

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. Friday, October 28, 2022, in Room 530, Curtis State Office Building, 1000 SW Jackson, Topeka, Kansas, to consider the adoption of proposed amended maternal and child health regulation K.A.R. 28-4-114, regarding the application process and licensee requirements for day care homes and group day care homes for children.

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

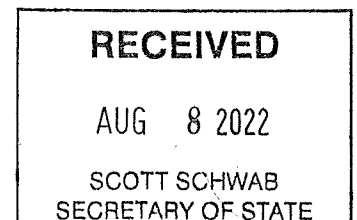
Summary of Regulation:

K.A.R. 28-4-114. Applicant; licensee. Updates infant age in day care homes and group day care homes from under 18 months to under 12 months of age. Revises licensing capacities for one and two providers. Updates the age for maximum number of children in care from under 11 years to under 16 years of age.

Economic Impact:

Cost to the agency: The proposed amended regulation will require staff time to update the agency handbook, "Kansas Laws and Regulations for Licensing Day Care Homes and Group Day Care Homes for Children." The costs for the update of the handbook and printing will be absorbed in the ongoing KDHE budget.

Cost to licensees: The proposed amended regulation has no implementation or compliance costs to child care licensees.



Costs to other governmental agencies or units: The proposed amended regulation applies to local units of government, including cities and counties, that operate a day care home or group day care home. For those licensees, there are no implementation or compliance costs.

A detailed economic impact is provided in the economic impact statement that is available from the designated KDHE contact staff person or at the KDHE Child Care Licensing website, as listed below.

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. Interested parties are encouraged to participate in the public hearing by submitting written comments.

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 of the comments 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

<https://www.kdhe.ks.gov/280/Child-Care-Licensing> or by contacting Amber Sellers at

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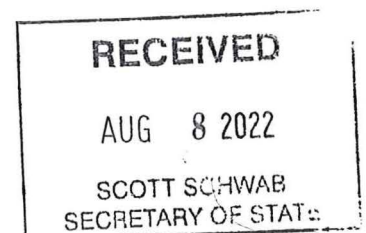
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Amber.Sellers@ks.gov, 785-296-8238, or fax 785-559-4244. Questions pertaining to the proposed regulation should be directed to Amber Sellers at the contact information above.

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.

Janet Stanek
Secretary



K.A.R. 28-4-114. Applicant; licensee. (a) Application process.

(1) ~~Any person desiring~~ Each person wanting to operate a facility shall apply for a license on forms provided by the department.

(2) Each applicant and each licensee shall submit the fee specified in K.A.R. 28-4-92 for a license or for the renewal of a license. The applicable fee shall be submitted at the time of license application or renewal and shall not be refundable.

(3) The granting of a license to any applicant or applicant with a temporary permit may be refused by the secretary if the applicant or applicant with a temporary permit is not in compliance with the applicable requirements of the following:

- (A) K.S.A. 65-504 through 65-506, and amendments thereto;
- (B) K.S.A. 65-508, and amendments thereto;
- (C) K.S.A. 65-512, and amendments thereto;
- (D) K.S.A. 65-530 and 65-531, and amendments thereto; and
- (E) all regulations governing facilities.

(4) Failure to submit the application forms and fee for renewal of a license shall result in an assessment of a late fee pursuant to K.S.A. 65-505, and amendments thereto, and may result in closure of the facility.

(b) Applicant and licensee requirements. Each applicant, if an individual, and each licensee, if an individual, shall meet the following requirements:

- (1) Be at least 18 years of age;
- (2) not be involved in child care or a combination of child care and other employment

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for more than 18 hours in a 24-hour period; and

(3) not be engaged in either business or social activities that interfere with the care or supervision of children.

(c) Multiple child care facilities.

(1) Each applicant with a temporary permit and each licensee who operates more than one child care facility, as defined in K.S.A. 65-503 and amendments thereto, shall maintain each child care facility as a separate entity.

(2) A license for an additional child care facility shall not be granted until all existing child care facilities for which the licensee has been granted a license are in compliance with licensing regulations.

(d) Multiple licenses. No licensee shall be licensed concurrently for or provide more than one type of child care or child and adult care on the same premises.

(e) License capacity for day care homes. Each applicant with a temporary permit and each licensee shall ensure that the requirements of this subsection are met.

(4) The maximum number of children for which a day care home may be licensed shall be the following:

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Table I-2. License capacity, one provider

Maximum number of children under 18 <u>12</u> months	Maximum number of children at least 18 <u>12</u> months but under 5 years of age	Maximum number of children at least 5 years but under 11 <u>16</u> years of age*	License capacity
0	7	3	10
1	5	4	10
2	4	3	9
3	3	2	8
<u>4</u>	<u>2</u>	<u>0</u>	<u>6</u>

*Children five years of age and over may be substituted for younger children in the license capacity.

~~(2) Children at least 11 years of age but under 16 years of age who are unrelated to the provider shall be included in the license capacity if child care for this age group as a whole exceeds three hours a week.~~

(f) Maximum capacity for group day care homes. Each applicant with a temporary permit and each licensee shall ensure that all of the requirements of this subsection are met.

