



April 5, 2022

Texas Health and Human Services Commission
Child Care Regulation
CCRRules@hhs.texas.gov

Submitted via email to CCRRules@hhs.texas.gov

Re: Comments on HHSC Draft Revisions to Chapter 746, Child Care Licensing Minimum Standards for Child Care Centers

On behalf of Texans Care for Children, we appreciate the opportunity to submit comments on draft updates to Title 26, Chapter 746, Minimum Standards for Child Care Centers. We appreciate Child Care Regulations' (CCR) efforts to solicit feedback during the comprehensive review of minimum standards to better meet the charge of protecting the health, safety, and well-being of children in care. We thank the agency for considering our recommendations during the stakeholder input process in July 2021 and for incorporating many of them in the draft rules changes. Although significant improvements have been made in the draft rules, updates or clarifications are needed in some areas to better ensure children can learn and grow in safe, quality child care environments.

Inclusive Child Care for Children with Disabilities, Developmental Delays, or other Special Care Needs

During the first few years of life, children's brains develop over 1 million neural connections per second. Child care is a vital learning environment for children as they develop the language, motor, and social skills that they need to become school ready. Unfortunately, limited awareness of *how* to care for children with developmental delays, disabilities, or other special care needs often restricts access to quality child care for these children and their families.

We appreciate HHSC CCR's proposed revisions to promote inclusive services for children with disabilities, developmental delays, or other special needs. **We are grateful to see the following**

additions and clarifications in the proposed minimum standards to ensure children with special care needs can learn alongside their peers in high-quality inclusive settings.

1. We support proposed subsection 746.501(30), which specifies that child care centers must have written policies and procedures in place for supporting inclusive services to kids with special care needs. We also appreciate the added hyperlink to the CCR Technical Assistance Library (in the Helpful Information box) to help child care centers as they develop and design inclusive practices for children with special care needs.
2. We thank the agency for adding subsection 746.1203(4), which sets out caregiver responsibilities and clarifies that caregivers must provide care that is consistent with the child's habits, interests, and any special needs, including any special supervision needs or care.
3. We appreciate the clarifications in new section 746.2202, which outlines caregiver responsibilities when planning activities for a child with special care needs. Children with disabilities, developmental delays, an injury, or other special care needs may need distinct activities or modified tasks or environments to learn alongside their peers. Adding this specific section in minimum standards is a critical step – it clarifies caregiver expectations and empowers educators to understand, accommodate, and support the development of all children.
4. We thank the agency for adding subsection 746.2202(2), which states that, in planning activities for children with special needs, caregivers must ensure: “A child who receives early intervention services or special education services can receive those services from a qualified service provider at your operation, with parental request and approval[.]”. This clarification in minimum standards is very much needed. Some Early Childhood Intervention (ECI) providers face challenges providing children with their ECI services while they are in child care, despite the fact that federal law requires ECI services in a child's natural environment. Including this requirement in minimum standards will ensure more providers are aware of the requirement to allow ECI specialists to work with a child in the classroom.
5. We appreciate the new Helpful Information box under section 746.2202, which: (a) highlights the benefits for *all* children when kids with special needs can learn alongside their peers; and (b) sets the expectation that, if a child's parent has shared with the center the child's Individualized Educational Program (IEP) or Individualized Family Service Plan (IFSP), the center should make every effort to incorporate the child's plan into the child's daily activities.
6. HHSC proposes clarifications around the Americans with Disabilities Act (ADA) in the Helpful Information box under section 746.2202. The language communicates that federal ADA law

prohibits child care centers from discriminating against children because of a disability – and that a child care center is subject to this law because it holds itself out the public as a business. **We ask HHSC to consider including this important ADA provision under section 746.2202 rather than in the Helpful Information box since a child care center is required to comply with the ADA.** Nevertheless, we appreciate the addition of the hyperlink to the FAQ about the ADA and child care operations. This resource will help more providers know and follow the law.

