

Regulatory Registry Posting related to the Child Care and Early Years Act, 2014 (CCEYA)

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Submissions Required by: May 11, 2015

Early Years Division
Ministry of Education
900 Bay Street, 24th Floor, Mowat Block
Toronto, ON M7A 1L2

Purpose

The purpose of this document is to seek feedback on proposed regulations under the Child Care and Early Years Act, 2014 to support the Government of Ontario's vision for child care modernization and early years integration. Please take the time to review this document and provide us with your comments. More information about how to respond is provided at the end of the document. Responses must be received no later than May 11, 2015.

The Vision

The government's early years vision is to ensure that Ontario's children and families are well supported by a system of responsive, high-quality, accessible and increasingly integrated early years programs and services. Additional information about this vision is provided in the Ontario Early Years Policy Framework (2013), which can be viewed online at: <http://www.edu.gov.on.ca/childcare/OntarioEarlyYear.pdf>

Transforming Ontario's Child Care and Early Years System

The Legislature recently passed new legislation to modernize and strengthen Ontario's child care system and improve oversight in both the licensed and unlicensed child care sectors. The Child Care Modernization Act, 2014 was passed by the Legislative Assembly and received Royal Assent in December 2014. Once proclaimed, the Child Care and Early Years Act, 2014 (CCEYA) will go into effect and the Day Nurseries Act (DNA) will no longer be used. The CCEYA gives the Ministry of Education the authority to establish important policies for the child care and early years sector, ranging from program requirements to licensing fees.

This legislation and the new regulatory proposals described in this document were informed by feedback received on the government's "Modernizing Child Care in Ontario" discussion paper from 2012, responses received following the regulatory registry posting from 2014, as well as the recommendations contained in the recent Auditor General and Ombudsman reports from 2014 (see Resources/References section).

This document marks the beginning of a staged approach to the development and implementation of new regulations under the CCEYA. These regulations will provide additional information for child care providers, parents/guardians and the general public about how to put the new legislation into practice. This document describes the proposed regulations that would come into effect when the legislation is proclaimed. Many of these regulations must be in place in order for the legislation to work. This document also includes information about transition regulations that would support the transition to the new Act.

It is important to note that many of the existing requirements set out in regulations under the DNA will be staying the same at this time and will be included in new regulations under the CCEYA. This will allow for additional time for dialogue as part of the government's staged approach to implementation. For more information on existing requirements under the DNA, please see the Resources/References section of this document.

Proposed Regulatory Changes

The new regulations that are proposed to be in place when the CCEYA is proclaimed address four priority areas: **licensing clarity**; **enforcement**; **licensing standards**; and **special needs**.

Licensing Clarity

The CCEYA defines “child care” as the provision of temporary care for or supervision of children in any circumstance. It also sets out a number of exemptions for programs or types of care that are not considered to be child care, and as such do not require a licence (e.g., care by relatives). The following regulatory proposals are intended to clarify the process of determining what is considered to be child care.

Primary Purpose of a Program

The proposed regulations would describe the factors that are used to determine the primary purpose of a program and whether or not it is considered child care and requires a licence. These factors would include: frequency and duration of a program, hours of operation, children’s ages, whether meals and/or transportation are provided, whether supervision is provided, program content and location, staff qualifications, accreditation, and program administration.

In addition, academic programs such as after-school tutoring are not considered to be child care under the CCEYA, and therefore are not required to have a licence. The proposed regulations would clarify that these exempted programs only include programs that serve children in junior kindergarten and older and that operate outside the hours when school is typically running. The proposed regulation would also clarify that pre-kindergarten programs offered by or in partnership with school boards or offered by family support programs funded by the Ministry of Education would also be exempt under this category.

Exempt Circumstances

The proposed regulations would also clarify that breakfast programs for children in school (such as the Student Nutrition Program, funded by the Ministry of Children and Youth Services) and therapeutic programs for children with special needs that are delivered or supervised by a regulated health professional are not child care and do not require a licence. This would include, for example, Children’s Treatment Centres.

A Provider’s Own Children

Under the CCEYA, home child care providers working with licensed agencies and unlicensed providers must count their own children under the age of six years when determining the total number of children in their care, with the exception of children junior kindergarten/kindergarten age and older who attend publicly-funded school full time. The proposed regulations would clarify that this exception would only apply: (1) if the provider has no record of convictions under the CCEYA or the DNA; and (2) between 6 a.m. and 7 p.m. on weekdays during the school year.

