



Kansas Child Care: An Overview

Child care providers are in a unique position to address the childhood obesity epidemic and tobacco-related health hazards. The Public Health Law Center has developed a series of resources designed to inform and support Kansas's efforts to cultivate child care settings that promote healthy eating, positive exercise habits, reduced screen time, and tobacco-free environments. This fact sheet outlines how child care is defined and regulated in Kansas.

Background

Since 1919, the state of Kansas has required child care programs to be licensed in order to protect the health, safety, and well-being of children cared for outside the home.¹ Child care licensing laws have evolved over the years, but the goal of protecting children who receive care away from their parents' home remains. "The desired outcome of the child care policy of the state of Kansas is that families be able to fulfill their roles as primary child care givers and educators of young children by having access to high quality, affordable child care."²

What are child care programs?

There are six types of child care programs in Kansas that provide non-parental care for children for any part of a 24-hour day. These programs are collectively known as



Early Care and Youth Programs	
Day Care Home	A facility caring for a maximum of 10 children under age 16, typically in the provider's own home. ³
Group Day Care Home	A facility caring for a maximum of 12 children under age 16, typically in the provider's own home. ⁴
Child Care Center	A facility providing care and educational activities for 13 or more children for more than three hours and less than 24 hours per day. ⁵
Preschool	A facility providing learning experiences for children age 30 months to five years for a maximum of three hours per day. ⁶
School-age Program	A facility that serves exclusively school-age children and youth. ⁷
Drop-in Program	A facility that serves exclusively school-aged children and youth, and where children are allowed to arrive and leave as they please. ⁸

Early Care and Youth Programs. The six main categories that are subject to licensure are: (1) Day Care Homes, (2) Group Day Care Home, (3) Child Care Centers, (4) Preschools, (5) School-age Programs, and (6) Drop-In Programs for School Age Children and Youth.

Who is required to be licensed?

Generally, any person, firm, corporation or association who wants to operate a residential or nonresidential child care program must be licensed by the Kansas Department of Health and Environment (KDHE).⁹ KDHE believes that “[t]o effectively regulate for the benefit of all children and the public, in general, all programs providing services for children when parents are absent should be equally required to meet and maintain compliance with regulations designed to protect children. The state’s responsibility for and ability to protect children’s health, safety and well-being is weakened when certain programs or operators of programs are exempted from meeting licensure requirements.”¹⁰ KDHE, together with local health departments, oversees the licensing and regulation of child care programs.

However, there are certain types of child care programs that are exempt from KDHE licensing. Some examples of programs that do not require licensure include:

- Preschools operated on the premises of private schools providing kindergarten through grade six;¹¹
- Extended school day programs at accredited non-public schools, attended by pupils of the school, and staffed by certified teachers;¹²
- Certain summer programs for school-age children;¹³
- Instructional classes (e.g., religious classes, academic tutoring, and athletic activities);¹⁴
- Programs operated by a local unit of government or school district; which meet for no more than four consecutive hours per day or for no more than two consecutive weeks.

While these exempt programs do not require licensure by KDHE, most are accredited and regulated by another agency or organization.

How is the child care setting regulated in Kansas?

Child care is regulated by the three branches of government: legislative, executive, and judicial. The legislative branch has the power to pass, amend, or repeal laws. The type of law created by a legislature is called a statute. The executive branch (i.e., state agencies, such as the Kansas Department for



Children and Families, the Kansas State Department of Education, or the Kansas Department of Health and Environment) has the authority and responsibility to run the day-to-day operations of the state by implementing regulations. The Governor, as head of the executive branch, may also issue executive orders. The judicial branch interprets statutes and regulations if needed through court cases.

What are statutes?

Statutes are written laws passed by a legislature. Statutes deal with specific situations and can cover many different topics; typically they command or prohibit something, or declare policy.¹⁵ Some statutes, called enabling statutes, grant authority to executive agencies to regulate a particular setting or



take certain actions. In other words, the legislature will pass generalized laws on a topic, and then will use an enabling statute to delegate power to executive agencies to implement regulations to fill in the gaps.¹⁶

What are regulations?

