

BACKGROUND AND PURPOSE

The Economic Affairs Interim Committee (EAIC) chose to study child care and the workforce during the 2023-2024 interim. After hearing testimony from stakeholders during the first half of the interim, members of the committee requested additional information on the statutes, rules, and policies surrounding child care providers in the state with the intent to look for solutions to simplify the process for prospective child care businesses.

The purpose of this paper is to outline the Montana Child Care Act and discuss recent statutory changes to the Act. Additionally, the paper discusses administrative rules promulgated by the Department of Public Health and Human Services (DPHHS) and explains the current status of administrative rules related to child care.

It is important to note that EAIC does not have administrative oversight over DPHHS. The Children, Family, Health, and Human Services (CFHHS) Interim Committee oversees DPHHS, including administrative rulemaking.

The proposed administrative rules related to child care in Montana Administrative Register (MAR) No. 37-1044, is currently under informal objection with CFHHS, and the committee recently posted a [draft formal objection letter](#) for consideration at its March 12, 2024, interim meeting. As such, all¹ administrative rules discussed in this paper are under objection and therefore not in effect. If CFHHS formally objects to MAR 37-1044, the rules and corresponding programs and policies may remain unadopted until after the 2025 legislative session.

THE MONTANA CHILD CARE ACT

The Montana Child Care Act was enacted during the 1989 legislative session and combined 16 other sections of code plus one new section into one part with the following purpose:

52-2-702. Purpose — findings. (1) The purpose of this part is to assure that children requiring day care be provided such food, shelter, security and safety, guidance and direction, nurture and comfort, and learning experiences commensurate to their ages and capabilities so as to safeguard the growth and development of such children, thereby facilitating their proper physical and emotional maturation.

¹ One proposed new rule in MAR 37-1044 (New Rule IV) is in effect as it enacts legislation directing the department to amend an existing rule.

(2) (a) The legislature finds that the number of children living in homes where both parents work or in homes with a single parent who works has increased dramatically over the last decade.

(b) The legislature finds that the availability of quality child care is critical to the self-sufficiency and independence of Montana families, including the growing number of mothers who have young children and who work out of economic necessity.

(c) The legislature further finds that the number of quality child-care arrangements falls far short of the number required for children in need of child-care services.

(d) It is the intent of the legislature that the state promote day care for the purposes of:

(i) improving the quality of, and coordination among, child-care programs and providing additional resources for child-care services;

(ii) promoting the availability and diversity of quality child-care services for all children and families that need such services;

(iii) providing assistance to families whose financial resources are not sufficient to enable them to pay the full costs of necessary child-care services;

(iv) ensuring that parents are not forced by lack of available programs or financial resources to place a child in an unsafe or unhealthy child-care facility; and

(v) assisting people in finding and maintaining employment by lessening the stress related to the lack of adequate child care.

STATUTES IN THE MONTANA CHILD CARE ACT

The Montana Child Care Act contains 24 sections. Since enactment in 1989, only six new sections have been added to the Act: one in 2003, one in 2005, one in 2021, and three in 2023.

The following statutes are contained in the Montana Child Care Act. This listing includes the history for each statute, showing the years in which the statute was first enacted and amended, if applicable.

52-2-701. Short title.

History: 1989

52-2-702. Purpose — findings.

History: 1981; 1987; 1989

52-2-703. Definitions.

History: 1949; 1965; 1974; 1979; 1981; 1987; 1989; 1991; 1993; 1995; 1997; 2001; 2021

