Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 09-36-16
Rule ID(s): 6318-6321
File Date: 9/28/16
Effective Date: 12/27/16

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Department of Human Services
Division:	Adult and Family Services
Contact Person:	Nicole Armstrong
Address:	Office of General Counsel Citizens Plaza Building, 15th Floor 400 Deaderick Street Nashville, Tennessee
Zip:	37243-1403
Phone:	615-313-4731
Email:	Nicole.Armstrong@tn.gov

Revision Type (check all that apply):
✓ Amendment
____ New
____ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1240-04-01	Standards for Group Child Care Homes
Rule Number	**Rule Title**
1240-04-01-.02	Ownership and Administration
1240-04-01-.03	Staff
1240-04-01-.06	Health and Safety

Chapter Number	**Chapter Title**
1240-04-02	Licensure Rules for Drop-In Child Care Centers
Rule Number	**Rule Title**
1240-04-02-.04	Ownership, Organization and Administration
1240-04-02-.05	Staff Requirements

Chapter Number	Chapter Title
1240-04-03	Licensure Rules for Child Care Centers
Rule Number	**Rule Title**
1240-04-03-.05	Ownership, Organization, and Administration
1240-04-03-.07	Staff

Chapter Number	Chapter Title
1240-04-04	Standards for Family Child Care Homes
Rule Number	**Rule Title**
1240-04-04-.02	Ownership and Administration
1240-04-04-.03	Staff
1240-04-04-.06	Health and Safety

Amendments

Rule 1240-04-01-.02 Ownership and Administration is amended by deleting subparagraph (b) under paragraph (2) in its entirety, and substituting instead the following language; and, so that, as amended, paragraph (2), shall read as follows:

(2) Policies.

(a) A new primary caregiver shall complete in the presence of the Licensing Counselor the "Checklist of Services" or write out a Statement of Purpose.

(b) A group child care home shall have written policies that include/address, at a minimum:

1. Services offered;

2. Written parental permission for observation of children by non-child care agency staff;

3. Provision for children's individual needs;

4. The home's admission policies and enrollment procedures;

5. Rates;

6. Fees charged, including late fees (if applicable) and plan for payment;

7. Behavior management techniques;

8. Hours of operation;

9. Inclement weather;

10. Emergency policy;

11. Whether the environment is smoke free;

12. Meal service policy;

13. Handling of children's personal belongings;

14. If the agency provides transportation for children in the agency's care, the written statement required by 1240-04-01-.07(1)(a) describing transportation plans, procedures and equipment utilized in the transportation process and parental permission for trips away from facility; and

15. Expulsion of a child, which policy shall be:

(i) Clearly articulated to staff and parents;

(ii) Developmentally appropriate and consistent;

(iii) Non-discriminatory;

(iv) Other options shall be considered prior to expulsion, such as but not limited to reducing the number of days or amount of time the child may attend, or if applicable, referrals to the Center on the Social and Emotional Foundations for Early Learning (CSEFEL), Early Intervention System, Individuals with Disabilities Education Act (IDEA);

(v) Procedures shall be developed to allow for a planned transition of a child to another program if expulsion must occur; and

(vi) Aggregate data that includes reasons for expulsions shall be maintained and reported to the Department annually.

Rule 1240-04-01-.02 Ownership and Administration is amended by deleting subparagraph (b) and (c) under paragraph (3) in its entirety, and substituting instead the following language; and also inserting a new subparagraph (c) and renaming subsequent subparagraphs accordingly, so that, as amended, paragraph (3), shall read as follows:

(3) Enrollment of Children and Parent Involvement.

(a) Children shall be at least six weeks of age before entering day care.

(b) The agency shall not admit a child into care until the parent/guardian has supplied the agency with a completed application, valid Tennessee Department of Health Official Immunization Certificates record (for children over two (2) months of age), and a health history. Exception: After an initial eligibility determination, children who are homeless and/or children in state custody may receive care prior to providing all required documentation as determined by the Department. Care without documentation of immunizations shall not exceed thirty days. [See 4(e) below and Chapter 1240-04-01-.06.]

(c) The agency shall maintain written documentation that the parent/guardian performed an on-site visit to the agency prior to the child being enrolled into care and that the agency provided and reviewed parent engagement strategies recognized by the Department with the parent during the required pre-placement visit. Exception: a pre-placement visit is not required for children of homeless families.

(d) A parent handbook that includes a copy of the agency's policies, operating procedures, information on parent engagement, and the Department's Summary of Licensing Requirements shall be supplied to the parent(s) upon admission of the child. The agency's policies shall include:

1. Criteria for the disenrollment of children [see expulsion policy requirements in 1240-04-01-.02 (b)(14)], and

2. Specific criteria concerning the release of children to anyone whose behavior may place the children at immediate risk.

(e) During normal hours of operation, parents shall be permitted access to their children, and ready access to all licensed areas of the home and premises shall be granted to Department representatives and inspection authorities (i.e., fire safety, sanitation, and health).

(f) Parents must be informed in advance of the child's removal from the premises except in cases of emergencies or pursuant to investigative procedures conducted pursuant to the child abuse laws.

Rule 1240-04-01-.02 Ownership and Administration is amended by deleting subparagraph (f) under paragraph 4, and substituting instead the following language, and also adding a new subparagraph (g) under paragraph (4) so that, as amended, paragraph (4), subparagraph (g) shall read as follows:

(f) A child's record shall be kept in a central location and shall be kept for one (1) year following the child's leaving the agency. Exception: The health record shall be returned to the parent/guardian upon request when the child leaves the agency.

(g) All children, including related children younger than age nine (9), shall have required records on file before care is provided. Exception: After an initial eligibility determination, children of

homeless families and/or children in state custody may receive care prior to providing required documentation as determined by the Department.

Rule 1240-04-01-.02 Ownership and Administration is amended by adding a new paragraph (8), so that, as amended, paragraph (8) shall read as follows:

(8) Data Reporting. Agencies shall submit data as requested by the Department quarterly on topics such as but not limited to: active enrollment, homeless children, non-traditional hours, deaths/serious injuries, child abuse, English as a Second Language/dual language learners, and children with disabilities.

Authority: T.C.A. §§4-5-201 et seq., 4-5-202, 71-1-105, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), 71-3-502(a)(4)(B), and Acts 2000, ch. 981, §§ 3(a)(4) and 14.

Rule 1240-04-01-.03 Staff is amended by deleting part 5 under subparagraph (a), paragraph (1) in its entirety, and substituting instead the following language, so that, as amended, paragraph (1), subparagraph (a), part 5, shall read as follows:

5. Training of Employees

(i) Training of New Employees - Prior to assuming duties, each new employee shall receive documented instruction in and have a working knowledge of:

(I) Program philosophy and policies;

(II) Job description;

(III) Emergency health and safety procedures;

(IV) Behavior management procedures;

(V) Detection, reporting, and prevention of child abuse;

(VI) Procedures for receiving and releasing children;

(VII) Safe sleep procedures;

(VIII) Shaken baby syndrome/abusive head trauma;

(IX) Meal service and safe food preparation policies;

(X) Supervision during high risk activities such as eating and outdoor play;

(XI) Food allergies;

(XII) Expectations for communications with parent/guardian;

(XIII) Disease control and health promotion;

(XIV) An overview of licensing requirements;

(XV) Information on risks of Cytomegalovirus (CMV) to female employees of childbearing age;

(XVI) A minimum of two (2) hours pre-service training as recognized by the Department; and

(XVII) Documentation of the requirements in this subparagraph (i) shall be maintained in the staff file.

(ii) Ongoing Training Requirements – any ongoing training required for employees shall include health and safety topics, such as but not limited to:

(I) Prevention and control of infectious diseases (including immunization);

(II) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(III) Administration of medication, consistent with standards for parental consent;

(IV) Prevention of and response to emergencies due to food and allergic reactions;

(V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(VI) Prevention of shaken baby syndrome and abusive head trauma;

(VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

(VIII) Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

(IX) Precautions in transporting children (if applicable); and

(X) First aid and pediatric cardiopulmonary resuscitation.

Rule 1240-04-01-.03 Staff is amended by deleting part 6 under subparagraph (a), paragraph (1) in its entirety, and substituting instead the following language, so that, as amended, paragraph (1), subparagraph (a), part 6, shall read as follows:

6. Criminal history and abuse registry background checks; appeals; exemptions.

(i) The following persons are required to have a background check no more than (90) days before having access to any child care agency:

(I) Any person who owns or operates a child care agency and will have significant contact with children;

(II) Any person who applies to work in a child care agency as an employee, director or manager;

(III) Any person who will provide substitute services to a child care agency for more than thirty-six (36) hours in a calendar year and who is counted in the adult: child ratio; and

(IV) Any person who is fifteen (15) years of age or older who will reside in a child care agency.

(ii) New background checks are required for all staff and residents when an agency moves from one class of care to another, such as when a family home becomes a group home or when an agency is sold and staff remain employed by the new owner or any time an agency is issued a license that is not the renewal of an existing license. Exception: Does not apply to background checks completed within the last ninety (90) days.

(iii) Background checks are required for all staff at least every five (5) years.

(iv) Requirements for Disclosure of Criminal/Juvenile and State Register History and Fingerprinting.

(I) The individuals identified in subparagraph (1)(a) above shall:

I. Complete a criminal/juvenile administrative findings history disclosure form;

II. Submit fingerprint samples for a criminal and juvenile records background check; and

III. Complete a criminal, juvenile background check/state review consisting of:

A. An investigation of a person's criminal background history by the Tennessee Bureau of Investigation (TBI) and through the Federal Bureau of Investigation's (FBI) national database;

B. An investigation of a person's juvenile records history that is available to the TBI;

C. A review of any available juvenile court records, if determined necessary by DHS;

D. A search of the vulnerable persons registry (VPR), maintained by the Tennessee Department of Health;

E. A search of the TN sexual offender registry (SOR), maintained by the TBI; and

F. A search of the DCS registry of indicated perpetrators of abuse or neglect of children.

G. A search of any state or federal registries required by the Child Care and Development Block Grant Act.

(v) Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Children Prior to Completion of Criminal History Review.

(I) A child care agency, substitute pool, or staffing agency shall be responsible for registration of persons required to have a background check. The responsible entity shall ensure that the process is completed prior to employment.

(II) A child care agency may not permit any person who is required to have a background check to assume any role or to have access to children until the agency receives written verification from the Department that the person is cleared to work/reside in the agency.

(III) Failure to Complete or Disclose Information on Criminal Disclosure Form.

I. Failure to properly complete all sections of the Criminal/Administrative History Disclosure Form shall result in the individual being prohibited from assuming any position for which a background review is required.

II. Failure to disclose all criminal and administrative history information may result in the person being:

A. Excluded by the Department from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and

B. Referred to the appropriate district attorney for criminal prosecution.

(IV) The Department will pay for the costs of performing one background check per person per agency per year.

(V) The child care agency shall be responsible for costs associated with the background check if:

I. The fingerprint sample is rejected and the fingerprint sample must be resubmitted;

II. The agency submits a second fingerprint sample for an individual when the initial background check has not been completed; or

III. The agency submits a fingerprint sample for a purpose unrelated to obtaining approval for a prospective employee, volunteer, etc. to have access to child care.

(vi) Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Children.

(I) No person shall be employed, be a licensee or operator or, provide substitute services, reside, or have any access to children in a child care agency if the criminal background check identifies an excludable criminal offense for which the person has:

I. Been convicted of, pled guilty or no contest to (or to a lesser included offense);

II. Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or

III. Been named in a pending warrant, indictment, presentment, or petition.

(II) An excludable criminal offense involves:

I. The physical, sexual or emotional abuse or neglect of a child;

II. A crime of violence against a child, or any person;

III. Any offense, including a lesser included offense, involving the manufacture, sale, distribution or possession of any drug; or

IV. Any offense that presents a threat to the health, safety or welfare of children.

V. The criminal offenses for which a person will be excluded from a child care agency include but are not limited to the following offenses as well as their lesser included offenses (even if not listed here):

A. Aggravated arson (T.C.A. § 39-14-302);

B. Aggravated assault (T.C.A. § 39-13-102);

C. Aggravated child abuse (T.C.A. § 39-15-402);

D. Aggravated child neglect (T.C.A. § 39-14-302);

E. Aggravated cruelty to animals (T.C.A. § 39-14-212);

F. Aggravated kidnapping (T.C.A. § 39-13-304);

G. Aggravated rape (T.C.A. § 39-13-502);

H. Aggravated rape of a child (T.C.A. § 39-13-531);

I. Aggravated robbery (T.C.A. § 39-13-402);

J. Aggravated sexual battery (T.C.A. § 39-13-504);

K. Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);

L. Aggravated vehicular homicide (T.C.A. § 39-13-218);

M. Arson (T.C.A. § 39-14-301);

N. Assault (T.C.A. § 39-13-101);

O. Carjacking (T.C.A. § 39-13-404);

P. Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);

Q. Criminal attempt, under T.C.A. § 39-12-101, to commit any criminal offense that requires exclusion from child care;

R. Criminal exposure to HIV (T.C.A. § 39-13-109);

S. Criminal homicide (T.C.A. § 39-13-201);

T. Criminally negligent homicide (T.C.A. § 39-13-212);

U. Cruelty to Animals (T.C.A § 39-14-202);

V. Custodial interference (T.C.A. § 39-13-306);

W. Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);

X. Domestic assault (T.C.A. § 39-13-111);

Y. Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);

Z. Especially aggravated burglary (T.C.A. § 39-14-404);

AA. Especially aggravated kidnapping (T.C.A. § 39-13-305);

BB. Especially aggravated robbery T.C.A. § 39-13-403);

CC. Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);

DD. Exploitation of a minor by electronic means (T.C.A. § 39-13-529);

EE. False imprisonment (T.C.A. § 39-13-302);

FF. First degree murder (T.C.A. § 39-13-202);

GG. Incest (T.C.A. § 39-13-302);

HH. Indecent exposure (T.C.A. § 39-13-511);

II. Involuntary labor servitude (T.C.A. § 39-13-307);

JJ. Kidnapping (T.C.A. § 39-13-105);

KK. Rape (T.C.A. § 39-13-503);

LL. Rape of a child (T.C.A. § 39-13-522);

MM. Reckless endangerment (T.C.A. § 39-13-103);

NN. Reckless homicide (T.C.A. § 39-13-215);

OO. Robbery (T.C.A. § 39-13-401);

PP. Second degree murder (T.C.A. § 39-13-210);

QQ. Sexual battery (T.C.A. § 39-13-505);

RR. Sexual battery by an authority figure (T.C.A. § 39-13-527);

SS. Sexual exploitation of a minor (T.C.A. § 39-17-1003);

TT. Solicitation of a minor (T.C.A. § 39-13-528);

UU. Stalking (T.C.A. § 39-17-315);

VV. Statutory rape (T.C.A. § 39-13-506);

WW. Statutory rape by an authority figure (T.C.A. § 39-13-532);

XX. Trafficking a person for sexual servitude (T.C.A. § 39-13-309);

YY. Vehicular assault (T.C.A. § 39-13-106);

ZZ. Vehicular assault while intoxicated (T.C.A. § 39-13-106);

AAA. Vehicular homicide (T.C.A. § 39-13-213);

BBB. Voluntary manslaughter (T.C.A. § 39-13-211); and

CCC. Weapons offenses (unlawful possession, carrying, use, etc.).

(III) No person may be employed as a driver or serve as a driver for a child care agency if the person:

I. Is currently charged with; or

II. Has been convicted of, or pled guilty, within the last five (5) years to any of the following criminal offenses:

A. Vehicular homicide;

B. Accidents involving death or personal injury;

C. Accidents involving damage to a vehicle;

D. Driving under the influence of an intoxicant, drug or drug producing stimulant; or

E. Any felony involving the use of a motor vehicle while under the use of any intoxicant.

(vii) Exclusion from access to child care based on a listing on a state registry.

(I) No person shall be employed, be a licensee or operator, provide substitute services, reside, or have any access to children in a child care agency if the results of the state registry review identify the person as being:

I. Listed on the Vulnerable Persons Registry;

II. Listed on the Sexual Offender Registry; or

III. Indicated in the records of the Department of Children's Services as a perpetrator of abuse or neglect of a child.

(viii) Supplemental Background Checks Subsequent to Licensing, Employment or Residence in a Child Care Agency.

(I) The Department may, at any time, require a new background check of any individual with access to children in a child care agency.

I. For an individual who was not subject to a background check prior to assuming a role, the individual's existing status in their role shall be conditional upon the satisfactory outcome of any requested background check.

(ix) Any person who is excluded shall remain excluded pending the outcome of any appeals or waiver review or any determination that the basis for exclusion no longer exists.

(x) An individual will also be excluded if a criminal or juvenile proceeding, registry or administrative background review requiring exclusion or any other provision of law is discovered and verified in any manner.

(xi) If a child care agency, substitute pool or staffing agency receives information from a source other than the Department that requires them to exclude an employee, substitute, volunteer, or resident they shall immediately exclude the person from any access to children and notify the Department on the same business day by calling the child and adult care complaint hotline.

(xii) The exclusion of such persons from access to child care shall be conducted pursuant to T.C.A. § 71-3-507 and this rule.

(xiii) Failure of a child care agency to perform the required background check before allowing a person access to child care or to immediately exclude individuals with a criminal history or state registry review status that requires exclusion, shall be the basis for the immediate suspension, denial or revocation of the child care agency's license.

Authority: T.C.A. §§4-5-201 et seq., 4-5-202, 71-1-105, 71-3-501 et seq., 71-3-502(a)(2), 71-3-508(c), Acts 2000, ch. 981, §§ 8 and 14, and Acts 2003, ch. 412, § 2, Acts 2016, ch. 839.

Rule 1240-04-01-.06 Health and Safety is amended by adding a new part 3 under subparagraph (g), paragraph (1), so that as amended, paragraph (1), subparagraph (g) shall read as follows:

(g) Exceptions to the above requirements in this section shall be made when:

1. The child's physician or the Department of Health provides a signed and dated statement, giving a medical reason why the child should not be given a specified immunization; or

2. The child's parent provides a written statement that such immunizations conflict with his/her religious tenets and practices.

3. Care for children of homeless families and/or children in state custody is needed before documentation of immunizations can be confirmed. Care without documentation of immunizations shall not exceed thirty days.

Authority: T.C.A. §§71-1-105(12), 71-3-501 et seq., and 37-1-603(b)(1)(A).

Chapter 1240-04-02
Licensure Rules for Drop-In Child Care Centers

Amendments

Rule 1240-04-02-.04 Ownership, Organization and Administration is amended by deleting subparagraph (a) under paragraph (4) in its entirety, and substituting instead the following language, so that, as amended, paragraph (4), subparagraph (a) shall read as follows:

(a) Children's Records.

