)

“If there is one cardinal rule about how to organize licensing rules, it is that the very first section of the first chapter should include a general statement of the purpose, scope, applicability, legal authority and definitions governing the rules that will follow. This is extremely important because it sets the statutory framework on which the rules are based and delineates the scope and authority of what is to be regulated.”

Source: National Association for Regulatory Administration. (2000). *NARA licensing curriculum*, chapter 2, p. 31. Minneapolis, MN: Author.

### Procedural Rules

Procedural rules include those that direct the activities of the applicant or licensee within the licensing process, including areas such as license fees, the application process, and enforcement. They should be clearly labeled and separate from facility-specific substantive rules. They may also cover consumer rights. This section will be more lengthy and detailed if the regulations apply to residential facilities versus part-day facilities.

## Differential and Additional Rules for Special Populations or Circumstances

This section can be used to apply additional requirements for special types of facilities or to exempt certain types of facilities from specific rules. For example, additional rules may apply for a child care center serving infants and toddlers. On the other hand, some exemptions from specific rules may apply for a school-age childcare center.<sup>10</sup>

### Licensing Requirement Categories

The following excerpt from *Best Practices for Human Care Regulation* recommends the inclusion of these categories in licensing requirements:

- Application – clearly identify all demographic information, disclosure of corporate ownership, and pertinent education or training skills.
- Background screening – inclusive of national, state, territory, tribal, and local criminal, abuse and neglect, and sex offender checks, a federal fingerprint check, employment history verification, etc.
- Behavior and guidance – staff-client interactions, positive guidance, prohibited practices.
- Environment – internal and external physical premises such as lighting, flooring, air quality, pest management, and management of hazardous substances.
- Family engagement – promote involvement in decisions and program activities.
- Food preparation and service – inclusive of kitchen practices as well as food delivery.
- Health – safe sleep practices, sanitization, bedding and linens, immunization records, medication administration, first aid and CPR training, the prevention and control of infectious disease, nutrition and physical activity.
- Personnel training – initial and ongoing training requirements, timeframes for completion, required topics, and credential or degree requirements.
- Ratio and group size – address square footage, personal space, overall capacity, ratios, and group size appropriate to the activity.
- Safety requirements – emergency preparedness, equipment and maintenance, water safety, prevention and response to allergic reactions, and management of toxic and hazardous materials.
- Supervision – requirements should be age appropriate, commensurate with the individual’s abilities, and be both direct and indirect, as applicable. It should prohibit abusive and high-risk behaviors by staff.
- Transportation – vehicle safety, maintenance, seat belts, restraints, supervision, field trip requirements, and insurance.

National Association for Regulatory Administration and National Center on Child Care Quality Improvement. 2015. *Best practices for human care regulation*, p. 48. Retrieved from <http://www.naralicensing.org/best-practices>

Other formatting considerations include the following:

- ◆ Establishing a set of generic or core requirements for several types of facilities with variations by program type, or having separate requirements for each program type
- ◆ Making requirements user-friendly, which might entail simplified numbering, a table of contents and index, and, if online, searchable text and links from the table of contents
- ◆ Identifying requirements by the level of risk that they pose to children if violated (see examples in *Contemporary Issues in Licensing: Monitoring Strategies for Determining Compliance: Differential Monitoring, Risk Assessment, and Key Indicators*<sup>11</sup>)

<sup>10</sup> National Association for Regulatory Administration. (2000). *NARA licensing curriculum*, pp. 31–32, 34. Minneapolis, MN: Author. Additional information is available at <http://www.naralicensing.org/licensing-curriculum>

<sup>11</sup> National Center on Child Care Quality Improvement. (2014). *Contemporary issues in licensing: Monitoring strategies for determining compliance: Differential monitoring, risk assessment, and key indicators*. Retrieved from <https://childcareta.acf.hhs.gov/resource/contemporary-issues-licensing-monitoring-strategies-determining-compliance-differential>

- ◆ Including guidance or rationale for requirements (see Texas requirements at <https://childcareta.acf.hhs.gov/licensing/state/TX> as an example)
- ◆ Referencing related statutes—for example, child passenger restraint and immunization laws—or including statutory language in the requirements
- ◆ Relating licensing requirement categories to categories used in other standards, such as the standards of the State or Territory’s QRIS and prekindergarten program. Are there opportunities to organize the regulations so that the categories match categories in other standards that affect licensees?

## Finalizing Licensing Requirements

Once the draft is completed, it should be submitted for initial review and comment. The initial review group should include workgroup participants, influential stakeholders, and all appropriate internal staff, including the program office, legal office, and any other relevant state officials whose input is needed before the rules are finalized. It is important to ensure that a timeframe is set for this review in the workplan, and to keep the process moving according to the timeline.