52-2-704. Duties of department.**History:** 1947; 1965; 1974; 1977; 1981; 1987; 1989; 1993; 1995; 1997; 2001**52-2-710. At-home infant care program — definition.****History:** 2003; 2019**52-2-711. Resource and referral and day-care improvement grant program.****History:** 1989; 1997**52-2-713. Payments for eligible children.****History:** 1975; 1947, 1979; 1981; 1987; 1989; 2007; 2023**52-2-714. Best beginnings child care scholarship program.****History:** 2023**52-2-715. Family income eligibility requirements.****History:** 2023**52-2-716. Copayment requirements.****History:** 2023**52-2-721. License required — registration required — term of license or registration certificate — no fee charged.****History:** 1965; 1974; 1947. 1981. 1989; 1987, 1989; 1999; 2001; 2023**52-2-722. Application for a license or registration certificate.****History:** 1965; 1974; 1977; 1981; 1987; 1989**52-2-723. Requirements for licensure.****History:** 1947; 1965; 1974; 1977; 1981; 1987; 1989; 2009**52-2-724. Provisional license — provisional registration certificate.****History:** 1947; 1965; 1974; 1979; 1981; 1987; 1989**52-2-725. Renewal license — registration certificate.****History:** 1947; 1965; 1974; 1981; 1987; 1989**52-2-726. Denial, cancellation, reduction, revocation, and nonrenewal of licenses and registration certificates — fair hearing.****History:** 1947; 1965; 1974; 1981; 1987; 1989**52-2-731. Standards for day care.****History:** 1947; 1965; 1974; 1981; 1987; 1989; 1995

52-2-732. Licensees or registrants to maintain records, furnish reports, and permit inspections.

History: 1947; 1965; 1974; 1981; 1987; 1989

52-2-733. Periodic visits to facilities by department — investigations — consultation with licensees and registrants.

History: 1947; 1965; 1974; 1981; 1987; 1989; 1991; 1995; 2007

52-2-734. Fire safety — certification required.

History: 1965; 1974; 1979; 1981; 1985; 1987; 1989; 1991; 2007

52-2-735. Health protection — certification required.

History: 1965; 1974; 1981; 1987; 1989; 1991; 1995

52-2-736. Prohibition against administering medicine without authorization — provision for emergency — definitions — penalty.

History: 2005

52-2-737. Group day-care home — staffing requirement.

History: 2021

52-2-741. Penalty — remedies.

History: 1947; 1965; 1974; 1981; 1987; 1989; 1997

CHANGES TO THE MONTANA CHILD CARE ACT

In the last 15 years, roughly one-third of the Montana Child Care Act has changed in some way: four new sections have been added to the Act, and five existing sections have been amended. Seven statutes within the Act have not been amended since the Act was established 35 years ago.

<i>Age of Statute</i>	Last Amended										
	1989	1995	1997	2001	2005	2007	2009	2019	2021	2023	Total
77 years (1947)	4	1	1	1		1	1				9
75 years (1949)									1		1
59 years (1965)	1	1								1	3
49 years (1975)										1	1
43 years (1981)	1										1
35 years (1989)	1		1								2
21 years (2003)								1			1
19 years (2005)					1						1
3 years (2021)									1		1
1 year (2023)										3	3

CHANGES IN 2023

The three new statutes added to the Act in 2023 were from [HB 648](#), which codified the Best Beginnings Scholarship Program:

52-2-714. Best beginnings child care scholarship program. There is a best beginnings child care scholarship program administered by the department. The program is established to provide scholarships to qualified low-income families whose child received care provided by a licensed or registered child care provider or day-care facility.

52-2-715. Family income eligibility requirements. In determining income eligibility for the best beginnings child care scholarship program, the department shall:

(1) set a qualifying income threshold at no less than 185% of the federal poverty level for each family size; and

(2) set a maximum qualifying income level that is no higher than that allowed by the federal child care and development block grant.

52-2-716. Copayment requirements. Each eligible family shall participate in the cost of child care by making a copayment based on a sliding fee scale not to exceed 9% of an eligible family's monthly income.

Additionally, HB648 amended one statute as follows:

52-2-713. Payments for eligible children. The department shall pay a rate ~~established by the department and appropriated by the legislature~~ established by the department and appropriated by the legislature based on a child's authorized enrollment slot to a day-care facility licensed or registered by the department for each child receiving day-care service and certified eligible by the department to receive day-care services."

Two bills during the 2023 session loosened licensing and registration restrictions on child care facilities and amended the same statute.