1. Each child shall have a record containing the following information:

(i) A current information form which includes the child's name, date of birth, name of parent(s), child's and parents' home address(es), emergency contact numbers (e.g., home, work, cell phone, pager, etc., as applicable), and the name and address (home and business or school) of a responsible person to contact in an emergency if the parent(s) cannot be located promptly;

(ii) Name, address, and telephone number of a physician to call in case of an emergency;

(iii) Written consent of parent(s) regarding emergency medical care;

(iv) A child release plan stating to whom the child shall be released and a clear policy concerning the release of child(ren) to anyone whose behavior may place the child(ren) in immediate risk;

(v) A signed statement from the parent or guardian verifying that the child or children are in good health and current with immunizations; and

(vi) Daily attendance records for each child.

2. A child's records shall be maintained in a central location within the agency and shall be kept by the drop-in center for one (1) year following the child's being disenrolled from the center. Exception: The health record shall be returned to the parent/guardian upon request when the child leaves the agency.

3. All children, including related children younger than age nine (9), shall have required records on file before care is provided. Exception: After an initial eligibility determination, children of homeless families and/or children in state custody may receive care prior to providing required documentation as determined by the Department.

1240-04-02-.04 Ownership, Organization and Administration is amended by deleting subparagraph (a) under paragraph (6) in its entirety, and substituting instead the following language:

(a) Before accepting a child for care, the parent or guardian shall register the child by providing:

1. The agency shall not admit a child into care until the parent/guardian has supplied the agency with a completed application, a signed statement from the parent or guardian verifying that the child or children are in good health and current with immunizations, and a health history. Exception: After an initial eligibility determination, children who are homeless and/or children in state custody may receive care prior to providing all required documentation as determined by the Department. Care without documentation of immunizations shall not exceed thirty days.

2. A statement regarding the estimated amount of time that the parent anticipates that the child will be in attendance at the drop-in center.

Rule 1240-04-02-.04 Ownership, Organization and Administration is amended by a new paragraph (9) so that, as amended, paragraph (9) shall read as follows:

(9) Data Reporting. Agencies shall submit data as requested by the Department quarterly on topics such as but not limited to: active enrollment, homeless children, non-traditional hours, deaths/serious injuries, child abuse, English as a Second Language/dual language learners, and children with disabilities.

Rule 1240-04-02-.04 Ownership, Organization and Administration is amended by a new paragraph (10) so that, as amended, paragraph (10) shall read as follows:

(10) The agency's policies shall include/address, at a minimum:

(a) Criteria for the disenrollment of children [see expulsion policy requirements in 1240-04-02-.04(10)(l)];

(b) Specific criteria concerning the release of children; includes responsibility until signed out;

(c) Written parental permission for observation of children by non-child care agency staff;

(d) Behavior management techniques;

(e) Hours of operation;

(f) Late fees;

(g) Rates;

(h) Inclement weather;

(i) Emergency policy;

(j) Whether the environment is smoke free;

(k) Meal Service policy; and

(l) Expulsion of a child, which policy shall be:

1. Clearly articulated to staff and parents;

2. Developmentally appropriate and consistent;

3. Non-discriminatory;

4. Other options shall be considered prior to expulsion, such as but not limited to reducing the number of days or amount of time the child may attend, or if applicable, referrals to the Center on the Social and Emotional Foundations for Early Learning (CSEFEL), Early Intervention System, Individuals with Disabilities Education Act (IDEA);

5. Aggregate data that includes reasons for expulsions shall be maintained and reported to the Department annually.

Rule 1240-04-02-.05 Staff Requirements is amended by deleting subparagraph (e) under paragraph (1) in its entirety, and substituting instead the following language, so that, as amended, paragraph (1), subparagraph (e) shall read as follows:

(e) Criminal Background Check and State Registry/Records Review Procedures.

1. Criminal Background and Abuse Registry Disclosures and Reviews; Fingerprinting Requirements.

(i) The following persons are required to have a background check no more than ninety (90) days before having access to any child care agency:

(I) Any person who owns or operates a child care agency and will have significant contact with children;

(II) Any person who applies to work in a child care agency as an employee, director or manager;

(III) Any person who will provide substitute services to a child care agency for more than thirty-six (36) hours in a calendar year and who is counted in the adult: child ratio; and

(IV) Any person who is fifteen (15) years of age or older who will reside in a child care agency.

(ii) New background checks are required for all staff and residents when an agency moves from one class of care to another, such as when a family home becomes a group home or when an agency is sold and staff remain employed by the new owner or any time an agency is issued a license that is not the renewal of an existing license. Exception: Does not apply to background checks completed within the last ninety (90) days.

(iii) Background checks are required for all staff at least every five (5) years.

(iv) Requirements for Disclosure of Criminal/Juvenile and State Register History and Fingerprinting.

(I) The individuals identified in subparagraph (1)(a) above shall:

I. Complete a criminal/juvenile/administrative findings history disclosure form;

II. Submit fingerprint samples for a criminal and juvenile records background check; and

III. Complete a criminal, juvenile background check/state review consisting of:

A. An investigation of a person's criminal background history by the Tennessee Bureau of Investigation (TBI) and through the Federal Bureau of Investigation's (FBI) national database;

B. An investigation of a person's juvenile records history that is available to the TBI;

C. A review of any available juvenile court records, if determined necessary by DHS;

D. A search of the vulnerable persons registry (VPR), maintained by the Tennessee Department of Health;

E. A search of the TN sexual offender registry (SOR), maintained by the TBI; and

F. A search of the DCS registry of indicated perpetrators of abuse or neglect of children.

G. A search of any state or federal registries required by the Child Care and Development Block Grant Act.

2. Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Children Prior to Completion of Criminal History Review.

(i) A child care agency, substitute pool, or staffing agency shall be responsible for registration of persons required to have a background check. The responsible entity shall ensure that the process is completed prior to employment.

(ii) A child care agency may not permit any person who is required to have a background check to assume any role or to have access to children until the agency receives written verification from the Department that the person is cleared to work/reside in the agency.

(iii) Failure to Complete or Disclose Information on Criminal Disclosure Form.

(I) Failure to properly complete all sections of the Criminal/Administrative History Disclosure Form shall result in the individual being prohibited from assuming any position for which a background review is required.

(II) Failure to disclose all criminal and administrative history information may result in the person being:

I. Excluded by the Department from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and

II. Referred to the appropriate district attorney for criminal prosecution.

(iv) The Department will pay for the costs of performing one background check per person per agency per year.

(v) The child care agency shall be responsible for costs associated with the background check if:

(I) The fingerprint sample is rejected and the fingerprint sample must be resubmitted;

(II) The agency submits a second fingerprint sample for an individual when the initial background check has not been completed; or

(III) The agency submits a fingerprint sample for a purpose unrelated to obtaining approval for a prospective employee, volunteer, etc. to have access to child care.

3. Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Children.

(i) No person shall be employed, be a licensee or operator or, provide substitute services, reside, or have any access to children in a child care agency if the criminal background check identifies an excludable criminal offense for which the person has:

(I) Been convicted of, pled guilty or no contest to (or to a lesser included offense);

(II) Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or

(III) Been named in a pending warrant, indictment, presentment, or petition.

(ii) An excludable criminal offense involves:

(I) The physical, sexual or emotional abuse or neglect of a child;

(II) A crime of violence against a child, or any person;

(III) Any offense, including a lesser included offense, involving the manufacture, sale, distribution or possession of any drug; or

(IV) Any offense that presents a threat to the health, safety or welfare of children.

(V) The criminal offenses for which a person will be excluded from a child care agency include but are not limited to the following offenses as well as their lesser included offenses (even if not listed here):

I. Aggravated arson (T.C.A. § 39-14-302);

II. Aggravated assault (T.C.A. § 39-13-102);

III. Aggravated child abuse (T.C.A. § 39-15-402);

IV. Aggravated child neglect (T.C.A. § 39-15-402);

V. Aggravated cruelty to animals (T.C.A § 39-14-212);

VI. Aggravated kidnapping (T.C.A. § 39-13-304);

VII. Aggravated rape (T.C.A. § 39-13-502);

VIII. Aggravated rape of a child (T.C.A. § 39-13-531);

IX. Aggravated robbery (T.C.A. § 39-13-402);

X. Aggravated sexual battery (T.C.A. § 39-13-504);

XI. Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);

XII. Aggravated vehicular homicide (T.C.A. § 39-13-218);

XIII. Arson (T.C.A. § 39-14-301);

XIV. Assault (T.C.A. § 39-13-101);

XV. Carjacking (T.C.A. § 39-13-404);

XVI. Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);

XVII. Criminal attempt, under T.C.A. § 39-12-101, to commit any criminal offense that requires exclusion from child care;

XVIII. Criminal exposure to HIV (T.C.A. § 39-13-109);

XIX. Criminal homicide (T.C.A. § 39-13-201);

XX. Criminally negligent homicide (T.C.A. § 39-13-212);

XXI. Cruelty to Animals (T.C.A § 39-14-202);

XXII. Custodial interference (T.C.A. § 39-13-306);

XXIII. Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);

XXIV. Domestic assault (T.C.A. § 39-13-111);

XXV. Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);

XXVI. Especially aggravated burglary (T.C.A. § 39-14-404);

XXVII. Especially aggravated kidnapping (T.C.A. § 39-13-305);

XXVIII. Especially aggravated robbery (T.C.A. § 39-13-403);

XXIX. Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);

XXX. Exploitation of a minor by electronic means (T.C.A. § 39-13-529);

XXXI. False imprisonment (T.C.A. § 39-13-302);

XXXII. First degree murder (T.C.A. § 39-13-202);

XXXIII. Incest (T.C.A. § 39-13-302);

XXXIV. Indecent exposure (T.C.A. § 39-13-511);

XXXV. Involuntary labor servitude (T.C.A. § 39-13-307);

XXXVI. Kidnapping (T.C.A. § 39-13-105);

XXXVII. Rape (T.C.A. § 39-13-503);

XXXVIII. Rape of a child (T.C.A. § 39-13-522);

XXXIX. Reckless endangerment (T.C.A. § 39-13-103);

XL. Reckless homicide (T.C.A. § 39-13-215);

XLI. Robbery (T.C.A. § 39-13-401);

XLII. Second degree murder (T.C.A. § 39-13-210);

XLIII. Sexual battery (T.C.A. § 39-13-505);

XLIV. Sexual battery by an authority figure (T.C.A. § 39-13-527);

XLV. Sexual exploitation of a minor (T.C.A. § 39-17-1003);

XLVI. Solicitation of a minor (T.C.A. § 39-13-528);

XLVII. Stalking (T.C.A. § 39-17-315);

XLVIII. Statutory rape (T.C.A. § 39-13-506);

XLIX. Statutory rape by an authority figure (T.C.A. § 39-13-532);

L. Trafficking a person for sexual servitude (T.C.A. § 39-13-309);

LI. Vehicular assault (T.C.A. § 39-13-106);

LII. Vehicular assault while intoxicated (T.C.A. § 39-13-106);

LIII. Vehicular homicide (T.C.A. § 39-13-213);

LIV. Voluntary manslaughter (T.C.A. § 39-13-211); and

LV. Weapons offenses (unlawful possession, carrying, use, etc.).

(iii) No person may be employed as a driver or serve as a driver for a child care agency if the person:

(I) Is currently charged with; or

(II) Has been convicted of, or pled guilty, within the last five (5) years to any of the following criminal offenses:

I. Vehicular homicide;

II. Accidents involving death or personal injury;

III. Accidents involving damage to a vehicle;

IV. Driving under the influence of an intoxicant, drug or drug producing stimulant; or

V. Any felony involving the use of a motor vehicle while under the use of any intoxicant.

4. Exclusion from access to child care based on a listing on a state registry.

(i) No person shall be employed, be a licensee or operator, provide substitute services, reside, or have any access to children in a child care agency if the results of the state registry review identify the person as being:

(I) Listed on the Vulnerable Persons Registry;

(II) Listed on the Sexual Offender Registry; or

(III) Indicated in the records of the Department of Children's Services as a perpetrator of abuse or neglect of a child.

5. Supplemental Background Checks Subsequent to Licensing, Employment or Residence in a Child Care Agency.

(i) The Department may, at any time, require a new background check of any individual with access to children in a child care agency.

(I) For an individual who was not subject to a background check prior to assuming a role, the individual's existing status in their role shall be conditional upon the satisfactory outcome of any requested background check.

6. Any person who is excluded shall remain excluded pending the outcome of any appeals or waiver review or any determination that the basis for exclusion no longer exists.

7. An individual will also be excluded if a criminal or juvenile proceeding, registry or administrative background review requiring exclusion or any other provision of law is discovered and verified in any manner.

8. If a child care agency, substitute pool or staffing agency receives information from a source other than the Department that requires them to exclude an employee, substitute, volunteer, or resident they shall immediately exclude the person from any access to children and notify the Department on the same business day by calling the child and adult care complaint hotline.

9. The exclusion of such persons from access to child care shall be conducted pursuant to T.C.A. § 71-3-507 and this rule.

10. Failure of a child care agency to perform the required background check before allowing a person access to child care or to immediately exclude individuals with a criminal history or state registry review status that requires exclusion, shall be the basis for the immediate suspension, denial or revocation of the child care agency's license.

Authority: T.C.A. §§4-5-202,71-1-105(5) and (12), 71-3-501 et seq., 71-3-501(8), and 71-3-502(a)(2), Acts 2016, ch. 839.

Rule 1240-04-02-.05 Staff Requirements is amended by deleting subparagraph (f) under paragraph (2) in its entirety, and substituting instead the following language, so that, as amended, paragraph (2), subparagraph (f) shall read as follows:

(f) Training of New Employees

1. Prior to assuming duties, each new employee shall receive documented instruction in and have a working knowledge of:

(i) Program philosophy and policies;

(ii) Job description;

(iii) Emergency health and safety procedures;

(iv) Behavior management procedures;

(v) Detection, reporting, and prevention of child abuse;

(vi) Procedures for receiving and releasing children;

(vii) Safe sleep procedures;

(viii) Shaken baby syndrome/abusive head trauma;

(ix) Meal service and safe food preparation policies;

(x) Supervision during high risk activities such as eating and outdoor play;

(xi) Food allergies;

(xii) Expectations for communications with parent/guardian;

(xiii) Disease control and health promotion;

(xiv) An overview of licensing requirements;

(xv) Information on risks of Cytomegalovirus (CMV) to female employees of childbearing age;

(xvi) A minimum of two (2) hours pre-service training as recognized by the Department; and

(xvii) Documentation of the requirements in this subparagraph (f) shall be maintained in the staff file.

Rule 1240-04-02-.05 05 Staff Requirements is amended by adding a new subparagraph (g) under paragraph (2) in its entirety, and substituting instead the following language, so that, as amended, paragraph (2), subparagraph (g) shall read as follows:

(g) Ongoing Training Requirements – any ongoing training required for employees shall include health and safety topics, such as but not limited to:

1. Prevention and control of infectious diseases (including immunization);

2. Prevention of sudden infant death syndrome and use of safe sleeping practices;

3. Administration of medication, consistent with standards for parental consent;

4. Prevention of and response to emergencies due to food and allergic reactions;

5. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

6. Prevention of shaken baby syndrome and abusive head trauma;

7. Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

8. Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

9. Precautions in transporting children (if applicable); and

10. First aid and pediatric cardiopulmonary resuscitation.

Authority: T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2), Acts 2016, ch. 839.

Amendments

Rule 1240-04-03-.05 Ownership, Organization, and Administration is amended by deleting subparagraphs (d) and (f) under paragraph (5) in their entireties, and substituting instead the following language, so that, as amended, paragraph (5), subparagraphs (d) and (f) shall read as follows:

(d) The agency shall not admit a child into care until the parent/guardian has supplied the agency with a completed application, valid Tennessee Department of Health Official Immunization Certificates record (for children over two (2) months of age), and a health history. Exception: After an initial eligibility determination, children who are homeless and/or children in state custody may receive care prior to providing all required documentation as determined by the Department. Care without documentation of immunizations shall not exceed thirty days.

(f) The agency shall maintain written documentation that the parent/guardian performed an on-site visit to the agency prior to the child being enrolled into care and that the agency provided and reviewed parent engagement strategies recognized by the Department with the parent during the required pre-placement visit. Exception: A pre-placement visit is not required for children of homeless families.

Rule 1240-04-03-.05 Ownership, Organization, and Administration is amended by deleting part (1) under subparagraph (a), paragraph (6), in its entirety, and substituting instead the following language, so that, as amended, paragraph (6), subparagraph (a) shall read as follows:

(a) A copy of the agency's policies, procedures, and the Department's Summary of Licensing Requirements shall be supplied to the parent/ upon admission of the child. The agency's policies shall include:

1. Criteria for the disenrollment of children [see expulsion policy requirements in 1240-04-03-.05(13);

2. Specific criteria concerning the release of children to anyone whose behavior may place the children at immediate risk;

3. Written parental permission for observation of children by non-child care agency staff;

4. Behavior management techniques;

5. Hours of operation;

6. Late fees;

7. Rates;

8. Inclement weather;

9. Emergency policy;

10. Whether the environment is smoke free; and

11. Meal Service policy.

Rule 1240-04-03-.05 Ownership, Organization, and Administration is amended by adding a new subparagraph (d) under paragraph (7), so that, as amended, paragraph (7), subparagraph (d) shall read as follows:

(d) All children, including related children younger than age nine (9), shall have required records on file before care is provided. Exception: After an initial eligibility determination, children of

homeless families and/or children in state custody may receive care prior to providing required documentation as determined by the Department.

Rule 1240-04-03-.05 Ownership, Organization, and Administration is amended by adding a new item (III) under subpart (ii), part 9, subparagraph (a), paragraph (8), so that, as amended, paragraph (8), subparagraph (a), part 9, subpart (ii) shall read as follows:

(ii) Exceptions to this immunization record requirement may be made only if:

(I) The child's physician or the health department provides a signed and dated statement, giving a medical reason why the child should not be given a specified immunization; or

(II) The child's parent provides a signed written statement that such immunizations conflict with his/her religious tenets and practices.

(III) Care for children of homeless families and/or children in state custody is needed before documentation of immunizations can be confirmed. Care without documentation of immunizations for such children shall not exceed thirty days.

Rule 1240-04-03-.05 Ownership, Organization, and Administration is amended by adding a new paragraph (13), so that, as amended, paragraph (13) shall read as follows:

(13) The agency shall have a written expulsion policy.

