Department of Health and Mental Hygiene

Board of Health

Notice of Public Hearing and Opportunity to Comment on Proposed Amendments to Article 47 of the New York City Health Code

What are we proposing? The Department of Health and Mental Hygiene (the Department) is proposing that the Board of Health (the Board) amend Article 47 (Child Care Services) of the New York City Health Code to enhance certain safety requirements in such services.

When and where is the hearing? The Department will hold a public hearing on the proposed rules. The public hearing will take place from 10AM to 12PM on July 27, 2016. The hearing will be at:

New York City Department of Health and Mental Hygiene
Gotham Center
42-09 28th Street, 14th Floor, Room 14-34
Long Island City, NY 11101-4132

How do I comment on the proposed amendments to the Health Code? Anyone can comment on the proposed amendments 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 347-396-6087

- **Speaking at the hearing**. Anyone who wants to comment on the proposed amendments at the public hearing must sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078. You can also sign up in the hearing room before or during the hearing on July 27, 2016. You can speak for up to five minutes.

Is there a deadline to submit written comments? Written comments must be received on or before 5:00 p.m. on July 27, 2016.

Do you 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 given above. You may also tell us by telephone at 347-396-6078. You must tell us by July 13, 2016.

Can I review the comments made on the proposed amendments? You may review the comments made online at http://rules.cityofnewyork.us/ on the proposed amendments by going to the website at

http://rules.cityofnewyork.us/. 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 Board of Health to make these amendments? Section 558 of the City Charter authorizes the Board of Health to adopt and amend the Health Code and to include in the Health Code all matters to which the authority of the Department extends. 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 Board of Health must meet the requirements of §1043 of the City Charter when creating or changing the Health Code. This notice is made according to the requirements of City Charter §1043.

Statement of Basis and Purpose

The Department's Bureau of Child Care enforces Article 47 of the Health Code, which regulates non-residential-based child care centers for children under six years of age.

The Department is proposing that the Board amend Article 47 of the Health Code as follows to enhance the health, safety and supervision of children in regulated child care services.

Educational directors

Department experience has shown that the consistent presence of an educational director is an important factor in providing quality, safe child care. The educational director is charged with developing a child care service's curriculum, implementing teacher training and ensuring that all staff are aware of and compliant with the child care service's written safety plan and the requirements of the Health Code. When there is no educational director present, or there is constant turnover in the educational director position, child care quality is diminished.

The Department attempts to routinely inspect all the 2,000+ child care services annually. When it finds on inspection that there is no educational director present, it is often told that the person holding the position is "temporarily absent," a statement which the Department cannot always corroborate. The Health Code requires that a fully qualified State-certified group teacher be designated as an acting educational director when the educational director is temporarily absent. The Department has no way of knowing, however, how long the educational director's absence has been or will last. To address these concerns, the Department is requesting that the Board amend Health Code §§ 47.13, 47.15 and 47.17 to require that child care service permittees notify the Department when educational directors are terminated or resign. Notification means that Department staff can timely follow up with the child care service to determine if the educational director has been replaced, and whether there is an appropriate certified teacher supervising other teachers and assuming the duties required of the educational director. When there is a temporary absence of an educational director, the Department is asking the Board to require that the permittee communicate in writing to teaching staff that there will be a temporary substitute educational director, and make such communication available for Department inspection.

Teacher and trainer qualification verification

All teaching staff in Article 47 programs are required to hold certain educational credentials and certifications, and many teaching staff in current child care programs present foreign and domestic education institution credentials and teacher certifications that require Department staff to spend a great deal of time checking and verifying such credentials and certifications. Equally important are the qualifications of trainers. The Department is proposing that the Board amend Health Code §§47.13, 47.15, 47.17 and 47.37 to require child care permittees to submit teachers' and trainers' documentation and certifications for review to an agency designated by the Department. The agent would review teaching staff certifications, diplomas, educational transcripts and trainers' credentials to determine that education and training are in compliance with the Health Code.

Teacher immunizations

A new Recommended Adult Immunization Schedule was approved by the Centers for Disease Control and Prevention (CDC) Advisory Committee on Immunization Practices and published in February 2016. The Department's requirements for child care staff and volunteer immunizations in Health Code §47.33(c) are being amended to be consistent with these recommendations. The major change is that having a history of measles and mumps will not be allowed to substitute for the vaccines for measles and mumps – the vaccines must still be administered even if a health care provider indicates that an individual has a history of these diseases. Vaccinations are not needed if there is laboratory proof of immunity. Vaccinations are also not needed for people born on or before December 31, 1956, regardless of their vaccination history, as such old vaccination histories are unreliable and most people were already exposed to these diseases.

