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TESTIMONY
New York City Department of Health and Mental Hygiene
Proposed Amendments of Article 47 Health Code
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Good morning. My name is Andrea Anthony and I am the Executive Director of the Day Care Council of New York. We are a membership organization representing 96 nonprofit organizations that operate more than 220 child care programs in the five boroughs of New York City. For 70 years, DCCNY member agencies have provided quality early childhood education for our youngest citizens. We advocate on their behalf at all levels of government, provide labor and mediation services, operate a professional training institute, and are the lead agency for the City's Child Care Resource and Referral system. As such, we are uniquely positioned to comment on changes to Article 47. We appreciate the opportunity to testify today.

In reviewing the proposed amendments, we are highlighting our concerns on certified teacher coverage, the mandatory storage of Epinephrine auto-injectors (or EpiPens), and the new tooth brushing requirements and procedures. Although there are a number of new amendments relating to shelter child care, we cannot comment on those provisions primarily because we are not aware how many DCCNY members sponsor those services.

Under the proposed changes to Article 47.13(c)(1), "every child care program shall designate a *certified group teacher* as the education director" (emphasis added). While requiring an educational director to be certified is an appropriate qualification standard, recruiting or retaining a certified group teacher is an increasingly difficult task for non-profit community based organizations that operate child care programs. The competition between certified teachers being recruited by the City's Department of Education and DCCNY's member agencies is a major problem that we foresee no immediate solutions with the exception of salary parity.

DCCNY has heard repeatedly from our member agencies that they are unable to retain certified group teachers due to higher salaries and benefits offered by the City's Department of Education. A certified group teacher in a public school can make over $13,000 more than their counterparts in community-based child care programs. After 15 years of service, that salary disparity can be as high as $40,612. This salary disparity has seriously impacted the recruitment and retention of certified teachers and educational directors when an existing teacher or director is terminated or resigns.

Furthermore, we understand that the new regulations requires child care programs "to notify DOHMH in writing within five business days of the separation from service of the education director." The new regulations do not state how long an agency has to recruit a new certified teacher or education director. Is there a penalty for agencies that do not hire individuals for these positions within 30 days, 60 days, etc? Is there an assumption that because an agency must have a certified teacher for every classroom that an existing teacher can assume the education director position? A mechanism must be developed to assist child care programs rather than penalize the system due to an extremely difficult recruiting environment period for nonprofit community child care programs.

A hardship waiver is a realistic procedure to assist community based programs to address what has become an extremely problematic situation. In 2015, DCCNY conducted a survey of its 220 member agencies, which resulted in a response from 169 agencies (a 79% response rate). We learned that half of our member agencies have lost certified teachers to the City's Department of Education and that most certified teacher vacancies can remain open from six months to a year.

DCCNY proposes that community based child care programs be permitted to apply for a hardship waiver renewable every 30 days until the position is filled. The program would document that they have posted a job announcement and are conducting interviews when and if an applicant contacts the agency. The interviewee can sign an attendance sheet.

I will now comment on the mandate that child care programs have two EpiPens on site. First, we ask: who will assume the costs for this ongoing medical expense? The amendment states that the EpiPens "must be readily accessible". The mandate to have EpiPens on site, without the accompanying requirement to have a medication administration policy, is problematic. We view this new mandate as an opportunity for NYC to reinforce the need for community nurses and the importance of staff training on the administration of medication in child care programs. However, we have several concerns.

We recognize that child care programs are required to have a Health Care Plan that may or may not include a medication administration policy. The current language in Article 47 on medication administration states "each permittee shall establish a policy as to whether the child care program **will or will not administer** medication. Does this mean a program can elect to refuse the mandate to store EpiPens?

The current language states, "**when** a program has a policy, the DOHMH should be notified immediately". The new language states, **if** a program has a policy, the DOHMH should be notified immediately. How can a child care program be mandated to store EpiPens without a medication administration policy that stipulates what will be done in a medical emergency and the number of trained staff? Also, the current and new language states a program should "designate **a sufficient number of staff** (unclear) and have at least one trained staff person on site" to recognize symptoms to administer EpiPens. In both instances, such language is unclear and could cost a child's life.

