

Comments for Safe Sleep Regulations, ORD No. 0318-03 (corrected)

2nd 15-Day Renotice March 12, 2020

submitted by
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Thank You:

We are extremely thankful that this third version has important new changes that we requested in our prior comments for version one and version two that had previously been rejected. We so appreciate the Office of Administrative Law (OAL) for requesting these additional changes.

- The word "licensee" was changed to "provider" so it will be clear that our staff may also perform the safe sleep duties.
- This new version clarifies that soiled bedding shall be placed in a closed container. The prior wording "suitable container" was not clear and would have been subject to varying interpretations.
- The phrase "aged 12 months or younger" was replaced with "up to 12 months of age." The first phrase would have included children until they were age 13 months old and this did not conform to the recommendations by experts.
- The passage about not "forcing" infants to take pacifiers was removed because it could be subject to varied interpretations.

Continued Concerns:

We are concerned that some of the OAL's concerns are still not fully addressed:

- 3.4 Failure to Properly Notice Documents Relied Upon
- 3.5 Failure to Include All Required Documents in the Rulemaking Record
- 3.8 Failure to Summarize and Respond to Public Comments
- 3.9 Failure to Properly Address Proposed Alternatives
- 4.1 Text errors

OAL Concerns 3.4 & 3.5 Failure to Properly Notice Documents Relied Upon & Failure to Include All Required Documents in the Rulemaking Record:

1. Missing 2012 Document:

"Safe Sleep Practices and Sleep Related Infant Death Prevention Strategies in Child Care" by the Health and Safety Regulatory Workgroup, Military Child Care Initiative, September, 2012 was relied upon and was not properly noticed or fully named in the first NOPA. The document **is not named** in the 2nd NOP or the 3rd NOPA. This document is still not included in the new Addendum to the Initial Statement of Reasons. The OAL disapproval document states that the NOPA refers to a 2012 white paper that was utilized "to develop new requirements and

strengthen existing requirements to reduce risk of unsafe sleeping environments.” The NOPA says that this white paper proposed eight regulatory changes. This particular white paper has 8 recommendations on page 8. OAL said this document was not identified as a document relied upon and it was not included in the rulemaking record. It is still not identified by name.

In August of 2018, The Child Care Law Center’s (CCLC) website included a page saying this document was given to the workgroup making recommendations for safe sleep regulations. We saved pictures of this page and we saved a copy of the document because links to and on websites often break as websites are updated. We think a prior Community Care Licensing Division (CCLD) web page had a link to this white paper, but this page is no longer available. The CCLC website page (link below) included the following:

<https://www.childcarelaw.org/2018/08/your-comments-on-the-safe-sleep-regulations-are-requestd/?eType=EmailBlastContent&eld=f95e752d-f4f7-41bb-9e8d-228e6923b201>

“...**Additional Information**

- Community Care Licensing must review any substantive comments and consider whether to modify the draft rules.
- In 2012, the California Health and Safety Regulatory Workgroup submitted a White Paper to the Community Care Licensing Division recommending [White Paper – Safe Sleep Practices and Sleep Related Infant Death Prevention Strategies in Child Care 2012](#)
- AB 1207, effective 1/1/18, requires Community Care Licensing to make information and training available to all licensed child care providers about protective factors, including safe sleep practices.”

This document is especially important to us because it has provisions allowing caregivers to continue to nurture and hold infants after they have fallen asleep.

It is important to note that the eight recommendations in the white paper do not include 15-minute checks and documentation.

2. Referenced Documents Do Not Seem to Be Relied Upon:

Some of the newly referenced documents in the new Addendum (page 18) that are purportedly included as resources for Section 102425(i) (now j) (1) through (7) do not seem to be documents relied upon. The rules in these documents often differ substantially from those proposed in this section. Actually, the other state rules documents better support our suggestion that certain additional requirements be limited to infants up to 12 months of age.

The New York Document:

This New York document does not have log and physical check requirements for infants age 12 months up to 24 months.

§47.01 Definitions. (q) Infant means a child younger than 12 months of age

We have been asking that these requirements be limited to children up to 12 months of age because the experts recommend this. This New York document may actually support our alternate suggestion.

The North Carolina Document:

This North Carolina document does not support proposed log and document requirements for infants age 12 months up to 24 months. It also requires documentation for just one month.

