



Understanding the Model Childcare Licensing Statute for Obesity Prevention

Childcare settings are a part of daily life for most U.S. children, and both nutrition and physical activity early intervention efforts have shown promise. This fact sheet explains why childcare settings are important sites for obesity prevention efforts.

Obesity rates among U.S. infants, toddlers, and preschool aged children approximately doubled over a roughly 20 year period, between 1976–1980 and 1999–2000.¹ A 2007–2008 nationally representative survey found that about 10 percent of infants to two-year-olds and 22 percent of children age two to five were overweight.² Of great concern, preschoolers who are overweight or obese are five times more likely to become overweight or obese adults than those preschoolers who are not obese.³ The good news is that a 2008–2011 study of low-income preschoolers found that obesity rates declined slightly in 19 of 43 states and territories studied.⁴

Most young children in the U.S. spend time in a childcare setting. About 12.5 million (61 percent) of U.S. children under five years old are in some type of arranged childcare setting, including care by relatives or a babysitter at home, by small and large family childcare providers (nonrelatives who care for children in the provider’s home), and by childcare centers (including



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infant-toddler centers, preschools, and Head Start programs).⁵ Because childcare is a part of daily life for most U.S. children and both nutrition and physical activity intervention efforts in childcare have shown promise, it is an important site for obesity prevention efforts.⁶

Regulation of Childcare

Childcare facilities are primarily regulated at the state level. State legislatures enact laws setting forth general requirements for childcare providers and facilities to obtain a license or permission to operate. Usually, the state administering agency (or department) enacts more detailed regulations implementing the statutes. The state administering agencies have different titles; for example, in Florida, it's called the Department of Children and Family Services⁷, while in Washington, it's called the Department of Early Learning.⁸ States tend to regulate childcare centers more heavily than family childcare homes, and some states differentiate between large and small family childcare homes, regulating small homes (usually limited to six children or fewer) more lightly than large ones. Licensing laws and regulations address health, hygiene, and safety requirements, such as disease and accident prevention, physical facility (including space per child and outdoor space), equipment standards, caregiver-per-child ratios, and caregiver qualifications, such as training certifications and criminal background clearances.

Depending upon state law, some cities and counties can enact childcare licensing standards for their local jurisdiction. In Florida, for example, the state law and regulations act as minimum standards. Individual counties may choose to enact their own standards, provided that they

exceed the state minimums and the state Department of Children and Family Services approves the local standards.⁹ Similarly, New York City sets licensing standards for its childcare centers.¹⁰

State Licensing Laws Lack Sufficient Obesity Prevention Standards

Despite the great need to prevent obesity in young children, most states lack adequate obesity prevention standards in their childcare licensing and administrative plans. While experts recommend that children ages two and older engage in at least 60 to 90 minutes of moderate- to vigorous-intensity physical activity throughout the day,¹¹ few states have adopted specific standards relating to the duration or scope of physical activity in childcare facilities. A 2007 survey found that only three states—Alaska, Delaware, and Massachusetts—required a specified number of minutes of physical activity per day.¹² A 2012 study found that the majority of states still fail to meet expert recommendations on active play as set forth in the most recent edition of the *National Health and Safety Performance Standards: Guidelines for Out-of-Home Childcare* (a collaborative project of the American Academy of Pediatrics, the American Public Health Association, and the National Resource Center for Health and Safety in Childcare).¹³

State regulations also fall short in limiting the amount of time young children in childcare facilities spend watching television, video, or other visual recordings, or viewing computers (collectively referred to as “screen time”). The 2012 study found that only 15 states addressed screen time limitations, although none met all of the expert standards.¹⁴

Similarly, many states need improved nutrition standards. The 2012 childcare study found that only 31 states required some types of childcare providers to comply with the nutrition standards required by the Child and Adult Care Food Program (CACFP) and only 20 states required all childcare providers to comply.¹⁵ The CACFP is a federal program administered by the United States Department of Agriculture (USDA) that subsidizes meals and snacks for low-income children (and adults) receiving care outside their homes.¹⁶

NPLAN's Model Childcare Licensing Statute for Obesity Prevention

The model statute is designed to address this gap in state licensing, to ensure that children in childcare are protected from obesity, just as they are from other health hazards. NPLAN's model statute is based on the expert recommendations issued in the most recent edition of the *National Health and Safety Performance Standards: Guidelines for Out-of-Home Childcare*, the Institute of Medicine's *Early Childhood Obesity Prevention Policies* (2011), and the

National Association for Sport and Physical Education's *Physical Activity Guidelines for Children from Birth to Age Five* (2009); it is modeled in part on the New York City Department of Health and Mental Hygiene Board of Health Day Care Regulations.¹⁷

While designed as a statute, the model can be adapted for other uses, including as state administrative regulations (provided that the administrative agency has the enacting authority) or part of a state's childcare quality rating system. In addition, local jurisdictions that have the authority to do so can adopt the standards by ordinance or regulation. Cities and counties without authority to regulate childcare facilities could pass a resolution urging childcare providers to adopt them. Government and private funders could require their implementation as a condition for funding. Childcare providers could also adopt the standards voluntarily.

