

Proposed

State of Kansas
Department of Health and Environment
Notice of Hearing on Proposed Administrative Regulation

The Kansas Department of Health and Environment (KDHE), Division of Public Health, Bureau of Family Health, will conduct a public hearing at 10:00 a.m. Thursday, October 31, 2019, in Room 530, Curtis State Office Building, 1000 SW Jackson, Topeka, Kansas, to consider the adoption of proposed new maternal and child health regulation K.A.R. 28-4-133, reporting of critical incidents at day care homes, group day care homes, child care centers, and preschools.

A summary of the proposed regulation and estimated economic impact follows:

Summary of Regulations:

K.A.R. 28-4-133. Reporting critical incidents. This regulation requires licensees to notify parents immediately in the case of a critical incident, expanding the existing notification requirements in K.A.R. 28-4-127(e)(2) pertaining to illnesses and injuries. It includes a list of critical incidents such as fires, vehicle collision, missing child, injuries requiring medical attention or death of a child. It also includes a requirement that licensees submit written reports of these critical incidents by the next working day to the Kansas Department of Health and Environment, on a form provided by KDHE.

Economic Impact:

Cost to the agency: The proposed regulation will enable KDHE to meet a federal requirement of the Child Care Development Grant Act of 2014 (Pub. L. 113-186). The Child Care Development Fund (CCDF) block grant Final Rule, 45 CFR §98.33, pertaining to consumer education, requires states to provide parents and the public online access to information concerning the aggregate number of serious injuries and deaths in licensed facilities through a consumer website. This is consistent with K.S.A. 65-534, which requires KDHE to maintain an online

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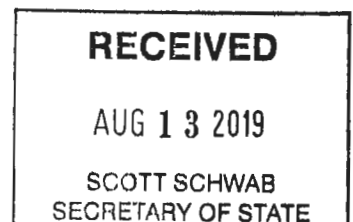
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information dissemination system accessible to the public. Consumer education, including web-based access to information, is an important tool to help parents make informed child care choices. KDHE will track reports of critical incidents received from licensees in the KDHE Child Care Licensing System (CLARIS). Costs to KDHE include entry, review and tracking of data. Costs will be absorbed in the ongoing KDHE budget.

Cost to licensees: The proposed regulation requires licensees to notify parents immediately after a critical incident. There are no implementation or compliance costs to licensees for notifications to parents. Licensees will also complete and submit a written report of each critical incident to KDHE. The report form will be provided by KDHE. Depending on the complexity of the critical incident, it is estimated to take the licensee or individual designated by the licensee approximately 15 minutes or less to complete and submit. The estimated cost to complete one report is \$3.20. This cost is based on an average of the hourly wages for a day care home/group day care home licensee and a child care center/preschool program director. The annual cost to licensees will vary depending on the hourly wage of the individual completing the form and the number of reportable incidents in a year. KDHE accepts the completed form by email, fax, or regular mail. Future enhancements to CLARIS may allow web-based submission of a report.

Costs to other governmental agencies or units: The proposed regulation applies to local units of government, including cities, counties, and unified school districts that operate a licensed child care facility. For those licensees, there are no implementation or compliance costs for notifications to parents following a critical incident. Licensees will also complete and submit a report of each critical incident to KDHE. Depending on the complexity of the critical incident it is estimated to take the licensee or individual designated by the licensee approximately 15 minutes or less to complete and submit. The estimated cost to complete one report is \$3.20.

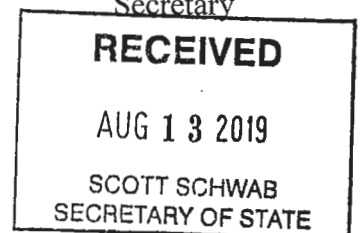


The time period between the publication of this notice and the scheduled hearing constitutes a 60-day public comment period for the purpose of receiving written public comments on the proposed regulation. All interested parties may submit written comments prior to 5:00 p.m. on the day of the hearing to Amber Sellers, Kansas Department of Health and Environment, Bureau of Family Health, Administration and Policy, 1000 SW Jackson, Suite 200, Topeka, KS 66612-1274, by email to Amber.Sellers@ks.gov, or by fax to 785-559-4244. During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulation as well as an opportunity to submit their written comments. It is requested that each individual giving oral comments also provide a written copy for the record. In order to give each individual an opportunity to present their views, it may be necessary for the hearing officer to request that each presenter limit an oral presentation to an appropriate time frame.

