



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

Notice of Opportunity to Comment on Proposed Health Code Amendment

What are we proposing? The Department is proposing that the Board of Health amend §47.25 of Article 47 (Child Care Services) of the New York City Health Code, found in Title 24 of the Rules of the City of New York to correct a drafting error by changing the term “school” to “permittee.”

When and where is the hearing? No hearing will be held on the amendment since it is only being proposed to correct a drafting error. A hearing would therefore serve no public purpose.

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

- **Website.** You can submit comments to the Department through the NYC rules Web site 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, CN 31
Long Island City, NY 11101-4132
- **Fax.** You can fax written comments to New York City Department of Health and Mental Hygiene at 347-396-6088.

Is there a deadline to submit written comments? Written comments must be received on or before 5:00 p.m. on April 21, 2014.

Can I review the comments made on the proposed amendment? You can review the comments made online at <http://rules.cityofnewyork.us/> on the proposed amendment by going to the website at <http://rules.cityofnewyork.us/>. All written comments and a summary of the oral comments received by DOHMH will be made available to the public within a reasonable period of time by the DOHMH Office of the General Counsel.

What authorizes the Board of Health of the Department of Health and Mental Hygiene to make this amendment? Sections 556, 558 and 1043 of the City Charter authorize the Board of Health to make this proposed amendment. This proposed amendment was not included in the Department’s regulatory agenda for this Fiscal Year because it was not contemplated when the Department published the agenda.

Where can I find the Health Code and the Department's rules? The Health Code and the rules of the Department of Health and Mental Hygiene are in title 24 of the Rules of the City of New York.

What rules govern the rulemaking process? The Department and Board of Health must meet the requirements of §1043 of the City Charter when creating or changing rules and the Health Code. This notice is made according to the requirements of City Charter §1043.

Statement of Basis and Purpose of the Proposed Amendment

The authority for these amendments is found in §§556 and 558 of the New York City Charter. Sections 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the New York City Health Code (the "Health Code") all matters to which the Department's authority extends. Section 1043 grants the Department rule-making authority.

The Charter provides the New York City Department of Health and Mental Hygiene (the "Department" or "DOHMH") with jurisdiction to protect and promote the health of all New Yorkers.

The Bureau of Child Care, in the Department's Division of Environmental Health, enforces Article 47 (Child Care Services) of the Health Code, which regulates all public and private group day care services providing care for children under six years of age. Health and safety standards for school-based programs for children ages three through five are established in Article 43 of the Health Code.

At its meeting on December 10, 2013, the Board of Health amended Articles 43 and 47 to add a new requirement that children between 6 and 59 months of age attending school based programs and child care services receive annual influenza vaccinations. The resolution as adopted contained a drafting error in §47.25(a)(2)(C), which used the term "school" instead of "permittee," to refer to the entity holding a child care service permit.

The Department is requesting that the Board amend Article 47 to correct the error and substitute the term "permittee" for "school" in this provision.

The proposal is as follows:

Note-matter in brackets [] to be deleted

Matter underlined is new

RESOLVED, that subparagraph (C) of paragraph 2 of subdivision (a) of section 47.25 of Article 47 of the New York City Health Code, set forth in title 24 of the Rules of the City of New York, be and the same hereby is amended, to be printed together with explanatory notes, to read as follows:

(C) A [school] permittee that fails to maintain documentation showing that each child in attendance has received each vaccination required by this subdivision or is exempt from such a requirement pursuant to paragraph A or B of this subdivision will be subject to fines for each child not meeting such requirements as provided for under this Code.

Notes: Subparagraph (C) of paragraph 2 of subdivision (a) of §47.25 was amended by resolution of the Board adopted on XXX to correct an error referring to a school rather than a child care service permittee as being responsible for documenting compliance with vaccination requirements.

**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: Technical Amendment of Health Code Article 47 (Vaccination Requirements for Children)

REFERENCE NUMBER: 2014 RG 004

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: February 4, 2014

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: Technical Amendment of Health Code Article 47 (Vaccination Requirements for Children)

REFERENCE NUMBER: DOHMH-38

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/ Hunter Gradie
Mayor's Office of Operations

February 10, 2014
Date