We respectfully ask HHSC to make improvements in the following areas to ensure child care providers and families are able to work collaboratively to promote the healthy development of every child during these critical early years.

- 1. Include training on serving children with special care needs as one of the training topics caregivers choose from for the six clock hours of annual training in section 746.1309(b).** In section 746.1309, the state has recognized the importance of caregivers having knowledge on the following topics: Child growth and development, Guidance and discipline, Age-appropriate curriculum; and Teacher-child interaction. To have a high quality, inclusive environment for every child, regardless of ability or development, caregiver training on how to serve, care for, and teach children with special needs must be a priority. Training geared towards the needs of children with special needs and child mental health will empower providers to understand, accommodate, and support the development of all children.
- 2. Clarify that child care centers are expected to provide information about ECI to families.** ECI services are effective at helping children learn to walk, communicate with their families, get ready to attend school, and potentially avoid costly special education services. The sooner children start ECI, the more effective it is – but many children do not receive services until they are older because developmental delays and disabilities are not identified until later or families do not hear about ECI services until later. Reducing late referrals and late entries into ECI is one of HHSC’s identified state goals. Young children spend a significant amount of time in child care, and parents value child care providers as a great resource on their children’s growth and development. Yet only 2% of ECI referrals in Texas come from child care providers. Child care directors and staff receive annual training on child development, so the state should leverage that knowledge – and the trusted partnership between caregivers and families – to make sure families receive information about ECI in the local area, especially if a caregiver has concerns about a child experiencing developmental delays or disability. In section 746.2202, there is a Helpful Information box recognizing that “child-care programs can be a great resource for parents who have questions about their child’s development and specialized services in the community.” Yet, there is no expectation for centers to make ECI information or resources available to families. When parents and providers receive information about available resources

and early interventions, children are more likely to get the support that they need to achieve their full potential.

3. **Clarify that information to parents about activity plans, policies, and procedures for kids with special needs.** Section 746.501 requires centers to have policies and procedures in place to support inclusive services for kids with special care needs, but it is unclear how parents receive or access this information. Parents and guardians want to know what the center is doing to integrate their child and what the options are for modified activities or learning for their child with special needs. The center's policies and procedures should be easily accessible and communicated to parents/caregivers.
4. **Provide minimum standards in Spanish and other languages when possible.** Texas families are diverse and may not use English as their preferred language. Every family should have access to the minimum standards in the language they are most competent in because access to information about the well being of their child should not be a burden. All families should be able to hold the child care provider of their choice accountable if quality standards are not being met.

Child-to-Staff Ratios and Group Sizes

When parents hug their children goodbye at child care and then head to work, they want to know that their little ones will be safe. They trust that the teacher will notice if their baby quietly puts a choking hazard in her mouth or their toddler begins to wander away.

During these early years of brain development, parents want to know that their children are getting the attention they need to build up the social, emotional, and learning tools they will later need in school. They trust that the teacher will have the time to comfort their son if he's having a hard day or give their daughter plenty of fun, engaging activities, like listening to a story or fingerpainting or playing outside.

To provide this kind of quality child care experience for their kids, parents are counting on state policymakers to be a strong partner. Finding affordable, nearby child care with an opening is often extremely difficult, particularly for families who have a tight budget or live in "child care deserts."¹ When busy, stressed out parents finally find a viable child care option, they trust that Texas leaders have put some basic rules in place to protect their kids.

Unfortunately, for many kids and parents in Texas, this is not the reality. Over ten years ago, Child Care Licensing (CCL), then a division of the Department of Family and Protective Services, **concluded "the**

¹ <https://childrenatrisk.org/childcaredeserts/>

agency does **not** believe that the current standards for group size or ratios adequately protect the health and safety of children in some age ranges.” Despite this finding, ratios and group size standards have still not changed, leaving children in regulated facilities at risk.

In 2015, the Sunset Commission report stated that the third most frequently repeated violation in childcare centers, and also one of the highest risk violations, was that “a caregiver in a day care operation failed to adequately supervise children.” There is no question that improved ratios and group sizes would address this issue.