Complete copies of the proposed regulation and the corresponding economic impact statement may be obtained from the KDHE Child Care Licensing website, at <http://www.kdheks.gov/bcclr/index.html> or by contacting Amber Sellers at Amber.Sellers@ks.gov, 785-296-8238, or fax 785-559-4244. Questions pertaining to the proposed regulation should be directed to Amber Sellers at the contact information above.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and the economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Amber Sellers.

Lee A. Norman, M.D.
Secretary



28-4-133. Reporting critical incidents. This regulation shall apply to all day care homes, group day care homes, preschools, and child care centers.

(a) Reports to parents and legal guardians. In addition to meeting the reporting requirements in K.A.R. 28-4-127, each primary care provider and each program director shall ensure that each of the following critical incidents is immediately reported to the parent or legal guardian of any child affected by the critical incident:

(1) Fire damage or other damage to the facility, or any damage to the property that affects the structure of the facility or the safety of the children in care;

(2) a vehicle collision involving any child in care;

(3) a missing child;

(4) an injury to a child that requires treatment by a health care professional;

(5) the death of any of the following:

(A) A child;

(B) a provider in a day care home or group day care home;

(C) an employee in a preschool or child care center; or

(D) a volunteer in a day care home, group day care home, preschool, or child care center;

and

(6) any other occurrence that jeopardizes the safety of any child in care.

(b) Written reports to the department. Each primary care provider and each program director shall ensure that a written report of any critical incident specified in subsection (a) is submitted by the next working day to the department. The report shall be submitted on a form provided by the department. A copy of each critical incident report shall be kept on file at the

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facility for at least one year from the date of the critical incident. (Authorized by and implementing K.S.A. 65-508; effective P-_____.)

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**Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the Budget**

Kansas Department of Health and Environment
Agency

Susan Vogel
Agency Contact

785-296-1291
Contact Phone Number

K.A.R. 28-4-133
K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to: Division of the Budget
900 SW Jackson, Room 504-N
Topeka, KS 66612

I. Brief description of the proposed rule(s) and regulation(s).

K.A.R. 28-4-133, Reporting critical incidents, applies to day care homes, group day care homes, child care centers, and preschools. The proposed new regulation requires licensees to notify parents immediately in the case of a critical incident, expanding the existing notification requirements in K.A.R. 28-4-127(e)(2) pertaining to illnesses and injuries. It includes a list of critical incidents such as fires, vehicle collision, missing child, injuries requiring medical attention or death of a child. It also includes a requirement that licensees submit written reports of these critical incidents by the next working day to the Kansas Department of Health and Environment (KDHE), on a form provided by KDHE.

This regulation has been developed for three main purposes:

- To ensure that parents of children in care receive information about critical incidents that impact the health, safety and well-being of their children.
- To enable KDHE to collect data and track incidents of critical events in a consistent manner, statewide. Sound public policy planning in respect to health and safety in regulated care settings starts with the collection of data. The proposed regulation aligns with an existing regulation for school age programs for children and youth, K.A.R. 28-4-592(g), and will provide data to evaluate the scope and severity of critical incidents in licensed facilities.
- To comply with a requirement of the Child Care and Development Block Grant Act of 2014 (Pub. L. 113-186). The Child Care Development Fund (CCDF) block grant Final Rule, 45 CFR Part 98.33, pertaining to consumer education, requires states to provide parents and the public online access to information concerning the aggregate number of serious injuries and deaths in licensed facilities through a consumer website. NOTE: The Kansas Department for Children and Families (DCF) is the lead agency for administration of the block grant. The proposed new regulation was developed cooperatively with DCF.

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II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)

The proposed new regulation is needed to meet a Federal requirement of the CCDF Block Grant Act. Final Rule, 45 CFR Part 98.33, effective Nov. 29, 2016, requires all states to aggregate data on serious injuries and deaths in child care and post the information on a consumer website. This is consistent with K.S.A. 65-534, which requires KDHE to maintain an online information dissemination system accessible to the public. Consumer education, including web-based access to information, is an important tool to help parents make informed child care choices.

Current child care licensing general regulations have two requirements concerning critical incidents. K.A.R. 28-4-127(e)(2) requires licensees to report immediately to the parent each illness or injury of a child that requires medical attention and K.A.R. 28-4-127(f) requires licensees to report to the county health department or to KDHE any injury or illness which results in the death of a child in care. The proposed new regulation lists additional events considered critical and requires that they be reported immediately to parents. It further requires notification of each critical incident to KDHE on a form provided by KDHE. KDHE will track reports of critical incidents in the KDHE Child Care Licensing Information System (CLARIS) and provide data to DCF for posting on the consumer website to comply with Federal CCDF reporting.