Permit suspensions and revocations

These amendments also clarify circumstances that may result in suspension and revocation of child care service permits, provide child care services with more concrete information about the Department's expectations and describe how the Department evaluates performance.

The Department evaluates a child care service's performance by comparing it to that of other child care services. Child care services found performing below standards may voluntarily enroll in a Department program to improve performance. As part of this program, Department staff help permittees identify and address administrative and other factors that compromise child safety. Department staff also work with the permittee to create a corrective action plan to remedy these factors. The Department proposes that this currently voluntary improvement process be made mandatory, amending §§47.21 and 47.77 and that failure to make required changes would result in a child care service being required to defend its permit at a hearing at the Office of Administrative Trials and Hearings (OATH).

The Department also requests that the Board amend Health Code §47.77 to provide that, in addition to actions authorized by other provisions of the Health Code, the Commissioner may revoke a child care service permit in certain circumstances, including but not limited to:

- having a history of prior or current child care permit, license or registration suspensions,
- revocations or suspensions (whether by the Commissioner or other government agencies) or
- failing to implement required corrective action plans.

It is also proposed that section 47.77 be amended to add that when a child care service permit is revoked by the Commissioner, any application for a new permit by any of the service's individual or corporate managers or directors will not be accepted for at least five years following the date of revocation.

These measures would enable the Department to take expedited action against unsafe facilities and clarify the bases for taking regulatory actions.

Fraud prevention

Individuals who work or volunteer in or are in control of any child care service must be fingerprinted in accordance with Health Code §47.19. Fingerprints are forwarded by the City Department of Investigation (DOI) to the New York State Division of Criminal Justice Services (DCJS). DCJS then reports on the individual's criminal history to DOI, and DOI informs the permittee of the individual's relevant criminal background. In recent years, there have been a number of incidents where permittees claimed as staff members people who did not work in a child care service. Several permittees fraudulently submitted credentials of qualified persons or created false documents and certifications to show the Department that they have a full complement of cleared and/or qualified staff. One permittee allowed an otherwise unidentified individual to assume the identity and credentials of another person and passed her off as a qualified group teacher for many years. In these cases, the fraud eventually results in revocation of the permits, in accordance with Health Code §5.13. The Department would like to be able to require permittees to include identification numbers assigned to fingerprints (the New York State Identification or "NYSID" number) by DCJS when applications for permits and staff qualifications are submitted for approval, so that it can more easily verify individuals' identities. Accordingly, the Department requests that the Board amend Health Code § 47.09 (a) to authorize the Department to require provision of NYSID numbers by persons with ownership and other interests in child care services, and persons whose credentials the Department is being asked to approve.

Early Intervention and CPSE services for disabled children

Health Code §47.19 requires that all staff, volunteers, contractors and others in child care services obtain clearances every two years from the State Central Register of Child Abuse and Maltreatment (SCR), be fingerprinted and have employment references checked unless "such person is working under the direct supervision and within the line of sight of a screened employee of the child care service." The Department has been asked to exempt from these requirements persons conducting assessments of or providing services to individual children who are disabled or at risk for disability under the Department's Early Intervention (EI) program (children under three years of age) or the City Department of Education's committee on preschool special education (CPSE) (ages three through five). These individuals are already cleared and the Department would like to avoid unnecessary delay by requiring that child care service permittees also clear them. The Department is asking the Board to amend this provision accordingly.

Lead in water

The Department is requesting that the Board amend Health Code §47.43(a) (requiring child care service permittees to test water for lead) to specify that such testing must be done every five years and to require that test results be sent to the Department. Elevated test results would have to be accompanied by a plan for remediation and until remediation is completed alternate sources of potable water provided.

Fire alarms and sprinklers

Health Code §47.59 (c) requires that all child care services attended by 30 or more children have fire alarms. The Department is proposing that the Board amend this provision to require all newly permitted child care facilities and those undergoing extensive renovation (i.e., material alterations requiring a revised certificate of occupancy) to have fire alarms approved by the Fire Department, and to

incorporate in the Health Code a requirement of the current Building Code that all new infant-toddler child care services and those undergoing material alterations be fitted with sprinkler systems. The Department believes that these requirements will significantly enhance safety.