[HB556](#) excludes a private residence from the requirement to obtain a family day-care home registration certificate if the care being provided is for six or fewer children, and if the provider does not receive payments as provided in 52-2-713 (payments for eligible children).

[HB336](#) requires DPHHS to recognize the status of, and may not require a state license for, a day-care facility that is licensed as a family child care provider or child care facility by any branch of the United States Armed Forces.

52-2-721. License required — registration required — term of license or registration certificate — no fee charged. (1) Except as provided in subsection (7), a person, group of persons, or corporation may not:

(a) establish or maintain a day-care center for children, in which day care is provided on a regular basis, unless licensed to do so by the department;

(b) operate a family day-care home or group day-care home without first procuring a family day-care or group day-care registration certificate from the department.

(2) The license and registration certificate must contain the ages and numbers of children for whom day care may be provided.

(3) The applicant's own children must be included in the manner provided for in department regulations in the total number of children to be cared for under the license or registration certificate.

(4) The department:

(a) may issue a license or registration certificate that remains in effect for a period not to exceed 3 years; and

(b) may not charge a fee to issue a license or registration certificate.

(5) A 3-year license may be issued only to a provider who has not received notice of any deficiencies on the licensing criteria and implementing guidelines that are provided in department rule.

(6) The department may issue a license to a day-care center in which day care is provided on an irregular basis if the person operating the center chooses to apply for licensure.

(7) A person who provides day care in a private residence for six or fewer children is not required to obtain a family day-care registration certificate and is exempt from the requirements of this part if that person does not receive payments as provided in 52-2-713. - HB556 (2023)

(8) The department shall recognize the status of and may not require a state license for a facility that is licensed as a family child care provider or child care facility by a branch of the United States armed forces, including the United States coast guard. - HB336 (2023)

ADMINISTRATIVE RULES

In response to Governor Gianforte’s Red Tape Relief/Regulatory Reform Initiative (RRI), DPHHS initiated a comprehensive needs assessment in 2021 and 2022 in an attempt to streamline child care rules and reduce unnecessary regulatory barriers for licensed and registered child care providers. The result of the RRI project was Montana Administrative Register (MAR) Notice 37-1044 – a repeal of the entirety of ARM Title 37, chapter 95, and an updated, restructured child care licensing and registration framework. In the notice, the department provided a statement of reasonable necessity describing the needs assessment results and rationale for restructuring the child care rules. In pertinent part²:

In accordance with the Gianforte administration’s commitment to expanding access to quality and affordable child care for Montana families, the department intends for these changes to remove unnecessary regulatory barriers for licensed and registered child care providers in Montana, while maintaining requirements necessary to ensure the safety and well-being on children in care.

...

The proposed rule repeals and restructuring will decrease barriers and increase capacity for quality and affordable child care, address stakeholder requests for increased clarity and consistency . . . and implement or be consistent with legislation passed during the 2021 and 2023 sessions of the Montana Legislature. Throughout these proposed rules, the department also carefully balanced its obligations to ensure the health and safety of children in care with the elimination of unnecessary regulatory burdens.

The department conducted a comprehensive needs assessment to determine how it could make child care licensing and registration work better for child care providers and families . . . Families who responded to the survey overwhelmingly identified cost, safety, convenience, and quality as their top priorities when looking for child care . . . Individuals providing child care who are not currently licensed or registered expressed interest in licensing and registration if the requirements could be made more feasible and appropriate to the type of care they are providing.

ADMINISTRATIVE RULES FOR CHILD CARE & WORKFORCE ISSUES IDENTIFIED BY EAIC

Several of the issues identified by EAIC for potential policy changes in EAIC’s study on child care and the workforce are addressed in the proposed rule package MAR No. 37-1044. This section provides summaries of certain rules within MAR No. 37-1044 and how they correlate to the identified issues.