(a) The policy shall be:

1. Clearly articulated to staff and parents;

2. Developmentally appropriate and consistent; and

3. Non-discriminatory.

(b) Other options shall be considered prior to expulsion, such as but not limited to reducing the number of days or amount of time the child may attend, or if applicable, referrals to the Center on the Social and Emotional Foundations for Early Learning (CSEFEL), Early Intervention System, Individuals with Disabilities Education Act (IDEA).

(c) Procedures shall be developed to allow for a planned transition of a child to another program if expulsion must occur.

(d) Aggregate data that includes reasons for expulsions shall be maintained and reported to the Department annually.

Rule 1240-04-03-.05 Ownership, Organization, and Administration is amended by adding a new paragraph (14), so that, as amended, paragraph (14) shall read as follows:

(14) Data Reporting. Agencies shall submit data as requested by the Department quarterly on topics such as but not limited to: active enrollment, homeless children, non-traditional hours, deaths/serious injuries, child abuse, English as a Second Language/dual language learners, and children with disabilities.

Authority: T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2), Acts 2016, ch. 839.

Rule 1240-04-03-.07 Staff is amended by deleting subparagraph (e) under paragraph (2) in its entirety, and substituting instead the following language, so that, as amended, paragraph (2), subparagraph (e), shall read as follows:

(e) Prior to assuming duties, each new employee shall receive documented instruction in, and have a working knowledge of:

1. Program philosophy and policies;

2. Job description;

3. Emergency health and safety procedures;

4. Behavior management procedures;

5. Detection, reporting, and prevention of child abuse;

6. Procedures for receiving and releasing children;

7. Safe sleep procedures;

8. Shaken baby syndrome/abusive head trauma;

9. Meal service and safe food preparation policies;

10. Supervision during high risk activities such as eating and outdoor play;

11. Food allergies;

12. Expectations for communications with parent/guardian;

13. Disease control and health promotion;

14. An overview of licensing requirements;

15. Information on risks of Cytomegalovirus (CMV) to female employees of childbearing age;

16. A minimum of two (2) hours pre-service training as recognized by the Department; and

17. Documentation of the requirements in this subparagraph (h) shall be maintained in the staff file.

Rule 1240-04-03-.07 Staff is amended by adding a new subparagraph (g) under paragraph (2) and renumber subsequent paragraphs accordingly, so that, as amended, paragraph (2), subparagraph (g), shall read as follows:

[(g) Ongoing Training Requirements – any ongoing training required for employees shall include health and safety topics, such as but not limited to:

1. Prevention and control of infectious diseases (including immunization);

2. Prevention of sudden infant death syndrome and use of safe sleeping practices;

3. Administration of medication, consistent with standards for parental consent;

4. Prevention of and response to emergencies due to food and allergic reactions;

5. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

6. Prevention of shaken baby syndrome and abusive head trauma;

7. Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within

the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

8. Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

9. Precautions in transporting children (if applicable); and

10. First aid and pediatric cardiopulmonary resuscitation.]

Rule 1240-04-03-.07 Staff is amended by deleting paragraph (9) in its entirety, and substituting instead the following language, so that, as amended, paragraph (9) shall read as follows:

[(9) Criminal Background Check and State Registry/Records Review Procedures.

(a) Criminal Background and Abuse Registry Disclosures and Reviews; Fingerprinting Requirements.

1. The following persons are required to have a background check no more than ninety (90) days before having access to any child care agency:

(i) Any person who owns or operates a child care agency and will have significant contact with children;

(ii) Any person who applies to work in a child care agency as an employee, director or manager;

(iii) Any person who will provide substitute services to a child care agency for more than thirty–six (36) hours in a calendar year and who is counted in the adult: child ratio; and

(iv) Any person who is fifteen (15) years of age or older who will reside in a child care agency.

2. New background checks are required for all staff and residents when an agency moves from one class of care to another, such as when a family home becomes a group home or when an agency is sold and staff remain employed by the new owner or any time an agency is issued a license that is not the renewal of an existing license. Exception: Does not apply to background checks completed within the last ninety (90) days.

3. Background checks are required for all staff at least every five (5) years.

4. Requirements for Disclosure of Criminal/Juvenile and State Register History and Fingerprinting.

(i) The individuals identified in subparagraph (1)(a) above shall:

(I) Complete a criminal/juvenile/administrative findings history disclosure form;

(II) Submit fingerprint samples for a criminal and juvenile records background check; and

(III) Complete a criminal, juvenile background check/state review consisting of:

I. An investigation of a person's criminal background history by the Tennessee Bureau of Investigation (TBI) and through the Federal Bureau of Investigation's (FBI) national database;

II. An investigation of a person's juvenile records history that is available to the TBI;

III. A review of any available juvenile court records, if determined necessary by DHS;

IV. A search of the vulnerable persons registry (VPR), maintained by the Tennessee Department of Health;

V. A search of the TN sexual offender registry (SOR), maintained by the TBI;

VI. A search of the DCS registry of indicated perpetrators of abuse or neglect of children; and

VII. A search of any state or federal registries required by the Child Care and Development Block Grant Act.

(b) Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Children Prior to Completion of Criminal History Review.

1. A child care agency, substitute pool, or staffing agency shall be responsible for registration of persons required to have a background check. The responsible entity shall ensure that the process is completed prior to employment.

2. A child care agency may not permit any person who is required to have a background check to assume any role or to have access to children until the agency receives written verification from the Department that the person is cleared to work/reside in the agency.

3. Failure to Complete or Disclose Information on Criminal Disclosure Form.

(i) Failure to properly complete all sections of the Criminal/Administrative History Disclosure Form shall result in the individual being prohibited from assuming any position for which a background review is required.

(ii) Failure to disclose all criminal and administrative history information may result in the person being:

(I) Excluded by the Department from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and

(II) Referred to the appropriate district attorney for criminal prosecution.

4. The Department will pay for the costs of performing one background check per person per agency per year.

5. The child care agency shall be responsible for costs associated with the background check if:

(i) The fingerprint sample is rejected and the fingerprint sample must be resubmitted;

(ii) The agency submits a second fingerprint sample for an individual when the initial background check has not been completed; or

(iii) The agency submits a fingerprint sample for a purpose unrelated to obtaining approval for a prospective employee, volunteer, etc. to have access to child care.

(c) Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Children.

1. No person shall be employed, be a licensee or operator or, provide substitute services, reside, or have any access to children in a child care agency if the criminal background check identifies an excludable criminal offense for which the person has:

   (i) Been convicted of, pled guilty or no contest to (or to a lesser included offense);

   (ii) Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or

   (iii) Been named in a pending warrant, indictment, presentment, or petition.

2. An excludable criminal offense involves:

   (i) The physical, sexual or emotional abuse or neglect of a child;

   (ii) A crime of violence against a child, or any person;

   (iii) Any offense, including a lesser included offense, involving the manufacture, sale, distribution or possession of any drug; or

   (iv) Any offense that presents a threat to the health, safety or welfare of children.

   (v) The criminal offenses for which a person will be excluded from a child care agency include but are not limited to the following offenses as well as their lesser included offenses (even if not listed here):

      (I) Aggravated arson (T.C.A. § 39-14-302);

      (II) Aggravated assault (T.C.A. § 39-13-102);

      (III) Aggravated child abuse (T.C.A. § 39-15-402);

      (IV) Aggravated child neglect (T.C.A. § 39-15-402);

      (V) Aggravated cruelty to animals (T.C.A § 39-14-212);

      (VI) Aggravated kidnapping (T.C.A. § 39-13-304);

      (VII) Aggravated rape (T.C.A. § 39-13-502);

      (VIII) Aggravated rape of a child (T.C.A. § 39-13-531);

      (IX) Aggravated robbery (T.C.A. § 39-13-402);

      (X) Aggravated sexual battery (T.C.A. § 39-13-504);

      (XI) Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);

      (XII) Aggravated vehicular homicide (T.C.A. § 39-13-218);

      (XIII) Arson (T.C.A. § 39-14-301);

      (XIV) Assault (T.C.A. § 39-13-101);

      (XV) Carjacking (T.C.A. § 39-13-404);

      (XVI) Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);

      (XVII) Criminal attempt, under T.C.A. § 39-12-101, to commit any criminal offense that requires exclusion from child care;

(XVIII) Criminal exposure to HIV (T.C.A. § 39-13-109);

(XIX) Criminal homicide (T.C.A. § 39-13-201);

(XX) Criminally negligent homicide (T.C.A. § 39-13-212);

(XXI) Cruelty to Animals (T.C.A § 39-14-202);

(XXII) Custodial interference (T.C.A. § 39-13-306);

(XXIII) Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);

(XXIV) Domestic assault (T.C.A. § 39-13-111);

(XXV) Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);

(XXVI) Especially aggravated burglary (T.C.A. § 39-14-404);

(XXVII) Especially aggravated kidnapping (T.C.A. § 39-13-305);

(XXVIII) Especially aggravated robbery (T.C.A. § 39-13-403);

(XXIX) Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);

(XXX) Exploitation of a minor by electronic means (T.C.A. § 39-13-529);

(XXXI) False imprisonment (T.C.A. § 39-13-302);

(XXXII) First degree murder (T.C.A. § 39-13-202);

(XXXIII) Incest (T.C.A. § 39-13-302);

(XXXIV) Indecent exposure (T.C.A. § 39-13-511);

(XXXV) Involuntary labor servitude (T.C.A. § 39-13-307);

(XXXVI) Kidnapping (T.C.A. § 39-13-105);

(XXXVII) Rape (T.C.A. § 39-13-503);

(XXXVIII) Rape of a child (T.C.A. § 39-13-522);

(XXXIX) Reckless endangerment (T.C.A. § 39-13-103);

(XL) Reckless homicide (T.C.A. § 39-13-215);

(XLI) Robbery (T.C.A. § 39-13-401);

(XLII) Second degree murder (T.C.A. § 39-13-210);

(XLIII) Sexual battery (T.C.A. § 39-13-505);

(XLIV) Sexual battery by an authority figure (T.C.A. § 39-13-527);

(XLV) Sexual exploitation of a minor (T.C.A. § 39-17-1003);

(XLVI) Solicitation of a minor (T.C.A. § 39-13-528);

(XLVII) Stalking (T.C.A. § 39-17-315);

(XLVIII) Statutory rape (T.C.A. § 39-13-506);

(XLIX) Statutory rape by an authority figure (T.C.A. § 39-13-532);

(L) Trafficking a person for sexual servitude (T.C.A. § 39-13-309);

(LI) Vehicular assault (T.C.A. § 39-13-106);

(LII) Vehicular assault while intoxicated (T.C.A. § 39-13-106);

(LIII) Vehicular homicide (T.C.A. § 39-13-213);

(LIV) Voluntary manslaughter (T.C.A. § 39-13-211); and

(LV) Weapons offenses (unlawful possession, carrying, use, etc.).

3. No person may be employed as a driver or serve as a driver for a child care agency if the person:

(i) Is currently charged with; or

(ii) Has been convicted of, or pled guilty, within the last five (5) years to any of the following criminal offenses:

(I) Vehicular homicide;

(II) Accidents involving death or personal injury;

(III) Accidents involving damage to a vehicle;

(IV) Driving under the influence of an intoxicant, drug or drug producing stimulant; or

(V) Any felony involving the use of a motor vehicle while under the use of any intoxicant.

(d) Exclusion from access to child care based on a listing on a state registry.

1. No person shall be employed, be a licensee or operator, provide substitute services, reside, or have any access to children in a child care agency if the results of the state registry review identify the person as being:

(i) Listed on the Vulnerable Persons Registry;

(ii) Listed on the Sexual Offender Registry; or

(iii) Indicated in the records of the Department of Children's Services as a perpetrator of abuse or neglect of a child.

(e) Supplemental Background Checks Subsequent to Licensing, Employment or Residence in a Child Care Agency.

1. The Department may, at any time, require a new background check of any individual with access to children in a child care agency.

(i) For an individual who was not subject to a background check prior to assuming a role, the individual's existing status in their role shall be conditional upon the satisfactory outcome of any requested background check.

(f) Any person who is excluded shall remain excluded pending the outcome of any appeals or waiver review or any determination that the basis for exclusion no longer exists.

(g) An individual will also be excluded if a criminal or juvenile proceeding, registry or administrative background review requiring exclusion or any other provision of law is discovered and verified in any manner.

(h) If a child care agency, substitute pool or staffing agency receives information from a source other than the Department that requires them to exclude an employee, substitute, volunteer, or resident they shall immediately exclude the person from any access to children and notify the Department on the same business day by calling the child and adult care complaint hotline.

(i) The exclusion of such persons from access to child care shall be conducted pursuant to T.C.A. § 71-3-507 and this rule.

(j) Failure of a child care agency to perform the required background check before allowing a person access to child care or to immediately exclude individuals with a criminal history or state registry review status that requires exclusion, shall be the basis for the immediate suspension, denial or revocation of the child care agency's license.]

Authority: T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), and 71-3-507, Acts 2016, ch. 839.

Amendments

Rule 1240-04-04-.02 Ownership and Administration is amended by amending subparagraphs (b)(5) and (b)(6) of Paragraph (2), adding new subparagraphs (b)(7) to (18), so that, as amended subparagraph (b)(5) to (18) reads as follows:

5. Handling of children's personal belongings;

6. If the agency provides transportation for children in the agency's care, the written statement required by 1240-04-04-.07(1)(a) describing transportation plans, procedures and equipment utilized in the transportation process and parental permission for trips away from facility;

7. Criteria for the disenrollment of children [see expulsion policy requirements in 1240-04 04-.02(b)(18);

8. Specific criteria concerning the release of children; includes responsibility until signed out;

9. Written parental permission for observation of children by non-child care agency staff;

10. Behavior management techniques;

11. Hours of operation;

12. Late fees;

13. Rates;

14. Inclement weather;

15. Emergency policy;

16. Whether the environment is smoke free;

17. Meal Service policy; and

18. The agency shall have a written expulsion policy.

    (i) The policy shall be:

        (I) Clearly articulated to staff and parents;

        (II) Developmentally appropriate and consistent; and

        (III) Non-discriminatory.

    (ii) Other options shall be considered prior to expulsion, such as but not limited to reducing the number of days or amount of time the child may attend, or if applicable, referrals to the Center on the Social and Emotional Foundations for Early Learning (CSEFEL), Early Intervention System, Individuals with Disabilities Education Act (IDEA).

    (iii) Procedures shall be developed to allow for a planned transition of a child to another program if expulsion must occur.

(iv) Aggregate data that includes reasons for expulsions shall be maintained and reported to the Department annually.

1240-04-04-.02 Ownership and Administration is amended by adding a new subparagraph (f) and (g) to Paragraph (3), so that as amended paragraph (3)(f) and (g) read as follows:

(f) The agency shall not admit a child into care until the parent/guardian has supplied the agency with a completed application, valid Tennessee Department of Health Official Immunization Certificates record (for children over two (2) months of age), and a health history. Exception: After an initial eligibility determination, children who are homeless and/or children in state custody may receive care prior to providing all required documentation as determined by the Department. Care without documentation of immunizations shall not exceed thirty days.

(g) The agency shall maintain written documentation that the parent/guardian performed an on-site visit to the agency prior to the child being enrolled into care and that the agency provided and reviewed parent engagement strategies recognized by the Department with the parent during the required pre-placement visit. Exception: A pre-placement visit is not required for children of homeless families.

Rule 1240-04-04-.02 Ownership and Administration is amended by deleting subparagraph (f) of Paragraph (4) in its entirety, and substituting instead the following language, and adding a new subparagraph (g) so that, as amended, subparagraph (f) and (g) shall read as follows:

(f) All children, including related children younger than age nine (9), shall have required records on file before care is provided. Exception: After an initial eligibility determination, children of homeless families and/or children in state custody may receive care prior to providing required documentation as determined by the Department.

(g) Data Reporting - Agencies shall submit data as requested by the Department quarterly on topics such as but not limited to: active enrollment, homeless children, non-traditional hours, deaths/serious injuries, child abuse, English as a Second Language/dual language learners, and children with disabilities.

Authority: T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2), Acts 2016, ch. 839.

Rule 1240-04-04-.03 Staff is amended by deleting part 6 under subparagraph (a), paragraph (1) in its entirety, and substituting instead the following language, so that, as amended, paragraph (1), subparagraph (a), part 6, shall read as follows:

6. Criminal Background Check and State Registry/Records Review Procedures.

(i) Criminal Background and Abuse Registry Disclosures and Reviews; Fingerprinting Requirements.

(I) The following persons are required to have a background check no more than ninety (90) days before having access to any child care agency:

I. Any person who owns or operates a child care agency and will have significant contact with children;

II. Any person who applies to work in a child care agency as an employee, director or manager;

III. Any person who will provide substitute services to a child care agency for more than thirty-six (36) hours in a calendar year and who is counted in the adult: child ratio; and

IV. Any person who is fifteen (15) years of age or older who will reside in a child care agency.

(II) New background checks are required for all staff and residents when an agency moves from one class of care to another, such as when a family home becomes a group home or when an agency is sold and staff remain employed by the new owner or any time an agency is issued a license that is not the renewal of an existing license. Exception: Does not apply to background checks completed within the last ninety (90) days.

(III) Background checks are required for all staff at least every five (5) years.

(IV) Requirements for Disclosure of Criminal/Juvenile and State Register History and Fingerprinting.

I. The individuals identified in subparagraph (1)(a) above shall:

A. Complete a criminal/juvenile administrative findings history disclosure form;

B. Submit fingerprint samples for a criminal and juvenile records background check; and

C. Complete a criminal, juvenile background check/state review consisting of:

(A) An investigation of a person's criminal background history by the Tennessee Bureau of Investigation (TBI) and through the Federal Bureau of Investigation's (FBI) national database;

(B) An investigation of a person's juvenile records history that is available to the TBI;

(C) A review of any available juvenile court records, if determined necessary by DHS;

(D) A search of the vulnerable persons registry (VPR), maintained by the Tennessee Department of Health;

(E) A search of the TN sexual offender registry (SOR), maintained by the TBI; and

(F) A search of the DCS registry of indicated perpetrators of abuse or neglect of children.

(G) A search of any state or federal registries required by the Child Care and Development Block Grant Act.

(ii) Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Children Prior to Completion of Criminal History Review.

(I) A child care agency, substitute pool, or staffing agency shall be responsible for registration of persons required to have a background check. The responsible entity shall ensure that the process is completed prior to employment.

(II) A child care agency may not permit any person who is required to have a background check to assume any role or to have access to children until the agency receives written verification from the Department that the person is cleared to work/reside in the agency.