Many of our member agencies have expressed concern about the liability insurance costs that will result in a mandatory policy on storage of EpiPens. We have also been told that, for those agencies that cannot afford to have a nurse consultant, it would be helpful to hire a nurse for a cluster of agencies in a given district. Agencies would report to the nurse the number of enrolled students that have conditions that may require medical attention. Such a service would allow an agency to have a medical professional that periodically checks on the program, i.e., weekly or monthly depending upon the number of programs in a cluster, and who is also at their deposal if an emergency occurs.

Having a nurse oversee child care programs in a given geographic area does not completely resolve the issue of staff untrained in medication administration. If an agency agrees to have Epi-Pens, they must have a specific number of trained staff based on the program's capacity. In the same instance that the DOHMH specifies minimum staff/child ratios for classrooms, a minimum ratio should be established for staff to be trained in medication administration, as well as CPR and First Aid. Best care practice would ensure that there were more than one or two trained staff on the premises (depending upon the size of the program) to assist with a life threatening situation. In a medical emergency, young children should have more than one staff person who is alert and comfortable with the responsibility of saving their life. This is especially true when children are taken on field trips and the only designated staff person must stay at the program or such staff person is on vacation or away from the program.

We recommend the head teacher in each classroom and the program director be trained in medication administration. Furthermore, we recommend the City fund the cost of nurses, the EpiPens, medication administration training, the development of a Health Care Plan, and subsequent follow-up by a medical professional to review the implementation of a program's plan and visit the program regularly (weekly or monthly) to check on children with medical issues. A child care program should not be forced to storage EpiPens without having trained staff.

I will now focus on the new regulations for tooth brushing. These comments were developed by the Day Care Council of New York's in-house Counsel, Nilesh Patel.

We have the following concerns regarding the proposed changes:

First, there is no indication of how child care centers should pay for toothbrushes or toothpaste. What mechanism will be used to fund these extra costs? Will child care providers be provided extra funding? Can extra expenses be passed on to the parents? Can child care centers apply for reimbursement if parents are unable or do not cover their share of costs for toothpaste, tooth brushes, or wax paper needed to fulfill a center's obligations under this change?

Second, there should be a clarification and express statement that staff should always place toothpaste on wax paper rather than directly on a toothbrush. Such a consistent practice will help minimize mistakes where staff inadvertently confuse and use a communal tube of toothpaste on the brush of a child with his/her own tube.

Third, the regulations should provide examples of best practices that will help minimize the risk of children taking another child's toothbrush and placing it in his/her mouth. If best practices cannot be listed in the regulations then the DOHMH should develop separate guidance for agencies and their staff.

Fourth, the proposed regulations state that child care programs shall have children brush their teeth while seated or standing around a table. It is foreseeable that children may reach over to take a toothbrush away from one of their peers. It is also foreseeable that children may place someone else's toothbrush in their mouth before staff is aware this is happening or before staff can take action to stop it. Such occurrences can increase the risk of children transmitting germs or disease to each other. Such occurrences may also result in liability or legal claims against the agency. While the proposed regulations impose a duty on agencies to engage in tooth brushing activities, there does not appear to be any indemnity or liability protection for child care programs should children swap toothbrushes and place them in their mouths.

Finally, the DOHMH should be aware that DCCNY's member agencies have a unionized workforce. The staff are not at-will employees who may be terminated at any time. Instead, they are protected by the "just cause" standard, which states that employees must receive progressive discipline, training, and opportunity to correct any deficiencies or sub-par work performance.

In the context of the tooth brushing requirement, the DOHMH should take note that violations of the tooth brushing requirements, even serious ones, may not always rise to the level of a "just cause" violation that justifies immediate termination of a staff member. The DOHMH should provide room for child care programs with unionized staff to institute a corrective action plan. Further, DCCNY urges the DOHMH not to unduly penalize a child care program or demand that they take actions that conflict with the programs' obligations under the "just cause" standard. Given that this is a new policy, we strongly recommend that DOHMH employ health professionals to demonstrate to child care programs the correct tooth brushing methods.

This concludes my comments on the proposed amendments to Article 47. Thank you for the opportunity to testify. I am available to answer any questions or to clarify areas in the testimony that were not clear.