Kansas uses the terms regulations and rules interchangeably. Rules and regulations are statements of law enacted by a state agency to implement or interpret legislation enforced or administered by the state agency.¹⁷ The power to create regulations is given to the agency by the legislative body through statute. Regulations, which have the force of law, fill gaps in the legislation and help agencies carry out their duties.¹⁸

What are executive orders?

Executive orders are directives from the governor that have the force of law. The Kansas Constitution vests

supreme executive power in the governor, therefore the governor is the head of the executive branch.¹⁹ That power, coupled with the authority granted to the executive branch through enabling statutes, allows the governor to issue executive orders.²⁰

How does the state legislature regulate child care settings in Kansas?

The Kansas Legislature has enacted a series of statutes regulating the child care setting. These statutes establish a licensing structure,²¹ place restrictions on tobacco use in child care settings,²² and delegate broad authority to the Secretary of the KDHE to implement these laws and enact regulations for the day-to-day operation of child care facilities.²³

What does the legislature require the executive branch to do?

The enabling statute directs KDHE to adopt rules “for the operation and maintenance of [...] child care facilities.”²⁴ The rules “shall be designed to promote the health, safety and welfare” of the children receiving care.²⁵ The statute outlines the basic licensing standards that KDHE must address in the rules. These basic standards include:

- standards that ensure safe and adequate physical surroundings;
- standards for proper staffing, supervision, and care;
- safety standards dealing with safe sleep practices, fire drills, emergency plans, protection from hazards, and outdoor safety;
- standards for program services, such as nutrition, planned activities, materials, and qualifications for child care providers; and
- health and sanitation standards.

Other Executive Agencies

KDHE is responsible for regulating child care facilities, but it is not the only executive agency to be involved in child care. The Kansas State Department of Education (KSDE) is responsible for overseeing the Child and Adult Care Food Program (CACFP), which is used by many child care providers. KSDE develops policies, approves Program Agreements between KSDE and CACFP sponsors, disburses federal funds, and monitors local programs for compliance with state and federal regulations.*

* Kan. State Dep’t of Educ, *CACFP Administrative Handbook* (2013), http://www.kn-eat.org/CACFP/CACFP_Docs/Guidance-Admin_Hdbk/C2_Overview_and_Definitions_11_2013.pdf.

How are regulations passed in Kansas?

Passing a regulation or rule in Kansas is multi-step process, and requires minimum of four to six months to complete.²⁶

How is the child care setting regulated in Kansas by the judicial branch?

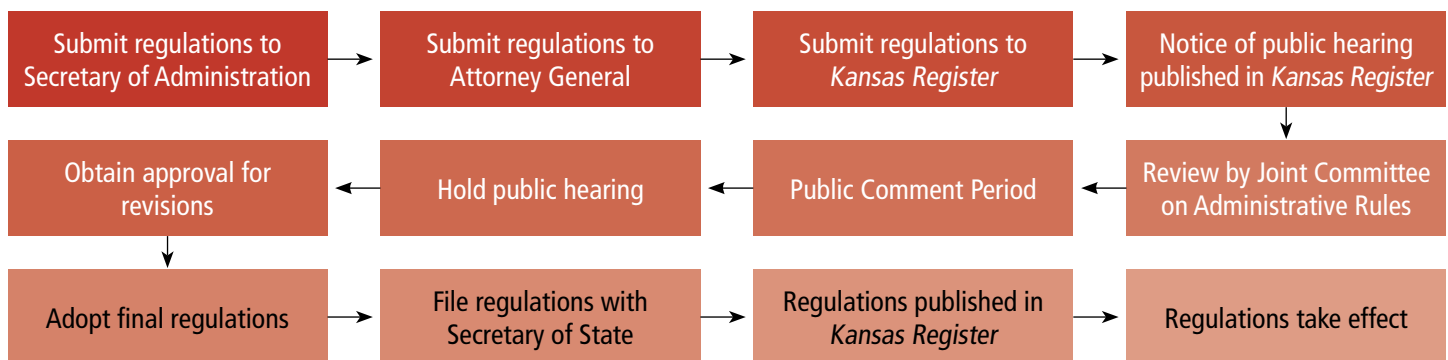
Kansas Courts are tasked with interpreting and enforcing state statutes and regulations. The courts issue their interpretations and orders through case opinions, known as case law. The Kansas judicial branch gets involved when someone challenges a child care law. A person may contest the legality of a regulation, or question whether KDHE followed

correct procedure when issuing rules. The courts may also address issues such as whether KDHE is properly enforcing child care laws, or whether a provider’s license was appropriately revoked.