(III) Failure to Complete or Disclose Information on Criminal Disclosure Form.

I. Failure to properly complete all sections of the Criminal/Administrative History Disclosure Form shall result in the individual being prohibited from assuming any position for which a background review is required.

II. Failure to disclose all criminal and administrative history information may result in the person being:

A. Excluded by the Department from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and

B. Referred to the appropriate district attorney for criminal prosecution.

(IV) The Department will pay for the costs of performing one background check per person per agency per year.

(V) The child care agency shall be responsible for costs associated with the background check if:

I. The fingerprint sample is rejected and the fingerprint sample must be resubmitted;

II. The agency submits a second fingerprint sample for an individual when the initial background check has not been completed; or

III. The agency submits a fingerprint sample for a purpose unrelated to obtaining approval for a prospective employee, volunteer, etc. to have access to child care.

(iii) Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Children.

(I) No person shall be employed, be a licensee or operator or, provide substitute services, reside, or have any access to children in a child care agency if the criminal background check identifies an excludable criminal offense for which the person has:

I. Been convicted of, pled guilty or no contest to (or to a lesser included offense);

II. Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or

III. Been named in a pending warrant, indictment, presentment, or petition.

(II) An excludable criminal offense involves:

I. The physical, sexual or emotional abuse or neglect of a child;

II. A crime of violence against a child, or any person;

III. Any offense, including a lesser included offense, involving the manufacture, sale, distribution or possession of any drug; or

IV. Any offense that presents a threat to the health, safety or welfare of children.

V. The criminal offenses for which a person will be excluded from a child care agency include but are not limited to the following offenses as well as their lesser included offenses (even if not listed here):

A. Aggravated arson (T.C.A. § 39-14-302);

B. Aggravated assault (T.C.A. § 39-13-102);

C. Aggravated child abuse (T.C.A. § 39-15-402);

D. Aggravated child neglect (T.C.A. § 39-14-302);

E. Aggravated cruelty to animals (T.C.A. § 39-14-212);

F. Aggravated kidnapping (T.C.A. § 39-13-304);

G. Aggravated rape (T.C.A. § 39-13-502);

H. Aggravated rape of a child (T.C.A. § 39-13-531);

I. Aggravated robbery (T.C.A. § 39-13-402);

J. Aggravated sexual battery (T.C.A. § 39-13-504);

K. Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);

L. Aggravated vehicular homicide (T.C.A. § 39-13-218);

M. Arson (T.C.A. § 39-14-301);

N. Assault (T.C.A. § 39-13-101);

O. Carjacking (T.C.A. § 39-13-404);

P. Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);

Q. Criminal attempt, under T.C.A. § 39-12-101, to commit any criminal offense that requires exclusion from child care;

R. Criminal exposure to HIV (T.C.A. § 39-13-109);

S. Criminal homicide (T.C.A. § 39-13-201);

T. Criminally negligent homicide (T.C.A. § 39-13-212);

U. Cruelty to Animals (T.C.A § 39-14-202);

V. Custodial interference (T.C.A. § 39-13-306);

W. Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);

X. Domestic assault (T.C.A. § 39-13-111);

Y. Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);

Z. Especially aggravated burglary (T.C.A. § 39-14-404);

AA. Especially aggravated kidnapping (T.C.A. § 39-13-305);

BB. Especially aggravated robbery T.C.A. § 39-13-403);

CC. Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);

DD. Exploitation of a minor by electronic means (T.C.A. § 39-13-529);

EE. False imprisonment (T.C.A. § 39-13-302);

FF. First degree murder (T.C.A. § 39-13-202);

GG. Incest (T.C.A. § 39-13-302);

HH. Indecent exposure (T.C.A. § 39-13-511);

II. Involuntary labor servitude (T.C.A. § 39-13-307);

JJ. Kidnapping (T.C.A. § 39-13-105);

KK. Rape (T.C.A. § 39-13-503);

LL. Rape of a child (T.C.A. § 39-13-522);

MM. Reckless endangerment (T.C.A. § 39-13-103);

NN. Reckless homicide (T.C.A. § 39-13-215);

OO. Robbery (T.C.A. § 39-13-401);

PP. Second degree murder (T.C.A. § 39-13-210);

QQ. Sexual battery (T.C.A. § 39-13-505);

RR. Sexual battery by an authority figure (T.C.A. § 39-13-527);

SS. Sexual exploitation of a minor (T.C.A. § 39-17-1003);

TT. Solicitation of a minor (T.C.A. § 39-13-528);

UU. Stalking (T.C.A. § 39-17-315);

VV. Statutory rape (T.C.A. § 39-13-506);

WW. Statutory rape by an authority figure (T.C.A. § 39-13-532);

XX. Trafficking a person for sexual servitude (T.C.A. § 39-13-309);

YY. Vehicular assault (T.C.A. § 39-13-106);

ZZ. Vehicular assault while intoxicated (T.C.A. § 39-13-106);

AAA. Vehicular homicide (T.C.A. § 39-13-213);

BBB. Voluntary manslaughter (T.C.A. § 39-13-211); and

CCC. Weapons offenses (unlawful possession, carrying, use, etc.).

(III) No person may be employed as a driver or serve as a driver for a child care agency if the person:

I. Is currently charged with; or

II. Has been convicted of, or pled guilty, within the last five (5) years to any of the following criminal offenses:

A. Vehicular homicide;

B. Accidents involving death or personal injury;

C. Accidents involving damage to a vehicle;

D. Driving under the influence of an intoxicant, drug or drug producing stimulant; or

E. Any felony involving the use of a motor vehicle while under the use of any intoxicant.

(iv) Exclusion from access to child care based on a listing on a state registry.

(I) No person shall be employed, be a licensee or operator, provide substitute services, reside, or have any access to children in a child care agency if the results of the state registry review identify the person as being:

I. Listed on the Vulnerable Persons Registry;

II. Listed on the Sexual Offender Registry; or

III. Indicated in the records of the Department of Children's Services as a perpetrator of abuse or neglect of a child.

(v) Supplemental Background Checks Subsequent to Licensing, Employment or Residence in a Child Care Agency.

(I) The Department may, at any time, require a new background check of any individual with access to children in a child care agency.

I. For an individual who was not subject to a background check prior to assuming a role, the individual's existing status in their role shall be conditional upon the satisfactory outcome of any requested background check.

(vi) Any person who is excluded shall remain excluded pending the outcome of any appeals or waiver review or any determination that the basis for exclusion no longer exists.

(vii) An individual will also be excluded if a criminal or juvenile proceeding, registry or administrative background review requiring exclusion or any other provision of law is discovered and verified in any manner.

(viii) If a child care agency, substitute pool or staffing agency receives information from a source other than the Department that requires them to exclude an employee, substitute, volunteer, or resident they shall immediately exclude the person from any access to children and notify the Department on the same business day by calling the child and adult care complaint hotline.

(ix) The exclusion of such persons from access to child care shall be conducted pursuant to T.C.A. § 71-3-507 and this rule.

(x) Failure of a child care agency to perform the required background check before allowing a person access to child care or to immediately exclude individuals with a criminal history or state registry review status that requires exclusion, shall be the basis for the immediate suspension, denial or revocation of the child care agency's license.

Authority: T.C.A. §§4-5-201 et seq., 4-5-209, 71-1-105, 71-3-501 et seq., 71-3-502(a)(2), 71-3-508(c), Acts 2000, ch. 981, §§8 and 14 and Acts 2003, Ch. 412, § 2, Acts 2016, ch. 839.

1240-04-04-.03 Staff – is amended by adding new subparagraphs (d) and (e) to Paragraph (1) so that as amended, paragraph (1)(d) and (e) shall read as follows:

(d) Prior to assuming duties, each new employee shall receive documented instruction in, and have a working knowledge of:

1. Program philosophy and policies;

2. Job description;

3. Emergency health and safety procedures;

4. Behavior management procedures;

5. Detection, reporting, and prevention of child abuse;

6. Procedures for receiving and releasing children;

7. Safe sleep procedures;

8. Shaken baby syndrome/abusive head trauma;

9. Meal service and safe food preparation policies;

10. Supervision during high risk activities such as eating and outdoor play;

11. Food allergies;

12. Expectations for communications with parent/guardian;

13. Disease control and health promotion;

14. An overview of licensing requirements;

15. Information on risks of Cytomegalovirus (CMV) to female employees of childbearing age;

16. A minimum of two (2) hours pre-service training as recognized by the Department; and

17. Documentation of the requirements in this subparagraph (h) shall be maintained in the staff file.

(e) Ongoing Training Requirements – any ongoing training required for employees shall include health and safety topics, such as but not limited to:

1. Prevention and control of infectious diseases (including immunization);

2. Prevention of sudden infant death syndrome and use of safe sleeping practices;

3. Administration of medication, consistent with standards for parental consent;

4. Prevention of and response to emergencies due to food and allergic reactions;

5. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

6. Prevention of shaken baby syndrome and abusive head trauma;

7. Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

8. Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

9. Precautions in transporting children (if applicable); and

10. First aid and pediatric cardiopulmonary resuscitation.

Rule 1240-04-04-.06 Health and Safety is amended by a new subparagraph (g)(3) to Paragraph (1), so that, as amended, paragraph (1)(g)(3) shall read as follows:

3. Care for children of homeless families and/or children in state custody is needed before documentation of immunizations can be confirmed. Care without documentation of immunizations shall not exceed thirty days.

Authority: T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2), Acts 2016, ch. 839.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services on 09/15/2016, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: (07/01/16

Rulemaking Hearing(s) Conducted on: (add more dates). 8/24/16

Date: 09/15/16

Signature: CMHewlett

Name of Officer: Catrina Hewlett

Title of Officer: Assistant General Counsel

DEBRA E. BATTS STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY My Commission Expires MAY 8, 2018

Subscribed and sworn to before me on: September 15 2016

Notary Public Signature: Debra E. Batts

My commission expires on: May 8, 2018

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

9/26/2016
Date

Department of State Use Only

Filed with the Department of State on: 9/28/16

Effective on: 12/27/16

Tre Hargett
Secretary of State

RECEIVED
2016 SEP 28 PM 3:35
SECRETARY OF STATE
PUBLICATIONS

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Following are comments received either orally or in writing at the public hearing(s) concerning the above rules or which were received within the time permitted for submission of comments following the hearing, together with the responses of the Department of Human Services. Similar or identical responses have been grouped together for purposes of response:

Comment One (Drop-in Centers):
Regarding 1240-04-02-.04 and 1240-04-02-.05 relating to drop-in centers, did the Department intend to make all requirements applicable to drop-in centers, such as requiring having immunization records on file (could be numerous) for all children versus a current statement of health; requiring onsite visits and parent handbooks; requiring a written expulsion and transfer policy; and the data reporting requirements? These will be difficult for drop-in centers to comply with.

Other concerns regarding the drop-in center changes included a request to clarify what we mean by non-traditional hours; clarification around what active enrollment mean for a drop in center; and whether the rules regarding smoke-free environment and transportation are necessary because they are already smoke-free pursuant to state law and do not provide any transportation services.

Response:
1240-04-02-.04 and 1240-04-02-.05 applicable to drop-in centers have been modified to remove the immunization records requirement (leaving the current requirement to have a signed statement regarding current immunizations form on file); removing the requirement for an onsite visit; removing the requirement for parent handbooks; and removing the requirement for a transfer policy.

Regarding non-traditional hours, non-traditional hours are hours for care outside of those traditional care hours typically offered by licensed childcare agencies, typically 6:00 am until 6:30 or 7:00 pm. The term "active enrollment" as applicable to drop-in centers refers to a list of current participants at the drop-in center. The rule regarding a smoke-free environment requires the agency to include such a statement in its policies, and does not need to be modified. The transportation rule provides that "if the agency provides transportation..." it needs to have a transportation plan on file. Agencies not providing such transportation would therefore not need to have a transportation plan on file. As such, no change is necessary with respect to these rule provisions.

Comment 2 (Training Requirements):
The Department received a number of comments on training requirements, which are contained in the following rules: 1240-04-01-.03, 1240-04-02-.05, 1240-04-03.07, and 1240-04-04-.03. Clarification was requested on what was necessary for pre-orientation and ongoing training, and how often ongoing training must be completed, and for which components. Commenters also requested the required number of training hours now, and whether the Department would now require 30 hours of training. Questions were also asked about what training was required before employment (and would be satisfactory for the Department) and what training was required within the first two weeks of employment.

Other comments asked if the Department would offer group training options, in particular for Shaken Baby Syndrome (and whether everyone had to obtain) and Before You Begin (other than during the day) and whether the cost would be borne by the provider or the Department, and when the training was required to be completed. Another commenter wanted to know if Cytomegalovirus information could be included in Department procedures and policies so they could obtain sample forms.

Another commenter wanted clarification on what documentation would be required to show compliance with the training requirements. On the training components, a commenter asked where they could obtain training on

building and physical premises safety and emergency preparedness training. Requests were made for the Department to inform Child Care Resource & Referral ("CCR&R") of the requirement to obtain training for prevention and control of infectious diseases because it is not available.

Commenters requested a source to verify their training was recognized by the Department.

Clarification was requested on the CPR training requirement, as it appears to be the same in the rule (one per center on duty), but their local program evaluator indicated everyone in the center needed to comply with the requirement.

A request was made to remove the language "such as but not limited to" before the list of required training topics because they need to know upfront what training is required.

A commenter requested that "pediatric" be added before the words "cardiopulmonary resuscitation" in the rules in order to align with language in the applicable federal regulations.

Response:
Pre-orientation training requires two hours of orientation to the topics listed in the rules—training containing an orientation to the required components that lasts the requisite two hours will satisfy this rule. Ongoing training must be completed annually, and the Department will communicate a policy on how many components must be covered annually. The amount of annual training required is not changed in these rules. The language "such as but not limited to" will remain in the list of requirements for training components to allow for flexibility if new safety issues or concerns arise that the Department feels need to be addressed by training. If new components arise, the Department will communicate the need for training to all providers, and allow sufficient time for providers to complete the training. This also allows the staff person the flexibility to take other training not specifically noted in the list.

The Department will make group training available for certain training components and may provide DVD copies of such training; those trainings will not include a cost to the providers. The Department can provide more information or links to resources on the Cytomegalovirus on the Department's provider website.

Documentation necessary to show compliance with the training requirements includes maintaining documentation of certificates obtained for attending trainings. Building and premises safety training and training for the prevention and control of infectious diseases are currently covered in the existing Tennessee Child Care On-line Training System ("TCCOTS") and/or Child Care Resource & Referral ("CCR&R").

Emergency preparedness training can be located at: https://training.fema.gov/is/courseoverview.aspx?code=is-36. Additional resources can be found here: http://www.acf.hhs.gov/occ/resource/emergency-preparedness-resources-for-child-care-programs.

The Department maintains a list of recognized training courses, which program evaluators can provide upon request.

The CPR training requirement has not changed—it still requires one person per duty to be CPR certified. This requirement may later change when the final federal regulations are published.

The word "pediatric" will be added before the words "cardiopulmonary resuscitation" in the rules for that training component.

Comment 3 (Background Checks):
The Department received a number of comments with respect to new background check requirements contained in the following rules: 1240-04-01-.03, 1240-04-02-.05, 1240-04-02.07, and 1240-04-04-.03. The comments were grouped into the following categories:

Criminal Offenses for Drivers: The rule excludes persons from transportation if they have pled guilty or been convicted of an offense involving vehicle damage. Commenters did not feel this was something that should exclude a driver, and felt that this would include simple accidents with vehicle damage as an excludable offense.

Who Is Subject to the Background Check Requirement. Commenters requested clarification on who has to be background check. Particular questions regarding whether parents needed to undergo a background check because they could "have access to children," and whether a juvenile aged fifteen (15) who attends the center during the day for a few hours after school must be checked.

Another question involved whether volunteers had to be background checked and if so, after how many hours of service. Also, one commenter indicated that Department of Education Rules should be similar. Someone requested further clarification on which employees had to be checked.

One commenter requested a change in the background check requirements, to have anyone who comes into an agency fingerprinted prior to entering the agency and having access to children because the rule only requires substitutes to obtain a background check if they will provide substitute services for more than 36 hours in a calendar year. An at-home provider asked how they would know if parents, extended family members, or homeless people are sexual offenders that they are letting into their programs/homes?

When. Several commenters stated that it was cumbersome to require the background checks be completed prior to employment. Another commenter asked that the Department send guidance on when they need to start sending employees for the five-year checks.

Does DHS Complete the Checks. Commenters asked if providers would be responsible for checking registries and juvenile records, and if so how they could accomplish this.

Unable to Obtain Fingerprints. Commenters wanted to know if they could only go through one background check agency and if so, what the cost involved. Commenters also wanted to know if they did everything correctly but had to resend the check in, if they would be responsible for the cost of the second background check. Another commenter asked if the mistake was a result of a Department mistake, would the provider have to pay for a new fingerprint/background check.

Every Five Year Requirement. Commenters wanted to know if they had to immediately exclude a caregiver if they had been there for a long time but had a five year background check show an excludable offense. Will the state pay for these checks every five years?

Exclusion Comment. What happens if someone is excluded, how do they appeal and will we pay attorneys' fees for the appeal. One commenter thought we should not exclude for misdemeanor drug offenses.

Another commenter asked where the information could come from as the rule mentions information coming from a source other than the Department.

Responses:

Criminal Offenses for Drivers: The rule as written only applies to criminal offenses which include an element of vehicle or property damage within the last five (5) years. As such, it would not be applicable to "fender benders" or other traffic accidents not resulting in any criminal charges.

Who Is Subject to the Background Check Requirement. All childcare employees must be background checked before beginning work, and again every five years thereafter. Parents of children do not need to be background checked, nor do juveniles visiting centers for a few hours a day who do not reside in the facility. Volunteers serving more than 36 hours in a center must be checked prior to starting their volunteer service or before exceeding the 36 hour volunteer requirement, pursuant to Public Chapter No. 839. No change to these rules will be made.

Regarding the home provider questions about parents, extended family members or homeless people, those persons are not required to undergo background checks under these rules.

When. For new employees, background checks must be completed no more than 90 days prior to employment, and then again every five years. The Department will send guidance on when to start sending employees for the every five-year checks, and has already sent one such communication to child care agencies.

Does DHS Complete the Checks. The Department will complete all background checks, including registry checks.

Unable to Obtain Fingerprints. If a fingerprint sample is rejected, the rejection notification letter already includes a code that allows the person to submit another fingerprint sample within 60 days without any additional charge.

Every Five Years Requirement. If a background check is performed on a current employee who has not undergone such a check within the past five years, and the results demonstrate an excludable offense, the person must be immediately excluded from access to children to protect the health and safety of such children. The State will cover the costs of these background checks.

