Does it Work:
Evaluating Local Early Care and Education Regulatory Change

Knowing the Legal Landscape

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The Public Health Law Center
Local Authority: The Basics

**FEDERAL**

The federal government, as long as it is acting within its constitutionally enumerated powers, can trump the states and their subdivisions.

**STATE**

State governments define the powers and authority of local governments.

**LOCAL**

If the federal or state government limits local authority in a particular policy area, it has PREEMPTED local control.
State Preemption of Local Law

Usually, a local government cannot do anything that conflicts with a state law.

• Varies state to state

• “Home rule” may provide some protection from state preemption by giving local governments independent authority over certain specific matters.

• Express vs. implied preemption
Enabling Acts

- Standards
- Inspection Powers
- Enforcement Powers
  - Criminal Penalties
  - Civil Penalties
Child Care Legal Landscape

- Statute
- Regulation
- Court Cases
- Guidelines
Licensing

Generally, any individual, group, or organization who wants to operate a child care facility must be licensed by the state.
Topics Covered by Statutes and Regulations

• The licensing process
  • e.g. Background checks, inspections, program requirements
• Negative licensing actions
  • i.e. consequences for failure to fulfill rules and regulations
• Safety procedures and regulations
• Staff ratios and group sizes
• Record keeping
• Behavior guidance
• Nutrition standards
• Health and sanitation rules
• Physical facility requirements
• Program development
  • i.e. activity plan
• Necessary equipment, materials, supplies
Minnesota—An Example

• 58 statutes relating to child care
  • Focused on licensing and certain safety issues such as reducing the risk of Sudden Infant Death Syndrome and fire safety issues.

• Enabling Statute § 245A.09
  • Grants the commissioner of human services the power to adopt rules to govern the operation, maintenance, and licensure of child care facilities.

• 2 sets of regulations that set specific standards for the day-to-day operations of child care facilities.
  • 1 for in-home day cares
  • 1 for child care centers
Assessing the Potential of Local Governments to Impose Standards of Nutrition and Physical Activity for Child-Care Settings

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Color Coding System

Yellow—Definitions of Child Care Arrangements
Orange—Licensing (process and requirements)
Red—Exemptions from Licensing
Purple—Local Authority/Control
Light Green—Food
Lime Green—Action/Behavior
True Blue—Space/Equipment
Light Blue—Activity
Gray—Screen Time
Pink—Breastfeeding
Red Wine—Smoking/Tobacco Use
Fuchsia—Overlapping Information
Initial Findings: Alaska

AK Statute § 47.32.030.

Powers of the department; delegation to municipality
(a) The department (of Health and Human Services) may
(7) enter into agreements with private entities, municipalities, and individuals to
investigate and make recommendations to the department regarding the licensure and
monitoring of entities under this chapter;
(b) A municipality receiving a delegation under this subsection may adopt
additional requirements for child care facilities operating within the boundaries of
the municipality if the requirements meet or exceed the requirements under state law.

AK Regulation 7 AAC 57.045.
Delegation and withdrawal of authority to license child care facilities.
(b) A municipality to which licensing powers have been delegated shall investigate,
license, and supervise child care facilities within its jurisdiction and shall enforce the
applicable provisions (of Alaska statutes and child care regulations)
(g) Nothing in this section prohibits a municipality to which licensing authority
has been delegated from adopting by ordinance additional child care facility
requirements that are more stringent than those set out in (the Alaska statutes and
child care regulations)
Initial Findings: Minnesota

MN Statute § 245A.15.
Regulations of family day care by local government
The authority of local units of government to establish requirements for
day care programs is limited by §299F.011, Subd. 4a, clauses (1) and (2).

299F.011, Subd. 4a. Day care home regulation.
(a) Notwithstanding any contrary provision of this section, the fire marshal
shall not adopt or enforce a rule: (1) establishing staff ratios, age
distribution requirements, and limitations on the number of children in care; (2) regulating the means of egress from family or group family day
care homes in addition to the egress rules that apply to the home as a single family dwelling. . .
Local Jurisdictions Regulating Child Care

- New York City
- Chicago
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