



STATE BOARD of ELEMENTARY and SECONDARY EDUCATION

P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064 • PHONE: 225-342-5840 • FAX: 225-342-5843

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May 11, 2024

MEMORANDUM

TO: Senator Cameron Henry, Senate President
Representative Phillip DeVillier, Speaker of the House
Senator Rick Edmonds, Chair, Senate Committee on Education
Representative Laurie Schlegel, Chair, House Committee on Education

FROM: Kimberly Tripeaux, Interim Executive Director
Board of Elementary and Secondary Education

RE: Summary Report on Board of Elementary and Secondary Education Proposed Rulemaking

Pursuant to R.S. 49:968(D)(1)(b), the Board of Elementary and Secondary Education hereby submits to you this summary report and announces its plan to proceed with rulemaking by finalizing the April 20, 2024, Notice of Intent that was promulgated on pages 558-561 of the *Louisiana Register*.

The Board has received no public comments and has not conducted a hearing pursuant to R.S. 49:953(A)(2)(a).

The Board has made no change to the proposed Rule.

Subject to legislative oversight by either the House Committee on Education or Senate Committee on Education, the Board anticipates adopting the Notice of Intent as a final Rule in the July 20, 2024, issue of the *Louisiana Register*.

The following document is attached:

1. A copy of the Notice of Intent.

Please contact Erin LeBlanc at (225) 342-5841 if the Board may be of any assistance to you concerning this Rule.

KT:ell

Attachment (1)

c: Caroline Tyler, Secretary, Senate Committee on Education
Elizabeth Borne, Legislative Analyst, House Committee on Education
Lisa Lovello, Legislative Analyst, House Committee on Education
Ashley Townsend, Policy Director, Louisiana Department of Education
Kimberly Tripeaux, Interim Executive Director, BESE
Kevin Calbert, Communications Manager, BESE

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? Yes.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

- 1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
- 2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
- 3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until noon, May 10, 2024, to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may also be hand delivered to Shan Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

**RULE TITLE: Bulletin 137—Louisiana Early Learning Center Licensing Regulations
Early Learning Providers**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no anticipated implementation costs or savings to state or local governmental units due to the proposed rule change. The proposed change modifies policy to strengthen measures designed to protect children and to provide additional clarity to early learning providers. The proposed revisions address: updates and revisions to several definitions; clarification regarding early learning programs operating on

local education authority property; establishing that a current license holder must be in compliance with licensing rules and regulations prior to changing the location of ownership of a center; clarification on how to report critical incidents; clarification of monitoring policy for provisionally-employed staff-members; correction of child-to-staff ratio for two-year-old children; clarification of qualifications for in-person trainer requirements to conduct health and safety and medication administration trainings; clarification of the use of prohibited substances; and addition of a requirement that the administration of supplements will require written parental authorization.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated effect on the revenue collections of state or local governmental units as a result of the proposed rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

There are no anticipated costs or benefits to directly affected persons, small business, or nongovernmental groups as a result of the proposed rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment as a result of the proposed rule change.

Beth Scioneaux
Deputy Superintendent
2404#026

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 139—Louisiana Child Care and Development Fund Programs—Child Care Programs (LAC 28:CLXV.103, 309, 311, 313, 320, 507, and 515)

In accordance with the provisions of R.S. 17:6(A)(10) and the Administrative Procedure Act (APA), R.S. 49:953(B)(1) et seq., the Board of Elementary and Secondary Education proposes to amend LAC 28:CLXV in *Bulletin 139—Louisiana Child Care and Development Fund Programs*. The proposed revisions accomplish the following: strengthen measures designed to protect children, ensure better statewide access to quality early care and learning, and provide additional clarity to family child care, in-home, and school-based child care providers. The aforementioned revisions further codify definitions and regulations regarding CCAP contracted seats.

**Title 28
EDUCATION**

Part CLXV. Bulletin 139—Louisiana Child Care and Development Fund Programs

Chapter 1. Child Care Assistance Program

§103. Definitions

Automated Child Care Time and Attendance—an electronic system that provides accurate and timely capturing, tracking, and reporting of time and attendance data.

Back Scans—attendance scans by head of household or household designee utilizing the LDOE Automated Child Care Time and Attendance system that are made at a time

other than the actual times of arrival and departure of the child.

BESE—Board of Elementary and Secondary Education.

Child Care and Development Fund (CCDF)—federal program whose purpose is to increase the availability, affordability and quality of child care for eligible families.

Child Care Assistance Program (CCAP)—program funded through the CCDF that makes payments to eligible child care providers for child care services provided to eligible families through both voucher seats and contracted seats.

Child Care Center—any place or center operated by any institution, political subdivision, society, agency, corporation, person or persons, or any other group for the purpose of providing care, supervision, and guidance of seven or more children, not including those related to the caregiver, unaccompanied by parent or legal custodian, on a regular basis for at least 12 1/2 hours in a continuous seven-day week.

Child Care Criminal Background Check (CCCBC)—information received by the department upon request for information pursuant to requirements set forth in R.S. 17:407.71 and 45 CFR 98.43(b).