Exclusion Comment. If excluded, an aggrieved party can file a request for a waiver; attorneys' fees must be paid by the party filing the request. The list of excludable offenses includes misdemeanor drug offenses, pursuant to the recently passed state law, Public Chapter No. 839.

Comment Four (Expulsion Policies):
The Department received multiple comments on the expulsion policy requirement contained in the following rules: 1240-04-01-.02, 1240-04-02-.04, 1240-04-03-.05, and 1240-04-04-.02.

Comments requested more details and clarification on what should be contained in expulsion polices and if we would provide templates. Another commenter indicated that while they may think their parent communication is clear, the program evaluators might not agree. Providers do not agree with having to have such a policy. One commenter requested an indicator manual, and noted that other states have these. Another commenter was upset that the burden was on the center versus the parents to transfer to another center. A request was made to know who the quarterly reports would be made to and how often. One commenter requested an allowance for disenrollment due to not paying tuition in their expulsion policy.

Another commenter said the CCFBG does not require an expulsion plan, but rather requires education for the public parents on expulsion. Many providers have smaller handbooks and would not want an expulsion policy to dominate the material offered at enrollment. There will much technical assistance needed in this area. Another commenter states that section (c) goes far beyond what is outlined in the CCDBG and causes undue burden and stress on private daycare providers and should be omitted.

Response:
No change will be made to the rules requiring an expulsion policy. Clear communication and expulsion plans provide parents with the center or facility's expectations for when a child can be disenrolled. Each provider must develop its own expulsion policy and the criteria for disenrollment and clearly communicate such information to parents, which would include inclusion of such information in the parent handbooks, and notification to parents that the policy exists. If the provider wants to include a provision regarding disenrollment for nonpayment of tuition, the provider should include that information in its expulsion policy.

Comment Five (Immunizations):
The Department received several comments on the immunization record exemption for children in foster care, alien children, and homeless children contained in 1240-04-01-.02, 1240-04-01-.06, 1240-04-02-.04, 1240-04-03-.05, 1240-04-04-.02, and 1240-04-04-.06.

Commenters wanted the homeless children and foster children exemption for immunization records to be expanded to include children who had moved to Tennessee from out of state. Other providers felt that this exemption might put other children in the centers at risk. Another provider wanted to know when the proposed rule will give parents of homeless, foster, or alien children 30 days to get their shot records submitted so she will know when she can immediately accept these children into care. Another provider wanted to know if the rule was going to change the allowance for her to obtain shot records from other states if such parents lived on the border, such as in Georgia or Alabama.

Response:
No change will be made in response to comments on this rule. The exemptions for children in these special situations, such as foster care, alien children, and homeless children is logical and takes into account the additional effort it may take to obtain such records for these children and their immediate need for quality care.

Comment Six (Data Reporting):
The Department received a few comments on data reporting requirements, contained in 1240-04-01-.02, 1240-04-01-.06, 1240-04-02-.04, 1240-04-03-.05, 1240-04-04-.02, and 1240-04-04-.06. Commenters wanted to know who would handle the reporting, to whom the reports would be made, how the reports would be made and in what format, and how often. Other commenters were concerned that it would be difficult to report data regarding children with emotional/behavioral problems. Other commenters did not see the need for reports of child abuse and requested it be changed to "instances of substantiated child abuse that occur in the childcare setting each year," indicating the Department would already have this information.
Other providers felt that the requirement for quarterly reports adds an undue burden to childcare providers.

Response:
The data reporting requirements are on an as requested basis and not more often than quarterly. The Department will send providers guidance on format of reporting and how often the Department anticipates requesting such data. Reporting such data should not place an undue burden on providers, and no change will be made in response to these comments.

Comment 7 (Release of a child):
Commenters suggested that the rule(s) regarding release of the child in 1240-04-01-.02, 1240-04-02-.04, 1240-04-03-.05, and 1240-04-04-.02 should include a written plan of consent for release of the child. A question was asked what if a parent calls and requests child be picked up by another family member, and they do have written permission, but the person is listed on the original application, then are they allowed to release the child. Commenters wanted clarification on the section regarding release anyone whose behavior might place the child at immediate risk of danger regarding what they legally could and could not do. A commenter wanted to know if a parent appeared intoxicated, could they deny release.

Response:
The rules already require a written child release plan stating to whom the child shall be released. They also require a clear policy be developed by the agency regarding release of child(ren) to anyone whose behavior may place the child(ren) in immediate risk. The specific question regarding written release permission to another family member can be addressed in the agency's written release policy. The same policy can also address releasing a child to someone whose behavior might place the child at risk.

Comment 8 (Parent Engagement):
Regarding 1240-04-03-.05(5)(f), commenters noted that the parental engagement strategies recognized by the Department have not been specified.

Response: Parent/family involvement involves parents and other family members in the child care program. Children in programs that emphasize active partnerships with parents generally receive higher quality care. Recognized parental engagement strategies may include, but are not limited to: quarterly updated bulletin boards for communications/announcements to parents; monthly written communication to parents; group parent meetings once per licensing year; individual parent conferences once a year; parent education handouts; one activity or project offered to families per licensing year; one educational training offered to families per licensing year; providing parents with current community resources when enrolling; offering parents an annual opportunity to evaluate the curriculum, structure and parent involvement aspects of the program, and maintaining a parental advisory council with documented meetings at least 2 times per year.

Comment 9 (Documentation of Incidents):
The Department received a few comments on documentation of incident rules. One commenter questioned whether under the provisions documentation and dis-enrollment before dis-enrolling a child because of an incident, does she first have to call her program evaluator since she has documentation?

Response:
There is no requirement that a provider notify the program evaluator prior to dis-enrolling a child. No changes were made in response to this comment.

Comment 10 (Notification Issues):

The Department received a number of comments on the lack of notification regarding the regular and emergency rules to provider, and the lack of clear, consistent communication from the Department. Another commenter indicated there should be a website just for resources for providers on the Department's website.

Response:
The Department published the regular rules and the emergency rules on the Department's website and the Secretary of State's website. The Department also sent out a provider letter the week before the rules hearings to remind providers of when and where they were occurring. The Department maintains a link to a website dedicated to resources and information for childcare providers, which can be located at: http://tn.gov/humanservices/topic/child-care-services.

No change to the rules is necessary.

Comment 11:
There is a typographical error in rule 1240-04-01-03(2)(v). "Ehicular homicide" should be "vehicular homicide".

Response:
This typographical error will be corrected.

Comment 12:
A comment was received about provider supervision during high risk outdoor activities such as eating or outdoor play, and having to sit at the table with the children. This commenter felt the providers should not be required to sit at the table with the children.

Response:
Nothing in the proposed rules changed the definition of high risk activity or the supervision requirements; no change is necessary in response to this comment.

Comment 13:
One commenter requested clarification and/or specific direction as to regulations specifically related to the Child Care Certificate Program.

Response:
The rules are equally applicable to both agencies that provide care for children of families who receive child care assistance and those that do not. No change to the rules is necessary in response to this comment.

Comment 14:
One commenter felt that the rule allowing parent access at all times to children was problematic because the longer the parent stays, the worse the child gets.

Response:
The lead agency associates unlimited parental access with best regulatory practices that contribute to the quality of care for children. Unscheduled visits by parents provide an incentive for agencies to maintain compliance with licensing rules and to maintain their overall level of quality. No change to the rules is necessary in response to this comment.

Comment 15:
Regarding 1240-04-03-.05(f), a commenter requested that the Department look into considering the age of children served for an on-site visit, specifically school-age program children being served by after-school program, and whether there should be an age requirement on this item.

Response:
The benefits associated with pre-enrollment visits are not limited to young children. A pre-enrollment visit is important for the parents and a child of any age. As such, no changes to the rules will be made in response to this comment.

Comment 16:
A commenter voiced concern regarding the grouping categories in the ratio section of the rules, and suggested incorporating a "walking group" of infants age 16-36 months to solve the problem.

Response:
No change was made in the rules to the ratio groupings, so no change is necessary in response to this comment.

Comment 17 (Parental Observation):
Regarding 1240-04-03-.05(6)(a)(3) requiring written parental permission before non-agency childcare staff person observe a child, one commenter asked if this should be part of the parent communication at enrollment. She indicated that a blanket permission that lacks details on the observation does not inform the parents, and parents should not be required to sign a blanket permission form, but rather, should sign for permission at the time of observation.

Response:
The rules address requiring facilities to have written policies that address written parental permission for observation of children by non-child care agency staff, but do not dictate what form that permission must take and/or when it must be signed. An agency may include in its policy a requirement for specific written permission at the time of observation. No change to the rules is necessary in response to this comment.

Comment 18:
In 1240-04-03-.07(9)(h), "Form" should be "from".

Response:
This typographical error, which is also found in 1240-04-01-.03(1)(a)(6)(xi), 1240-04-02-.05(1)(e)(8), and 1240-04-04-.03(1)(a)(6)(viii), will be corrected.

Comment 19:
One commenter noted that calling the hotline on the same business day could be problematic for providers. Accreditation agencies allow for 72 hours to report issues. It is more important that the person be excluded, not that the call be made in the same business day. We don't see this requirement in the federal law.

Response:
Nothing in the amendments to the rules addresses this requirement, and no change is necessary in response to this comment.

Comment 20:
Regarding 1240-04-03-.07(c)(10), one commenter noted that this section is a repeat of the previous section 9 and actually refers to the old law.

Response:
The new rules relating to the background check requirements found in the amended 1240-04-03-.07(c)(9) are independent of the existing provisions found in 1240-04-03-.07(c)(10) relating to the exclusion of persons from contact with children, which are not changed in the proposed rules. No changes were made in response to this comment.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The rules impact child care centers, group child care homes, family child care homes, and drop-in child care centers regulated by the Department of Human Services.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

These rules will have no projected financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

See (B) below.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Public Chapter 839 was signed into law on April 21, 2016. The law relates to criminal background checks for those individuals working or proposing to work in child care agencies. Among other things, the law requires criminal background checks for existing child care employees every five years (Section 10) and requires additional training requirements for newly hired child care agency staff (Section 13). The Act takes effect July 1, 2016. (Section 14). The passage of the Act on April 21, 2016, and its July 1, 2016, effective date does not provide adequate time to conduct a notice of rulemaking hearing. Due to the length of time necessary to complete the rulemaking process to promulgate rules related to background checks for individuals working in child care agencies, these emergency rules are required in order for the Commissioner to comply with the enactment of the Legislature. The Department is simultaneously issuing a notice of rulemaking hearing regarding these rules and will promptly conduct a rulemaking hearing to consider comments on the adoption of these as permanent rules.

These rules also implement provisions of the federal Child Care and Development Block Grant (CCDBG) which was reauthorized by Congress and passed in November 2014. The CCDBG Reauthorization requires states to allow homeless children to receive CCDF assistance after an initial eligibility determination but before providing required documentation (including documentation related to immunizations) to make it easier for vulnerable families to access child care services. States are also required to make public information about the results of health and safety monitoring that includes information about the annual number of deaths, the annual number of serious injuries, and the annual number of incidences of substantiated child abuse in child care settings. In addition, the CCDBG Act requires states to establish pre-service and ongoing training requirements for providers serving children receiving CCDF assistance relating to the following health and safety topics:

- Prevention and control of infectious diseases (including immunization)
- Prevention of sudden infant death syndrome and use of safe sleeping practices
- Administration of medication, consistent with standards for parental consent
- Prevention of and response to emergencies due to food and allergic reactions
- Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic
- Prevention of shaken baby syndrome and abusive head trauma
- Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602(a) (1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(a)(1))
- Handling and storage of hazardous materials and the appropriate disposal of bio contaminants
- Precautions in transporting children (if applicable)
- First aid and cardiopulmonary resuscitation

The CCDBG provisions included in the current rule amendments are required to be implemented by September 30, 2016, by the State's Child Care Development Fund (CCDF) State Plan, based on implementation requirements issued by the federal Office of Childcare, Administration of Children and Families. The rules need to be in place by July 1, 2016, in order to allow the department sufficient time to implement the data reporting requirements, homeless children CCDF assistance processes, and provide required and necessary training to childcare agency staff by the September 30, 2016 deadline. Failure to comply with the September 30 deadline could result in a 5% loss of federal funding. See Section 658E(c)(3)(B)(ii)(II)(cc).

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule will impact Child Care Agencies, including Day Care Centers, Family Home Centers, Group Home Centers and Drop In Centers.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

There are no Judicial Rulings of Attorney General Opinions that related directly to these rule amendments.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

It is estimated that increases in state expenditures in FY 16-17 are estimated to be $673,129.00. FY 16-17 will require the largest number of background checks in order to reach compliance with the law and rule requirements. It is estimated that background checks will be required for an estimated 14,469 individuals at a cost of $42.00 per individual, resulting in state expenditures estimated to be $607,698.00. In addition, the Department will need to hire one Special Investigator position with recurring expenditures estimated to be $65,431.00 ($48,000.00 salary and $17,431.00 benefits).

The recurring increase in state expenditures in FY 17-18 and subsequent years is estimated to be $126,205.00. This is based on an estimate that 1,447 individuals will need background checks at $42.00 per individual, resulting in state expenditures of $60,774.00. Added to this, is the recurring cost for one Special Investigator position of $65,431.00 ($48,000.00 salary and $17,431.00 benefits).

All costs associated with this will be funded with existing federal CCDBG funds and existing State Maintenance of Effort funds in the Department's recurring budget. No additional state appropriations will be needed.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Joyce Turner,
Interim Director of Operations
Community and Social Services

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Joyce Turner,
Interim Director of Operations
Community and Social Services

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Joyce Turner
Interim Director of Operations
Community and Social Services
400 Deaderick Street
Citizen's Plaza Building, 15th Floor
Nashville, TN 37243
615-313-4771
Joyce.Turner@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

N/A

RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
ADULT AND FAMILY SERVICES DIVISION

CHAPTER 1240-04-01
STANDARDS FOR GROUP CHILD CARE HOMES

TABLE OF CONTENTS

1240-04-01-.01 Introduction
1240-04-01-.02 Ownership and Administration
1240-04-01-.03 Staff
1240-04-01-.04 Equipment
1240-04-01-.05 Program
1240-04-01-.06 Health and Safety
1240-04-01-.07 Transportation
1240-04-01-.08 Food
1240-04-01-.09 Physical Facilities
1240-04-01-.10 Care of Children with Disabilities
1240-04-01-.11 Appendices

1240-04-01-.01 INTRODUCTION.

(1) Purpose Of Licensing. The primary purpose of licensing is the protection of children. Minimum requirements seek to maintain adequate health, safety, and supervision of children while in a group care setting. Developmental (comprehensive) child care provides appropriate educational experiences, health services, and social services to children and their families.

(2) Types Of Agencies. Child care services may be offered by family day care homes, group day care homes, day care or child development centers, nursery schools, day nurseries, and kindergartens as well as schools or agencies providing before and after school care. Regardless of name, purpose, or auspices, all are subject to licensure unless exempt by law. (See specific definitions below.)

(3) General Standards And Requirements.

(a) Issuance of a license is based on achievement in meeting and maintaining compliance with minimum standards, or requirements, set forth in these rules. The license applies only to the agency, organization, or person(s) to which or to whom it is issued and only to the building and premises approved for the operation of the child welfare agency. In addition to state licensing requirements, it is the responsibility of the applicant/licensee to comply with all applicable local ordinances, including zoning ordinances and business tax licenses or other locally required permits.

(b) A day care home must comply with all requirements in these rules to receive an annual license. In addition to fire safety and environmental sanitation approval, the applicant must demonstrate good faith intent to comply with these rules before a conditional license may be issued. Failure to meet such requirements, or to demonstrate good intention in meeting them in the case of a conditional license, shall constitute grounds for denial of a license or for revocation of a license already issued.

(c) Appendices to these rules which contain fire safety, health, environmental sanitation regulations, summaries of applicable laws, and other information are incorporated herein by reference.

(4) Legal Basis For Licensing. *TCA §71-3-501 et seq.* provide for defining, inspection, licensing, and regulation of child welfare agencies including day care homes. (See Appendix A for summary of applicable laws.) The Tennessee Department of Human Services has responsibility for licensing all such agencies offering child care to groups of children.

(Rule 1240-04-01-.01, continued)

(5) Definitions. For the purpose of this Chapter, the following definitions are applicable:

(a) Annual License. An annual permit issued by the Department to a child welfare agency or to a child care system central operator, authorizing the licensee to provide child care in accordance with provisions of the license, the law, and requirements (rules) of the Department. Issuance of a license is not an endorsement of child care methods or of an agency's operational philosophy. A license is not transferable from one location to another or from one licensee/operator to another.

(b) Approved Day Care Home. An approved day care home is a day care home which is related through contractual or employment arrangements to a central operator. The approved day care home must meet the same requirements and must have been evaluated by the central operator in the same manner as an individual licensed day care home.

(c) Caregiver(s). Any person who provides all or part of the care of a group of children, including the primary caregiver.

(d) Central Operator. The individual(s), or the corporation, partnership, cooperative, or other private or public entity of any kind, who or which, through their authorized representative(s), in addition to other activities, if any, owns, administers or operates a child care system. The central operator shall have ultimate responsibility for the administration/operation of any or all day care homes and child care centers in the system and shall, together with the primary caregiver, sign the application for a license. The central operator shall be the licensee.

(e) Child. A person under 17 years of age.

(f) Child Care. The wide variety of arrangements made by parents (or guardians) for the care outside of their home of children under 17 years of age, for less than 24-hour periods without transfer of custody.

(g) Child Care System. The existence of any day care homes approved or licensed and used by a licensed and incorporated day care agency or a licensed child-placing agency in its work; or the existence of two (2) or more facilities used for day care purposes which facilities are under the ownership, administration or control of any individual(s), corporation, partnership, cooperative, or other public or private entity of any kind.

(h) Commissioner. The executive head of the Department of Human Services, appointed by the Governor.

(i) Conditional License. A permit issued by the Department to a new child welfare agency or to a new child care system central operator, permitting and authorizing the licensee to begin child care operations. It is valid for 90 days and is issued upon application by the operator only if the staff and facility do not present any apparent hazards to the children that may be in care and only if the facility has received fire safety and environmental sanitation approval. If, at the end of the 90-day period, evidence is provided by the applicant/ licensee that such child welfare agency is suitable and properly managed and that the agency is in compliance with these rules, the Department will issue an annual license to the child welfare agency.

(j) Day Care. Synonymous with definition of child care, above.

(k) Department (DHS). The Tennessee Department of Human Services and its representatives.