Permit posting

Health Code §47.73 currently requires that a child care service permit must be posted "in a conspicuous place near its public entrance where staff, parents and others may review" it. The Department is requesting that the Board amend this to specify that the permit be posted in a location where it will be more readily visible to parents and caregivers dropping off and picking up children. It is critical that parents know that a service has a Department permit and is not operating illegally and without oversight.

Statutory Authority

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

Section 556 of the Charter provides the New York City Department of Health and Mental Hygiene (the "Department") with jurisdiction to protect and promote the health of all persons in the City of New York.

Statement pursuant to Charter §1043

This proposal was not included in the Department's Regulatory Agenda for FY '16 since the need for the proposal was not known at the time the Regulatory Agenda was promulgated.

The proposal is as follows:

Note-matter in brackets [ ] to be deleted
Matter <u>underlined</u> is new

"Shall" and "must" denote mandatory requirements and may be used interchangeably unless otherwise specified or unless the context clearly indicates otherwise.

RESOLVED, that subdivisions (a) and (f) of §47.09 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 amended to be printed together with explanatory notes, to read as follows:

§47.09 Applications for permits.

A person or entity that has never held a permit issued by the Commissioner to operate a child care service and that proposes to operate a child care service subject to such permit, shall attend a pre-permit

orientation session held by the Department and shall thereafter submit an application for a permit to the Department.

(a) *New application.* An application for a new permit shall be submitted on forms approved or provided by the Department and shall include, but not be limited to the following:

* * *

(5) [Certifications and other documentation required by this Code for teaching staff health training; qualifications, health examinations.] Proof that teachers' credentials required by this Code have been submitted for review to and have been verified by an agent designated by the Department; and that the permit applicant has documentation of all teachers' and volunteers' health examinations and immunizations.

* * *

(9) Names, including aliases, and other identifying and contact information for all individual owners, managers, or other persons with a controlling interest in the child care service, officers, directors and board members of a permittee corporation, members of an LLC, partners, educational directors, executive and administrative director, if any. Identifying information must include the New York State Identification or NYSID number assigned to these individuals when they were fingerprinted by the New York State Division of Criminal Justice Services, in accordance with §47.19 of this Article.

* * *

(f) *Applications to be complete.* No permit shall be issued until the Department has received and has approved all documentation, records, reports, or other information required by this Code. The Commissioner may reject any incomplete application for a new or renewal permit and order an existing child care service closed and its permit suspended if the permit application contains misleading information, or information is omitted.

Notes: Paragraphs (5) and (9) of subdivision (a) and subdivision (f) were amended by resolution adopted XXX. Subdivision (a) requires additional current and background information from applicants for child care service permits so that an informed decision may be made by the Commissioner on whether to issue such permits. Subdivision (f) authorizes the Commissioner to reject an application for a new permit and close and suspend an existing child care service if its application for a renewal permit if information is misleading or missing.

RESOLVED, that subdivision (a), paragraph (1) of subdivision (c), and paragraph (4) of subdivision (d) of §47.13 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York , are amended, to be printed together with explanatory notes to read as follows:

§47.13 Teaching staff qualifications in child care services for children ages two to six.

(a) *Accreditation.* In determining teacher and educational director qualifications, the Department may accept documentation from schools, colleges and universities approved by the State Education Department or other teacher accreditation organizations acceptable to the Department certifying that such persons have met the specific Code requirements. All teacher documentation must be submitted for review to an agency designated by the Department.

(b) *Pending certifications.* A permittee may temporarily employ an educational director or individual group teachers pending certification by the State Education Department or other accreditation organization or while a teacher's study plan for obtaining certification is pending approval by the Department, provided that the permittee has complied with criminal justice and State Registry of Child Abuse and Maltreatment screening requirements for staff set forth in this Article.

(c) *Educational director.* Every child care service shall designate a qualified teacher as the educational director who shall be in charge of staff training, educational and child development programs and shall supervise all teaching staff at each permitted child care service.

(1) *Coverage for educational director.* When an educational director is not present to supervise a child care service, the permittee shall designate a certified group teacher to act as educational director. In addition, the permittee must notify the Department in writing within five business days of the termination or resignation of the educational director. When the educational director will be on anticipated leave for more than five business days, the permittee must notify teaching staff in writing that a certified teacher has been designated as educational director and make this written communication available to the Department for inspection upon request.

