

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
COMMUNITY AND FIELD SERVICES DIVISION**

**CHAPTER 1240-4-12
REGISTRATION OF FAMILY DAY CARE HOMES**

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1240-4-12-.01 SCOPE AND PURPOSE.

These rules set forth standards for voluntary registration of family day care homes with fewer than five (5) children, guidelines for regulation and monitoring of homes by sponsoring organizations through contractual agreement with the department of human services, and the authority and responsibility of the department of human services. To be eligible for participation in the child care food program or purchase of services, homes shall be in compliance with these rules. The rules are intended to establish a minimum level of protection of the health, safety, and welfare of children in the care of family day care providers.

Authority: TCA §71-1-105(5) and (12). Administrative History: Original rule filed October 29, 1990; effective December 13, 1990.

1240-4-12-.02 DEFINITIONS.

- (1) *Registered Family Day Care Home* is the private residence of a provider of child care for no more than four (4) non-related children and which has been certified by a sponsoring organization to meet certain rules of the department of human services. A related child means the children, step-children, grandchildren, siblings, stepchildren, nieces, nephews of the provider of child care, or a child who is in the child care provider's legal or physical custody as a result of a court order and who resides in the provider's home.
- (2) *Provider or Family Day Care Provider* is a person 18 years of age or older who has voluntarily applied to operate, or who is operating, a Registered Family Day Care Home.
- (3) *Sponsoring Organization* means an agency that contracts with the Tennessee Department of Human Services to assist in the voluntary registration of family day care providers.
- (4) *Certificate Of Registration* refers to a document issued by a sponsoring organization to a family day care provider, acknowledging that the provider is in compliance with applicable rules at a given time.
- (5) *Child or Children* means a person under 17 years of age.
- (6) *Infant* refers to a child 6 weeks through 15 months of age.
- (7) *Toddler* is a child 16 months through 30 months of age.
- (8) *Parent* is a term used to refer to a biological or adoptive parent, a guardian, or a custodian or foster parent with primary responsibility for a child.

(Rule 1240-4-12-.02, continued)

- (9) *Substitute* refers to a person 18 years of age or older who is designated by the provider and approved by the sponsoring organization to provide child care in the provider's home in the provider's absence.
- (10) *Department* means the Tennessee Department of Human Services.

Authority: TCA §71-1-105(5) and (12). **Administrative History:** Original rule filed October 29, 1990; effective December 13, 1990.

1240-4-12-.03 RESPONSIBILITIES OF DEPARTMENT.

- (1) Responsibility for ensuring that a sponsoring organization complies with these rules rests with the Department of Human Services which shall:
 - (a) Inspect and monitor the sponsoring organization to determine compliance with applicable rules and contract requirements;
 - (b) Conduct random inspections of registered family day care homes to ensure compliance with applicable rules;
 - (c) Provide technical assistance to the sponsoring organization;
 - (d) Conduct necessary administrative review procedures involving provider appeals; and
 - (e) When the Department determines that a provider is operating in violation of applicable rules, the Department shall notify the sponsoring organization. In case of imminent danger or hazard to the health, safety or welfare of any children in a home, the Department shall suspend or revoke a Certificate of Registration unless the sponsoring organization has done so or is in the process of doing so. The provider shall have the right to a fair hearing as provided herein.

Authority: TCA §71-1-105(5) and (12). **Administrative History:** Original rule filed October 29, 1990; effective December 13, 1990.

1240-4-12-.04 SPONSORING ORGANIZATION'S AUTHORITY.

- (1) Sponsoring Organization. By contractual agreement with the Department of Human Services, a sponsoring organization is authorized to:
 - (a) Register, on voluntary basis, Family Day Care providers with no more than four (4) non-related children within a county or district;
 - (b) Issue a Certificate of Registration to a Family Day Care provider who is in compliance with applicable rules;
 - (c) Provide administrative and support services to providers, including but not limited to, technical assistance, training and consultation;
 - (d) Evaluate and monitor providers with at least one scheduled and one unscheduled visit the first year and one unscheduled visit per year thereafter;
 - (e) Maintain permanent records on providers as prescribed by the Department of Human Services;

(Rule 1240-4-12-.04, continued)