Note: (10A NCAC 09.0606(6)) [needs a lowercase letter \(a\) before \(6\)](#)

09.0606 (a) (6) specifies that caregivers shall visually check, in person, sleeping infants aged 12 months or younger at least every 15 minutes

09.0606 (a) (7) specifies how caregivers shall document compliance with visually checking on sleeping infants aged 12 months or younger

09.0606 (a) (11) specifies any other steps the center shall take to provide a safe sleep environment for infants aged 12 months or younger

09.0606 (g) Documents that verify staff member's compliance with visual checks on infants shall be maintained for a minimum of one month.

The Minnesota Document:

The Minnesota document recommends checks for infants defined as less than 12 months old. These checks are to be done every 30 minutes after the first four months of care. It does not include documentation requirements.

245A.147 FAMILY CHILD CARE INFANT SLEEP SUPERVISION REQUIREMENTS.

Subdivision 1. In-person checks on infants.

(a) License holders that serve infants are encouraged to monitor sleeping infants by conducting in-person checks on each infant in their care every 30 minutes.

(b) Upon enrollment of an infant in a family child care program, the license holder is encouraged to conduct in-person checks on the sleeping infant every 15 minutes, during the first four months of care

245A.02 DEFINITIONS.

Sub. 19. Family day care and group family day care child age classifications.

(a) For the purposes of family day care and group family day care licensing under this chapter, the following terms have the meanings given them in this subdivision.

(b) "Newborn" means a child between birth and six weeks old.

(c) "Infant" means a child who is at least six weeks old but less than 12 months old.

The Colorado Document:

The Colorado document uses the phrase “up to 12 months of age”, it has no documentation requirement, and wants checks of sleeping infants every 10 minutes. It does not support proposed requirements for checks and documentation for infants age 12 months up to 24 months.

- (7.707.75(I) Safe Sleep Environments for Infants
- (7.707.75(I) (1) Begins with...” Each infant up to twelve (12) months of age...”
- (7.707.75(I)(12)(c) All sleeping infants must be physically observed at least every ten (10) minutes by a staff member.
- (7.707.75(I)(13) Infants who fall asleep in a car safety seat, bean bag chair, bouncy seat, infant seat, swing, jumping chair, play pen or play yard, highchair, chair, sofa, adult futon, adult bed or other piece of equipment not approved for sleep must immediately be moved to their approved sleep area and placed on their back to sleep.

Note that this does not include infants who fall asleep in the caregiver’s arms.

OAL Concerns 3.8 Failure to Summarize and Respond to Public Comments & 3.9 Failure to Properly Address Proposed Alternatives:

We believe that comments that did not receive a proper response should be reconsidered carefully.

The Office of Administrative Law's disapproval document states (page 19) that each reason for accepting or rejecting objections or recommendations must be explained.

1. 102425(i)(j) (1) and (2)(A), (2)(B), (2)(D) page 16 and 17: CFCCN believes that the first Final Statement of Reasons did not properly respond to our 12/28/18 request to limit requirements to infants up to age 12 months where experts limit recommendations to infants up to 12 months. The FSOR essentially said that public comments about infant ages were not allowed. We believe all underlined changes in the first version should have been open to public comment and that these comments should now be seriously reconsidered and receive proper responses. We are hoping that this recommendation will then be accepted.

We said the following (See page 77 of the FSOR.):

“Please change the wording in (i) and (i) (1) from “infant(s)” to “infants under 1 year of age.”

Recommendations to check infants every 15 minutes for SIDS or SUIDS should be for infants under 1 year old.

AAP and SIDS safe sleep recommendations are for infants under 12 months old.

Remember that California Health and Safety Codes and Title 22 regulations define an infant as under age 2 years, but the groups and organizations making recommendations that you wish to incorporate are defining an infant as under 12 months of age.”

The FSOR Response Page 82:

“Infant Ages

‘...The suggested amendments are outside of the scope of the noticed hearing, as they do not address the changes made and open for public comment.’”

The highly recognized Caring for Our Children publication (glossary) defines “infant” as “A child between the time of birth and the age of ambulation (usually the ages from birth through twelve months).” This publication is often cited and it is listed as a resource in the Addendum.

There are places in the FSOR saying that the Department wants physical checks and documentation to keep all infants safe and infants are defined as up to age 24 months. But why does the Department believe 15-minute checks and documentation are necessary for the safety of infants over 12 months of age safe when experts are not recommending these requirements for children over 1 year of age? The Department has not explained their reasons for this belief. The cited state’s physical check requirements are for infants up to age 12 months. Research based recommendations in Caring for Our Children are for infants up to age 12 months.

