



**NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

**Notice of Public Hearing and Opportunity to Comment on
Proposed Amendments to Chapter 3 of Title 24 of the Rules of the City of New York**

What are we proposing? The New York City Department of Health and Mental Hygiene (“Department”) is proposing to amend Chapter 3 (titled “Performance Summary Cards and Penalties for Child Care Programs”) of Title 24 of the Rules of the City of New York to modify the information that will be presented on the required performance summary cards.

When and where is the hearing? The New York City Department of Health and Mental Hygiene will hold a public hearing on the proposed rule. The public hearing will take place at 10AM to 12PM on Monday, November 8, 2021. The hearing will be conducted by video conference accessible via internet or telephone:

- **Internet.** To participate in the public hearing, enter to register at this Webex URL: <https://nycdohmh.webex.com/nycdohmh/j.php?MTID=m5a485af31788f77e68afbaf4f250ed72>
If prompted to provide an event number or password, please enter the following:
Event number: **2335 855 3374**, Password: **Health** (432584 from phones)
- **Phone:** For access, dial: **(408) 418-9388**; then please enter the following
Access Code: **2335 855 3374**

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website:** You can submit comments to the Department through the NYC Rules website at <http://rules.cityofnewyork.us>.
- **Email:** You can email written comments to resolutioncomments@health.nyc.gov
- **Mail:** You can mail written comments to:
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, 14th Floor, CN30
Long Island City, NY 11101-4132
- **Fax.** You can fax written comments to the Department at 347-396-6087.
- **Speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078 or by emailing at resolutioncomments@health.nyc.gov before the hearing begins at 10AM on November 8, 2021. While you will be given the opportunity during the hearing to indicate that you would like to comment, we prefer that you sign-up in advance. You can speak for up to three minutes.

Is there a deadline to submit written comments? Written comments must be received on or before 5:00 p.m. on November 8, 2021.

What if I need assistance to participate in the hearing? You must tell us if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address shown above, or by telephone at 347-396-6078. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by October 25, 2021.

Can I review the comments made on the proposed amendments? You may review the comments made online at the website <https://rules.cityofnewyork.us/proposed-rules/>. All written comments and a summary of the oral comments received by the Department will be made available to the public within a reasonable period of time by the Department's Office of the General Counsel.

What authorizes the Department to make these amendments? Section 390-j of the New York State Social Services Law, as enacted by Chapter 513 of the Laws of 2016, requires the Department to adopt rules pertaining to the issuance of performance summary cards to child care programs. Sections 1043 and 556 of the New York City Charter ("Charter") authorize the Department to make these proposed amendments.

Where can I find the Department's rules? The rules of the Department can be found in Title 24 of the Rules of the City of New York.

What laws govern the rulemaking process? This notice is made according to the requirements of Charter §1043.

Statement of Basis and Purpose

Background

Pursuant to recent amendments to Social Services Law Section 390-j enacted by Chapter 513 of the Laws of 2016, the Department is required to issue performance summary cards to child care programs and to adopt related regulations. The Department enacted such regulations in a new Chapter 3 ("Performance Summary Cards and Penalties for Child Care Programs") of Title 24 of the Rules of the City of New York, effective Jan. 28, 2018.

The Proposed Amendments

The Department is proposing to amend Chapter 3 of Title 24 of the Rules of the City of New York to modify the contents of the performance summary card. The revised performance summary card will more effectively communicate important information summarizing the child care program's performance. Numerous fields that were part of the initial card are being removed to improve clarity. The data that that is no longer being displayed will still be available on the Department's website and the revised card will provide information on how to access the website.

Facility and Program Violations

The Department proposes to present violations in two categories: facility maintenance violations and program operations violations, to provide parents with information about the nature of the violations that a child care program has received. The amended rule adds definitions for both categories of violations.