Texas’ ratios are among the five worst in the nation for children aged 18 months, 28 months, 3 years and 4 years, according to a report on state policies by Child Care Aware.² **The time has come for Texas to improve its ratios and group sizes, especially for our infants and toddlers, to ensure they are in safe and effective programs.**

We strongly urge HHSC to revise ratios and group sizes to meet the state’s responsibility of maintaining minimum standards that protect the health, safety, and wellbeing of children in child care. At a minimum, the state should phase-in the ratio and group size standards that Texas Child Care Licensing recommended in 2010 as well as lower ratios and group size for 18–24-month-old toddlers to ensure that children are in safe learning environments (see Table 1 below). Even with staffing challenges during the pandemic, children’s safety must be the priority and revisions to ratios should be – and can be – thoughtfully phased in.

Safer ratios and group sizes have clear benefits for children, child care providers, and the state.

- Child-to-staff ratios and group sizes are two of the best indicators for determining the quality of a child care program and they significantly affect child health and safety.³ National experts agree that smaller group size is associated with a lower risk of infection in child care, lower rates of disease, fewer injuries, fewer situations involving potential danger, and more opportunities for positive interaction with children.⁴
- Excessive numbers of young children increase the danger of caregiver’s high stress and loss of control. Smaller group size is associated with more developmentally appropriate classroom activities than larger group size, more responsive and stimulating behavior, and less restriction of children’s behavior.⁵
- Data consistently confirms that most Texas child care providers have found ways to staff classrooms with lower than minimum standard ratios to better safeguard young children. The

² Dallas Morning News (2016). Why Texas must improve minimum standards for child care or risk another crisis.

³ www.developingchild.harvard.edu.

⁴ <https://childcareta.acf.hhs.gov/ccdf-fundamentals/child-provider-ratio-standard-and-group-size>

⁵ Ibid.

Child and Family Research Partnership at the LBJ School of Public Affairs reported in 2017 that lower ratios provided “significantly safer classrooms” and that “89% of providers were observed to have ratios better than minimum standards.” The majority of Texas child care providers already adhere to lower ratios and group sizes, reporting that they could not safely manage that many infants and toddlers nor could they retain staff under the current standards.⁶

Table 1: CCR Ratios and Group Sizes in comparison to the Texas Children Care Licensing 2010 Proposal and Administration for Children and Families Recommendations

Current Texas Standard			CCL 2010 Licensing Proposal			Administration of Children & Families	
Age of Children	Ratio	Max. group size per 2+ caregivers	Age of Children	Ratio	Max. group size per 2+ caregivers	Age of Children	Ratio
0-11 months	4	10	0-11 months	4	8	0-23 months	4
12-17 months	5	13	12-17 months	5	10		
18-23 months	9	18	18-35 months	9	18		
2 years	11	22	2 years	9	18	2 years	4-6
3 years	15	30	3 years	14	28	3 years	9
4 years	18	35	4 years	18	35	4 years	10
5 years	22	35	5 years	20	35	5 years	10

Notes on Table 1: Texas CCL had recommended changing only the most glaring mismatch of standards to health and safety standards, recommending:

- Matching the group size to ratios for infant and toddlers to make the standard for 0–11-month-olds 1:4 and 2:8 (not the current 10) and 1:5 and 2:10 (not the current 13)
- Modifying the ratio for 2-year-olds from 1:11 to 1:9
- Modifying the ratio for 3-year-olds from 1:15 to 1:14
- Modifying the ratio for 5-year-olds from 1:22 to 1:20

We appreciate the opportunity to submit comments on these important issues affecting young Texas children. If you have any questions or need more information, please contact Adriana Kohler, Policy Director at akohler@txchildren.org or David Feigen, Senior Early Childhood Policy Associate at dfeigen@txchildren.org.

⁶ Child and Family Research Partnership at the LBJ School of Public Affairs (2017). <https://childandfamilyresearch.utexas.edu/child-care-ratios-texas-and-childrens-safety>.