Child Care Provider—an early learning center, family child care provider, in home child care provider, military child care center or school child care center.

Child Care Resource and Referral (CCR and R)—a state or local organization with whom the department has contracted to provide services to families, early childhood professionals, and communities statewide.

Contracted Seats—seats for full-time care for infants through three-year-old children of CCAP-eligible families, as defined in Chapter 5 of this Part, for which the LDOE pays a CCAP-certified child care provider for a specified number of child care seats.

Criminal Background Check (CBC)—a fingerprint-based personal Louisiana criminal history information record obtained from the Louisiana Bureau of Criminal Identification and Information pursuant to R.S. 17:407.71. A CBC is satisfactory if it shows no arrests for any crime included in R.S. 15:587.1(C), or if an arrest is shown on the CBC for any excludable offense, the CBC or documentation from the jurisdiction of arrest affirmatively shows that the charges were disposed of without a conviction. A plea of guilty or nolo contendere shall be deemed to be a conviction.

Family Independence Temporary Assistance Program (FITAP)—program administered by the Department of Children and Family Services (DCFS) that provides cash assistance to families with dependent children.

Full-Time Care—child care calculated to be 30 or more hours per week that is paid in units of days or half days with a maximum of 22 days per month.

Supervision—the function of observing, overseeing, and guiding a child or group of children, that includes awareness of and responsibility for the ongoing activity of each child and being near enough to intervene if needed.

Supplement—herbal or other dietary, nutritional, or other food or medical supplement administered to be ingested by children orally, in aerosol form, or in any other manner.

Supplemental Nutrition Assistance Program (SNAP)—federal program administered by DCFS that provides monthly benefits to that help eligible low income households buy food needed for good health.

Unexplained Absence—an absence for which the head of household has not provided verbal or written notification to the provider or the department about the absence.

Voucher Seats—a placement made to a CCAP-eligible family, as defined in Chapter 5 of this Part, that provides funding to a child care provider; this voucher is retained by the family when the child and family transfers to another CCAP-certified provider.

Water Activity—a water-related activity in which children are in, on, near and accessible to, or immersed in, a body of water, including but not limited to a swimming pool, wading pool, water park, river, lake, or beach.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR part 98 and R.S. 17:407.28.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2109 (October 2015), amended LR 42:42 (January 2016), LR 42:1870 (November 2016), LR 43:1279 (July 2017), LR 44:257 (February 2018), effective March 1, 2018, LR 44:800 (April 2018), LR 47:1279 (September 2021), LR 48:30 (January 2022), LR 48:1006 (April 2022), LR 49:1208 (July 2023), LR 50:

Chapter 3. CCAP Provider Certification

§309. Specific Certification and Registration

Requirements for Family Child Care Providers

A. - A.2. ...

3. Telephone. Have a working telephone that is capable of receiving incoming and making outgoing calls and that is available at all times in the residence in which care is being provided. The provider shall notify the LDOE immediately upon a change in such phone numbers by submitting written notice to the LDOE by fax or email.

4. - 9. ...

10. Medication Administration Training. Provide documentation of current medication administration training. Providers may complete the approved self-paced, online training provided by the LDOE or utilize an in-person trainer. If taught in person, the training must be taught by a licensed nurse, licensed physician, licensed physician's assistant, licensed paramedic, or licensed EMT who is on the LDOE registry of approved trainers.

11. - 15.b. ...

c. Supplements. Children shall not be administered any form of supplements without prior written parental authorization.

16. - 31. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98.43, R.S. 15:587.1, and R.S. 17:407.71.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2111 (October 2015), amended LR 42:2173 (December 2016), LR 43:1279 (July 2017), LR 44:258 (February 2018), effective March 1, 2018, LR 47:1280 (September 2021), LR 49:1208 (July 2023), LR 50:

§311. Specific Certification Requirements for In-Home Child Care Providers

A. - A.1. ...

2. Telephone. Have a working telephone that is capable of receiving incoming and making outgoing calls and that is available at all times in the home in which care is being provided. Notify the LDOE immediately upon a change in such phone numbers by submitting written notice to the LDOE by fax or email.

3. - 8. ...

9. Medication Administration Training. Provide documentation of current medication administration training. Providers may complete the approved self-paced, online training provided by the LDOE or utilize an in-person trainer. If taught in person, the training must be taught by a licensed nurse, licensed physician, licensed physician's assistant, licensed paramedic, or licensed EMT who is on the LDOE registry of approved trainers.

10. - 14.b. ...

c. Supplements. Children shall not be administered any form of supplements without prior written parental authorization.

A.15. - B. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98.43, R.S. 15:587.1, and R.S. 17:407.71.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2112 (October 2015), amended LR 42:2174 (December 2016), LR 43:1280 (July 2017), LR 44:260 (February 2018), effective March 1, 2018, amended LR 47:1282 (September 2021), LR 49:1209 (July 2023), LR 50:

§313. Specific Certification Requirements for Public School and BESE-Approved Nonpublic School Child Care Centers

A. - A.5.

6. Medication Administration Training. Provide documentation of current medication administration training. Providers may complete the approved self-paced, online training provided by the LDOE or utilize an in-person trainer. If taught in person, the training must be taught by a licensed nurse, licensed physician, licensed physician's assistant, licensed paramedic, or licensed EMT who is on the LDOE registry of approved trainers.