~~(1)~~ The maximum number of children for which a group day care home may be licensed shall be the following:

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TABLE II — LICENSE CAPACITY, ONE PROVIDER

Age of Children Enrolled	License Capacity
At Least 2 1/2 Years but Under 11 Years of Age	9
At Least 3 Years but Under 11 Years of Age	10
At Least 5 Years but Under 11 Years of Age	12

Table III ~~II~~ License capacity, two providers*

Maximum number of children under 18 <u>12</u> months	Maximum number of children at least 18 <u>12</u> months but under 5 years of age	Maximum number of children at least 5 years but under 11 <u>16</u> years of age**	License capacity*
<u>0</u>	<u>10</u>	<u>2</u>	<u>12</u>
1	8	3	12
2	7	3	12
3	6	3	12
4	-4- <u>5</u>	<u>2</u> <u>3</u>	<u>10</u> <u>12</u>

* A second provider shall be present ~~when~~ whenever the number of children exceeds the maximum number allowed for one provider. If only one provider is present, see table I.

** Children five years of age and over may be substituted for younger children in the license capacity.

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Table III. License capacity, one provider

<u>Age of children enrolled</u>	<u>License capacity</u>
<u>At least 2 1/2 years but under 11 years of age</u>	<u>9</u>
<u>At least 3 years but under 11 years of age</u>	<u>10</u>
<u>At least 5 years but under 11 years of age</u>	<u>12</u>

~~TABLE IV- LICENSE CAPACITY, TWO PROVIDERS*~~

Maximum Number	Maximum Number	Maximum Number	License Capacity*
of Children Under	of Children at Least	of Children at Least	
18 Months	18 Months but	2 1/2 Years but	
	Under 2 1/2 Years	Under 11 Years	
	of Age-	of Age**	
0	5	7	12

~~*A second provider shall be present when the number of children exceeds the maximum number allowed for one provider. See Table I.~~

~~**Children five years of age and over may be substituted for younger children in the license capacity.~~

~~(2) Children at least 11 years of age but under 16 years of age unrelated to the provider shall be included in the license capacity if child care for this age group as a whole exceeds three hours a week.~~

~~(g) Developmental levels. Any Each child who does not function according to age-appropriate expectations shall be counted in the age group that reflects the developmental age~~

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level of the child.

(h) License capacity not exceeded. Each applicant with a temporary permit and each licensee shall ensure that the total number of children on the premises, including children under 11 years of age related to the applicant with a temporary permit, the licensee, or any other provider, does not exceed the license capacity, except for the additional children permitted allowed in subsection (j).

(i) Emergency care. Emergency care may be provided if the additional children do not cause the license capacity to be exceeded.

(j) Additional children on the premises. In addition to the number of children permitted allowed under the terms of the temporary permit or the license and specified in subsections (e) and (f), other children may be permitted allowed on the premises, as follows:

(1) Not more than two additional children 2 1/2 years of age or older who attend part-day preschool or part-day kindergarten may be present at any time between the hours of 11:00 a.m. and 1:00 p.m. for the noon meal on days that school is in session.

(2) Not more than two additional children at least five years of age but under 11 years of age may be present between the hours of 6:00 a.m. and 6:00 p.m. The additional children may be present as follows:

(A) During the academic school year before and after school, in-service days, school holidays, scheduled or emergency closures, and school breaks not to exceed two consecutive weeks; and

(B) during the two consecutive weeks before the opening of the academic school year in

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August or September and following the end of the academic school year in May or June.

(3) Not more than two additional children 11 years of age or older, unrelated to the applicant with a temporary permit or the licensee, may be present for not more than two hours a day during child care hours if all of the following conditions are met:

(A) The additional children are not on the premises for the purpose of receiving child care in the facility.

(B) The additional children are visiting the applicant's or the licensee's own child or children.

(C) The additional children are supervised by a provider if they have access to the children in care.

(k) Substitute. Each applicant with a temporary permit and each licensee shall arrange for a substitute to care for children in the event of a temporary absence or extended absence of the primary care provider.

(l) Posting of temporary permit or license and availability of regulations. Each applicant with a temporary permit and each licensee shall post ~~any~~ a current temporary permit or license conspicuously as required by K.S.A. 65-504, and amendments thereto. A copy of the current regulations governing facilities shall be kept on the premises and shall be available to all providers at all times.

(m) Closure. Any applicant may withdraw the application for a license. Any applicant with a temporary permit and any licensee may submit, at any time, a request to close the facility. If an application is withdrawn or a facility is closed, ~~any~~ the temporary permit or

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license granted to the applicant or licensee for that facility shall become void. (Authorized by K.S.A. 2010 Supp. 65-508; implementing K.S.A. 2010 Supp. 65-504, K.S.A. 2010 Supp. 65-505, and K.S.A. 2010 Supp. 65-508; effective, E-80-18, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended Feb. 26, 1990; amended Feb. 3, 2012; amended P-_____.)

