

**VELMANETTE MONTGOMERY**  
25TH SENATE DISTRICT

**ALBANY OFFICE**  
ROOM 903  
LEGISLATIVE OFFICE BUILDING  
ALBANY NEW YORK 12247  
PHONE (518) 455-3451  
FAX (518) 426-6854

**DISTRICT OFFICE**  
30 THIRD AVENUE  
BROOKLYN NEW YORK 11217  
PHONE (718) 643-6140  
FAX (718) 237-4137

E MAIL: MONTGOME@NYSenate.GOV

WEBSITE: MONTGOMERY.NYSenate.GOV



**THE SENATE**  
**STATE OF NEW YORK**  
**ALBANY**

**SECRETARY, SENATE DEMOCRATIC CONFERENCE**

**RANKING MINORITY MEMBER**

CHILDREN & FAMILIES

**COMMITTEES:**

AGRICULTURE

CRIME VICTIMS CRIME & CORRECTION

EDUCATION

FINANCE

HEALTH

RULES

September 12, 2016

Honorable Andrew Cuomo  
Governor of New York State  
NYS Capitol Building  
Albany, NY 12224

Sheila J. Poole  
Executive Deputy Commissioner  
NYS Office of Children & Family Services  
52 Washington Street, Room 305 South  
Rensselaer, NY 12144

Re: Comments to the emergency child care safety regulations proposed by Governor Cuomo

Dear Honorable Governor Cuomo and Executive Deputy Commissioner Poole,

I represent the residents of District 25 in the New York State Senate and am the ranking member of the Children and Families Committee. I submit these comments in response to the emergency child care safety regulations proposed by Governor Andrew Cuomo.

As a State Senator, a mother and an early childhood education professional, I prioritize the safety and wellbeing of children in my district and across the state. I have always and will continue to advocate for our youth who do not have lobbyists, who cannot participate in elections and who often do not have their interests represented in Albany. I understand and appreciate the Governor's efforts to ensure our children's safety in child care facilities. Those who have been tasked with caring for our children of course need to be held to high standards. However these regulations are both overly punitive and lack the nuances necessary to make them effective.

#### **Fair Hearings:**

I am particularly troubled that the Office of Children and Family Services (OCFS) would be allowed to circumvent the hearing process in certain instances. Every child care provider should be entitled to make their case at a fair hearing, which is often their first opportunity to speak with someone other than an inspector.

#### **Referrals to Law Enforcement:**

With these regulations comes a new potential for law enforcement involvement. With the exception of criminal cases, day care centers are not an appropriate environment for police officers. The presence of law enforcement can be traumatizing for young children and forever ruin the integrity of a provider even in cases where criminal charges were not necessary to begin with.

### **Increase in Fines:**

Additionally, almost doubling and in some cases quadrupling fines for even first time offenses is not conducive to creating a safer environment for children. Many providers do not have access to financial support to fix any issues that arise. These exorbitant fines have the potential to cripple a small provider, preventing the possibility of immediate action to remedy the identified issues.

### **Definition of “Imminent Danger:”**

Though Governor Cuomo has attempted to better define “imminent danger,” these new regulations still do not provide enough clarity or allow for the nuances that are present in real life cases. I find it troubling that when discussing imminent danger, both the death of a child and being short staffed appear to be held in the same regard, for example. While one is clearly a serious emergency and an extenuating circumstance, the other may be temporary due to an absence and could be quickly remedied without punitive actions. Furthermore there is not an acknowledgment of situations that facility directors have no control over. For instance, in my district and across New York City, there are many day care facilities located in New York City Housing Authority (NYCHA) buildings that are vital to the residents there but are dependent on NYCHA to be responsive in addressing repairs and other environmental concerns. These directors should not have the additional burden of high fines or face possible closure of their facilities for circumstances beyond their control.

### **Recommendations:**

In August, I held very productive meetings with community stakeholders, child care providers and advocates from my district and in Albany to discuss the proposed regulations and receive feedback. We discussed many alternatives to some of the punitive measures proposed in these regulations, some of which have already been offered by advocacy organizations such as the Day Care Council of New York. These include:

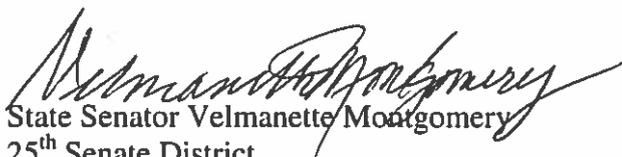
- Providers need more access to professional development as well as resources to help them address their issues
- Providers should have quick access to a hearing in every case instead of high fines for first violations
- Inspectors need adequate professional development training to ensure that they do not misinterpret existing law or misjudge childrens’ environments
- There needs to be a consensus between providers, professionals, parents and legislators on what specific situations constitute “imminent danger.”

I am concerned that these proposed regulations reflect a larger issue regarding the underfunding and devaluing of child care and those who provide these critical services. There is a clear disconnect between the significant contributions child care providers make to the communities they serve and the way child care is addressed in public policy. Day cares, especially in low-income neighborhoods and communities of color, have traditionally provided safe spaces for our most vulnerable members of society. **Providers have and continue to care for our children while being grossly underpaid, severely under resourced and even disrespected. We should not add criminal treatment to the list**

**of challenges they already face and we must include their perspectives when making changes in law that directly impact them.**

I urge you to consider our recommendations before these emergency regulations become permanent. We need to take a legislative approach to this issue that is appropriate, involves practitioners and advocates, and supports improving the quality of child care throughout our state.

Sincerely,



State Senator Velmanette Montgomery

25<sup>th</sup> Senate District

Cc: Colleagues