

Information and guidance related to COVID-19 is changing rapidly. Please refer to the Physicians Insurance website for the most up-to-date information.

Guidance – Childcare for Healthcare Providers in Washington during COVID-19

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1. Summary.

The Washington State Department of Children, Youth & Families has created a Childcare Waiver/Exception form related to COVID-19 (citation below). Governor Inslee has also temporarily waived and suspended numerous requirements relating to childcare, including previously required background checks and requirements for eligibility for state subsidies.

The Washington State Hospital Association (WSHA) has been working with the Governor's office to obtain licensure exemptions for hospitals that want to provide onsite childcare (under the current regulations, only government owned hospitals might qualify for providing unlicensed, onsite childcare). However, to date, the Governor's office has not issued any of these requested exemptions or waivers.

1.2 Analysis.

The Childcare Waiver/Exception form referenced above is linked here:

https://content.govdelivery.com/attachments/WADEL/2020/03/15/file_attachments/1401421/15-868%20Emergency%20Child%20Care%20Waiver%20%28Exception%29.pdf.

This form is to be sent to the DCYF licensing field office for approval – a list of field offices is linked here: <https://www.dcyf.wa.gov/find-an-office/el-offices>.

On March 26, 2020, Governor Inslee issued Proclamation No. 20-31, which temporarily waives and suspends certain provisions regarding licensed childcare facilities that receive subsidies associated with childcare. This Proclamation also temporarily waived and suspended certain provisions requiring background checks for childcare workers. This Proclamation does not address emergency licensure for new childcare facilities. The Proclamation is linked here: <https://www.governor.wa.gov/sites/default/files/proclamations/20-31%20-%20COVID-19%20DCYF%20Child%20Care-Background%20Checks%20%28tmp%29.pdf>.

As referenced above, WSHA is continuing to work with the governor's office on obtaining licensure exemptions for hospitals to provide onsite care. To date, no waivers have been issued.

Certain school districts are providing childcare for children of healthcare workers and other first responders. Information regarding care provided by the Seattle School District is linked here: https://www.seattleschools.org/district/calendars/news/what_s_new/coronavirus_update/resources/child_care. The Seattle YMCA is also providing childcare for healthcare workers – this

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information is linked here: <https://www.seattleyymca.org/blog/ymca-opens-child-care-essential-workers-serve-hundreds-families>. Additionally, select Boys and Girls Clubs are also providing childcare – information on these services is provided here:

<https://positiveplace.org/2020/03/extended-programming/>.

Additionally, KinderCare is also providing prioritized childcare for children of healthcare workers. A list of their locations that are currently open for these services is linked here:

<https://www.kindercare.com/lp/essential-care-centers>.

It is highly likely that local school districts may also be providing childcare services. Healthcare facilities seeking information on potential childcare options are encouraged to check with these local resources.

1.3 Original Guidance (March 19, 2020).

Per RCW 43.216.010(2), the following types of providers can provide childcare in the state of Washington without a license. It does not appear that most health care entities would fit within any of these categories, with the possible exception of governmental entities, in bold below:¹

- (a) Blood relatives, stepparents, adoptive parents, legal guardians;*
- (b) People who care for children of a neighbor or friend, as well as parents who care for each other's children;*
- (c) Nursery schools that are engaged primarily in early childhood education with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;*
- (d) Schools, including boarding schools, that are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, and accept only school age children;*
- (e) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;*
- (f) Facilities providing child care for periods of less than twenty-four hours when a parent or legal guardian of the child remains on the premises of the facility for the purpose of participating in:
 - (i) Activities other than employment; or*
 - (ii) Employment of up to two hours per day when the facility is operated by a nonprofit entity that also operates a licensed child care program at the same facility in another location or at another facility;**
- (g) Any entity that provides recreational or educational programming for school age children only and the entity meets all of the following requirements:*

¹ The below list is a summary from the statute.

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- (i) The entity utilizes a drop-in model for programming, where children are able to attend during any or all program hours without a formal reservation;
- (ii) The entity does not assume responsibility in lieu of the parent, unless for coordinated transportation;
- (iii) The entity is a local affiliate of a national nonprofit; and
- (iv) The entity is in compliance with all safety and quality standards set by the associated national agency;
- (h) **A program operated by any unit of local, state, or federal government;**²
- (i) A program located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;
- (j) A program located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;
- (k) A program that offers early learning and support services, such as parent education, and does not provide child care services on a regular basis.

Thus, if the health care entity that would like to provide onsite care is part of a public hospital district, they are eligible to set up childcare onsite without a license. Should any requesting entity that is part of a public hospital district seek to establish non-licensed care, further requirements and considerations regarding child care can be addressed in a separate guidance document.

1.4 Original Next Steps (March 19, 2020).

When contacted regarding the possibility of emergency licensure for health providers, the Department of Children Youth and Families' Emergency Childcare unit made a general reference to the above identified exemptions for licensed childcare, and noted that they are "working with folks to get programs up and running as quickly as possible..." To date, the Department has not updated their website or other information regarding potential emergency exceptions of the licensing regulations.

Additionally, via emergency proclamation, the governor has the power to waive or suspend:

"Such other statutory and regulatory obligations or limitations prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency if strict compliance with the provision of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency, unless (i) authority to waive or suspend a specific statutory or regulatory obligation or limitation has been expressly granted to another statewide elected official, (ii) the waiver or suspension would conflict with federal requirements that are a prescribed condition to the allocation of federal funds to

² Emphasis added.

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the state, or (iii) the waiver or suspension would conflict with the rights, under the First Amendment, of freedom of speech or of the people to peaceably assemble. The governor shall give as much notice as practical to legislative leadership and impacted local governments when issuing orders under this subsection (2)(g). RCW 43.06.220(2)(g).”

Thus, if there were enough entities in the position of wanting to set up onsite childcare, it would be worth a joint effort to connect with the Governor’s office to get a waiver of childcare licensure for health care facilities during the duration of the COVID-19 crisis.

WSHA has also advised that they are not aware of any solutions so far regarding this issue. ³

³ WSHA advised that at the time of the initial school closures, they looked into what the impact would be for hospitals. The original estimate of absenteeism for hospital employees during this crisis was 15-20%. However, the actual observed impact has been around 6%.