- (f) Provide enforcement of the rules concerning standards for registration of family day care providers, including provisions for notice of rights to appeal and implementation of appeal procedures for providers per its contract with the Department; and
 - (g) Provide a program of outreach and public relations to providers and potential providers regarding applicable rules, to parents of young children regarding availability of day care, and to the general public regarding the program.
- (2) Approval Requirements for Sponsoring Organizations.
- (a) Execution of a contract with the Department of Human Services constitutes approval of a sponsoring organization to conduct a program of voluntary registration of family day care home providers.
 - (b) The Department shall conduct an annual Programmatic inspection of the sponsoring organization to determine compliance with applicable provisions of these rules and provisions of the contract with the sponsoring organization. An organization shall comply with specific terms of the contract prior to renewal.
- (3) Requirements of Sponsoring Organizations
- (a) Eligibility.
 - 1. Any public, private not-for-profit, or private for-profit agency or organization may apply to the Department of Human Services to become a family day care sponsoring organization, provided it meets the following eligibility requirements.
 - 2. A sponsoring organization, in order to secure, maintain, or renew a contract to provide registration services for a system of family day care homes shall:
 - (i) Demonstrate the capability of providing administrative and support services, including but not limited to inspection, supervision, and monitoring of family day care homes and training, technical assistance, and consultation to registered or applicant providers;
 - (ii) Meet the program and fiscal requirements of the contract with the Department of Human Services, including all applicable state and federal regulations; and
 - (iii) Comply with all performance provisions and level of service provisions, as specified in the executed contract and its exhibits or appendices.
 - 3. A sponsoring organization shall not be a Child and Adult Care Food Program (CACFP) sponsor to Registered Home Providers which the sponsoring organization regulates.
 - (b) Administrative Responsibility.
 - 1. The sponsoring organization shall delegate responsibility for day-to-day operations and administration to an executive director or other qualified administrator and clearly specify in writing the respective duties of the governing board or advisory committee and of the executive director or administrator.

Authority: TCA §71-1-105(5) and (12). **Administrative History:** Original rule filed October 29, 1990; effective December 13, 1990.

1240-4-12-.05 STANDARDS FOR REGISTERED FAMILY DAY CARE PROVIDERS.

- (1) Application. Registration of a family day care home for fewer than five (5) children is voluntary; however, if a family day care provider applies for a Certificate of Registration, the applicable rules herein shall be met before a Certificate will be issued. An application for registration of a family day care home shall constitute consent by the applicant for representatives of the sponsoring organization or the Department to enter the premises at any time during operating hours, including both scheduled and unscheduled visits, for the purpose of inspecting the home, investigating complaints, and gaining access to all children who are present. Failure to allow access to representatives of the sponsoring organization or the Department shall constitute good cause for denial, suspension, or revocation of a Certificate of Registration.
- (2) Provider Eligibility.
 - (a) To be approved as a registered family day care provider, the applicant shall:
 1. Be at least 18 years of age;
 2. Secure two (2) nonrelative references in writing;
 3. Have good character and reputation and possess adequate intelligence, stability, and physical stamina to operate a family day care home and to provide good child care;
 4. Provide written evidence of sound physical, mental, and emotional health to care for young children, signed by a health care provider; and
 5. Demonstrate satisfactory compliance (or good intention to comply) with all applicable re-quirements of the Department of Human Services.
 - (b) Before approval, a provider shall submit an application for Family Day Care Home Registration (on a form supplied by the Department of Human Services or a sponsoring organization) to the sponsoring organization.
 - (c) Upon submitting a completed application and all required information and evidence of compliance, an applicant shall be approved as a Registered Family Day Care Home and will receive a letter to that effect and a Certificate of Registration.
 - (d) A registration certificate shall be issued to a specific provider at a specific location and is not transferable.
 - (e) Prior to approval, the provider shall attend at least three (3) hours of orientation to registered child care.
 - (f) The provider shall notify the sponsoring organization before changing residence.
 - (g) The registration period shall be three (3) years, at the end of which time the provider will be notified of the need to make application for the next registration period.
- (3) Supervision And Provider Requirements.
 - (a) At least one (1) adult shall be present and supervising the children at all times.