The regulations of the four contiguous states, Colorado, Oklahoma, Missouri, and Nebraska were reviewed. All four states have reporting requirements pertaining to parents. Three of the four states, Colorado, Nebraska and Oklahoma, have regulations requiring licensees to notify the State Licensing Agency of emergency situations or critical events such as an accident/serious injury requiring medical attention or death of child while in care; a missing child; an emergency/disaster damage to the premises; or any other incident exposing children to imminent risk. Licensees in Missouri are required to notify parents of an illness/injury and to maintain a completed Accident/Injury Report form on file at the facility. Additionally, they are required to report fires/fire damage and communicable diseases to the appropriate state agency.

III. Agency analysis specifically addressing following:

A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The proposed new regulation ensures that parents receive information about critical incidents that impact the health, safety and well-being of their children. When working parents feel confident about their child care, including the level of communication with those caring for their children, they are more likely to be more productive at work.

The proposed new regulation will not restrict the business activities or the growth of licensees. Immediate notification to parents requires a minimum amount of time for licensees. Active and open communication with parents may reduce their anxieties about their children in care and may reduce the number who move their children from one facility to another based on levels of communication or dissatisfaction with the care provided.

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Licensees will be required to report, in writing, to KDHE only those incidents that rise to the level of being a “critical incident” as listed in the proposed new regulation. Some facilities may never have such an incident. Others may have one or more in a year’s time. KDHE does not have a complete accounting of critical incidents for these facilities beyond what is required to be reported in K.A.R.28-4-127(f); and those incidents that are either voluntarily reported by the licensee or that are identified as the result of a complaint.

Licensees may benefit from data collected and analyzed by KDHE. Information shared through training and technical assistance by KDHE and local licensing surveyors may help licensees in program planning specific to their facility and the ages of children in care.

B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;

The proposed new regulation applies to licensed day care homes, group day care homes, child care centers, and preschools. Depending on the type of licensed child care facility, ownership may range from sole proprietorships, limited liability companies, corporations and nonprofit corporations to local units of government, including cities, counties, and unified school districts. There are no associated implementation or compliance costs that would be passed on to parents of children in care or other individuals. There is no impact on utility ratepayers.

The economic impact on licensees would be minimal.

- Notifications to parents would be immediate after an incident. There would be no implementation or compliance costs to licensees for notifications to parents.
- Notifications to KDHE will require time for the licensee to complete and submit a written report. The report form will be provided by KDHE. The current form, Notification of Injury, Illness or Critical Incident, used by School Age Programs for Children and Youth pursuant to K.A.R. 28-4-592(g) is a two-page form requesting basic facility information and a description of the incident including dates, times, child and adults involved and action taken. Licensees of other facility types sometimes voluntarily submit this form to KDHE following a critical incident. Depending on the complexity of the critical incident it is estimated to take the licensee or individual designated by the licensee approximately 15 minutes or less to complete and submit. The estimated cost to complete one report is \$3.20. This cost is based on an average of the hourly wages for a day care homes/group day care home licensee and a child care center/preschool program director. Note: The annual cost to licensees will vary depending on the hourly wage of the individual completing the form and the number of reportable incidents in a year. KDHE accepts the completed form by email, fax, or regular mail. Future enhancements to CLARIS may allow web-based submission of a report.

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C. Businesses that would be directly affected by the proposed rule and regulation;

As of May 10, 2019, there were 4,535 licensed child care facilities with the capacity to serve 94,610 children that will be directly affected by this proposed new regulation.

A breakdown of program types is as follows:

Program Type	Total Facilities	Total Capacity
Child Care Center	628	49,819
Group Day Care Home	1,311	15,723
Head Start Child Care Center	49	1,840
Licensed Day Care Home	2,401	23,990
Preschool	146	3,238
Total Licensed Child Care Facilities	4,535	94,610

D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

There are no costs to parents associated with the new regulation. Parents will benefit from knowing that licensees must notify them immediately when there is a critical incident involving or impacting their children. Reasonable communication with parents has always been expected of licensees. This regulation clarifies one element of that expectation, by requiring immediate notification if there is a type of critical incident specifically listed in the regulation, one that involves or impacts the parent's child.

The costs to licensees for completing and submitting the notifications of critical incidents to KDHE is described in Section III. B. above. Licensees will benefit by having guidance on what types of incidents are critical, should be reported immediately to parents, and should be reported in writing to KDHE. KDHE's ability to track critical incidents and make information available will benefit licensees in program planning and developing and implementing strategies to reduce risks with the potential to harm the children in their care.