* * *

Notes: Subdivision (a) and paragraph (1) of subdivision (c) of §47.13 were amended by resolution adopted XXX to require submission of teachers' credentials to an agency designated by the Department and for permittees to notify the Department of educational directors' termination or resignation and to maintain documentation of educational directors' absences exceeding five days duration.

RESOLVED, that subdivision (a) of §47.15 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended, to be printed together with explanatory notes to read as follows:

§47.15 Teaching staff qualifications for infant-toddler child care services.

A child care service authorized to provide care for children under 24 months of age may employ staff with either the qualifications listed in §47.13 of this Code for each title or the following alternative

qualifications[:]; all documents and credentials must be submitted for review to an agency designated by the Department:

(a) *Educational director.* Every infant-toddler child care service shall have an educational director who shall be in charge of staff training, educational and child development programs and shall supervise all teaching staff at each permitted infant-toddler child care service. The permittee must notify the Department in writing within five business days of the termination or resignation of an educational director.

* * *

Notes: Section 47.15 was amended by resolution adopted XXX to require submission of teachers' credentials to an agency designated by the Department and for permittees to notify the Department of educational directors' termination or resignation.

RESOLVED, that subdivisions (a) and (b) of §47.15 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended, to be printed together with explanatory notes to read as follows:

§47.17 Teaching staff qualifications for night child care services.

(a) Permittees offering night care services shall comply with all requirements of this Article except when such requirements are inconsistent with the provisions of this section, in which case the provisions of this section shall control. All documents and certifications required by this section must be submitted for review to an agency designated by the Department.

(b) *Educational director.* The educational director shall be qualified in accordance with §47.13 of this Code; or hold a baccalaureate degree, including 12 college credits in early childhood education, and have two years experience in a licensed program with children younger than six years of age. When the educational director is not present to supervise the teachers in a night care service, the permittee shall designate a certified group teacher qualified pursuant to §47.13 (d) of this Article to act as educational director. The permittee must notify the Department in writing within five business days of the termination or resignation of an educational director.

* * *

Notes: Subdivisions (a) and (b) were amended by resolution adopted XXX to require submission of teachers' credentials to an agency designated by the Department and for permittees to notify the Department of educational directors' termination or resignation.

RESOLVED, that §47.19 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York , be amended by adding a new subdivision (j) to be printed together with explanatory notes, to read as follows:

§47.19 Criminal justice and child abuse screening of current and prospective personnel; reports to the Department.

* * *

(j) *Services for certain children*. Permittees must allow access to children receiving assessments and services of professional consultants retained by Early Intervention program providers or New York City Department of Education committees on preschool special education, or successor programs, without requiring proof of consultants' fingerprinting, SCR clearances or references.

Notes: Subdivision (j) was added by resolution adopted XXX to enable access to work with individual children attending child care services without further fingerprinting or SCR clearance for certain persons assessing or providing services to such children.

RESOLVED, that paragraph (3) of subdivision (a) of §47.21 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York , be amended; that subdivision (b) of §47.21 be amended; that a new subdivision (c) be added to §47.21, and that subdivisions (c), (d) and (e) be relettered as subdivisions (d), (e) and (f), respectively, to be printed together with explanatory notes to read as follows:

§ 47.21 Corrective action plan.

(a) *Approved corrective action plan required.* A corrective action plan shall be submitted by the permittee to the Department within five business days for review and approval by the Department[.]:

(1) Prior to the permittee hiring, retaining or utilizing the services of persons listed in subdivision (a) of §47.19 of this Code when such persons are reported as having:

(A) A criminal conviction as specified in §47.19[ ](h); or

(B) Pending criminal charges as specified in §47.19(h); or

(C) SCR reported incidents of child abuse or maltreatment which have been indicated or which are under investigation.

(2) When a death or serious injury of a child or an incident involving a lost child has occurred while in the care of an applicant for a permit or permittee, or in the care of any owner, director, employee, or volunteer of the applicant or permittee or while in the care of any agent of the permittee, or if a related criminal or civil action has already been adjudicated or adjudication is pending in any jurisdiction with respect to such death or serious injury or incident involving a lost child.