Enforcement

The CCEYA provides for the use of a range of enforcement tools to support compliance with the new Act and strengthen oversight of child care settings. These tools include administrative penalties, compliance orders, protection orders and restraining orders.

While most enforcement tools can be put into place through policy, business processes and training, the amount of administrative penalties needs to be set out by regulation. It is proposed that administrative penalties would apply to contraventions of the Act for both licensed and unlicensed child care providers/operators. They would apply to contraventions such as exceeding the maximum number of children permitted, and preventing access to parents. These penalties would not apply to licensing standards set out in regulations at this time.

The proposed regulations would also provide specific penalty amounts that would increase based on the length of the contravention and previous contraventions. For instance, contraventions related to the number/age of children permitted would start at \$2,000 per child, and other contraventions would range from \$500 to \$4,000 per contravention for a first-time penalty. The CCEYA sets out \$100,000 as the maximum penalty for a contravention.

It is important to note enforcement tools can be used progressively. This means that, where appropriate, a child care provider may have an opportunity to come into compliance before an administrative penalty is issued.

Licensing Standards

Many existing licensing standards under the DNA will stay the same at this time and will be included in the regulations to be made under the CCEYA. The new proposed standards are related to enhancing quality; increasing access to licensed before and after school programs; updating licensed home child care requirements; and updating health and safety standards. The proposed standards are based on research and practice, feedback received on the government's "Modernizing Child Care in Ontario" discussion paper from 2012, responses received following the government's regulatory registry posting from 2013/2014, as well as the recommendations contained in the Auditor General report from 2014.

Enhancing Quality

We know that high quality programs and services can have an extraordinary and long-lasting impact on children's development and well-being. To enhance program quality in licensed child care, the proposed regulations would highlight key ideas described in "How Does Learning Happen?: Ontario's Pedagogy for the Early Years" (April 2014). This will help to strengthen quality using the latest research findings about learning and development. These regulations would require operators to:

- Have a program that focuses on positive, responsive interactions; active exploration, play and inquiry; and experiences that support development in a holistic manner;
- Ensure ongoing and regular communication with parents/guardians about what their children are experiencing through the day, supported by pedagogical documentation;
- Create environments that support children's positive interactions, communication and self-regulation; and

- Have materials/environments and a flow of the day that maintains safety and allows children to engage in complex and active exploration and play.

In addition, to support the implementation of the new regulation, the government is proposing to issue a policy statement that establishes “How Does Learning Happen?” as the provincial framework to guide programming and pedagogy in licensed programs (see Resources/References section). “How Does Learning Happen?” was designed to strengthen quality in a range of child care and early years settings that use various program approaches. It is not a formal curriculum, but rather a professional learning resource that supports educators in making informed choices about program delivery and content.

Increasing Access to Licensed Before and After School Programs

To support consistency between school and before and after-school programs, the proposed regulations would set out alternative ratios and group sizes for school-aged children. The regulations would combine age groupings for four and five year olds to allow for a child to adult ratio of 1:13, with a maximum group size of 26. For older children, there would be separate age groupings for 6-8 year olds (1:15 ratio, maximum group size of 30) and 9-12 year olds (1:20 ratio, maximum group size of 20). In addition, the government is considering allowing providers to include up to 25% (up from 20%) of children from another age group in programs for children ages four and older. Child care providers would have the option to adopt these ratios and group sizes or continue to follow the existing limits.

The proposed regulation would also set out new space requirements for licensed programs in order to accommodate the new ratios and group sizes for children ages four and older described above.

Updating Licensed Home Child Care Requirements

To support regulated home child care providers, the proposed regulations would update the qualifications requirement for home visitors working with licensed agencies. Home visitors would need to be members in good standing with the Ontario College of Early Childhood Educators (or have other qualifications in a relevant area, subject to Ministry approval). Existing home visitors would be allowed a period of five years to meet this requirement.

It is also proposed that home visitors would be required to conduct unannounced home visits at least quarterly, and these visits would be guided by ministry supports and resources.