² See [MAR Notice No. 37-1044](#) (P. 50) for the complete Statement of Reasonable Necessity

ADMINISTRATIVE RULES FOR LICENSING & REGISTRATION

The department incorporated both HB556 and HB336 in MAR No. 37-1044. For each bill, one new rule was created. According to the reasonable statement of necessity:

NEW RULE III DETERMINING FACILITY TYPE AND COUNTING CHILDREN ON LICENSE OR REGISTRATION

HB 556 generally revised laws related to persons providing care to permit six or fewer children in a private residence without the requirement of a child care registration. For these providers, HB 556 removed the registration requirement if the providers do not receive child care subsidy payments administered by the department. NEW RULE III updates the number of children who can be cared for without a required registration to align with HB 556. The proposed rule also contains new language that would clarify how a provider's own children are counted when determining the number of children in care, which dictates the type of license or registration that may be applicable to the facility.

NEW RULE VII ISSUING A LICENSE OR REGISTRATION

This proposed rule also incorporates the statutory changes made pursuant to House Bill 336 (HB 336), which was passed during the 2023 Legislative Session. HB 336 requires the department to recognize a child care facility that has been licensed by any branch of the United States armed forces and therefore not require a separate state license or registration.

ADMINISTRATIVE RULES FOR SCHOOL-AGE CHILD CARE LICENSING

Additionally, the administrative rule process led to the creation of a new type of child care license for school-age child care. Presently, a school-age child care provider is not obligated to be licensed, but if the provider is not licensed, then the provider cannot take advantage of any subsidy programs. However, if the school-age child care provider seeks licensing under the current rules, the only option is to get licensed as a day-care center, which means that while the provider then has access to the subsidy programs, the provider must also adhere to all the same provisions as other day-care centers, most of which are not age appropriate for school-age children, such as staffing ratios, transportation requirements (car seats), naptime, and curriculum and activity requirements. According to the statement of reasonable necessity:

The process also led to the creation of a new type of child care license, for out-of-school time providers, with decreased requirements that align with the needs of school-age children. Making it easier for out-of-school-time providers to become licensed will increase the number of families that can utilize child care subsidies for school-age children. This will support the Montana workforce and business community by ensuring that employees have the child care they need for their school-age children to receive care during working hours.

ADMINISTRATIVE RULES FOR CHILD CARE STAFFING & RATIOS

The department implemented HB422 in MAR Notice 37-1044 with New Rule IV, giving the following reason:

NEW RULE IV CHILD-TO-STAFF RATIOS, STAFF NUMBERS, AND SUPERVISION

The proposed new rule aligns with House Bill 422 (HB 422) from the 2023 Legislative Session, which increased the number of children who can be supervised by a single staff member (the child-to-staff ratio). HB 422 increases ratios depending on the age of the children and allows ratios to be doubled during nap time. HB 422 includes higher ratios and larger group sizes for older children in child care centers and in school-age care facilities. These proposed increases in the child-to staff-ratios are warranted because older children require less assistance with basic tasks and can better understand rules related to safety than can younger children. The proposed rule would simplify the explanation of family and group child care program staff requirements, including for overlap care.

Responding to feedback related to workforce issues in the child care industry, the department included clarifying rules on both teacher responsibilities and qualifications, and volunteers. Notably, the qualifying age for a base role as a teacher in a child care center changed from 18 to 16, and volunteer roles were clarified to state background checks were necessary for volunteers only if they will have unsupervised access to the children.

NEW RULE LXXII LEAD TEACHER RESPONSIBILITIES AND QUALIFICATIONS

The proposed rule would combine content from ARM [37.95.622](#), [37.95.704](#), and [37.95.1170](#), to consolidate lead teacher responsibilities and qualifications in one rule. The proposed rule changes the title of the position from "early childhood lead teacher" to "lead teacher," to incorporate the different needs of all lead teachers, including school-age care program lead teachers who would not care for children in early childhood. As with NEW RULE LXXI, the education, training, other licensure, and experience qualifications for the role of lead teacher would follow the model established in NEW RULE LXX with respect to the required qualifications of a child care program director. As there, this proposed rule is further designed to support a diverse, qualified child care workforce and expand Montana's child care capacity.

