

Suspension motion approved by JCAR:

(Move that) JCAR object to and suspend portions of the Department of Children and Family Services' emergency rule titled Licensing Standards for Day Care Centers (89 Ill. Adm. Code 407; 47 Ill. Reg. 8756) because they fail to meet the criteria for emergency rulemaking in 1 Ill. Adm. Code 230.400(a)(1)(C) and (a)(3)(B) and meet the criteria for suspension in 1 Ill. Adm. Code 230.550(a)(3)(A). Suspended portions of the emergency rule include: (1) Section 407.90(e)(3)(A) and (e)(3)(B)(i), (ii), and (iii); (2) provisions in Section 407.90(e)(3) and 407.190(f) that limit early childhood assistants' supervision of day care center classrooms in the absence of early childhood teachers to classrooms of children age 2 and older, for only the first and last 90 minutes of the center's licensed program hours; and (3) provisions in Section 407.90(e)(3)(B) that allow no more than 50 percent of licensed classrooms in operation to be supervised by early childhood assistants. This emergency rule implements previous Department policy, with additional unjustified restrictions, that allowed day care center classrooms to be supervised for up to 3 hours a day by early childhood assistants when an early childhood teacher is not available and this substitution is included in the center's staffing plan. The Department initially implemented this 3-hour policy in 2020 via emergency rules that were allowed to expire and never adopted companion proposed amendments that would have made this policy permanent. The Department then revived this policy as guidance that was in effect from September 23, 2022, through May 31, 2023. This emergency is agency created because the Department previously implemented the 3-hour policy outside of rule and passed up previous opportunities to adopt this rule despite multiple requests from day care providers. Additionally, this emergency rule imposes new restrictions, without adequate justification, on the use of early childhood assistants that the previous emergency rules and Department guidance did not include. By limiting the times of day when assistants can substitute for teachers and the number and age range of classrooms that can be supervised by assistants, this rule imposes unreasonable and unnecessary economic costs on day care providers, many of whom have relied on this policy for the last 3 years and may be forced to curtail their hours or reduce their number of classrooms as a direct result of this emergency rule. JCAR finds that these specified provisions of this emergency rule pose a threat to the public interest and welfare.

Sec. 407.90(e)(3):

3) When all children are two years of age or older, a qualified early childhood assistant 18 years of age or older may provide direct supervision without the presence of an early childhood teacher to a classroom for the first 90 minutes of the licensed program hours, and for the last 90 minutes of the licensed program hours.

A) Early childhood assistants shall not be utilized for three consecutive hours.

B) The use of an early childhood assistant without an early childhood teacher present shall not exceed three hours of the licensed program day, except as allowed in Section 407.190(e)(2) or 407.190(f) and shall not exceed 50 percent of the licensed classrooms that are in operation during that time frame.

i) The director shall provide on-going on-site supervision of the early childhood assistant.

ii) The day care center director shall post a notice outside of each classroom if that room is temporarily staffed with an early childhood

assistant, and no early childhood teacher is present.

- iii) The day care center shall maintain a daily log of names, dates, and times of usage of each early childhood assistant utilized in each classroom without an early childhood teacher present.
- iv) There shall be a staffing plan that identifies each classroom where an early childhood assistant is utilized without an early childhood teacher present. The staffing plan shall be accessible on site, submitted to the licensing representative for their licensing file, and filed on-site in the staff personnel records.

Sec. 407.190(f)

- f) When all children are two years of age or older, a qualified early childhood assistant 18 years of age or older may provide direct supervision without the presence of an early childhood teacher to a classroom for the first 90 minutes of the licensed program hours, and the last 90 minutes of the licensed program hours if they meet all requirements listed in Section 407.90(e)(3).