

SEN. MARK A. MACDONALD, CHAIR
SEN. JOE BENNING
SEN. CHRISTOPHER BRAY
SEN. VIRGINIA "GINNY" LYONS



REP. TREVOR SQUIRRELL, VICE CHAIR
REP. SETH BONGARTZ
REP. MARK HIGLEY
REP. CAROL ODE

STATE OF VERMONT

Legislative Committee on Administrative Rules (LCAR)

MEMO TO: Secretary Michael Smith, Agency of Human Services
Commissioner Sean Brown, Department for Children and Families
Representative Ann Pugh, Chair, House Committee on Human Services
Senator Virginia "Ginny" Lyons, Chair, Senate Committee on Health and Welfare

CC: Interim Secretary Kristin L. Clouser, Chair, Interagency Committee on
Administrative Rules
Louise Corliss, APA Clerk, Office of the Secretary of State

FROM: Legislative Committee on Administrative Rules

DATE: December 2, 2021

SUBJECT: 21-E17 – Licensing Regulations for Registered and Licensed Family Child Care Homes
21-E18 – Licensing Regulations for Afterschool Child Care Programs
21-E19 – Child Care Licensing Regulations: Center Based Child Care and Preschool Program

The Legislative Committee on Administrative Rules (LCAR or Committee) affirmatively voted to pass over the following rules at its November 18, 2021, meeting:

- 21-E17 – Licensing Regulations for Registered and Licensed Family Child Care Homes;
- 21-E18 – Licensing Regulations for Afterschool Child Care Programs; and
- 21-E19 – Child Care Licensing Regulations: Center Based Child Care and Preschool Program.

While LCAR did not vote to object to the rules pursuant to [3 V.S.A. § 844\(e\)\(1\)\(D\)](#)—which provides that “[o]n a majority vote of the entire Committee, the Committee may object under this subsection if an emergency rule is . . . [n]ot necessitated by an imminent peril to public health, safety, or welfare sufficient to justify adoption of an emergency rule[.]”—it also did not vote to approve the rules. The Vermont Administrative Procedure Act (APA) does not require LCAR to either vote to approve or object to rules, including emergency rules, but it is standard practice for LCAR to do so.

In addition to the chairs of the subject matter committees—the Senate Committee on Health and Welfare and the House Committee on Human Services—many members of LCAR expressed concerns about whether the Department for Children and Families (DCF) had shown that there was an imminent peril to public health, safety, or welfare sufficient to adopt these three emergency rules.

As dictated by the APA, “[t]he failure of the Committee to object to [these] rule[s] is not an implied legislative authorization of [their] substantive or procedural lawfulness.” 3 V.S.A. § 844(e)(2). Further, and pursuant to [3 V.S.A. § 817\(c\)](#), LCAR may choose to hold a hearing on one or more of these emergency rules prior to the emergency rules expiring on April 16, 2022.

DCF indicated in a November 17, 2021, memorandum to LCAR that it “is in the process of initiating rulemaking pursuant to 3 V.S.A. § 836 to adopt the amendments in [these] emergency rules as permanent rules.” This was further elaborated upon in testimony by Heidi Moreau, DCF Policy Advisor, who explained that the permanent rule filing forms had been completed but not yet forwarded to the Secretary of Human Services for signature. LCAR expects that this will happen with all due haste.

In general, it is imperative that, absent one of the two statutory bases for emergency rulemaking, the procedural steps of permanent rulemaking are properly followed. It is the intent of the General Assembly that in adopting and amending rules “[a]gencies maximize the involvement of the public in the development of rules [and a]gency inclusion of public participation in the rulemaking process [is] consistent. . . . When an agency adopts rules, it subjects the rules to thorough regulatory analysis.” [3 V.S.A. § 800](#). That did not happen with these three emergency rules.

DRAFT