



Legal update and action plan regarding pandemic child care in Ohio

March 26, 2020

Overview of changes to child care law

On March 17, 2020, Governor DeWine signed an Executive Order establishing a temporary pandemic child care license that allows the Ohio Department of Job and Family Services (ODJFS) to provide child care to families in which parents work in the health, safety and essential service fields during the COVID-19 pandemic. Importantly, on March 23, 2020, ODJFS released its list of “essential staff” that may use pandemic child care, prioritizing hospital and clinic staff, dentists, pharmacy staff and others, such as first responders. The full list of essential employees can be found [here](#).

Subsequently, an Executive Order issued March 24, 2020, required that:

- All child care programs must close by 11:59 p.m. on March 25, 2020.
- Only licensed or certified pandemic child care programs can provide child care beginning March 26, 2020.

This means all school-age child care programs and preschools licensed by the ODE must be closed unless they have received designation as a pandemic child care program from ODJFS.

In response to the above Executive Orders, ODJFS issued new rules providing that currently licensed family child care home providers and currently certified in-home aides can apply for a pandemic child care license *in addition* to child care centers. Further, ODJFS announced child care center ratio and group size will be adjusted as follows.

Age Category	Ratio/Group Size
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Infant	1:4 or 2:6
Toddler	1:6
Preschool	1:6
School Age	1:6

ODJFS has also recommended that children of parents of the same employer should be kept together, when possible. Parent interaction at drop-off and pick-up times should be limited. If a large space (like a gymnasium) is used to create several small spaces, temporary walls that are at least six feet in height or a similar temporary structure must be used to ensure adequate space between groups.

Many existing daycare centers (*i.e.*, YMCA) have already been approved to provide pandemic child care. (If you receive questions from employees regarding this, you can direct them to ODJFS' [Coronavirus Pandemic Child Care Information for Families](#).) Certain schools and other entities have expressed interest in using their buildings to provide pandemic child care. ODJFS has made it easier for institutions to apply for this type of child care license.

Action plan for institutions interested in providing pandemic child care¹

More guidance will likely be provided by ODJFS, but, currently and if interested, your institution may begin implementing the following steps.

Step 1: Review licensing requirements contained in O.A.C. 5101:2-12-02.1 to determine if the institution can meet the space, safety and staffing requirements that are needed to provide this type of child care.

The full list of 19 licensing requirements is found in paragraph D of the above-referenced rule. However, noteworthy requirements include:

(1) The pandemic center shall have a building certificate of occupancy and fire inspection for the space being utilized for child care.

(2) There shall be at least 35 square feet of usable wall-to-wall indoor floor space for each child the center is licensed to serve.

(4) There shall be at least one child care staff member onsite during all hours of operation who is currently trained in cardiopulmonary resuscitation (CPR) appropriate for all age groups that the center is licensed to serve. The training shall meet the requirements in Appendix A to rule [5101:2-12-10](#) of the Administrative Code.

(5) The pandemic center shall ensure that the following staff-child ratios and maximum group size limitations are maintained at all times:

(a) one child care staff member per four infants with no more than six children in the room.

(b) one child care staff member per six children older than infants with no more than six children in the room.

(10) Each child enrolled for care shall have a completed [JFS 01234](#) "Child Enrollment and Health Information for Child Care" and a completed [JFS 01259](#) "Pandemic Child Care Center Child Enrollment Addendum" on file by the child's first day of attendance at the center. ²

(11) The pandemic child care center shall have a written attendance record that tracks in and out times for each

child each day. The record shall include the child's name and date of birth.

(14) The pandemic child care center shall follow the cleaning and sanitizing chart in Appendix A to rule [5101:2-12-13](#) of the Administrative Code and the handwashing requirements in Appendix B to rule [5101:2-12-13](#) of the Administrative Code.

(18) The pandemic child care center shall not provide transportation nor swimming activities in water deeper than 18 inches to any child without prior approval from ODJFS.

(19) The pandemic child care center shall immediately notify ODJFS in writing if any of the following occurs to a child while in the care for the pandemic child care center:

(a) A child dies.

(b) A child receives a bump or blow to the head that requires first aid or medical attention.

(c) An incident, injury or illness occurs that requires a child to be removed by the parent or emergency services from the program for medical treatment, professional consultation or transportation for emergency treatment.

(d) Abuse of a child is substantiated by a public children services agency.

Step 2: Consider whether your institution needs to obtain formal approval from its governing/school board.

Step 3: Submit an application to ODJFS for a license.

1. The child care center shall submit the JFS 01258 "[Application for Temporary Pandemic Child Care Center License](#)" to ODJFS.
2. If the program is not currently operating as a licensed child care center, it shall also comply with a pre-licensing inspection.
3. ODJFS has stated it will "evaluate programs based on location, capacity and the number of children currently being served with parents employed to provide health, safety or other essential services."

Step 4: Arrange for pre-licensing inspection with OJDFS.

Step 5: Check on insurance.

Verify insurance is up-to-date and obtain any necessary riders. Obtain evidence of insurance from the participating employers.

Step 6: Sign Provider Agreement with ODJFS.

Pandemic programs must sign a provider agreement and the contract for Pandemic Programs in order to receive reimbursement for care. Programs will be reimbursed at rates set by ODJFS.

Step 7: Obtain volunteers and volunteer waivers.

Step 8: Ensure staff have background checks.

Background checks are still required by any staff working with children. If staff members have existing approval from ODJFS, then a copy should be kept on file.

Staff members without a background check have seven days from their start day to submit for BCI/FBI checks and complete a request for a background check in the Ohio Professional Registry. More information on background checks may be found [here](#).

Step 9: Review/amend the current use of facilities policies.

With respect to schools, R.C. 3313.75, 3313.76 and 3313.77 provide rules for the use of school buildings and grounds. Specifically, R.C. 3313.75 states that a board of education may authorize the opening of schoolhouses for any lawful purposes, provided that no rental or lease shall interfere with the public schools in such district. Individual districts should review and make any required changes to these policies to facilitate the new child care program.

For instance, NEOLA policy 7510 provides: "Should all or any part of the District's community be struck by a disaster, the Board shall make school premises available, at no charge, for the housing, feeding, and care of victims or potential victims when requested by local, State, or Federal authorities. The Superintendent should meet with the Police Department to establish a disaster preparedness plan in order to ensure that proper procedures are established to minimize confusion, inefficiency, and disruption of the educational program. (R.C. 5915.02-08)."

Step 10: Consider additional policies that the program may want to implement.

Programs can create their own policies above state minimum requirements. For example, the program might have policies regarding when it will send a sick child home and whether the program will take the temperature of every child and/or staff member before they enter the program.

Note: *The General Assembly passed Sub. H.B. 197 on March 25, 2020. This new legislation did not alter the above guidance. The legislation does delay the requirement that child care centers participate in Step Up to Quality in order to receive public funding from July 1, 2020, to September 1, 2020.*

¹ For family child care providers and certified in-home aides, new rules for providing pandemic child care can be found at 5101:2-13-02.1 and 5101:2-14-02.1, respectively.

² The enrollment application forms can be found on the new [ODJFS website](#). Other helpful resources are also provided on this website, such as Temporary Pandemic Child Care Centers and Ohio's Building and Design Construction Requirements.

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