(3) When required by the Department, after the permittee has been cited for violations or conditions deemed imminent health hazards, or when the Department determines that the permittee has been operating with serious uncorrected violations over a period of time, to demonstrate the permittee's willingness and ability to continue in operation in accordance with applicable law.

(b) *Contents of corrective action plan.* A corrective action plan shall assess the risk to children in the child care service, and shall clearly and convincingly demonstrate that such person presents no danger to any child, or other persons. The plan shall include, but not be limited to, consideration of the following factors:

(1) Seriousness of the incident(s) or crimes cited in the report(s);

(2) Seriousness and extent of injuries, if any, sustained by the child(ren) named or referred to in the indicated report(s) or disclosed upon investigation of the criminal charge;

(3) Any detrimental or harmful effect on child(ren) as a result of the person's actions or inactions and relevant events and circumstances surrounding these actions and inactions as these relate to any report(s);

(4) The age of the person and child at the time of the incident(s);

(5) Time elapsed since the most recent incident(s);

(6) Number of indicated incident(s) or crimes; where more than one incident or crime, an evaluation of each separately, and an assessment of the total effect of all indicated incidents on risks to children currently under care;

(7) Duties of the person under consideration; degree of supervision, interaction, opportunity to be with children on regular, substantial basis and if position may involve being alone with children or will always involve presence of other adults; (8) Information provided by person, re: rehabilitation, i.e., showing positive, successful efforts to correct the problems resulting in the indicated child abuse or criminal report so that children in care will not be in danger, demonstrated by no repeated incidents or showing that the person has undergone successful professional treatment;

(9) Employment or practice in a child care field without incident involving injuries to children

(10) Extra weight and scrutiny shall be accorded child abuse and maltreatment reports involving fatality, sexual abuse, subdural hematoma, internal injuries, extensive lacerations, bruises, welts, burns, scalding, malnutrition or failure to thrive; and crimes involving homicides, sexual offenses (misconduct, rape, sodomy, abuse); kidnapping; felony possession or sale of a controlled substance; felony promotion of prostitution; obscenity offenses; disseminating indecent material involving, or to, minors; incest; abandonment of a child; endangering welfare of a child; promoting sexual performance by a child; felony weapon possession; assault; reckless endangerment; coercion; burglary; arson and robbery; driving while intoxicated or under the influence of alcohol if the person will have responsibilities for unsupervised contact or driving motor vehicles at the child care service.

(c) *Contents of corrective action plan for imminent health hazards or serious repeat violations.* When the Department requires a corrective action plan to show that imminent health hazards or patterns of serious repeat violations are being corrected, the permittee must:

(1)Address each hazard, condition or violation;

(2)Identify their causes; and

(3)Provide a plan satisfactory to the Department showing that the causes have been addressed, and that the conditions or violations have been corrected and will not recur.

[(c)] (d) *Implementing the plan.* If the Department determines that such plan adequately safeguards the health and safety of children, the permittee shall be responsible for implementation of the plan, subject to periodic monitoring by the Department.

[(d)] (e) *Rejection of plan.* If the Department determines that such plan fails to provide adequate safeguards, a permittee that intends to hire or retain the employee shall resubmit the plan until it is acceptable to Department and shall not allow such employee to have unsupervised contact with any children until the plan is approved by the Department.

[(e)] (f) *Remedies.* Any person aggrieved by the action of the Department in enforcing this section may request that the Department provide him or her with an opportunity to be heard in accordance with §7-02 (a)(1) of the Rules of the Department (24 RCNY Chapter 7). The decision of the Department after such opportunity to be heard shall be a final agency determination.

Notes: Paragraph (3) of subdivision (a) was amended by resolution adopted XXX to add requirements for preparation of a corrective action plan not only when imminent health hazards are present but also when a child care service is operating with serious repeat violations. The heading of subdivision (b) was amended to clarify that this subdivision applied to plans required when there were positive findings on fingerprint and SCR clearance. A new subdivision (c) was added to set forth general requirements for plans prepared to address serious repeat violations, and existing subdivisions (c), (d) and (e) were relettered as subdivisions (d), (e) and (f), respectively.

RESOLVED, that subdivision (c) of §47.33 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York , be amended, to be printed together with explanatory notes to read as follows:

§47.33 Health; staff.