7. - 8.d. ...

e. The three hours of training by a child care health consultant on infectious diseases, health and safety, and/or food service preparation required in LAC 51:XXI.301.A.9 shall not count towards the annual training requirements. Providers may complete the approved self-paced, online training provided by the LDOE or utilize an in-person trainer. If taught in person, the training must be taught by a licensed nurse, licensed physician, licensed physician's assistant, licensed social worker, or licensed nutritionist who is on the LDOE registry of approved trainers.

9. - 11.b. ...

c. Supplements. Children shall not be administered any form of supplements without prior written parental authorization.

12. - 27. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 17:407.26.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2113 (October 2015), amended LR 42:2174 (December 2016), LR 44:261 (February

2018), effective March 1, 2018, amended LR47:1284 (September 2021), LR 49:1209 (July 2023), LR 50:

§320. Suspension of Payments to Providers

A. ...

B. If the provider does not come into compliance within 14 calendar days of such notice, the LDE may suspend payments to the provider until the provider is in compliance.

C. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 17:407.26.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:1280 (July 2017), amended LR 50:

Chapter 5. CCAP Household Eligibility

§507. Certification Requirements for Categorically Eligible Households

A. - A.2. ...

3. participate in the system designated by the LDOE for capturing time and attendance; and

4. - 4.b. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and R.S. 17:407.28.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 42:43 (January 2016), amended LR 50:

§515. Payments Made on Behalf of Households

A. - C.3. ...

D. Payment for voucher seats is made to the provider after the child care has been provided.

E. - G. ...

H. Payment for contracted seats.

1. Providers will be paid to reserve or hold a seat based on the approved age category for the designated seat.

2. The seat may be held and payment made for 45 calendar days prior to being filled.

3. After 45 calendar days, the contract for the seat will no longer be in effect, and the provider will not be paid to hold the seat.

4. The seat will be paid at the rate specified in the agreement with the provider for the length of the contract based on the age of the child at the contract start date.

5. Payments for contracted seats will be made prior to provision of child care services. Any payments made for contracts that are not filled will be rectified through the LDOE recoupment process.

6. The LDOE may terminate or refuse renewal of a provider's contracted seats and impose a period of ineligibility for any provider found to operate in violation of the CCAP provider agreement and will be subject to §321 of this Part.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and R.S. 17:6 and 17:407.28.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2116 (October 2015), amended LR 42:44 (January 2016), LR 42:1870 (November 2016), LR 44:801 (April 2018), LR 45:1745 (December 2019), LR 47:573 (May 2021), LR 48:31 (January 2022), LR 48:1270 (May 2022), LR 50:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on rules proposed for adoption, repeal, or amendment. All Family Impact Statements will be kept on file in the state board office which has adopted,

amended, or repealed rules in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? Yes.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the Louisiana Revised Statutes, there is hereby submitted a Poverty Impact Statement on rules proposed for adoption, amendment, or repeal. All Poverty Impact Statements will be in writing and kept on file in the state agency which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial authority? No.
2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.
3. Will the proposed Rule affect employment and workforce development? Yes.
4. Will the proposed Rule affect taxes and tax credits? No.
5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? Yes.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until noon, May 10, 2024, to Shan N. Davis,

Executive Director, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may also be hand delivered to Shan Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 139—Louisiana Child Care and Development Fund Programs—Child Care Programs

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will increase the number of seats funded through the Child Care Assistance Program (CCAP). The average cost of a B-3 seat is \$12,500 and includes the average of the CCAP infant, toddler, and three-year-old rate. Currently, 4,500 children are enrolled in B-3 seats, with approximately 6,000 expected to be funded through the annual CCAP appropriation, including the contracted seats provided for through the proposed rule change. The FY 24 appropriation included in Act 447 of the 2023 Regular Session for this purpose was \$87.7 M. Additional reviewers of applications will be contracted as needed, estimated at a potential \$434,700 in FY 24, \$819,480 in FY 25, and \$819,480 in FY 26. These costs will be funded using federal dollars received through the American Rescue Plan Act (ARPA), the Childcare Development Block Grant, and the Child Care Development Fund.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated effect on the revenue collections of state or local governmental units as a result of the proposed rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change may result in economic benefits to directly affected persons, small businesses, or nongovernmental groups. The changes support the critical stabilization of the child care industry (which results in a more stable workforce across Louisiana industry and the economy) by paying the fixed costs of providing quality child care services. The changes will additionally assist providers in offering early learning care more consistently and comprehensively for more families and children, statewide, to ensure that some children in every parish receive care.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will provide for more stable employment within the child care sector and greater stability for owners of child care centers, as center leadership will be able to operate with greater assurance that payment will be received for a certain number of seats. More stable child care options will support parents in the workforce.

Beth Scioneaux
Deputy Superintendent
2404#031

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office