The CALIFORNIA SIDS ADVISORY COUNCIL: DRAFT MINUTES OF OUR JULY 24, 2018, MEETING says that the **CDPH State SIDS/SUID** Workgroup “should *not* re-evaluate AAP recommendations, as these have been researched by highly qualified and esteemed physician-scientists, and California does not have expertise equal to or exceeding those who painstakingly made these recommendations.”

Documenting checks every 15 minutes for all sleeping infants for up to two years will be extremely difficult and burdensome. We know of providers who now will not care for infants due to these proposed regulations. Many providers work alone and such checks will interrupt the bottle feeding of other infants and efforts to rock other infants to sleep, as well as the activities being offered for all the children. It is our experience that physical checks wake many sleeping infants. Documentation of infant checks should only be required as recommended by responsible research. Documented physical checks should not be required for ages and past time periods (one month, four months, etc.) that have not been recommended by experts basing their recommendations on responsible research.

2. 102425(~~h~~)(i) page 16 of FSOR: CFCCN believes that the first Final Statement of Reasons did not properly respond to our 9/17/18 request for an exception that would allow providers to hold sleeping infants. This exception is recommended in “Safe Sleep Practices and Sleep Related Infant Death Prevention Strategies in Child Care” by the Health and Safety Regulatory Workgroup, Military Child Care Initiative, September, 2012.

FSOR page 82 does not give a reason why caregivers must not hold sleeping infants. It merely repeats the proposed regulation requirement. Is there some research? The white paper recommends this exception. Documents cited in the Addendum and the white paper only specify that infants should be moved ***if they fall asleep in inappropriate sleeping equipment and locations.***

The Department's response says the following:

"Encouraging Infant Sleep:

The regulations do not prohibit a licensee from soothing children in their arms to comfort them and get them to sleep. However, they should be moved to a safe sleep environment per regulations when possible, once they have fallen asleep. The Department has considered your comments and determined that no amendment is required."

The white paper (page 8, number 2) says the following:

"Infants who fall asleep in equipment or in a location that is not approved for infant safe sleep will be moved to a safe sleep environment and placed on their backs to sleep for the remainder of their nap. Examples of equipment that may not be used for infant sleep include, but are not limited to car seats, infant carriers, high chairs, baby snugs and infant swings. Examples of locations that may not be used for infant sleep include, but are not limited to, couches, beds, pillows and bean bag chairs. **Providers may hold infants in their arms while sleeping** if needed but must ensure that soft objects that pose a risk of injury or can cause suffocation are not near the infant's face."

Like so many other documents, including the referenced state rules documents, this white paper is concerned with equipment and furnishings not suitable for infant sleeping – not provider arms.

3. 102425(i)(j)(6) page 17 of version 3: CFCCN believes that the first Final Statement of Reasons did not properly respond to our 9/17/18 request to allow an exception for FCCH's to use bathrooms or kitchens when these rooms are not located on the floor where infants are sleeping.

There is no response at all to this suggestion in the FSOR.

OAL Concern 4.1 Text Errors (in the family child care sections):

1. Spelling Errors in 102425(e)(7):
 - Please change the word "innumerate" to "enumerate." "Innumerate" means without a basic knowledge of mathematics and arithmetic, and "enumerate" means 1 : to ascertain the number of : count 2 : to specify one after another : list
 - Please change "subjection" to "subsection."
2. Italic Errors:

Sometimes, italics are omitted for text and section letters being replaced in this third version. These are some instances we found in the family child care pages:

102425(d)(2) (NOW(3)(A) bottom of page 15 and top of page 16:

- The first 5 lines being replaced, need italics.

102425(d)(2) (now 3) page 15:

- In the first line, the third word “infants” needs italics.
- In the second line, in (6 11/189), the “6” and “8” need italics.
- In the fourth and fifth line, the words “they may remain in the position that suits them” need italics.

102425(i)(now j)(2)(C)(1.) page 17 version three:

- In the first line at the top of page 17, the word “licensee’ needs italics.

102425(i)(now j)(2)(C)(1.) bottom of page 17 version three:

In the second line (6/11/189), the “6” and “8” need italics.

102425(i)(now j)(2)(D) page 17:

- In the second line, the words “licensing agency” need italics.

102425(i)(now j)(3) page 17:

- In the second line, the word “licensee” needs italics.

102426(a)(2), page 18 of version three:

- In the first line, the word “licensee” needs italics.

3. Indent Error:

102425(d)(2) (was E) page 15:

- (2) should align with (1) and (3)