Finally, to implement these standards effectively, providers need training to serve more nutritious meals and lead developmentally appropriate physical activities for young children.¹⁸ Many childcare providers will face an added financial burden in meeting the higher standards. Enrolling more childcare providers in the CACFP subsidy program can assist providers in meeting the financial cost of more nutritious foods. Other government or private subsidies can also help allay costs.



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- ¹ Ogden CL, Flegal, KM, Carroll, MD, et al. "Prevalence and Trends in Overweight Among US Children and Adolescents, 1999-2000." *Journal of the American Medical Association*, 288(14): 1728-1732, 2002. Available at: <http://jama.jamanetwork.com/article.aspx?articleid=195387>.
- ² Ogden CL, Carroll MD, Curtin LR, et al. "Prevalence of High Body Mass Index in US Children and Adolescents, 2007-2008." *Journal of the American Medical Association*, 303(3): 242-249, 2010. Available at: www.jama.ama-assn.org/content/303/3/242.full.
- ³ Centers for Disease Control and Prevention (2013, August 9). *Vital Signs: Obesity Among Low-Income, Preschool-Aged Children-- United States, 2008-2011*. MMWR, Morbidity and Mortality Weekly Report; Vol. 62, No. 31, p. 629-634, August 9, 2013.
- ⁴ *Id.* at 629.
- ⁵ Laughlin, Lynda. 2013. "Who's Minding the Kids? Child Care Arrangements: Spring 2011." *Current Population Reports, P70-135*. U.S. Census Bureau, Washington, DC., p. 2. Accessed November 2013. Available at: www.census.gov/prod/2013pubs/p70-135.pdf.
- ⁶ Healthy Eating Research and Active Living Research. *Preventing Obesity Among Preschool Children: How Can Child-care Settings Promote Healthy Eating and Physical Activity?* Research Synthesis. October 2011. Accessed September 2013. Available at: www.healthyeatingresearch.org/publications-mainmenu-111/research-briefs-and-syntheses-mainmenu-114.
- ⁷ Fla. Stat. § 402.302(5).
- ⁸ Rev. Code Wash. Ann. § 43.25.020.
- ⁹ Fla. Stat. § 402.301, 402.306, 402.307.
- ¹⁰ New York City, N.Y. Health Code §§ 47.01, 47.35-47.37.
- ¹¹ While the federal government has issued physical activity standards, they do not address children under six years old. Health and Human Services (HHS). *2008 Physical Activity Guidelines for Americans*. Available at: www.health.gov/paguidelines/guidelines/default.aspx#toc. The World Health Organization's guidelines, *Recommended Amount of Physical Activity*, similarly do not address children under age five. www.who.int/dietphysicalactivity/factsheet_recommendations/en/. The American Academy of Pediatrics, American Public Health Association, and National Resource Center for Health and Safety in Child Care have developed recommendations for physical activity in childcare. American Academy of Pediatrics, et.al. *Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Early Care and Education Programs*, 3rd ed. Elk Grove Village, IL: American Academy of Pediatrics, 2011, Standard 3.1.3.1 (hereafter "Caring for Our Children"). Available at: http://nrckids.org/CFOC3/CFOC3_color.pdf.
- ¹² The study apparently looked at state administrative regulations, but it is not clear if it reviewed licensing statutes. Benjamin S, Cradock A, Walker E, et al. "Obesity Prevention in Child Care: A Review of U.S. State Regulations." *BMC Public Health*, 8: 188, 2008.
- ¹³ National Resource Center for Health and Safety in Child Care and Early Education, *Achieving a State of Healthy Weight: 2012 Update*, p. 19. June 2013, p. 24. Accessed November 2013, available at: <http://nrckids.org/index.cfm/products/achieving-a-state-of-healthy-weight1/>.
- ¹⁴ *Id.* at p. 19.
- ¹⁵ *Id.* at p. 50.
- ¹⁶ 42 U.S.C. 1766, 7 CFR Part 226. The Healthy and Hunger-Free Kids Act of 2010 requires the USDA to update to review and update the nutrition standards in the CACFP every ten years to ensure that the nutrition standards are consistent with the most recent U.S. Dietary Guidelines. 42 U.S.C. § 1766(g)(B)(i). The USDA is due to issue updated standards during 2013.
- ¹⁷ *Caring for Our Children*, *supra* note 11; Institute of Medicine (IOM). *Early Childhood Obesity Prevention Policies*. Washington, DC: The National Academies Press, 2011 (hereafter "IOM Guidelines"); National Association for Sport and Physical Education (NASPE). *Active Start: A Statement of Physical Activity Guidelines for Children Birth to Five Years*, 2nd ed. 2009 (hereafter "NASPE Guidelines"). Available at: www.aahperd.org/naspe/standards/nationalguidelines/ActiveStart.cfm; New York City Health Code §§ 47.01, 47.35-47.37.
- ¹⁸ Information on developmentally appropriate physical activity for young children is available from the National Association for the Education of Young Children (www.naeyc.org), NASPE (www.aahperd.org), and PE Central (www.pecentral.org).