* * *

(c) *Staff immunizations.* [Health care providers shall certify that each staff or volunteer] Each staff person and volunteer shall obtain a report from a health care provider who is a licensed physician, nurse practitioner, physician's assistant, or doctor of osteopathy certifying that such person has been immunized

against measles; mumps; rubella; varicella (chicken pox); and [tetanus and diphtheria (Td) or] tetanus, diphtheria and acellular pertussis (Tdap) in accordance with recommendations of the CDC Advisory Committee on Immunization Practices (ACIP). Persons born on or before December 31, 1956 [who have a history of measles or mumps disease shall not require such] are not required to have measles, mumps or rubella vaccines. A history of having health care provider documented varicella [, measles or mumps] or herpes zoster disease shall be accepted in lieu of varicella[, measles or mumps vaccines] vaccine. A history of having measles, mumps or rubella disease shall not be substituted for the measles, mumps, or rubella vaccine. A laboratory test demonstrating detectable varicella, measles, mumps, or rubella antibodies shall also be accepted in lieu of varicella, measles, mumps and rubella vaccine. An employee may be exempted from this immunization requirement for ACIP-recognized medical contraindications upon submission of appropriate documentation from a licensed physician. Each staff person and volunteer shall submit such report of immunization to the permittee. Reports of immunizations shall be confidential and shall be kept by the permittee in a paper or electronic file with other staff and volunteer health information, except that such reports shall be made available to the department upon request.

* * *

Notes: Subdivision (c) was amended by resolution adopted XXX to incorporate recommendations of the CDC Advisory Committee on Immunization Practices issued in February, 2016.

RESOLVED, that subdivision (e) of §47.37 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York , be amended, to be printed together with explanatory notes to read as follows:

* * *

(e) The Department may provide such training or any part thereof or accept training provided by others found satisfactory to the Department. All trainers' qualifications must be submitted for review to an agency designated by the Department. Persons who enroll in workshops conducted by the Department may be charged a reasonable fee to defray all or part of the costs incurred by the Department for workshop registration materials, training, testing, and certificate issuance.

Notes: Subdivision (e) was amended by resolution adopted XXX to require submission of trainers' qualifications for review to an agency designated by the Department.

RESOLVED, that subdivision (a) of §47.43 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York , be amended, to be printed together with explanatory notes to read as follows:

§47.43 Plumbing; toilets, hand wash, and diaper changing facilities.

(a) *Plumbing installation.* Plumbing shall be installed only by a licensed plumber and shall be free of cross-connections and other hazards to health. Drinking water from faucets and fountains shall be tested for lead content by an existing permittee upon the effective date of this provision or by a new permittee within 30 days of receiving a permit and by all permittees every five years thereafter using a method approved by the Department. Copies of test results must be sent to the Department upon receipt by mail, email or fax and the permittee shall investigate and take remedial action if lead levels at or above 15 parts per billion (ppb) are detected. Remedial action must be described in a corrective action plan to be submitted to the Department with reports of elevated test results. Until remedial action is completed, the permittee must provide and use bottled potable water from a source approved by the Department or the State Department of Health.

Notes: Subdivision (a) was amended by resolution adopted XXX to clarify requirements for testing drinking water for lead.

RESOLVED, that subdivision (c) of §47.59 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York , be amended, to be printed together with explanatory notes to read as follows:

§47.59 Fire safety.

* * *

(c) In a child care service holding a permit for more than 30 children, an approved interior fire alarm system shall be provided. All child care services applying for a new permit or that are located in premises undergoing material alterations must be equipped with Fire Department approved interior fire alarm systems. Infant-toddler services obtaining a new permit or that are located in premises undergoing material alterations must be equipped with a sprinkler system that complies with the New York City Building Code.

* * *

Notes: Subdivision (c) was amended by resolution adopted XXX to require applicants for a new permit after the effective date of the amendment, and those undergoing material alterations requiring a new certificate of occupancy to install fire alarms and requiring that applicants for a new permit to operate an infant-toddler child care service after the effective date of the amendment, or current permittees whose premises are undergoing material alterations install sprinkler systems. Including such requirements from the current Building and Fire Codes in the Health Code enables the Department to deny or revoke permits where a child care service fails to comply with those codes' requirements.

RESOLVED, that subdivision (b) of §47.73 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York , be amended, to be printed together with explanatory notes to read as follows:

§47.73 Required postings.