Lower and Higher Risk Violations

The Department proposes to distinguish violations within each category based on risk level. “Lower risk violations” would be all violations of the Health Code or a Department rule with a fixed penalty of \$200, which is the minimum penalty set forth in the Health Code. “Higher risk violations” would be all violations that have a fixed penalty over \$200. The majority of the Department’s relevant penalties for this proposal are set forth in Chapter 7 (titled “Adjudicatory Hearings and Violation Fines and Penalties”) of the Department rules in Title 24 of the Rules of the City of New York.

Excellent, Satisfactory, or Needs Improvement Rating

In order to clarify and make more meaningful the information to be presented to the public, the Department proposes to have the performance summary cards display ratings of Excellent, Satisfactory, or Needs Improvement for each category of violations, based on the number of violations a program received in that category and the risk level of those violations. The thresholds for these ratings are specified in the proposed rule.

This proposal was included in the Department’s FY2022 Regulatory.

The proposed changes are as follows:

Underlined language is new.

[Language in brackets is to be deleted.]

Section 1. Chapter 3 (“Performance Summary Cards and Penalties for Child Care Programs”) of Title 24 of the Rules of the City of New York is amended to read as follows:

§ 3-01 Scope and applicability.

This Chapter applies to any child care program holding a permit to operate in New York City pursuant to Article 47 of the Health Code (“Health Code”) located in Title 24 of the Rules of the City of New York.

§ 3-02 Definitions.

When used in this Chapter, the following terms have the following meanings:

[Adjudicated violations.] “Adjudicated violation[s]” means a cited violation[s] of the Health Code or Department rules sustained following a hearing or default, pursuant to a decision by a hearing officer at the Office of Administrative Trials and Hearings (“OATH”)[,] or pursuant to a settlement agreement between the Department and a child care program, to the extent that such decision or settlement agreement remains in effect. “Adjudicated violation[s]” also [means] includes any cited violation[s] for which a hearing has not been held but for which the hearing date has been rescheduled at the request of the child care program more than one time.

“Facility maintenance violation” means a violation of the Health Code or Department rules related to the physical space of the child care, reflecting an environmental hazard or other physical deficiency in the real property covered by the permit, including but not limited to a violation of requirements related to internal and external spaces, physical plant, equipment and

structural maintenance, sanitation, egress, fire and general safety, lighting, ventilation, plumbing, food safety or pest control.

“Higher risk violation” means a violation, other than a violation of this Chapter, with a penalty amount fixed by the Health Code or Department rules at over \$200.

[Initial inspection.] “Initial inspection” means an inspection conducted other than for the purpose of ascertaining whether a prior violation has been abated, or [of responding] in response to [the receipt of] a complaint.

“Lower risk violation” means a violation with a penalty amount fixed by the Health Code or Department rules at \$200, or a violation of this Chapter.

[Permit.] “Permit” means a permit issued by the Department[,] pursuant to Article 47 of the [24 RCNY] Health Code [Article 47].

[Permit suspension.] “Permit suspension” means a suspension of a child care program’s permit to operate due to a violation of the Health Code or any rule promulgated by the Department, other than a suspension [based on a cited violation] that is subsequently [dismissed] vacated.

“Program operations violation” means a violation of the Health Code or Department rules related to permitting, written safety plan, staff qualifications, clearances, training, child supervision, child and staff health requirements, personal hygiene, child development policies, performance summary cards, records or documentation, Department inspections, or any other violation of the Health Code or Department rules that does not constitute a facility maintenance violation.

[Public health hazard. “Public health hazard” has the same meaning as “imminent or public health hazard,” as such term is defined in 24 RCNY Health Code Article 47.]

[Site.] “Site” means the location, specified in a permit, where child care services are provided.

[Teaching staff.] “Teaching staff” means the education[al] directors, group teachers,[and] assistant teachers, and teacher aides of a child care program.

§ 3-03 Performance summary cards.