(Rule 1240-04-01-.01, continued)

(l) Family Day Care Home. A home (an occupied residence) operated by a person for the purpose of receiving therein a minimum of five and a maximum of seven children under 17 years of age, who are not related to such person and whose parent(s) or guardian(s) are not residents in the same house, for less than 24 hours per day for care, without transfer of legal custody.

(m) Group Day Care Home. Any facility operated by a person, social agency, corporation or institution, or any other group which receives a minimum of eight and a maximum of 12 children (and up to three additional school-age children who will only be present before and after school, on school holidays, on school snow days, and during school summer vacation) for less than 24 hours per day for care outside their own homes, without transfer of legal custody. Before a group day care home opens, fire safety and environmental inspectors must approve the facility.

(n) High School Diploma. As used in the context of caregivers' qualifications, refers to a document recognizing graduation from an accredited institution, public or private, based on the issuing state's required number of academic credits, including passing a GED test. As used in this Chapter, a certificate or statement of attendance or similar document, or correspondence or video courses, do not qualify as or for a high school diploma.

(o) Infant. A child who is six weeks through 15 months of age.

(p) Law. The licensing law as contained in *TCA §§71-3-501* through *71-3-531*, and related statutes or other referenced statutes or regulations.

(q) Licensee. The person(s), agency(ies), or central operator to whom a license is issued and who must assume ultimate responsibility for a day care home or homes. In a single-site home, the licensee is the primary caregiver. In a child care system of approved homes, the central operator is the licensee. (The term as used herein also refers to an agency.)

(r) Parent. A biological or adoptive parent, guardian, or custodian who has primary responsibility for a child.

(s) Preschool Child. A person who is 31 months through five years of age. The term includes infants and toddlers.

(t) Primary Caregiver. The adult who is responsible for direct care and supervision of children in a day care home and for the daily operation of a home. In a group day care home which is not operated by a central operator, the primary caregiver is the licensee. Duties may include hiring, training, and supervision of other caregivers.

(u) School-age Child. A person who is five years of age and in kindergarten or older (refers to kindergarten through grade six).

(v) Staff. Full and part-time caregivers, employees, and volunteers, if any.

(w) Substitute. Paid or unpaid persons who are replacement for regular staff. The names, addresses, telephone numbers and dates of service shall be recorded for all substitutes in the staff personnel records of the home. Substitutes providing services for thirty-six (36) hours or more in a calendar year are required to have a criminal background check pursuant to 1240-04-01-.03(1)(a)6 and shall meet the same requirements for regular staff for physical examinations as required by 1240-04-01-.06(3); provided, however, for purposes of 1240-04-01-.03(1)(a)6, persons serving

(Rule 1240-04-01-.01, continued)

temporarily as caregivers in field service placements as part of an educational course of study or other curriculum requirement shall not be considered as substitutes for purposes of this rule.

(x) Toddler. A child who is 16 months through 30 months of age.

(y) Volunteer. A person who provides services for a child care agency without payment and who is used to supplement regular staff or substitutes. The volunteer shall not be used to meet classroom adult:child ratios. The names, addresses, telephone numbers and dates of service for all volunteers shall be recorded in the staff personnel records of the home.

(6) Procedures For Getting A License.

(a) The Department offers one prelicensure consultation session. When an individual or group is giving consideration to opening a child care service/business, the local county office of the Tennessee Department of Human Services should be contacted. The individual or group will be given the name of a licensing representative who will serve as their consultant.

(b) The Department will offer prelicensure training to prospective providers of day care. Interested persons or groups should contact a licensing representative to determine the date of the next meeting in their area.

(c) The licensing representative will inform the interested individuals or entity of the appropriate time to apply for a license. The group day care home application fee is $10.

(d) Upon satisfaction of the following minimum requirements, a conditional license may be issued:

1. Primary caregiver's qualifications meet the requirements (see Chapter 1240-04-01-.03);

2. Three satisfactory references for the primary caregiver are verified;

3. Physical facilities receive fire safety and environmental approval; and

4. If staff and facility do not present any apparent hazards to the children who may be in care.

(e) Receipt of an application begins the evaluation process which is completed with the issuance or denial of an annual license. This process includes:

1. At least two visits to the day care home, one of which is unannounced;

2. Observation of caregivers' interaction with children;

3. Review of agency records;

4. Request for written and oral information related to licensure requirements; and

5. Use of an evaluation checklist, itemizing requirements and noting compliance or noncompliance, a copy of which is left with the applicant.

(Rule 1240-04-01-.01, continued)

(f) Upon issuance of an annual license, the licensee is expected to maintain compliance with requirements throughout the year.

(g) Near the end of a licensing term, the licensee will be notified by mail of a scheduled reevaluation for a new license. Application for a renewed license must be made prior to the expiration of the existing license. The reevaluation process is similar to the initial evaluation, but agencies receiving two consecutive annual licenses are rewarded with a shorter, less involved reevaluation and/or fewer reevaluations. A home accredited by the National Association for Family Day Care (NAFDC) may be reevaluated every three years. (See Appendix A for further information regarding the licensing process.)

(7) Licensing Action And Appeal Rights. Procedures for applications, suspensions, denials, revocations of licenses and appeal rights are governed by Chapter 1240-5-11.

(8) Grace Period. Because the amount of in-service training required has been increased, new agencies and new primary caregivers will be granted a reasonable grace period if needed to obtain the required hours of training.

(9) Investigations Of Child Abuse And Neglect; Custodial Authority Of Children.

(a) A child care provider is required by law to cooperate with the Department and other investigators by reporting any suspected child abuse and neglect to the Department. The child care provider must further cooperate by providing access to the records of children and staff and by allowing investigators to interview children and staff.

(b) A child care provider should protect the child by requesting the investigator's identification and by knowing who is entitled to custody of the child. An investigator may take a child off of the premises of the agency if he/she has obtained custody of the child through voluntary placement agreement with the parent, through court order or through emergency assumption of custody under *TCA §37-1-113* without parental permission or if the child's parent or legal guardian is present and approves, or in conjunction with investigative procedures under the child abuse laws.

(c) Child care providers do not have a right to be present during interviews with staff or children or to receive information or results of the interviews or investigations concerning child abuse or neglect unless directly related to efforts to enforce the child abuse or licensing laws.

Authority: *T.C.A. §§4-5-201 et seq., 71-1-105, 71-3-501 et seq., and Acts 2000, ch. 981, §§ 8 and 14.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Amendment filed March 17, 1980; effective June 29, 1980. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9,1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed April 30, 1996; effective July 14, 1996. Amendment filed September 29, 2000; effective December 13, 2000.*

1240-04-01-.02 OWNERSHIP AND ADMINISTRATION.

(1) Ownership/Sponsorship.

(a) The licensee of a single-site group day care home shall be the primary caregiver.

(b) In a child care system, an adult person or persons shall be designated as having ultimate responsibility for the administration/operation of any or all day care home(s) in the system. Such person(s) shall be known as the central operator. The central operator and a primary caregiver shall sign an application for a license for each home sponsored (unless sponsoring agency is classified public).

(Rule 1240-04-01-.02, continued)

(c) The name, address, and phone number of an applicant, central operator, and all primary caregivers shall be made known to the Department of Human Services and to parents of children enrolled in the home(s) and become public record.

(d) The applicant/licensee shall notify DHS before changing location of a group day care home.

(e) The primary caregiver shall assume responsibility for daily operation of a day care home and shall meet specified qualifications prior to licensure. (See Rule 1240-04-01-.03.)

(f) Day care agencies sharing common land shall be located in separate facilities and shall not share equipment or facilities with the exception of outdoor equipment and play area, which shall be used by children from one agency at a given time.

(2) Policies.

(a) A new primary caregiver shall complete in the presence of the Licensing Counselor the "Checklist of Services" or write out a Statement of Purpose.

~~(b) A group child care home shall have written policies concerning~~

~~1. Services offered;~~

~~2. Provision for children's individual needs;~~

~~3. The home's admission policies and enrollment procedures;~~

~~4. Fees charged (if applicable) and plan for payment;~~

~~5. Handling of children's personal belongings; and~~

~~6. If the agency provides transportation for children in the agency's care, the written statement required by 1240-04-01-.07(1)(a) describing transportation plans, procedures and equipment utilized in the transportation process and parental permission for trips away from facility.~~

[(b) A group child care home shall have written policies that include/address, at a minimum:

1. Services offered;

2. Written parental permission for observation of children by non-child care agency staff;

3. Provision for children's individual needs;

4. The home's admission policies and enrollment procedures;

5. Rates;

6. Fees charged, including late fees (if applicable) and plan for payment;

7. Behavior management techniques;

8. Hours of operation;

(Rule 1240-04-01-.02, continued)

9. Inclement weather;

10. Emergency policy;

11. Whether the environment is smoke free;

12. Meal service policy;

13. Handling of children's personal belongings;

14. If the agency provides transportation for children in the agency's care, the written statement required by 1240-04-01-.07(1)(a) describing transportation plans, procedures and equipment utilized in the transportation process and parental permission for trips away from facility; and

15. Expulsion of a child, which policy shall be:

    (i) Clearly articulated to staff and parents;

    (ii) Developmentally appropriate and consistent;

    (iii) Non-discriminatory;

    (iv) Other options shall be considered prior to expulsion, such as but not limited to reducing the number of days or amount of time the child may attend, or if applicable, referrals to the Center on the Social and Emotional Foundations for Early Learning (CSEFEL), Early Intervention System, Individuals with Disabilities Education Act (IDEA);

    (v) Procedures shall be developed to allow for a planned transition of a child to another program if expulsion must occur; and

    (vi) Aggregate data that includes reasons for expulsions shall be maintained and reported to the Department annually.]

(c) A policy statement signed by both the primary caregiver and the parent shall be given to the parent, and a signed copy or other documentation that parent received a copy shall be kept on file.

(3) Enrollment of Children and Parent Involvement.

(a) Children shall be at least six weeks of age before entering day care.

~~(b) Prior to admission of children, the parent shall submit a completed information (application) form and current health record. [See 4(e) below and Chapter 1240-04-01-.06.]~~

~~(c) A copy of "Summary of Licensing Requirements" (furnished by the Department) shall be given to the parent(s) of each child enrolled.~~

~~(d) During normal hours of operation, parents shall be permitted access to their children, and ready access to all licensed areas of the home and premises shall be granted to Department representatives and inspection authorities (i.e., fire safety, sanitation, and health).~~

(Rule 1240-04-01-.02, continued)

~~(e) Parents must be informed in advance of the child's removal from the premises except in cases of emergencies or pursuant to investigative procedures conducted pursuant to the child abuse laws.~~

[(b) The agency shall not admit a child into care until the parent/guardian has supplied the agency with a completed application, valid Tennessee Department of Health Official Immunization Certificates record (for children over two (2) months of age), and a health history. Exception: After an initial eligibility determination, children who are homeless and/or children in state custody may receive care prior to providing all required documentation as determined by the Department. Care without documentation of immunizations shall not exceed thirty days. [See 4(e) below and Chapter 1240-04-01-.06.]

(c) The agency shall maintain written documentation that the parent/guardian performed an on-site visit to the agency prior to the child being enrolled into care and that the agency provided and reviewed parent engagement strategies recognized by the Department with the parent during the required pre-placement visit. Exception: a pre-placement visit is not required for children of homeless families.

(d) A parent handbook that includes a copy of the agency's policies, operating procedures, information on parent engagement, and the Department's Summary of Licensing Requirements shall be supplied to the parent(s) upon admission of the child. The agency's policies shall include:

1. Criteria for the disenrollment of children [see expulsion policy requirements in 1240-04-01-.02 (b)(14)], and

2. Specific criteria concerning the release of children to anyone whose behavior may place the children at immediate risk.

(e) During normal hours of operation, parents shall be permitted access to their children, and ready access to all licensed areas of the home and premises shall be granted to Department representatives and inspection authorities (i.e., fire safety, sanitation, and health).

(f) Parents must be informed in advance of the child's removal from the premises except in cases of emergencies or pursuant to investigative procedures conducted pursuant to the child abuse laws.]

(4) Records.

The following records shall be kept and shall be available to the Department:

(a) An annual operating budget (actual or projected), which includes a statement of income and expenditures. Adequate financing of the day care operation shall be maintained.

(b) Staff records including:

1. Recommendations from three nonrelated references on each applicant and caregiver. The central operator's/primary caregiver's reference information shall be given to the licensing counselor;

2. Training received during the year for each caregiver;

3. Reserved;

(Rule 1240-04-01-.02, continued)

4. Adult health records.

(c) Children's health records.

(d) Daily attendance records on children; on staff if more than one caregiver.

(e) A record on each child which includes the following information:

1. Name, date of birth, name of parent(s), home address, business address and telephone, work hours, child's background information, transportation plan, and the names of persons allowed to pick the child up.

2. The following information shall be kept where it can be found quickly in an emergency: The name, address, and telephone number of the person parents wish to be called if they cannot be reached. The name, address, and telephone number of a doctor to call in an emergency; written permission of parent authorizing emergency medical care.

3. A written plan of how the primary caregiver intends to communicate daily with parents of every child below 31 months of age.

~~(f) Children's records shall be kept for one year following the child leaving the agency.~~

[(f) A child's record shall be kept in a central location and shall be kept for one (1) year following the child's leaving the agency. Exception: The health record shall be returned to the parent/guardian upon request when the child leaves the agency.

(g) All children, including related children younger than age nine (9), shall have required records on file before care is provided. Exception: After an initial eligibility determination, children of homeless families and/or children in state custody may receive care prior to providing required documentation as determined by the Department.]

(5) Right to Privacy/Confidentiality. The licensee and caregivers shall not disclose or knowingly permit the use of by other persons any information concerning a child or family except as required by law or regulation.

(6) Posting of License. During the hours of operation, an up-to-date license to operate a group day care home shall be posted near the main entrance where anyone entering may see it.

(7) Liability and Medical Payment Insurance Coverage.

(a) General liability, automobile liability and medical payment insurance coverage shall be maintained on the vehicles owned, operated or leased by the child care agency and on the operations of the child care agency's facilities.

(b) Automobile liability coverage shall be maintained in a minimum amount of Three Hundred Thousand Dollars ($300,000) combined single limit of liability. The requirement of this subparagraph only applies to child care programs that transport children.

(c) General liability coverage on the operations of the child care agency facilities shall be maintained in a minimum amount of Three Hundred Thousand Dollars ($300,000) per occurrence and Three Hundred Thousand Dollars ($300,000) general aggregate coverage, or Three Hundred Thousand Dollars ($300,000) per occurrence.

(Rule 1240-04-01-.02, continued)

(d) Medical payment coverage, as the primary coverage, shall be maintained in the minimum amount of Five Thousand Dollars ($5,000) for injuries to children being transported in vehicles owned, operated or leased by the child care agency under subparagraph (b), and in the minimum amount of Five Thousand Dollars ($5,000), for injuries to children resulting from the operation of the child care agency under subparagraph (c).

(e) The requirements of this paragraph shall not apply to an agency that is under the direct management of a self-insured administrative department of the state, a county or a municipality or any combination of those three (3) or that has, or whose parent entity has, a self-insurance program that provides, as determined by the Department, the coverages and the liability limits required by these rules.

(f) Documentation that the necessary insurance is in effect, or that the administrative department or other entity is self-insured, shall be maintained in the records of the child care agency and shall be available for review by the Department's licensing staff.

[(8) Data Reporting. Agencies shall submit data as requested by the Department quarterly on topics such as but not limited to: active enrollment, homeless children, non-traditional hours, deaths/serious injuries, child abuse, English as a Second Language/dual language learners, and children with disabilities.]

Authority: *T.C.A. §§4-5-201 et seq., 4-5-202, 71-1-105, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), 71-3-502(a)(4)(B), and Acts 2000, ch. 981, §§ 3(a)(4) and 14.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed July 1, 1993; effective September 14, 1993. Amendment filed November 18, 1999; effective January 31, 2000. Amendment filed September 29, 2000; effective December 13, 2000. Amendment filed August 30, 2001; effective November 13, 2001. Amendment filed November 21, 2002; effective February 4, 2003.*

1240-04-01-.03 STAFF.

(1) Qualifications.

(a) All Caregivers.

1. Every staff person, including volunteers, practicum students, and substitutes, shall be physically, mentally, and emotionally capable of performing his/her duties satisfactorily.

(i) Drug Screening for Child Care Vehicle Drivers Upon Reasonable Cause.

(I) The Department, in its sole discretion, may require any individual, who drives or may drive at any time any vehicle transporting children on behalf of the agency or its contractors, to undergo a drug screening test when, in the Department's sole determination, there is reasonable cause to believe that such individual may have an impairment or possible impairment that potentially poses a risk of harm to children in the care of the agency caused by the use, or possession and potential use, of any drug. For purposes of this part, the term "drug" shall include alcohol.

(II) An individual directed to undergo such examinations or screenings may refuse to do so, but will not be permitted to drive a vehicle transporting children in the agency or have any further contact with

(Rule 1240-04-01-.03, continued)

children in the care of the child care agency until evidence is provided that is satisfactory, in the Department's discretion, to demonstrate that the individual does not represent a risk of harm to the children in the agency's care.

(ii) Safety Plans.

(I) The Department may require, in its sole discretion, the child care agency to enter into a safety plan approved by the Department that prohibits or limits such individual's contact with children in the care of the child care agency pending the outcome of such testing.

(II) The Department may otherwise require, in its sole discretion, that the child care agency enter into a long-term or permanent safety plan that prohibits or limits the driving duties by an individual described in part 1 for, or contact by such individual with, children in the care of the agency.

(III) Failure to adhere to the safety plan shall be grounds for action by the Department against the child care agency's license as permitted by T.C.A. § 71-3-508(c).

(IV) The child care agency, or any individual whose employment status is directly and adversely impacted by a safety plan or by refusal to undergo an examination as directed by the Department may, at any time during the existence of the plan or during the pendency of the directive for an examination, make written request to the Director of Licensing for an intradepartmental review of the safety plan. Such review shall be conducted by the Director or the Director's designee within ten (10) business days of receipt of the written request.

(V) Any individual or child care agency that has received an adverse decision from the intradepartmental review set forth in subpart (IV) above, may appeal such safety plan to the Department by filing a written request for an administrative hearing before the Department's Administrative Procedures Division within ten (10) business days of the Director's decision. The hearing shall be held by the Division within twenty (20) business days of the receipt of the request for an administrative hearing.

(VI) Any safety plan that exceeds ninety (90) days when proposed or that continues for more than ninety (90) days may be appealed by the child care agency to the Child Care Agency Board of Review.