* * *

(b) The permittee shall [display] post the following [in a conspicuous place near] at the front door of its public entrance where staff, parents and others may review them:

(1) The current permit securely encased in a weather-resistant glass or plastic protective frame, and

(2) A sign provided or approved by the Department stating that the Department's most recent summary inspection report for the child care service may be obtained from the Department's website, or by calling 311, and that complaints about the child care service may be made to, and more information about requirements for operation of child care services may be obtained by calling 311.

Notes: Subdivision (b) was amended by resolution adopted XXX to enable parents, caretakers and other potential users of child care services to more readily see a currently valid permit and obtain assurance that a child care is lawfully in operation.

RESOLVED, that subdivision (a) of §47.77 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended, numbering the current subdivision as paragraph (1), and adding a new paragraph (2); adding a new subdivision (h), relettering current subdivision (h) as

subdivision (i), amending the newly relettered subdivision (i), and adding a new subdivision (j), to be printed together with explanatory notes to read as follows:

§47.77 Closing and enforcement.

(a) *Imminent health hazards.* (1) When the Department determines that any child care service is being operated in a manner, or maintaining one or more conditions that constitute an imminent health hazard, or that its operation otherwise presents a risk of endangering the health or safety of children or other persons, the Commissioner may order such child care service to close and to discontinue operations, suspending its permit, without further proceedings, by service of an order upon the permittee, or other person(s) managing or in control of such child care service. An order issued pursuant to this section shall provide the permittee, or other person(s) in control, an opportunity to be heard and to show cause why such child care service should not remain closed until there are changed circumstances, or the correction, removal or abatement of the dangerous or detrimental condition(s).

(2) The Commissioner may require any child care service permittee that consistently fails to correct imminent or repeat, serious violations to enroll in a program in which factors contributing to violations are analyzed and the permittee establishes a corrective action plan to address and correct violations. When, in the opinion of the Commissioner, a permittee enrolled in such a program is unable or unwilling to write or implement a corrective action plan that adequately protects the health and safety of children, the Commissioner shall provide the permittee with an opportunity to show cause at a hearing why the child care service's permit should not be suspended or revoked.

* * *

(h) *Other actions.* In addition to any action authorized by this article or Article 5 of this Code, the Commissioner may refuse to renew, or may revoke or deny issuance of a permit if:

(1) the child care service's permit was ordered suspended more than once during the past 36 months, or

(2) the child care service's permit was previously ordered suspended for having lost a child, another instance of inadequate supervision or for inappropriate behavioral management of children occurs; or

(3) the permittee failed to implement a corrective action plan; or

(4) a permit applicant or permittee continued operating a child care service when a permit was either ordered suspended or the child care service was ordered closed for operating without a permit; or

(5) the Commissioner determines that a permittee is unable or unwilling to correct a pattern of serious, repeated violations including, but not limited to, those defined as imminent health hazards; or

(6) the Commissioner finds out after issuing a permit that a previous or current permit, license, registration or other authorization to operate a child care program, held by the permittee, or any officer, manager or director of the permitted entity, was or is being suspended or revoked in any jurisdiction.

[(h)] (i) *Department authority not limited by this section.* Nothing herein shall be construed to limit the authority of the Department to issue notices of violation [pursuant to Article 7 of this Code] seeking monetary penalties for violations cited by the Department, or commence any other proceeding or action provided for by this Code or other applicable law, including actions to deny, suspend or revoke permits.

(j) *Effect of permit revocation.* When a permit has been ordered revoked by the Commissioner, an application for a new permit will not be accepted for at least five years from the date revoked from the permittee or from any individual person exercising management and control in the child care service whose permit was revoked.

Notes: Subdivision (a) was amended, numbering the current subdivision as paragraph (1) and adding a new paragraph (2) and a new subdivision (h), relettering subdivision (h) as subdivision (i) and adding a new subdivision (j), by resolution adopted XXX to clarify the Commissioner's authority to suspend and revoke existing permits and deny issuance of new permits to persons whose permits are revoked.

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
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NEW YORK, NY 10007
212-788-1400

CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Amendment of Rules Governing Child Care Services (Health Code Article 47)

REFERENCE NUMBER: DOHMH-71

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 — *May 31, 2016*
Mayor's Office of Operations — Date

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 Rules Governing Child Care Services (Health Code Article 47)

REFERENCE NUMBER: 2016 RG 051

RULEMAKING AGENCY: New York City 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: May 31, 2016