(Rule 1240-4-12-.05, continued)

- (b) The provider shall not be employed at any other occupation during the hours child care is provided.
 - (c) In addition to the provider's related children under nine (9) years of age, a registered provider shall, care for no more than four (4) other children at one time. (See definition of *related*.)
 - (d) The total number of children in care at one time (including provider's related children) shall not exceed seven (7).
 - (e) The total number of children under three (3) years of age shall not exceed four (4).
 - (f) Helpers and substitutes shall meet the health requirements.
 - (g) Any substitute for the provider shall be at least 18 years of age.
 - (h) Persons in the home shall be of such character and physical and mental status such that children's health, safety, and welfare are not threatened. No person charged with or convicted of a crime against a child shall be permitted to care for children.
 - (i) The provider shall have a plan for the care of children in such emergencies as provider illness, injury to or illness of a child, fire, or disaster situation.
 - (j) After the first year, the provider shall complete at least two (2) hours of training annually.
- (4) Records.
- (a) When a child is enrolled and before care is provided, a record shall be taken and maintained that includes the following:
 - 1. Child's name, social history, and health history;
 - 2. Parent(s)' name(s), address, place of employment, phone number(s) of location during hours of child's care, name(s) of other(s) to whom child may be released;
 - 3. Name of child's physician and permission to get medical treatment in an emergency when parent is not available;
 - 4. Current immunizations record; and
 - 5. Description of accidents or serious illnesses occurring while the child is in care (including date, time, circumstance, and action taken).
 - (b) The provider's record shall include the following:
 - 1. Health provider's statement;
 - 2. Evidence of a TB test with negative results;
 - 3. Two (2) letters of reference from persons (other than relatives) who know the provider; and
 - 4. Evidence of training hours received.

(Rule 1240-4-12-.05, continued)

- (c) First aid information shall be available and provider(s) shall be familiar with it.
 - (d) The Certificate of Registration shall be on display in a conspicuous place during the hours of operation.
 - (e) Emergency phone numbers shall be posted near the telephone for the following: Parents of Children in Care, Emergency Medical Care, Fire Station, Law Enforcement, Poison Control Center (if available), Rescue Squad, and Child Abuse Referral.
 - (f) The provider shall give parents receipts of payments if requested.
- (5) Children's Activities.
- (a) A variety of age-appropriate activities shall be provided and shall include some of the following on a daily basis:
 - 1. Reading and talking to children;
 - 2. Manipulating toys;
 - 3. Active and quiet play;
 - 4. Indoor and outdoor play; and
 - 5. Rest or sleep.
 - (b) Equipment and materials shall be made available to the children for all of the above activities.
 - (c) Television shall be limited to programs suitable for children, and other activities shall be provided for children who do not wish to watch TV. No child shall be required to watch TV.
 - (d) Infants and toddlers shall not be routinely left in cribs or playpens when they are awake.
 - (e) Children shall not be subjected to spanking or other means of inflicting pain; to frightening, shaming, or humiliating punishment; to abusive or derogatory language.
 - (f) The provider shall use positive discipline techniques that are appropriate to the age level and needs of the child, that help a child to learn and maintain self-control and self-esteem and do not relate to physical punishment or deprivation of food, rest, or toileting.
 - (g) Toilet training shall not be started without communication and agreement with the parent, nor until the child has indicated readiness.
- (6) Children's Health.
- (a) Children's physical needs shall be met as follows:
 - 1. Children shall be diapered and cleaned as needed.
 - 2. Diapers shall be changed on a cleanable, nonporous surface, which is sanitized after each change with one-quarter (1/4) cup of bleach to one (1) gallon water. Hands must be washed after each change.