Lastly, the proposed regulations would remove the requirement to care for a maximum of three children under the age of three years, while maintaining the restriction of caring for no more than two children under the age of two years (which applies to all licensed and unlicensed child care providers). This would allow providers to care for more preschool aged children. Licensed agencies will continue to work with providers to determine the total number of children, and their ages, that an individual provider can care for (subject to the rules set out in the CCEYA).

Updating Health and Safety Standards

Many child care providers already exceed the existing requirements for health and safety. The following changes are being proposed to recognize these efforts and to align with current safety requirements in place for other sectors that work with children.

The proposed regulations would require all licensed operators to have a police vulnerable sector check (PVSC) conducted every five years for all licensed child care employees, volunteers, students, regulated home child care providers, and all adults living in a home where child care is offered. A PVSC is an enhanced screen for individuals working with vulnerable populations, which includes information from a standard criminal reference check together with additional information. All individuals would also be required to complete an offence declaration that confirms that they have had no changes in their criminal history in the past year.

It is also proposed that all child care centre supervisors, all employees working in licensed child care centres, and all regulated home child care providers be required to have current first aid certification including infant and child cardiopulmonary resuscitation (CPR).

To ensure that parents are aware of any incidents that may take place during the day in regulated child care, the proposed regulations would require that parents be notified when any accident or incident occurs that affects the health, safety or well-being of their child.

Lastly, it is proposed that all licensed operators be required to follow the latest version of Health Canada's Food Guides (with an option to follow the Food Guide for First Nations, Métis and Inuit), and establish policies/procedures to provide high-quality meals/snacks and positive mealtime experiences.

Children with Special Needs

Over the course of the last few decades there have been many changes related to the language and practices put into place to support children with special needs. To keep pace with these changes, the proposed regulations would replace current terminology in the DNA with "child with special needs", defined as a child with cognitive, physical, social, emotional or communicative needs, or needs relating to overall development, that requires additional support. This terminology reflects current practice in the child care sector.

The proposed regulations would eliminate the current limit placed on the number of children with special needs that can be placed in a regulated child care provider's home (currently 1 – 2 children). Instead, licensed agencies would be able to determine the number of children with special needs enrolled based on certain factors such as the child's diagnosis, the qualifications/experience of the provider, etc. This would help to increase access to child care spaces for children with special needs.

In addition, the CCEYA describes child care and early years programs and services as those provided to children under 13 years, whereas the DNA allows for services for children with special needs up to 18 years. This change reflects the range of services that are now available in the community outside of child care settings for adolescents with special needs. Children 13 to 18 years of age with special needs who may currently be receiving child care services/supports and/or financial assistance under the DNA will continue to be able to do so until they turn 18 years of age.

Miscellaneous/Technical Regulations

In addition to the proposed regulations mentioned above, there are additional proposals that are miscellaneous and/or technical in nature and are required in order to implement the CCEYA.

Duty for Unlicensed Provider to Disclose

The CCEYA requires unlicensed providers to tell parents that they are unlicensed. The proposed regulations would require that parents be told in writing (hard-copy or electronic) and that a record of the communication be kept by the provider.

Term of a Provisional Licence

The proposed regulations would specify that provisional licences would not be valid for any longer than one year, and that generally the term would be three months except in extenuating circumstances.

Criminal Reference Check for a Person Suspected of Being Convicted of a Specific Offense

The CCEYA provides the authority for the Director (in the Ministry) or an inspector to request a criminal reference check from any individual who is suspected of being convicted of a specific offence. The proposed regulations would set out that when it is requested, the criminal reference check provided must be no more than six months old as of the request date, in alignment with what is currently required in the Education Act. This requirement would be separate from the requirement to have a police vulnerable sector check and an annual offence declaration (see page 5).

Protected Term and Branding of Licensed Child Care

In addition to requiring licensed providers to post a licence, the proposed regulations would require licensed operators, home child care agencies and home child care providers to post a logo/decal. This would allow for parents/guardians to easily determine whether or not a provider is licensed. Exceptions would be provided for in-home services (regulated child care in the child's own home) and would allow regulated home-based child care providers to remove the logo/decal outside of operating hours. The logo/decal is still under development and work is ongoing within the Ministry on this initiative.

Transition or Time-Limited Regulations

The proposed regulation would also include a number of transitional regulations that would support the transition from the DNA to the CCEYA.