When licensing agency staff are satisfied the draft is complete, they will submit it through the State or Territory’s regulatory review and promulgation process. Each State and Territory has a different process, which generally includes several levels of review and a public comment period. The amount of time this process takes varies from State to State.

In some States, this process includes public hearings held across the State. Before holding public hearings, some States hold public workshops or listening sessions to solicit feedback. Holding meetings before the public hearings allows the workgroup to have conversations with various stakeholders and potentially resolve any concerns before the formal hearings. For example, the workgroup may receive feedback on proposed requirements that might warrant a delayed effective date.

Public hearings provide an important opportunity to build understanding and support for the requirements as well as hear feedback from varied perspectives and identify any unintended consequences of the revised requirements. Typically, there are strict requirements about interaction between agency representatives and participants at public hearings. These requirements can limit the dialogue, which is why public workshops and listening sessions are a valuable step in the overall process.

Whether or not a fiscal impact statement is required, the licensing agency should be prepared to address how the revised requirements’ cost to providers and parents is justified. If there is a significant fiscal impact for providers, States may wish to consider a later effective date for specific requirements to allow time for planning and implementation.

If the review and approval process includes the governor’s office or legislature, meeting with relevant staff in advance (and during the process, if possible) is advisable to increase the likelihood of approval. In addition to collaborative workgroup members, other community stakeholders can provide support for new requirements such as:

- ◆ Child care provider organizations
- ◆ Business leaders who understand the impact that quality, reliable child care has on their current and future workforce
- ◆ CCR&R agencies that understand a family’s reliance on access to quality care
- ◆ State and county health agencies, which can provide statistics on how licensing regulations protect children’s health; for example, improved immunization rates, reporting of infectious diseases, and safe food practices

- ◆ State fire marshals' offices, which can remind the public of the importance of oversight and education to reduce the risk of fire
- ◆ Child abuse prevention and family strengthening agencies that understand the role that child care providers play in supporting strong families
- ◆ City planning and zoning departments, which may rely on licensing agencies to make providers aware of building and zoning restrictions
- ◆ Service providers, including agencies that authorize child care subsidies or other benefit programs, home visitors, early intervention resource managers, and pediatricians
- ◆ Early learning advisory councils, which share a common goal for the well-being and healthy development of young children
- ◆ Civic groups that wish to contribute to the well-being of children and families in their communities

## Rolling Out New Licensing Requirements

Once the requirements are officially finalized and adopted, all interested parties must be made aware of them. A communications roll-out plan is essential to ensure an intentional, thoughtful approach.

It is best to use multiple methods of communication to reach providers. There are a number of ways to communicate the new requirements to the public, including the following:

- ◆ Posting the requirements to the licensing agency's website
- ◆ Sending an email to all licensees and stakeholders announcing and linking to the new requirements
- ◆ Sending a telephone voice or text message announcement, if the technology is available to send a mass announcement
- ◆ Mailing a hard copy of the new requirements to each licensed program
- ◆ Ensuring that the requirements are available in the languages spoken by providers
- ◆ Using the licensing agency's communication network to disseminate a press release
- ◆ Facilitating discussions at in-person or webinar-based outreach sessions, which could take place in partnership with provider associations and other stakeholder groups

Depending on the extent of the revisions, training for child care programs affected by new requirements may be critical. Training should cover the rationale for the requirements and how compliance is measured. Training should be held in various geographic areas of the State or Territory. Webinars may also be used. Reserve time for an open Q&A session at the end, and record the webinar to post to the licensing agency's website. Technology such as online survey tools may be used as a format for programs and parents to ask questions, and responses can be posted online.

Licensing staff must also be trained on the new requirements to ensure their understanding of the revisions so they can effectively enforce the requirements and provide technical assistance to providers.

An effective strategy used by some States is phasing in new requirements—giving a certain amount of time, such as one year, before the new requirements are enforced. It may also be appropriate to allow additional time for any requirements that have a significant fiscal impact; for example, child-caregiver ratios. Some States complete a transitional monitoring visit during which revised requirements are reviewed but not cited as a violation. This arrangement allows time for all licensees to learn about and come into compliance with the new requirements.

Once the monitoring report has been updated to reflect the revised requirements, it should be posted online. The CCDBG Act of 2014 requires States to provide monitoring reports “by electronic means.”<sup>12</sup> Providing the results of monitoring inspections can improve transparency for families. States can also share monitoring checklists, rationale for requirements, and other resources to help families and providers fully understand and participate in the licensing system.

## Use of Interpretive Guides

Some States take an additional step by developing interpretive guides, also known as guidance manuals or compliance guides, to help clarify requirements and ensure statewide consistency in administration of the licensing program. While some guides are intended only for licensing staff, making them available to programs and parents ensures a shared understanding of the requirements, their rationale, and how they are measured. This transparency increases understanding, trust, and consistency.