(Rule 1240-4-12-.05, continued)

3. Children in care seven (7) hours or more shall receive nutritionally balanced meals and snacks: two (2) meals (unless during night hours) and one (1) or two (2) snacks.
 4. Infant diets and other special diets shall be prepared in accordance with a physician's instructions.
 5. Formula and food brought from home shall be labeled with the child's name, Opened baby food shall not be used, and formula remaining in the bottle after feeding shall be discarded.
 6. Infants unable to hold a bottle shall be held while fed; bottles shall not be propped.
 7. The provider and others shall not smoke while physically interacting with children.
 8. Each child shall have an individual crib or mat for sleeping.
 9. Sleeping infants under 13 months shall be checked every half hour by touching them. If a child appears to not breathe or is in distress, the provider shall immediately seek emergency medical help.
- (b) Parents of every child enrolled shall be notified if one of the following diseases has been introduced into the home: Hepatitis A, Foodborne outbreaks (food poisoning), Salmonella, Shigella, Measles, Mumps, Rubella, Pertussis, Polio, Hemophilus Influenza Type B, Meningococcal Meningitis. (Providers may want to consult the local health department.)
 - (c) Prescribed medication shall not be given to a child except under the direction of a physician. Non-prescribed, internal and external medication shall not be given to a child except with the parent's written authorization. Medications or drugs shall be labeled with the child's name and specific instruction given for administering them. Administration of medications and noticeable side effects shall be recorded and reported to parents. Medication shall not be handled by children and shall be stored out of children's reach.
 - (d) The provider shall notify the parent(s) as soon as possible when their child becomes ill or injured.
 - (e) The provider shall report any suspected physical, sexual, or emotional abuse or neglect to the local county office of the Department of Human Services.
- (7) Communication With Parents And Others.
- (a) Parents and inspection authorities, from the sponsoring organization and the Department shall be given immediate access to the home and premises while children are in care.
 - (b) The provider shall give parent(s) of every child enrolled a copy of these rules.
 - (c) The provider shall discuss the child's daily activities, schedule, and progress with the parent(s) on a regular basis.
 - (d) The provider shall inform parents in writing of the name, address, and phone number of the sponsoring organization.
 - (e) The provider shall not disclose or knowingly permit the use of any information concerning tile child or family except as required by law or regulation.

(Rule 1240-4-12-.05, continued)

- (f) The provider's name, address, and other referral information shall be included in the DHS Resource and Referral System unless the provider requests exclusion in writing.
- (8) Safety.
- (a) The home and furnishings shall present no hazard to the health or safety of children.
 - (b) A fire drill with the children shall be practiced a minimum of once every three (3) months.
 - (c) There shall be at least two (2) doors to the outside that are unblocked exits.
 - (d) Kerosene or other portable heaters shall not be in use while children are present.
 - (e) Fuel-burning heaters shall be vented to the outside of the home.
 - (f) Children shall not be kept in a room that has no window to the outside.
 - (g) Latches on interior doors shall be such that a child can open the door from the inside of a room or closet.
 - (h) At least one working smoke detector shall be properly installed on each level of the home.
 - (i) All unused electrical outlets accessible to children shall be covered with receptacle covers.
 - (j) All toxic substances, such as medicines, cleaning agents, polishes, bleach, detergents, paints, insecticides, etc., shall be stored out of children's reach and away from food; all weapons and dangerous utensils and tools shall be stored out of children's reach.
 - (k) Floors, walls, ceilings, furniture, equipment, and all surfaces and utensils shall be kept clean and in good repair.
 - (l) Adequate ventilation, heating, and cooling shall be appropriately provided.
 - (m) Both hot and cold running water shall be available from an approved source.
 - (n) Children and caregivers shall have access to a working indoor toilet.
 - (o) Disposable towels or separate clean hand towels, napping space and clean bedding, shall be provided for each child.
 - (p) A working telephone shall be available in the house.
 - (q) A working flashlight shall be available for emergency lighting.
 - (r) A safe outdoor play area shall be available either adjacent to the home or within safe walking distance.
 - (s) Hands (children's and caregivers') shall be washed frequently; before any food handling, after toileting, and after helping children with toileting.
 - (t) Sewage and waste shall be disposed of properly.