NEW RULE LXXIII TEACHER RESPONSIBILITIES AND QUALIFICATIONS

The proposed rule would combine content from ARM [37.95.622](#) and [37.95.704](#), to consolidate teacher responsibilities and qualifications in one rule. The proposed rule would provide a consistent qualifying age for this role of 16 years of age. As with NEW RULE LXXII, the proposed rule would remove "early childhood" from the title of the role to be inclusive of teachers in school-age care facilities.

NEW RULE LXXVII VOLUNTEER QUALIFICATIONS

The proposed rule would add new requirements related to volunteers, clarifying required qualifications. These proposed changes are based on the feedback provided by child care programs during the child care licensing assessment process indicated a need for clarity about volunteer roles and responsibilities; the proposed rule is intended to provide the requested clarification.

ADMINISTRATIVE RULES FOR BUILDING CODES

The proposed administrative rules in MAR No. 37-1044 includes clarification and simplification for building codes and inspection processes for child care providers. For example:

NEW RULE XXXI BUILDING REQUIREMENTS RELATED TO EXITS

The department proposes to combine and condense content from ARM [37.95.121](#), [37.95.610](#), [37.95.705](#), and [37.95.1110](#), related to exits and egress. The proposed rule would clarify content that is similar, but not identical, across several current rules and align building exit and egress requirements with international fire and building codes. New content is proposed to make it explicit that there are opportunities for child care providers to use apartment buildings and basements as child care facilities, provided there are adequate fire safety options in place. This would standardize building requirements across all provider types, except for RCE facilities (which would be exempt from the requirements) and decrease confusion about exits and egresses. It would also support increased capacity for providers residing in different types of residential settings. The proposed rule would support, but streamline, core fire safety and building code requirements.

NEW RULE XXXII INDOOR SPACE REQUIREMENTS

The department proposes to combine and condense content from ARM [37.95.610](#), [37.95.611](#), [37.95.705](#), [37.95.1021](#), [37.95.1120](#), and [37.95.1180](#), related to indoor space requirements. The proposed rule would combine content that is identical across several rules, eliminating redundancy, and reduce regulations on how indoor space may be used. Consistent with fire codes, the proposed rule would bar the use of the third floors of private residences for child care purposes. The proposed rule would add flexibility for programs in shared spaces to utilize some indoor space on an infrequent basis (like a school gym or library). It also would make explicit that there are opportunities for child care providers to use apartment buildings and basements as child care facilities, provided there are adequate fire safety options in place. This would increase flexibility for many types of providers in shared spaces, as well as for providers residing in different types of residential settings. These changes are being proposed with the goal of increasing overall child care capacity and diversity. The proposed rule would maintain, but streamline, core safety requirements of indoor spaces.

COMMITTEE CONSIDERATIONS

A separate briefing paper – [Child Care & Workforce Policy Options: Regulations](#) – provided an outline and considerations for the committee on potential policy changes in child care regulation, including regulations for licensing, staffing and ratios, building codes, and HOA covenants. In that paper, one of the considerations for the committee is to review statutes within the Montana Child Care Act that have not been revised in recent legislative sessions to determine if amendments are warranted. As detailed above, nearly 2/3 of the Montana Child Care Act has not been revised in over 15 years.

If the committee chooses to review and revise the Montana Child Care Act, the committee may consider coordinating with CFHHS. The summary of the formal objection letter draft states, “the Committee believes that for the adoption of the rules proposed in MAR No. 37-1044 to be valid as proposed, the Legislature would first need to amend the statutes governing day care under Title 52, chapter 2, part 7, MCA,” implying that CFHHS intends to draft a committee bill to amend one or more of the statutes in the Act to address its objection to the rule package.

Additionally, the committee could monitor the status of MAR 37-1044 as it relates to the policy issues identified by the committee or seek additional information from either DPHHS or CFHHS regarding the administrative rules and opportunities for resolution.