

# PUBLICATION

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## Coronavirus: Temporary Child Care Solutions Could be Subject to Extensive State Regulations

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**The ultimate impact of the coronavirus (COVID-19) cannot be predicted at this time; however, the disruption of commerce and family life has commenced in the United States. The sudden lack of reliable child care providers such as grandparents and daycare facilities has thrown carefully orchestrated family plans out the window. While the federal government has taken financial action such as making low-interest loans available to small businesses affected by the pandemic, it has yet to provide a solution for child care as schools and daycare facilities close their doors across the nation. There is no national mandate or consensus on daycare facility closures. For example, in Georgia, Governor Brian Kemp has suggested daycare facilities close if they feel it is prudent, but has not mandated closure. News reports have noted that in Ohio, Governor Mike DeWine plans to eventually close all daycare facilities in the state. Kentucky's governor, Andrew Beshear, has alerted residents that all daycare centers in the state must close on Friday, March 20.**

In light of these developments, some businesses are contemplating the creation of temporary on-site child care so that employees may bring their children to work if schools and daycare facilities close. This could be an especially tempting solution for health care employers or any employer located in proximity to empty school buildings. The urge to develop a mutually beneficial partnership may be strong. An on-site or nearby temporary daycare facility could prove to be a convenient solution to the lack of child care options; however, "pop-up daycares" raise potential legal and/or regulatory questions including whether they would be held to state child welfare and protection statutes, state licensure requirements, and federal laws.

There are numerous statutes on every state's books for the protection of children, from seat belt laws to child neglect laws. These statutes apply whenever the provision of child care or other child-centered activity is involved. Additionally, states have their own rules and regulations regarding whether a child care service requires licensure, and what requirements such a licensed service must meet to care for children in the state.

For example, in Georgia, any place operated by an individual or business that receives compensation for caring for seven or more children under the age of 18 is considered a Child Care Learning Center and is subject to Georgia licensure requirements. In the alternative, an individual or business operating out of a private residence and receiving compensation for caring for three to six children under the age of 13 would be considered a Family Child Care Learning Home, but would still be subject to Georgia licensure requirements. Depending on the arrangement, if a Georgia business wished to provide care for children of its employees, it could be required to background check and fingerprint every potential employee of the temporary daycare as well as meet other rules concerning every aspect of child care from feeding plans to proper toileting procedures.

Fortunately, it appears that some states may relax the licensure requirements in this time of need. In an effort to assist the community in providing care for children whose schools are closed, the Tennessee Department of Human Services (TDHS) has released recommended guidelines for those considering offering emergency child care. TDHS has stated that the guidance does not serve as a substitute for licensure, but merely provides some direction for those who are considering offering temporary child care. TDHS asks that each emergency

childcare facility do the following: register with TDHS, perform abbreviated background checks on employees and volunteers, follow approved ratios of caregivers to children, group children by age and assign each child to a specific caregiver, maintain accountability procedures such as sign in/out sheets and emergency contacts, institute facility safety measures such as ensuring there are working phones and unblocked exits, practice disease management, and observe individual medical needs.

If a business plans to temporarily provide on-site child care for its employees, we recommend that it take the time to either: (i) review whether it must comply with state laws and regulations regarding child care facilities, or (ii) obtain written guidance from the appropriate state agency to the effect that its proposed child care service would not be required to meet state licensure requirements. Additionally, the business should obtain proper insurance coverage or verify that its current insurance policies would cover an on-site child care facility.

If you have any questions regarding these issues, or any other health care regulatory or transactional matters, please contact [Michelle Williams](#), [Janelle Alleyne](#), or any other member of [Baker Donelson's Health Law team](#). Also, please visit the [Coronavirus \(COVID-19\): What You Need to Know](#) information page on our website.