(Rule 1240-4-12-.05, continued)

- (u) Foods shall be stored properly in clean containers, protected from contamination; perishables shall be stored at 45° or below. All food shall be used with children in care. Food shall be prepared in a safe, sanitary manner.
 - (v) Dishes and utensils shall be either disposable or washed, rinsed, and sanitized properly.
 - (w) Children's diapers shall be changed on a clean, nonporous surface, away from the kitchen.
 - (x) Pets shall be vaccinated in accordance with a veterinarian's recommendations. Unconfined pets shall not be in with the children on a daily basis.
 - (y) Wading pools shall not be used unless in compliance with local ordinances. Swimming pools shall be inspected by the local Health Department if used for Day Care; two (2) adults shall be present and supervising when children are swimming.
 - (z) To be a registered family day care home, a mobile home shall conform to the following description: a "modular" home, 24 feet wide, built after 1974, with front and rear exits, anchored, with wheels removed.
- (9) Failure To Meet Requirements And Appeal Procedures.
- (a) The sponsoring organization shall review and may deny, suspend, or revoke a certificate if the family day care provider or other person living in the home has been convicted of child abuse or neglect or other crime against children, is under the influence of alcohol or drugs while children are in care, falsified an application or other document, or fails to comply with any other part of these rules.
 - (b) If the sponsoring organization determines that an applicant is not in compliance with the requirements, the applicant shall be given written notice of the violations by certified mail, return receipt requested, stating violations and citing the specific requirements not met. The applicant shall be given 10 calendar days to make corrections after which a written notice of denial shall be sent to the applicant by the sponsoring organization by certified mail, return receipt requested. The applicant may appeal the denial to the Department as provided in the appeal section of the provider requirements.
 - (c) When complaints and reports of violations are received, the sponsoring organization shall take the following action;
 1. Investigate the allegations (other than those of child abuse/neglect which shall be reported to the Department of Human Services) and require the provider to correct those that are determined to be valid.
 2. If during the course of an investigation, the sponsoring organization determines that children are in imminent danger and recommends removal of the children, the Department shall be notified immediately, and the Certificate of Registration shall be suspended. Immediate written notice of the cause for such suspension together with notice of what must be done to lift the suspension and a reasonable time frame for correction shall be given to the provider. The notice shall also indicate the consequences (revocation) of failure to correct the problem causing suspension. Notice of the right to appeal and the procedures for appeal shall also be given in the notice.

(Rule 1240-4-12-.05, continued)

3. If children are not in imminent danger, but the sponsoring organization has substantiated existing violations, the provider shall be given notice of violations and specific requirements violated and opportunity to correct violations within a reasonable time period. The provider shall be required to file with the sponsoring organization a plan of corrective action within 10 days to avoid revocation of the certificate. The notice shall state the consequences of failure to file the corrective action plan (revocation) and shall give notice of the right to appeal and the procedures for appeal.
 4. If the causes leading to the notice of violation and/or the suspension are not corrected within a reasonable time, the Certificate of Registration shall be revoked by the sponsoring organization, or by the Department, and the provider shall be sent written notice of such revocation and the basis for revocation by certified mail, return receipt requested. Such notice shall state the effective date of revocation which shall be 90 days from the date of the notice. The notice shall contain notice of the right to appeal and the procedures for appeal.
 5. All notices of denial, suspension, or revocation shall be sent by certified mail, return receipt requested and copies of these shall be simultaneously sent to the Department's Day Care Division.
- (d)
1. The provider shall be sent, by certified mail, return receipt requested, written notice of the basis for the denial, suspension, or revocation of the Certificate of Registration by the sponsoring organization, or by the Department if it conducts such action.
 2. Within 10 days of the date of receipt of the written notice, the provider must request in writing to the sponsoring organization, or the Department if it took adverse action, an appeal of the decision in order to preserve the right to a fair hearing.
 3. The request for appeal shall be acknowledged by the sponsoring organization and the Department within 10 days of receipt. The Hearing shall be conducted by a Hearing Officer designated by the Commissioner of the Department utilizing the provisions of *TCA §§4-5-301 through 4-5-323*. The Hearing Officer shall enter an initial order which shall be reviewed by a designee of the Commissioner which designee shall enter a final order.
 4. Pending appeal and pending the final order, the provider may continue to be registered under an existing Certificate unless the Certificate has been suspended due to imminent danger to the health or safety of children in the care of the provider.
 5. The provider shall have the right to be represented by retained counsel in such proceedings.
- (e) A provider may not reapply for a Certificate of Registration for a period of 60 days following a denial, suspension, or revocation of a certificate or for such period following entry of a final agency order or final order of a reviewing court.

Authority: *TCA §71-1-105(5) and (12)*. **Administrative History:** *Original rule filed October 29, 1990; effective December 13, 1990.*