2. A person who has a physical, mental, or emotional condition which is in any way harmful to children shall not be present with the children.

3. To be counted in the caregiver to child ratio, caregivers shall be at least 16 years of age and able to read and write, and must be supervised by an adult.

4. Caregivers shall be of suitable character to work with young children.

~~5. Reserved.~~

[5. Training of Employees

(Rule 1240-04-01-.03, continued)

(i) Training of New Employees - Prior to assuming duties, each new employee shall receive documented instruction in and have a working knowledge of:

(I) Program philosophy and policies;

(II) Job description;

(III) Emergency health and safety procedures;

(IV) Behavior management procedures;

(V) Detection, reporting, and prevention of child abuse;

(VI) Procedures for receiving and releasing children;

(VII) Safe sleep procedures;

(VIII) Shaken baby syndrome/abusive head trauma;

(IX) Meal service and safe food preparation policies;

(X) Supervision during high risk activities such as eating and outdoor play;

(XI) Food allergies;

(XII) Expectations for communications with parent/guardian;

(XIII) Disease control and health promotion;

(XIV) An overview of licensing requirements;

(XV) Information on risks of Cytomegalovirus (CMV) to female employees of childbearing age;

(XVI) A minimum of two (2) hours pre-service training as recognized by the Department; and

(XVII) Documentation of the requirements in this subparagraph (i) shall be maintained in the staff file.

(ii) Ongoing Training Requirements – any ongoing training required for employees shall include health and safety topics, such as but not limited to:

(I) Prevention and control of infectious diseases (including immunization);

(II) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(III) Administration of medication, consistent with standards for parental consent;

(Rule 1240-04-01-.03, continued)

(IV) Prevention of and response to emergencies due to food and allergic reactions;

(V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(VI) Prevention of shaken baby syndrome and abusive head trauma;

(VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

(VIII) Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

(IX) Precautions in transporting children (if applicable); and

(X) First aid and pediatric cardiopulmonary resuscitation.]

~~6. Criminal history and abuse registry background checks; appeals; exemptions.~~

~~(i) Each person:~~

~~(I) Applying to work with children as a paid employee, a director, or manager of a child care agency;~~

~~(II) Applying to work as a new substitute in a child care agency;~~

~~(III) Who applies for a license for, or who otherwise seeks to operate (an "operator") a child care agency as defined in TCA §§ 71-3-501 et seq. and who has significant contact with children in the course of the role of operator. For purposes of this subparagraph, an "operator" shall be an individual who is an owner or administrator of a child care agency or a child care system; or~~

~~(IV) Fifteen (15) years of age or older who resides in a child care agency or who moves into a child care agency following initial licensure shall:~~

~~I. Complete a criminal history disclosure form as approved by the Department;~~

~~II. Supply a fingerprint sample in a manner prescribed by the Tennessee Bureau of Investigation in accordance with procedures established by the Department, and shall submit to a fingerprint based criminal history check to be conducted by the Department and the Tennessee Bureau of Investigation in accordance with procedures established by the Department;~~

~~III. Submit to a review of their status on the Department of Health's vulnerable persons registry under Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated.~~

(Rule 1240-04-01-.03, continued)

~~IV. Agree to release all records relating to his or her criminal history to the child care agency and to the Department so that the criminal history information can be verified.~~

~~(ii) The entity that is seeking to employ the person or use the person as a substitute, or which has the person residing in the agency, or the licensee or operator of a child care agency, shall be responsible for obtaining, and submitting the fingerprint sample and any information necessary to process the criminal history review, in such manner as may be required by the Department, to the Tennessee Bureau of Investigation within ten (10) days of the first day of beginning employment or substitute status, or within ten (10) days of the license application or seeking operator status, or, within ten (10) days of the application for an initial license for a facility in which the person resides or within ten (10) days after the resident moves into the child care facility.~~

~~(iii) The child care agency shall be responsible for all costs associated with obtaining, handling and processing of the fingerprint sample which is submitted to the Tennessee Bureau of Investigation. The Department of Human Services will pay for the costs of processing the criminal records background check with the Tennessee Bureau of Investigation using the applicant's fingerprint sample. The Department shall only pay for one (1) processing fee that is required by the Tennessee Bureau of Investigation. If the fingerprint sample is rejected, and further costs are required to process the fingerprint, the child care agency is responsible for any further costs, regardless of the number of efforts required to obtain a valid fingerprint sample.~~

~~(iv) Pending outcome of the fingerprint background check and the Department of Health's vulnerable person's registry the applicant for employment, for a license or for operator or for a substitute position shall be conditional and shall be dependent upon the background check. No person whose criminal history disclosure form describes a criminal history or other activities within the prohibitions of subpart (vii) shall be permitted to be employed as a caregiver, a substitute, director, nor may such person be allowed to be a licensee, or an operator who has significant contact with the children in the agency's care, nor shall such person be permitted to reside in or otherwise have access to children in the child care facility while children are present.~~

~~(v) A copy of the disclosure form and the results of the criminal history check and the results of the inquiry to the Department of Health's vulnerable persons registry shall be maintained in the child care agency's records for review by the Department of Human Services.~~

~~(vi) The child care agency shall immediately review the report of the background check received from the Department and the Tennessee Bureau of Investigation, and shall immediately consult with the Department to resolve any questions relative to the person's status. Upon determination that the person's status prohibits the person from having access to children as described in subpart (vii), the child care agency shall immediately exclude such person from access to children. Failure to exclude the person under this part or subpart (iv) will result in immediate suspension of the child care agency's license.~~

~~(vii) Exclusions from access to children based upon criminal history or other status.~~

(Rule 1240-04-01-.03, continued)

~~(I) No person shall be employed, or otherwise act, as a caregiver or as a substitute caregiver for children in a child care agency, nor shall any person be a licensee, director, or be an operator who has significant contact with children in a child care agency, nor shall a person who is a resident in a child care agency have access to or contact with children in a child care agency, nor shall any other person have any access to children in a child care agency whatsoever, who:~~

~~I. has any pending warrant, indictment or presentment;~~

~~II. has been convicted, pled guilty to or pled no contest to any crime or charge, or~~

~~III. has any pending juvenile proceeding or previous juvenile finding which, if an adult, would result in any crime or charge, involving:~~

~~A. Any crime, including a lesser included offense derived from any crime involving the physical, sexual, or emotional abuse or gross neglect of a child or any other crimes involving a threat to the health, safety or welfare of a child; or~~

~~B. Any crime of violence, including a lesser included offense derived from a crime of violence against another person; or~~

~~C. Any crime involving, or lesser included offenses derived from any crime involving, the manufacture, sale, distribution or possession of any drug; or~~

~~D. A violation of TCA §§ 39-13-213; 55-10-101; 55-10-102 or 55-10-401 or any felony involving use of a motor vehicle while under the influence of any intoxicant. Such persons under this subitem may not for a period of five (5) years from the date of the conviction or guilty plea be employed or serve as a driver transporting children for a child care agency.~~

~~IV. Is listed on the abuse registry maintained by the Department of Health pursuant to Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated; or~~

~~V. Known to the management or licensee of a child care agency as a perpetrator of child abuse or child sexual abuse or who is identified to the child care agency's management or licensee by the Department of Human Services or by the Department of Children's Services as a validated or indicated perpetrator of abuse of a child based upon an investigation conducted by the Department of Children's Services or by the child protective services agency of any other state; and~~

~~A. who is associated in providing care or ancillary services in any manner within a child care agency; or~~

(Rule 1240-04-01-.03, continued)

~~B. who is a family member or other person residing at the child care agency's facility(ies) or adjacent residence of the caregiver; or~~

~~C. who has unrestricted access to children in the child care agency as determined by the Department of Human Services.~~

~~(II) An employee or volunteer who has been identified by the Department as having neglected a child based on an investigation conducted by the Department of Children's Services, or any child protective services agency of any state, and who has not been criminally charged or convicted or pled guilty as stated above, shall be supervised by another adult while providing care for children.~~

~~(viii) Appeals of exclusions.~~

~~(I) Any person who is excluded or whose license or operator status is denied based upon the results of the criminal history background review may appeal the exclusion or denial to the Department within ten (10) days of the mailing date of the notice of such exclusion or denial to the subject person.~~

~~(II) If timely appealed, the Department shall provide an administrative hearing pursuant to Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated in which the appellant may challenge the accuracy of the report, and may challenge the failure to grant an exception to the exclusion or denial required by this subsection if a rule for such purpose has been promulgated by the Department pursuant to subpart (ix).~~

~~(III) The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified in the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the report was generated, has been dismissed, nolled or has resulted in an acquittal.~~

~~(ix) Exemptions from exclusions.~~

~~(I) The Department will consider the granting of exemptions from the prohibitions under subpart (vii).~~

~~(II) The person seeking the exemption may indicate the request on the disclosure form, or may seek the exemption by written request to the Commissioner at any time. The request shall state the basis for the request, including any extenuating or mitigating circumstances that would, in the person's opinion, justify an exemption from the exclusion. Any documentary evidence may also be submitted with the request~~

~~(III) Advisory group to review exemption requests.~~

(Rule 1240-04-01-.03, continued)

~~I. The Department will establish an advisory group composed, at a minimum, of law enforcement personnel, persons experienced in child protective services, persons experienced in child development issues and child care providers licensed by the Department to review the requested exemption and advise the Department as to whether such request is warranted.~~

~~II. At the Department's request, the advisory group shall review the written request and any other evidence in any other form which it determines necessary to determine the status of the exemption request.~~

~~III. Based upon the recommendation of the advisory group, the Department shall make the final determination regarding an exemption. The exemption shall only be granted if the circumstances, as reviewed and determined by the advisory group and the Department, clearly warrant the exemption. The decision will be filed with the child care agency and shall be maintained in the Department's record concerning the agency and shall be open to public inspection.~~

~~(IV) Appeal of exemption decision.~~

~~I. The Department shall notify in writing the person making the request for exemption of the decision regarding the exemption request and the basis for the decision. A person aggrieved by the Department's determination may appeal the decision by filing a written request with the Commissioner within ten (10) days of the mailing date of the decision as shown by the date of the notice. If timely appealed, the person shall be granted an administrative hearing under the provisions of TCA §§ 4-5-301 et seq.~~

~~II. The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified on the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the criminal background history report was generated, has been dismissed, nolled or has resulted in an acquittal.~~

~~(x) Alternate and Supplementary Criminal Background Checks.~~

~~(I) The Department of Human Services may, at its own expense, utilize background checks pursuant to the provisions of TCA § 71-3-507(g) or (h) to determine the criminal history or other status on the Department of Health's abuse registry of persons applying to work or who are current employees, licensees, operators or volunteers or current residents of child care agencies or persons working with contractors of the Department who are not otherwise required by the provisions of this subparagraph or any other provisions of law to undergo a criminal history background check. The Department may also utilize the abuse registry of the Department of Health under Title~~

(Rule 1240-04-01-.03, continued)

~~68, Chapter 11, Part 10 of the Tennessee Code Annotated, for such persons.~~

~~(II) The Department may require such individuals to complete a disclosure form as required by subpart (i) and to undergo a fingerprint sample. The Department will submit the form and the fingerprints to the Tennessee Bureau of Investigation for review.~~

~~(III) Status Pending Background Check.~~

~~I. Pending the outcome of the background check, if required, the applicant for employment or licensee or operator status or for a substitute or volunteer services position, shall be in a conditional status with the child care agency or the Department contractor, and such status shall be dependent upon the outcome of the background check.~~

~~II. The employment status of persons for whom a post-employment criminal background check was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a child care agency for whom a criminal background check was conducted after license approval, and who were not otherwise subject to a pre-status applicant background check and to the exclusionary provisions provided in this part, shall be governed by any regulations which may govern their status in a regulated entity or by applicable employment law.~~

~~(IV) Name Searches.~~

~~I. As a further supplemental method of criminal background history review for any applicants for employment, license or operator status, or for substitute or volunteer status with child care agencies, or with the Department or its contractors, as listed in subdivision TCA § 71-3-501(g)(1) or with the entities which the Department may regulate, or for residents of new child care agencies, or for current employees, licensees, operators, substitutes or volunteers of child care agencies or for current residents of child care agencies, the Department may require such persons to submit a disclosure form as set forth in part 1, a copy of which shall be maintained with the Department and shall be filed with the entity with whom such person is associated, and may require such person to agree to release all records involving the person relating the criminal history of such person.~~

~~II. The Department may, by agreement with the Tennessee Bureau of Investigation, access the Bureau's criminal history computer database using only the name of the person and such other person as contained on the disclosure form or such other information as may be available. If the Department determines it to be necessary, then the Department may require fingerprint verification pursuant to items (I) and (II) above.~~

(Rule 1240-04-01-.03, continued)

~~(V) All provisions of subpart (vii) including, but not limited to, the exclusion of individuals from providing care, from being licensed for the care of children or having access to children upon determination of the criminal background or perpetrator of such individual, the suspension of operations of regulated, certified or approved entities that fail to exclude persons with a criminal background, and the exemptions from the exclusionary provisions shall be applicable to persons having criminal backgrounds or perpetrator status as determined by the processes established by this part.~~

~~(VI) Any person disqualified from care for or access to children based upon the results of the criminal history background review under this part may appeal that determination to the Department as provided in subpart (viii).~~

~~(VII) Nothing in this part shall be construed to prevent the exclusion of any individual from providing care for, from being licensed or approved for the care of children pursuant to this part or from having access to a child in a child caring situation if a criminal or juvenile proceeding background or perpetrator status is discovered and verified in any other manner other than through a procedure established pursuant to this chapter. All procedures, rules, and appeal processes established pursuant to this subparagraph for the protection of children and the due process rights of excluded individuals shall also be applicable to such individuals.~~

~~(xi) Nothing in this part shall be construed to mean that any other law which mandates that criminal background checks be conducted on applicants for employment, license or operator status, for substitute or volunteer positions or for resident status is made voluntary, repealed or superseded in any manner by the provisions of this subparagraph, and the provisions of subpart (x) are supplementary to, and are not in lieu of any mandatory provisions for such other statutorily required criminal background checks.~~

[6. Criminal history and abuse registry background checks; appeals; exemptions.

(i) The following persons are required to have a background check no more than (90) days before having access to any child care agency:

(I) Any person who owns or operates a child care agency and will have significant contact with children;

(II) Any person who applies to work in a child care agency as an employee, director or manager;

(III) Any person who will provide substitute services to a child care agency for more than thirty-six (36) hours in a calendar year and who is counted in the adult: child ratio; and

(IV) Any person who is fifteen (15) years of age or older who will reside in a child care agency.

(ii) New background checks are required for all staff and residents when an agency moves from one class of care to another, such as when a family home becomes a group home or when an agency is sold and staff remain employed by the new owner or any time an agency is issued a license that

(Rule 1240-04-01-.03, continued)

is not the renewal of an existing license. Exception: Does not apply to background checks completed within the last ninety (90) days.

(iii) Background checks are required for all staff at least every five (5) years.

(iv) Requirements for Disclosure of Criminal/Juvenile and State Register History and Fingerprinting.

(I) The individuals identified in subparagraph (1)(a) above shall:

I. Complete a criminal/juvenile administrative findings history disclosure form;

II. Submit fingerprint samples for a criminal and juvenile records background check; and

III. Complete a criminal, juvenile background check/state review consisting of:

A. An investigation of a person's criminal background history by the Tennessee Bureau of Investigation (TBI) and through the Federal Bureau of Investigation's (FBI) national database;

B. An investigation of a person's juvenile records history that is available to the TBI;

C. A review of any available juvenile court records, if determined necessary by DHS;

D. A search of the vulnerable persons registry (VPR), maintained by the Tennessee Department of Health;

E. A search of the TN sexual offender registry (SOR), maintained by the TBI; and

F. A search of the DCS registry of indicated perpetrators of abuse or neglect of children.

G. A search of any state or federal registries required by the Child Care and Development Block Grant Act.

(v) Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Children Prior to Completion of Criminal History Review.

(I) A child care agency, substitute pool, or staffing agency shall be responsible for registration of persons required to have a background check. The responsible entity shall ensure that the process is completed prior to employment.

(II) A child care agency may not permit any person who is required to have a background check to assume any role or to have access to children until the agency receives written verification from the Department that the person is cleared to work/reside in the agency.

(Rule 1240-04-01-.03, continued)

(III) Failure to Complete or Disclose Information on Criminal Disclosure Form.

I. Failure to properly complete all sections of the Criminal/Administrative History Disclosure Form shall result in the individual being prohibited from assuming any position for which a background review is required.

II. Failure to disclose all criminal and administrative history information may result in the person being:

A. Excluded by the Department from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and

B. Referred to the appropriate district attorney for criminal prosecution.

(IV) The Department will pay for the costs of performing one background check per person per agency per year.

(V) The child care agency shall be responsible for costs associated with the background check if:

I. The fingerprint sample is rejected and the fingerprint sample must be resubmitted;

II. The agency submits a second fingerprint sample for an individual when the initial background check has not been completed; or

III. The agency submits a fingerprint sample for a purpose unrelated to obtaining approval for a prospective employee, volunteer, etc. to have access to child care.

(vi) Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Children.