The costs to KDHE will involve the entry, review, and tracking of data, which will be absorbed in the current budget. KDHE will benefit in two ways from the proposed new regulation:

- The written reports will provide KDHE with consistent and comprehensive information on the numbers and types of critical incidents occurring in regulated child care facilities. The reports will provide KDHE with information which will help to identify issues around preparedness planning for critical incidents that could impact the health and safety of children and will aid in assessing and reducing predictable risks of harm to children in regulated care.
- It will enable KDHE to fulfill a requirement of CCDF pertaining to consumer education and availability of information to help parents make informed child care choices based on the needs of their family.

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E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

As described in Section III. B. above, implementation of the proposed new regulation will have minimal economic effect on licensees, chiefly in the time required for the licensee to complete and submit to KDHE a written report of a critical incident. The written report form, provided by KDHE, should take approximately 15 minutes or less to complete and submit. Should a reportable incident take place in a licensed facility the estimated cost to the licensee to complete the form would be \$3.20. KDHE will accept the form by email, fax, or regular mail, whichever is most convenient for the licensee.

F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

\$435

An estimate, expressed as a total dollar figure, of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

\$435 annually

Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES NO

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

The total annual estimated cost to licensees of day care homes, group day care homes, child care centers and preschools was determined by using data contained in CLARIS and information from *Who Cares for Kansas Children? —2018 Kansas Child Care Workforce Study and State Child Care Profile* prepared by Child Care Aware of Kansas.

Calculations were made as follows:

Pursuant to K.A.R. 28-4-592(g) school age program licensees are required to report critical incidents to KDHE. While licensees of other facility types may voluntarily report incidents, school age program data is the most complete and was used to project the number of critical incidents for the facility types impacted by the proposed new regulation.

CLARIS school age program report data for the last four years (January 1, 2015 - December 31, 2018) was used to determine a report rate as a percentage of the total number of licensed school age programs.

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During that period school age program licensees reported 43 critical incidents or roughly 10.75 per year. Based on a total of 365 licensed school age programs the estimated report rate is about 3%.

As of May 10, 2019, there were 4,535 licensed child care facilities that will be directly impacted by the proposed new regulation. See Section III. C. for a breakdown of number of facilities by type. Based on a report rate of 3%, an estimated 136 critical incident reports would be submitted each year.

Who Cares for Kansas Children? —2018 Kansas Child Care Workforce Study and State Child Care Profile reports that a day care/group day care home licensee earns an average of \$19,687 annually or about \$9.54 an hour based on a 40-hour work week. The average salary for a program director in a licensed center/preschool is \$32,867 or about \$15.92 per hour based on a 40-hour work week. The combined average hourly rate for licensees and program directors is \$12.73. The per licensee cost of \$3.20 to complete a critical incident form was figured by multiplying the \$12.73 average hourly wage by the estimated 15 minutes needed to complete the form.

The estimated annual total implementation and compliance costs of \$435 was obtained by multiplying the \$3.20 per report cost by 136 – the anticipated number of critical incident reports that would be submitted each year.

Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES NO

The costs to licensees for implementation and compliance will be minimal. The written report form, provided by KDHE, is estimated to take the licensee or an individual designated by the licensee approximately 15 minutes or less to complete and submit. The estimated cost to complete one report is \$3.20.

G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

The proposed new regulation will not increase or decrease revenues of cities, counties or school districts or impose functions or responsibilities on cities, counties or school districts. When the notice of hearing for this regulation is published in the *Kansas Register*, standard agency procedure will be followed and the three organizations will be contacted electronically with attached copies of the regulation, economic impact statement, and published notice of hearing.

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H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

KDHE communicates with the regulated community via meetings and webinars, letters and emails to licensees, updates on the KDHE Child Care Licensing Program website and through presentations at child care professional developments events. Additionally, KDHE works with statewide partners to disseminate information and to receive feedback. The partners include Child Care Aware of Kansas, Child Care Providers Coalition of Kansas, Kansas Association for the Education of Young Children, and the Kansas Head Start Association.

At the present time, the licensing program is providing information about the proposed regulation to state and local licensing surveyors and partners in an effort to collect feedback. The KDHE Child Care Licensing Program will conduct webinars for surveyors and child care providers to discuss this proposed regulation change and answer questions. Additionally, recent and upcoming presentations at child care professional development events provide opportunities to engage licensees and to solicit input.

I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

NA