Where can I find the statutes and regulations that apply to child care settings?

The child care statutes enacted by the Kansas Legislature can be found at http://www.kslegislature.org/li/b2013_14/statute/065_000_0000_chapter/065_005_0000_article/. The KDHE regulations that govern the day-to-day operations of child care settings in Kansas can be found on the KDHE website at <http://www.kdheks.gov/bccclr/regs.html>.

Kansas Administrative Rule Making Process²⁷



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Endnotes

- ¹ Kan. Dep't of Health and Env't, *Child Care Licensing: The Basis for and Purpose of Child Care Regulation* (2001), http://www.kdheks.gov/bcclr/gen_info.html.
- ² KAN. STAT. ANN. § 65-528(a) (2014).
- ³ KAN. ADMIN. REGS. § 28-4-113(d) (2014).
- ⁴ KAN. ADMIN. REGS. § 28-4-113(k) (2014).
- ⁵ KAN. ADMIN. REGS. § 28-4-420(d) (2014).
- ⁶ KAN. ADMIN. REGS. § 28-4-420(t) (2014).
- ⁷ KAN. ADMIN. REGS. § 28-4-576(ii) (2014).
- ⁸ KAN. ADMIN. REGS. § 28-4-700(e) (2014).
- ⁹ KAN. STAT. ANN. § 65-501 (2014).
- ¹⁰ *Supra* note 1.
- ¹¹ KAN. ADMIN. REGS. § 28-4-422(a)(2) (2014).
- ¹² KAN. ADMIN. REGS. § 28-4-578(b)(1) (2014).
- ¹³ KAN. ADMIN. REGS. § 28-4-578(b)(2) (2014).
- ¹⁴ KAN. ADMIN. REGS. § 28-4-578(b)(3) (2014).
- ¹⁵ Black's Law Dictionary (9th ed. 2009).
- ¹⁶ Tobacco Control Legal Consortium, *Laws, Policies and Regulations: Key Terms & Concepts* (2013), <http://publichealthlawcenter.org/sites/default/files/resources/tclc-fs-laws-policies-regs-terms-2013-update.pdf>
- ¹⁷ KAN. STAT. ANN. § 77-415(c)(4) (2014).
- ¹⁸ The Pennsylvania State University Libraries, *Law — Understanding Statutes, Regulations, and Jurisdiction* (2012), <http://www.libraries.psu.edu/psul/researchguides/socialsciences/under.html>.
- ¹⁹ KAN. CONST. art. I, § 3 (2014).
- ²⁰ In the past, governors in Kansas have issued executive orders to create commissions and coalitions to collect information about the child care setting, as well as have issued orders calling for various state departments to work together to develop quality and licensing standards for family child care providers.
- ²¹ KAN. STAT. ANN. §§ 65-501 – 65-535 (2014).
- ²² KAN. STAT. ANN. § 65-530 (2014).
- ²³ KAN. STAT. ANN. §§ 65-508(c) (2014); 65-528(b) (2014).
- ²⁴ KAN. STAT. ANN. § 65-508(c)(1) (2014).
- ²⁵ *Id.*
- ²⁶ See Kan. Dep't of Admin, *Policy and Procedure Manual for the Filing of Kansas Administrative Regulations* (2014) <http://admin.ks.gov/docs/default-source/Chief-Counsel/ppmlegal.pdf?sfvrsn=2>.
- ²⁷ KAN. STAT. ANN. §§ 77-415 — 77-438 (2014) (Rules and Regulations Filing Act).