On the other hand, interpretive guides may become too prescriptive and may be misunderstood as writing regulation through interpretation. It is very important that a licensing agency’s legal office review interpretations to ensure that the correct interpretation is given and that the licensing agency is not overstepping the requirement or providing guidance beyond its authority.

Uses of interpretive guides include the following:

- ◆ Assistance with training for both licensees and agency staff
- ◆ Explanation of the intent, purpose, or rationale of each requirement
- ◆ Explanation of how compliance with the requirement will be measured by the licensing program
- ◆ Interpretation of the requirement and any pertinent information relating to the requirement
- ◆ Technical assistance regarding how to maintain compliance

Examples of interpretive guides for child care licensing programs can be found in the document *Interpretive Guides for Child Care Licensing Regulations*.<sup>13</sup>

## Further Technical Assistance Support

The National Center on Early Childhood Quality Assurance (ECQA Center) is available to assist States and Territories in the development and revision of child care licensing regulations. Assistance is available by contacting the ECQA Center at [QualityAssuranceCenter@ecetta.info](mailto:QualityAssuranceCenter@ecetta.info) or by contacting your federal Office of Child Care Regional Program Manager. Additional resources on a broad range of licensing topics are available on the Early Childhood Training and Technical Assistance System website at <https://childcareta.acf.hhs.gov/topics/protecting-childrens-health-and-safety>.

<sup>12</sup> See note 2.

<sup>13</sup> National Center on Early Childhood Quality Assurance. (2017). *Interpretive guides for child care licensing regulations*. Retrieved from <https://childcareta.acf.hhs.gov/resource/interpretive-guides-child-care-licensing-regulations>

## Appendix. Vermont's Licensing Requirement Development Process

The State of Vermont was recently faced with the task of revising regulations that were over 15 years old and reducing four sets of regulations (for registered child care homes, licensed child care homes, early childhood, and nonrecurring care) down to two sets (registered and licensed family child care homes, and center-based child care and preschool programs, which would include early childhood and nonrecurring care). The State decided to use a new “bottom-up” process of writing the rules with the community. Below is an outline of the process used to develop the new sets of requirements.

### Phase I (several months)

- ◆ The deputy commissioner and director of licensing toured the State, holding informational meetings to introduce the regulation revision process and provide participants with the opportunity to brainstorm and share their goals for the revisions.
- ◆ Meetings were held in each of Vermont's 12 districts. Attendees included child care providers from homes and centers, community partners, parents, licensing field specialists, licensing supervisors, and other relevant licensing agency staff.

### Phase II (1 year)

- ◆ The State contracted with NARA to assist with drafting requirements for home- and center-based programs. It was decided by the licensing agency that writing new requirements would only begin after feedback was collected from stakeholders consisting of about 100 child care providers, community partners, and various invested professionals from around the State. Licensing agency leadership decided to take this approach because they felt it was important for the regulations to be written from the “bottom up” as opposed to the “top down.”
- ◆ A decision-making group called the process management team was convened. Its members consisted of content specialists within the Child Development Division (a licensing supervisor, a military liaison, etc.), a family child care home provider, and a center-based program director. The group was responsible for processing feedback from the workgroup meetings and making decisions regarding the layout, organization, and content of the two new sets of requirements.
- ◆ Nine workgroups were formed, each in a different geographic area of the State.
  - Each group consisted of home- and center-based providers and staff, community partners, licensing field specialists, licensing supervisors, and other Child Development Division staff. Participants who represented others in the community would take questions to their colleagues and come back to the next meeting with feedback from others.
  - The workgroups were connected by Vermont's Interactive Television system.
  - Each month, the deputy commissioner and the director of licensing would facilitate the meeting from a different site, being in person at each site at least once.
  - The first meeting was used to establish working rules and to establish goals for the process. A Wordle—also known as a word cloud, which is a visual depiction of words used that gives more prominence to the more commonly used words—was developed with comments from the meeting. The Wordle reflected the importance of “clarity” and “measurable rules,” which became the driving force of the process.

- Each meeting began with best practice information on a particular topic followed by small-group discussion. A volunteer from each site would document the discussions and log them into an online survey (Survey Monkey) designed for this purpose.
  - A participant from each workgroup was selected and paid a stipend to moderate the workgroup.
  - The workgroups met once a month on a Saturday morning for 2–3 hours.
  - This process lasted a year, with 9–10 workgroup meetings held.
- ◆ The process management team used the notes from each month’s meeting to begin making decisions on requirement changes and to shape the agenda for the next month’s meeting.

### Phase III (1 year)

- ◆ Once the draft was complete, the new rules were compared with the old rules and crosswalked to ensure that anything that was removed was deliberate and nothing was erroneously left out. This was important because the entire structure of the document and most requirements had been changed in some way.
- ◆ This process was completed concurrently for both sets of regulations.
- ◆ Once a final edit was completed for both sets of regulations, filing documents were created to begin the legislative promulgation process.

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