(a) ***

(b) A performance summary card issued [in 2018, or issued at any time] to a child care program [that has held a permit to operate at a site for less than one year] shall include the following information, as known as of the date such card is issued:

(1) the number of full years the child care program has been permitted to operate at the site, except that [for a child care program that has been permitted to operate at a site for] more than 10 years of operation[, such number] shall be indicated by “10+” and less than one year of operation shall be indicated by “<1”;

(2) ***

(3) ***

(4) ***

(5) ***

(6) ***

(c) A performance summary card issued [after 2018] to a child care program that has held a permit to operate at a site for at least one year shall also include[, as of the date such card is issued,] the following information[, as known as of the date such card is issued] for the prior calendar year:

[(1) the number of full years the child care program has held a permit to operate at that site, except that for a child care program that has been permitted to operate at a site for more than 10 years, such number shall be indicated by “10+”;

(2) the number of children permitted to be cared for by the child care program at the site at any time;

(3) the number of teaching staff employed by the child care program at the site;

(4) the number of permit suspensions of the child care program's permit at the site during the previous three years;

(5)](1) the total number of [public health hazard] facility maintenance violations based on the prior calendar year's initial inspection(s) at the site and adjudicated [in the previous year] by OATH, to be reflected by the following ratings:

(A) "Excellent" means having no such violations;

(B) "Satisfactory" means having no more than two lower risk violations and no higher risk violations; and

(C) "Needs improvement" means having more than two lower risk level violations or one or more higher risk level violation; and

[6](2) [the average number of public health hazard violations per inspection at the site adjudicated in the previous year] the total number of program operations violations based on the prior calendar year's initial inspection(s) at the site and adjudicated by OATH, to be reflected by the following ratings:

(A) "Excellent" means having no such violations;

(B) "Satisfactory" means having no more than two lower risk violations and no higher risk violations; and

(C) "Needs improvement" means having more than two lower risk level violations or one or more higher risk level violations.

[(7) the average number of violations of the Health Code or rules of the Department, other than public health hazard violations, at the site adjudicated in the previous year;

(8) the Citywide averages for the numbers of violations specified in paragraphs (6) and (7) of this subdivision for all child care programs, as calculated by the Department for the prior calendar year; and

(9) information on how to find the child care program's inspection record for the site online.]

§ 3-04 Posting.

(a) ***

(b) ***

(c) ***

(d) A child care program shall immediately [remove] surrender to the Department a posted performance summary card upon a permit suspension.

(e) ***

[(f) A child care program site that is permitted to reopen following a permit suspension shall post the applicable performance summary card in accordance with subdivision (a) of this section before reopening.

(g)](f) If a child care program's performance summary card is damaged or stolen, the child care program shall immediately contact the Department to request a replacement card.

§ 3-05 Updated performance summary cards.

Upon request from a child care program based on a change to the number of adjudicated violations for the prior calendar year that would change either of the program's ratings, the

Department shall provide such program with an updated performance summary card. The Department may also provide an updated performance summary card to reflect a new permit suspension. Updated performance summary cards shall reflect a child care program's adjudicated violations that were cited by the Department in the prior calendar year [adjudicated in the 12 months prior to the date of issuance] and permit suspensions imposed in the 36 months prior to the date of issuance. [The issuance of an updated performance summary card shall not require the Department to provide revised Citywide averages for the numbers of violations specified in §§ 3-03(c)(5) and (6).] Upon receipt of an updated performance summary card, the child care program shall post the updated card and dispose of the prior performance summary card in a manner that prevents its reuse.

§ 3-06 Penalties.

(a) ***

(1) ***

(2) For a violation of [§§] Section 3-04(a) of this Chapter for operating without posting [the required] a performance summary card issued to the program: \$1,000; and

(3) For a violation of any other requirement of [§ 3-04] this Chapter [not listed in paragraph (2) of this subdivision]: \$500.

(b) ***

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of required information for child day care performance summary cards

REFERENCE NUMBER: 2020 RG 20

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: 9/27/2021

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of required information for child day care performance summary cards

REFERENCE NUMBER: DOHMH-111

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

September 28, 2021
Date