

Dept. of Health and Human Services**§ 98.41**

(2) Describe in the Plan exemption(s) to licensing requirements, if any, for child care services for which assistance is provided, and a demonstration for how such exemption(s) do not endanger the health, safety, or development of children who receive services from such providers. Lead Agencies must provide the required description and demonstration for any exemptions based on:

- (i) Provider category, type, or setting;
- (ii) Length of day;
- (iii) Providers not subject to licensing because the number of children served falls below a State-defined threshold; and
- (iv) Any other exemption to licensing requirements; and

(3) Provide a detailed description in the Plan of the requirements under paragraph (a)(1) of this section and of how they are effectively enforced.

(b)(1) This section does not prohibit a Lead Agency from imposing more stringent standards and licensing or regulatory requirements on child care providers of services for which assistance is provided under the CCDF than the standards or requirements imposed on other child care providers.

(2) Any such additional requirements shall be consistent with the safeguards for parental choice in § 98.30(f).

[63 FR 39981, July 24, 1998, as amended at 81 FR 67582, Sept. 30, 2016]

§ 98.41 Health and safety requirements.

(a) Each Lead Agency shall certify that there are in effect, within the State (or other area served by the Lead Agency), under State, local or tribal law, requirements (appropriate to provider setting and age of children served) that are designed, implemented, and enforced to protect the health and safety of children. Such requirements must be applicable to child care providers of services for which assistance is provided under this part. Such requirements, which are subject to monitoring pursuant to § 98.42, shall:

- (1) Include health and safety topics consisting of, at a minimum:
 - (i) The prevention and control of infectious diseases (including immuniza-

tions); with respect to immunizations, the following provisions apply:

(A) As part of their health and safety provisions in this area, Lead Agencies shall assure that children receiving services under the CCDF are age-appropriately immunized. Those health and safety provisions shall incorporate (by reference or otherwise) the latest recommendation for childhood immunizations of the respective State, territorial, or tribal public health agency.

(B) Notwithstanding this paragraph (a)(1)(i), Lead Agencies may exempt:

(1) Children who are cared for by relatives (defined as grandparents, great grandparents, siblings (if living in a separate residence), aunts, and uncles), provided there are no other unrelated children who are cared for in the same setting.

(2) Children who receive care in their own homes, provided there are no other unrelated children who are cared for in the home.

(3) Children whose parents object to immunization on religious grounds.

(4) Children whose medical condition contraindicates immunization.

(C) Lead Agencies shall establish a grace period that allows children experiencing homelessness and children in foster care to receive services under this part while providing their families (including foster families) a reasonable time to take any necessary action to comply with immunization and other health and safety requirements.

(1) The length of such grace period shall be established in consultation with the State, Territorial or Tribal health agency.

(2) Any payment for such child during the grace period shall not be considered an error or improper payment under subpart K of this part.

(3) The Lead Agency may also, at its option, establish grace periods for other children who are not experiencing homelessness or in foster care.

(4) Lead Agencies must coordinate with licensing agencies and other relevant State, Territorial, Tribal, and local agencies to provide referrals and support to help families of children receiving services during a grace period comply with immunization and other health and safety requirements;

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- (ii) Prevention of sudden infant death syndrome and use of safe sleeping practices;
- (iii) Administration of medication, consistent with standards for parental consent;
- (iv) Prevention and response to emergencies due to food and allergic reactions;
- (v) Building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic;
- (vi) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;
- (vii) Emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602(a)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(a)(1)) that shall include procedures for evacuation, relocation, shelter-in-place and lock down, staff and volunteer emergency preparedness training and practice drills, communication and reunification with families, continuity of operations, and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions;
- (viii) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;
- (ix) Appropriate precautions in transporting children, if applicable;
- (x) Pediatric first aid and cardiopulmonary resuscitation;
- (xi) Recognition and reporting of child abuse and neglect, in accordance with the requirement in paragraph (e) of this section; and
- (xii) May include requirements relating to:
 - (A) Nutrition (including age-appropriate feeding);
 - (B) Access to physical activity;
 - (C) Caring for children with special needs; or
 - (D) Any other subject area determined by the Lead Agency to be necessary to promote child development or to protect children's health and safety.
- (2) Include minimum health and safety training on the topics above, as described in § 98.44.

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- (b) Lead Agencies may not set health and safety standards and requirements other than those required in paragraph (a) of this section that are inconsistent with the parental choice safeguards in § 98.30(f).
- (c) The requirements in paragraph (a) of this section shall apply to all providers of child care services for which assistance is provided under this part, within the area served by the Lead Agency, except the relatives specified at § 98.42(c).
- (d) Lead Agencies shall describe in the Plan standards for child care services for which assistance is provided under this part, appropriate to strengthening the adult and child relationship in the type of child care setting involved, to provide for the safety and developmental needs of the children served, that address:
 - (1) Group size limits for specific age populations;
 - (2) The appropriate ratio between the number of children and the number of caregivers, in terms of age of children in child care; and
 - (3) Required qualifications for caregivers in child care settings as described at § 98.44(a)(4).
- (e) Lead Agencies shall certify that caregivers, teachers, and directors of child care providers within the State or service area will comply with the State's, Territory's, or Tribe's child abuse reporting requirements as required by section 106(b)(2)(B)(i) of the Child Abuse and Prevention and Treatment Act (42 U.S.C. 5106a(b)(2)(B)(i)) or other child abuse reporting procedures and laws in the service area.

[81 FR 67582, Sept. 30, 2016]

§ 98.42 Enforcement of licensing and health and safety requirements.

- (a) Each Lead Agency shall certify in the Plan that procedures are in effect to ensure that child care providers of services for which assistance is made available in accordance with this part, within the area served by the Lead Agency, comply with all applicable State, local, or tribal health and safety requirements, including those described in § 98.41.
- (b) Each Lead Agency shall certify in the Plan it has monitoring policies and practices applicable to all child care