Licences Issued

A transitional regulation is being proposed to carry over existing licences issued under the DNA until providers have their licences renewed. New applicants applying for a licence after the CCEYA comes into effect would be issued a licence under the CCEYA. Licences that are carried over would still need to comply with the CCEYA once it is proclaimed.

Funding Agreements and Agreements for Sharing of Costs Among Municipalities

The proposed transitional regulations would carry over existing funding and cost-sharing agreements made under the DNA until funding agreements are renewed.

Authorized Recreation and Skill-Building Programs

The CCEYA provides an exception to licensing for authorized recreation and skill-building programs, but the exception does not come into force until regulations are put into place. Until then, a transitional regulation is being proposed to allow recognized children's recreation service providers to continue to operate under the existing requirements (see Ministry of Tourism, Culture and Sport Regulation 797 in the Resources/References section).

Private Schools

The CCEYA requires all private schools that serve children under JK/K age to be licensed. Under the DNA, private schools that were operating before a certain date in 1993 were authorized to operate without a licence. In July 2014, the Ministry of Education communicated publicly that the deadline for private schools that were not required to be licensed under the DNA to become licensed would be extended to January 1, 2016 (if operators applied for a licence by January 1, 2015). The proposed regulations would provide for this transition to bridge the time period from the date of proclamation to the January 1, 2016 extension.

Counting a Provider's Own Children

All licensed and unlicensed home child care providers will be required to include their own children under six years of age when counting the number of children they can care for under the CCEYA. However, they may exclude their own children enrolled in full-day junior kindergarten or kindergarten. The proposed regulations would clarify that this exclusion also applies to five year olds enrolled in Grade One.

Age of Children in Care

The CCEYA allows licensed home child care providers to care for no more than six children, and unlicensed providers to care for no more than five children, under 13 years of age. Currently the DNA allows for no more than five children under 10 years of age. To facilitate a smooth transition for those who may be caring for 11 and 12 year old children when the CCEYA comes into force, the proposed regulations would allow providers not to count those older children until January 1, 2016.

Conclusion

Transforming child care in Ontario will take time and requires a gradual approach to change to allow for a smooth transition and minimal disruption to service system managers, child care providers, children and their families. Following this consultation period, feedback from the public and our partners will be considered in supporting the development of regulations under the CCEYA.

Your Advice is Important

All interested parties are encouraged to provide feedback on the proposed regulations. The Ministry of Education values the unique and diverse perspectives from parents/families and broader child care and early years partners. Please provide the Ministry of Education with your comments no later than May 11, 2015.

You can send your response by e-mail to: CCGE_modernization@ontario.ca

Alternatively, you may wish to send your response by mail to:

Child Care Modernization
c/o Early Years Division
Ministry of Education
900 Bay Street, 24th floor Mowat Block
Toronto, ON M7A 1L2

Thank you for taking the time to review this document and provide feedback. Please note that you will not receive a formal response to your comment. Please continue to stay engaged with news about child care in Ontario by visiting www.ontario.ca/childcare.

Resources/References

Auditor General of Ontario Annual Report 2014:

http://www.auditor.on.ca/en/reports_2014_en.htm

Child Care and Early Years Act, 2014:

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_14c11_e.htm

Day Nurseries Act:

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90d02_e.htm

Day Nurseries Act – Regulation 262:

http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_900262_e.htm

Early Childhood Educators Act, 2007:

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_07e07_e.htm

How Does Learning Happen? Ontario's Pedagogy for the Early Years (April 2014):

<http://www.edu.gov.on.ca/childcare/HowLearningHappens.pdf>

Ministry of Tourism and Recreation Act – Regulation 797:

http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_900797_e.htm

Modernizing Child Care in Ontario: Sharing Conversations, Strengthening Partnerships, Working Together (June 2012):

http://www.edu.gov.on.ca/childcare/Modernizing_Child_Care.pdf

Ombudsman Ontario Report: Careless About Child Care (October 2014):

<http://www.ombudsman.on.ca/Resources/Reports/Careless-About-Child-Care.aspx>

Ontario Early Years Policy Framework (January 2013):

<http://www.edu.gov.on.ca/childcare/OntarioEarlyYear.pdf>

Regulatory Registry Posting – Proposal to Amend Reg. 262 under the Day Nurseries Act (2013/2014):

<http://www.ontariocanada.com/registry/showAttachment.do?postingId=14762&attachmentId=22931>