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Kansas Administrative Regulations Economic Impact Statement (EIS)

Kansas Department of Health and Environment
Agency

Susan Vogel
Agency Contact

785-296-1291
Contact Phone Number

K.A.R. 28-4-114
K.A.R. Number(s)

☒ Permanent ☐ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

☒ No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?

☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.

☒ No If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

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Section I

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

K.A.R. 28-4-114, Applicant; licensee, explains the application process and licensee requirements for day care homes and group day care homes for children, including the maximum number of children allowed to ensure the health of safety of children in care. The proposed amendment adjusts ratios of children in care to better ensure their health and safety and align with national best practice standards. Per the Kansas State Fire Marshal (KSFM), fire code does not allow for more than 12 unrelated children in a daycare home; related children under 11 years of age count in capacity. The first proposed amendment would be to update infant age. Current regulation describes infants as under 18 months of age; the proposed amendment would update the infant age to under 12 months of age. The second amendment change would update capacity tables Licensed Day Care Homes and Group Day Care Homes.

Section II

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

The approach chosen adheres to the standards set forth by Caring for Our Children (4th ed), from the Administration for Children and Families, which is a best practice health and safety recommendation for keeping children safe in child care. Additionally, the regulations of Colorado, Oklahoma and Missouri were reviewed. All three states have staff-child ratio requirements that align with what is proposed.

Section III

Agency analysis specifically addressing the following:

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

The proposed amendments will enhance business activities by addressing the need for infant care slots in one-provider settings. It increases toddler and preschool age slots when two providers are present. Currently one provider may care for 3 children less than 18 months and two-provider settings are limited to 10 vs. 12 with 4 children up to 12 months in age. This change also provides an incentive to place a second adult in the home. Currently two providers may care for 10 children when there are 4 less than 18 months. As recommended, two providers could care for 12 children. It provides a measure of economic relief to providers who have seen the number of full-time preschool age children decline due to Pre-K programs and provides a balance between the need for safety and marketplace realities.

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- 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(s) and regulation(s) and on the state economy as a whole;

There is no economic impact foreseen on specific businesses, sectors, public utility ratepayers, individuals and local governments by the proposed regulation change. The costs to KDHE will involve staff time and reprinting of regulation books, which will be absorbed in the current budget.

- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

In general, the proposed amendments would increase availability of care for children under 12 months of age. The availability of additional spots helps more families return to work and stay in their communities.

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

There are no costs to parents associated with the changes to regulations. Parents will benefit with more infant care available, enabling them to go back to work. There would be no additional costs. Licensees would benefit as they would be empowered to care for more infants than they could previously legally, which could thereby help them stay in business and meet community needs for child care.

- 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;

No cost or negative impact would occur with the proposed amendments to the regulation.

- F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.

Note: Do not account for any actual or estimated cost savings that may be realized.

Costs to Affected Businesses – \$0

Costs to Local Governmental Units – \$0

Costs to Members of the Public – \$0

Total Annual Costs – \$0

(sum of above amounts)

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

There was no methodology used because there will be no annual implementation and compliance costs expected to be incurred by or passed along to any of the aforementioned segments.

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- ☐ Yes If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing 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.
- ☐ No
- ☒ Not Applicable

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

There are no changes expected in aggregate state revenues and expenditures for the implementation of the proposed regulation change for either the current nor the next fiscal year.

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

There are no expected immediate or long-range economic impacts of the proposed regulation change.

- 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.

When the notice of hearing for these regulations is published in the *Kansas Register*, standard agency procedure was followed, and the three organizations were contacted electronically for comment with copies of the regulations, economic impact statement, environmental benefit statement for environmental regulations, and published notice of hearing

- 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).

The proposed amendments are requested because of conversations had with child care providers concerning barriers, and they responded stating the current ratios and age ranges were barriers to their work; they suggested the ratio and age range changes reflected in this document. The University of Kansas Center for Public Partnerships and Research (KU CPPR) performed a survey that confirmed these findings. These updated ratios and age range changes were then brought to the following organization for comment:

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Child Care Licensing Systems Improvement team – which includes the following individuals and organizations, child care providers, and citizens: *KDHE Licensing staff, Child Care Aware of Kansas, Kansas Head Start, University of Kansas Center for Public Partnerships and Research (KU CPPR), Kansas Department for Children and Families, Kansas Children's Cabinet and Trust Fund, Early Childhood Recommendations Panel, Child Start, Kansas Children's Service League, Kansas Action for Children, Kansas Child Care Training Opportunities (KCCTO), Kansas State Department of Education, Kansas State Fire Marshal, Kansas State Center for Child Development, various licensed child care providers, regional government child care organizations, among others.*

Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

☐ Yes If yes, complete the remainder of Section IV.

☒ No If no, skip the remainder of Section IV.

- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

Click here to enter agency response.

- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

Click here to enter agency response.

- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

Click here to enter agency response.

- D. Provide a detailed statement of the data and methodology used in estimating the costs used.

Click here to enter agency response.

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