(I) No person shall be employed, be a licensee or operator or, provide substitute services, reside, or have any access to children in a child care agency if the criminal background check identifies an excludable criminal offense for which the person has:

I. Been convicted of, pled guilty or no contest to (or to a lesser included offense);

II. Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or

III. Been named in a pending warrant, indictment, presentment, or petition.

(II) An excludable criminal offense involves:

(Rule 1240-04-01-.03, continued)

I. The physical, sexual or emotional abuse or neglect of a child;

II. A crime of violence against a child, or any person;

III. Any offense, including a lesser included offense, involving the manufacture, sale, distribution or possession of any drug; or

IV. Any offense that presents a threat to the health, safety or welfare of children.

V. The criminal offenses for which a person will be excluded from a child care agency include but are not limited to the following offenses as well as their lesser included offenses (even if not listed here):

A. Aggravated arson (T.C.A. § 39-14-302);

B. Aggravated assault (T.C.A. § 39-13-102);

C. Aggravated child abuse (T.C.A. § 39-15-402);

D. Aggravated child neglect (T.C.A. § 39-14-302);

E. Aggravated cruelty to animals (T.C.A. § 39-14-212);

F. Aggravated kidnapping (T.C.A. § 39-13-304);

G. Aggravated rape (T.C.A. § 39-13-502);

H. Aggravated rape of a child (T.C.A. § 39-13-531);

I. Aggravated robbery (T.C.A. § 39-13-402);

J. Aggravated sexual battery (T.C.A. § 39-13-504);

K. Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);

L. Aggravated vehicular homicide (T.C.A. § 39-13-218);

M. Arson (T.C.A. § 39-14-301);

N. Assault (T.C.A. § 39-13-101);

O. Carjacking (T.C.A. § 39-13-404);

P. Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);

Q. Criminal attempt, under T.C.A. § 39-12-101, to commit any criminal offense that requires exclusion from child care;

R. Criminal exposure to HIV (T.C.A. § 39-13-109);

(Rule 1240-04-01-.03, continued)

S. Criminal homicide (T.C.A. § 39-13-201);

T. Criminally negligent homicide (T.C.A. § 39-13-212);

U. Cruelty to Animals (T.C.A § 39-14-202);

V. Custodial interference (T.C.A. § 39-13-306);

W. Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);

X. Domestic assault (T.C.A. § 39-13-111);

Y. Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);

Z. Especially aggravated burglary (T.C.A. § 39-14-404);

AA. Especially aggravated kidnapping (T.C.A. § 39-13-305);

BB. Especially aggravated robbery T.C.A. § 39-13-403);

CC. Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);

DD. Exploitation of a minor by electronic means (T.C.A. § 39-13-529);

EE. False imprisonment (T.C.A. § 39-13-302);

FF. First degree murder (T.C.A. § 39-13-202);

GG. Incest (T.C.A. § 39-13-302);

HH. Indecent exposure (T.C.A. § 39-13-511);

II. Involuntary labor servitude (T.C.A. § 39-13-307);

JJ. Kidnapping (T.C.A. § 39-13-105);

KK. Rape (T.C.A. § 39-13-503);

LL. Rape of a child (T.C.A. § 39-13-522);

MM. Reckless endangerment (T.C.A. § 39-13-103);

NN. Reckless homicide (T.C.A. § 39-13-215);

OO. Robbery (T.C.A. § 39-13-401);

PP. Second degree murder (T.C.A. § 39-13-210);

QQ. Sexual battery (T.C.A. § 39-13-505);

RR. Sexual battery by an authority figure (T.C.A. § 39-13-527);

SS. Sexual exploitation of a minor (T.C.A. § 39-17-1003);

TT. Solicitation of a minor (T.C.A. § 39-13-528);

UU. Stalking (T.C.A. § 39-17-315);

VV. Statutory rape (T.C.A. § 39-13-506);

WW. Statutory rape by an authority figure (T.C.A. § 39-13-532);

XX. Trafficking a person for sexual servitude (T.C.A. § 39-13-309);

YY. Vehicular assault (T.C.A. § 39-13-106);

ZZ. Vehicular assault while intoxicated (T.C.A. § 39-13-106);

AAA. Vehicular homicide (T.C.A. § 39-13-213);

BBB. Voluntary manslaughter (T.C.A. § 39-13-211); and

CCC. Weapons offenses (unlawful possession, carrying, use, etc.).

(III) No person may be employed as a driver or serve as a driver for a child care agency if the person:

I. Is currently charged with; or

II. Has been convicted of, or pled guilty, within the last five (5) years to any of the following criminal offenses:

A. Vehicular homicide;

B. Accidents involving death or personal injury;

C. Accidents involving damage to a vehicle;

D. Driving under the influence of an intoxicant, drug or drug producing stimulant; or

E. Any felony involving the use of a motor vehicle while under the use of any intoxicant.

(vii) Exclusion from access to child care based on a listing on a state registry.

(I) No person shall be employed, be a licensee or operator, provide substitute services, reside, or have any access to children in a child care agency if the results of the state registry review identify the person as being:

I. Listed on the Vulnerable Persons Registry;

II. Listed on the Sexual Offender Registry; or

III. Indicated in the records of the Department of Children's Services as a perpetrator of abuse or neglect of a child.

(viii) Supplemental Background Checks Subsequent to Licensing, Employment or Residence in a Child Care Agency.

(I) The Department may, at any time, require a new background check of any individual with access to children in a child care agency.

I. For an individual who was not subject to a background check prior to assuming a role, the individual's existing status in their role shall be conditional upon the satisfactory outcome of any requested background check.

(ix) Any person who is excluded shall remain excluded pending the outcome of any appeals or waiver review or any determination that the basis for exclusion no longer exists.

(x) An individual will also be excluded if a criminal or juvenile proceeding, registry or administrative background review requiring exclusion or any other provision of law is discovered and verified in any manner.

(xi) If a child care agency, substitute pool or staffing agency receives information from a source other than the Department that requires them to exclude an employee, substitute, volunteer, or resident they shall immediately exclude the person from any access to children and notify the Department on the same business day by calling the child and adult care complaint hotline.

(xii) The exclusion of such persons from access to child care shall be conducted pursuant to T.C.A. § 71-3-507 and this rule.

(xiii) Failure of a child care agency to perform the required background check before allowing a person access to child care or to immediately exclude individuals with a criminal history or state registry review status that requires exclusion, shall be the basis for the immediate suspension, denial or revocation of the child care agency's license.]

7. Reserved.

8. Reserved.

9. All caregivers shall be able to explain emergency procedures to follow in case of fire, serious injury or illness of a child or a caregiver, or disaster.

10. All caregivers shall have training in detection, reporting, and prevention of child abuse.

11. All caregivers shall have a minimum of two hours training annually, in addition to other required training in specific subject areas.

(b) Primary Caregiver.

1. Prior to issuance of a license, the primary caregiver in a single-site home and all primary caregivers in a system shall:

(Rule 1240-04-01-.03, continued)

(i) be 18 years of age or older;

(ii) be able to read and write English; and

(iii) have earned a high school diploma (See definitions in Section 1240-04-01-.01).

2. A primary caregiver shall complete a DHS-sponsored child care orientation class within three months of licensure.

3. A substitute for the primary caregiver shall be at least 18 years of age.

4. A primary caregiver shall present evidence of receiving eight hours of training, consultation, or technical assistance annually in child care or a related field. After the first year of licensure (in any category), this training shall be in addition to other required training in specific subject areas such as Child and Adult Care Food Program (CACFP), personal safety or first aid, etc.

5. A primary caregiver shall not be employed at any other occupation during child care operating hours.

(c) Central Operator.

1. In order to receive a license, the central operator or person in charge of the child care system (or multiple homes) shall have:

(i) Graduated a four-year college or university and completed one year of full-time work experience with a group of young children; or

(ii) Completed some formal college training in early childhood education or child development (or related field), or received a Child Development Associate (CDA) credential or National Association of Family Day Care (NAFDC) accreditation, and completed one year of full-time work experience with a group of young children; or

(iii) A high school diploma or its equivalent (see "Definitions" in Chapter 1240-04-01-.01) and two years full-time work experience with a group of young children.

2. The central operator or person in charge of the child care system shall complete a DHS-sponsored child-care orientation class within three months of licensure.

(2) Caregiver to Child Ratios and Supervision.

(a) An adult caregiver (at least 18 years of age) shall be present and supervising children in care.

(b) The total number of children (including "related" children under nine years of age) shall not exceed 15.

(c) If enrollment drops to seven or fewer children, family day care home ratios shall be met.

(d) If four (4) or more infants/toddlers are enrolled, they shall have their own space and their own caregiver for their safety and security and for infection control. Children shall

(Rule 1240-04-01-.03, continued)

be cared for in small groups as much as possible, but may be mixed for short periods. Barriers shall be sufficient to provide separation without isolating children.

(e) Staff Ratios and Chart.

1. A group day care home shall have 1, 2, or 3 caregivers, based upon the ages and numbers of children served.

2. Before eight (8) or more children are enrolled, the facility shall be approved by a fire safety inspector and by an environmentalist.

3. If any child's physical or mental condition requires special care, or if children under nine (9) years of age living in the home increases the group size, or when a field trip is taken off the premises, the number of caregivers shall be increased by one (1).

4. One of the following adult:child ratios shall be met. (A chart is also provided at the end of part 4.):

(i) Group Day Care Homes with One Caregiver:

(I) If any number of children up to the maximum of fifteen (15) children are present, and no child is under three (3) years of age, at least one (1) caregiver shall be present.

(II) If over twelve (12) children are enrolled, the additional children shall be of school age and a school age program shall be provided.

(ii) Group Day Care Homes with Two Caregivers:

(I) If any number of children up to the maximum of fifteen (15) children are present, and at least one (I) but not more than nine (9) children are present who are under the age of three (3), then at least two (2) caregivers shall be present. If more than four (4) of those children are under two (2) years of age, three (3) caregivers shall be present.

(II) If over twelve (12) children are enrolled, the additional children shall be of school age and a school age program shall be provided.

(iii) Group Day Care Homes with Three Caregivers:

(I) If any number of children up to the maximum of fifteen (15) children are present, and ten (10) or more children present are under three (3) years of age, there shall be three (3) caregivers present.

(II) If over twelve (12) children are enrolled, the additional children shall be of school age and a school age program shall be provided.

Caregivers Required[1]	Maximum Number of Children and Ages[2]
1	Maximum of 15 present and no child present is under three (3) years of age.[3]
2	Maximum of 15 present and at least one (1) child up

(Rule 1240-04-01-.03, continued)

	to a maximum of nine (9) children present are under three (3) years of age, but no more than four (4) present are under two (2) years of age.[3]
3	Maximum of 15 if ten (10) or more are under three (3) years of age.[3]

[1] If any child's physical or mental condition requires special care, if children under 9 living in the home increases the group size, or when a field trip is taken off premises, the number of caregivers required shall be increased by one.

[2] Before 8 or more children are enrolled, the facility shall be approved by a fire safety inspector and by an environmentalist.

[3] If over 12 children are enrolled, the additional children shall be of school age and a school age program shall be provided.

Authority: *T.C.A. §§4-5-201 et seq., 4-5-202, 71-1-105, 71-3-501 et seq., 71-3-502(a)(2), 71-3-508(c), Acts 2000, ch. 981, §§ 8 and 14, and Acts 2003, ch. 412, § 2.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed July 1, 1993; effective September 14, 1993. Amendment filed April 30,1996; effective July 14, 1996. Amendment filed September 29, 2000; effective December 13, 2000. Amendment filed September 29, 2003; effective December 13, 2003.*

1240-04-01-.04 EQUIPMENT.

(1) General.

(a) All equipment shall be well made and safe with no sharp edges, splinters, or other conditions which present a hazard for children.

(b) Unsafe equipment shall be repaired or removed from the day care home or play yard at once.

(c) Babies and toddlers shall have additional equipment for comfort and safety, such as cribs, high chairs, etc.

(d) School-aged children shall have educational materials such as puzzles, craft items, etc., and equipment suitable for their size, interests, and needs.

(2) Indoor Play Equipment.

(a) The day care home shall have play equipment for active and quiet play, suitable for the children's ages and interests and for children with special needs, and for all activities required in the Program Section. (See Chapter 1240-04-01-.05.)

(b) Play materials and equipment shall be in sufficient quantity to provide twice as many activities as there are children at a given time.

(c) Play materials and equipment shall be placed in such a way that children can get it and return it when needed, so that they can grow in independence.

(Rule 1240-04-01-.04, continued)

(3) Outdoor Play Equipment.

(a) Enough play equipment shall be provided so that each child can take part in many kinds of play each day.

(b) Equipment shall be placed to avoid accidents, for example, swings placed out of traffic paths.

(c) If there are climbers or swings, they shall be placed on a resilient surface and not over concrete, asphalt, or similar surface such as hard-packed dirt.

(d) Climbers, swings, and other large equipment shall be securely anchored.

(e) If used, retainer structures for loose material, such as sand or pea gravel, shall be placed at least six (6) feet from the perimeter of play structures.

Authority: *T.C.A. §§71-1-105(12) and 71-3-501 et seq.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed April 30, 1996; effective July 14, 1996.*

1240-04-01-.05 PROGRAM.

(1) Activities.

(a) A balanced daily program of developmentally appropriate activities shall be provided which includes some of the following: reading to and talking with children; art and music activities; building and manipulating toys; and dramatic play activities such as doll play, housekeeping, and role play. Children shall also be allowed to participate in age-appropriate home-type activities, such as cooking, cleaning, gardening, and washing clothes as a meaningful learning experience.

(b) There shall be a written and posted schedule of daily routine activities.

(c) Children shall be given opportunity to make their own choices in some activities. Other play activities shall be planned by the caregiver.

(d) Children shall not spend all day in one room, unless the room has at least 30 square feet of usable play space per child.

(e) Television, video tapes, and movies shall be limited to two hours per day and to programs designed for children's education and/or enjoyment. Programs/movies with violent or adult content (including "soap operas") shall not be permitted in children's presence. Other activities shall be available to children during television/movie viewing.

(f) Except when the weather is extremely bad, children of all ages, including infants and toddlers, shall have outdoor play each day.

(2) Discipline.

(a) Discipline techniques used shall be positive, appropriate to the age level and needs of children in care; designed to help children learn and maintain self-control and self-esteem; and shall not involve physical punishment, or deprivation of food, rest, or

(Rule 1240-04-01-.05, continued)

toileting. (Physical, or corporal punishment is the infliction of bodily pain as a penalty for the child's behavior of which the punisher disapproves.)

(b) Praise and encouragement of good behavior shall be used instead of noticing only unacceptable behavior.

(c) Punishment which is shaming, humiliating, frightening, or injurious to children shall not be used.

(3) Physical Care - Naps.

(a) Preschool children shall have a reclining rest period according to their individual needs. School-aged children shall be allowed to nap if needed but not forced to do so.

(b) Each toddler who is able to walk and each preschooler shall have individual napping space, something soft and at least two inches thick to sleep on, and clean bedding. (Examples: couch with cover, thick sleeping bag or foam pad, family bed with cover, or cot with cover.)

(c) Each child under 15 months of age and any child unable to walk shall have his/her own crib or playpen and bedding for napping.

(d) Because of the risk of Sudden Infant Death Syndrome (SIDS), sleeping infants (under 13 months) shall be checked every 30 minutes by touching them. If a child appears not to be breathing, emergency medical assistance shall be sought immediately.

(e) Each child shall have his or her own clean sheet and coverlet.

(f) After a child has rested for a reasonable period, she/he shall be allowed to get up.

(4) Physical Care - Toilet Training.

(a) Toilet training shall never be started until a child has been in the day care home long enough to feel comfortable.

(b) Toilet training shall not be started until a child is able to understand, to do what is asked of them, and to let their need to use the bathroom be known.

(c) Children shall not be made to sit on the potty or toilet for more than five minutes.

(d) Children shall be diapered or cleaned when needed in a safe, sanitary manner.

(5) Personal Safety Curriculum.

(a) For ages three (3) through school-age, a curriculum shall be offered that shall include instruction, at least once a year, in personal safety.

(b) Personal Safety Curriculum Components and Guidelines.

1. The personal safety curriculum shall include a Department-recognized component for the prevention of child abuse, including, for children four (4) years of age and older, a child sexual abuse prevention component.

2. The curriculum shall be based upon curriculum guidelines provided by the Department to the child care provider in any suitable format. The child care provider may choose terminology and instructional methods for this curriculum

(Rule 1240-04-01-.05, continued)

with a goal of providing clear, effective and appropriate instruction to the children in personal safety, including the prevention of all forms of child abuse.

(c) Personal Safety Instruction Requirements for School-Age Children.

1. For school-age children, the curriculum shall include instruction for reporting physical, sexual or verbal abuse.

2. Children of school-age shall not be required to receive personal safety instruction from the child care agency if they annually receive personal safety instruction as required by this paragraph (5) in the curriculum of their local public education agency, or, if they receive such instruction in any other educational setting, as approved, in either circumstance, by the Department.

3. Documentation of Personal Safety Instruction in Educational Settings.

(i) Written documentation, in a form and manner approved by the Department, verifying that annual personal safety instruction as required by this paragraph (5) is being provided in a public educational setting to each child enrolled in the child care agency, shall be maintained on file with the Department.

(ii) For children who do not attend public schools, the child care provider shall secure and maintain documentation, in a form and manner approved by the Department, verifying that each school-age child enrolled in the child care agency is receiving annual personal safety instruction as required by this paragraph (5).

(d) Beginning October 1, 2008, the personal safety curriculum used by a child care agency shall be made available by the child care agency to parents and legal guardians for review. The child care agency shall use a standard notification form developed by the Department that will be provided to the parents or legal guardians by the child care agency to confirm that the parents/guardians have been notified of the curriculum to be used and of their opportunity to review the personal safety curriculum.

(e) The record of each enrolled child shall include a copy of the signed notification form acknowledging that parents/legal guardians have been provided an opportunity to review the agency's personal safety curriculum, and have been notified of the sexual abuse/personal safety curriculum for their child.

(f) If parents/legal guardians have questions regarding the personal safety curriculum, a representative of the child care agency shall meet with the parents/legal guardians to discuss the curriculum.

Authority: *T.C.A. §§4-5-202, 4-5-209, 71-1-105(12), 71-3-501, 71-3-502(l), 71-3-502 et seq., and 2008 Tenn. Pub. Acts 1032.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Amendment filed June 7, 1982; effective September 30, 1982. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed June 27, 1985; effective September 13, 1985. Amendment filed October 9, 1987; effective January 27, 1988. Amendment filed April 30, 1996; effective July 14, 1996. Public necessity rule filed October 1, 2008; effective through March 15, 2009. Amendment filed December 29, 2008; effective March 14, 2009.*

1240-04-01-.06 HEALTH AND SAFETY.

(1) Children's Health Records.

(Rule 1240-04-01-.06, continued)

(a) Before a preschool child older than eight weeks is accepted for care, he/she shall have proof of being age-appropriately immunized against the following diseases: diphtheria, tetanus, pertussis, polio, measles, mumps, rubella, and hemophilus influenza type B by having a certification form signed or stamped by a certified health care provider. (Children of six through eight weeks of age may be enrolled before immunizations are begun.)

(b) Records of children older than 18 months shall state whether immunizations required for care are complete, and if not complete, when future immunizations will be given. If immunizations are not continued on time by the parent, the child shall not remain in care. If a child has any known allergies, they shall be indicated in the child's health record. Foreign-born children shall also present evidence of tuberculosis (TB) screening. (See Appendix B for information about TB screening.)

(c) A copy of each infant/toddler's or preschool child's immunization record shall be on file in the day care home and available to appropriate staff. (Children of six through eight weeks of age may be enrolled before immunizations are begun.)

(d) Before a school-aged child is accepted for care, the caregiver shall have on file a statement from the parent (or school) that the child's immunizations are current and that their health record is on file at the specified school which the child attends.

(e) If children with mental, physical, or sensory impairment or with a medical disorder are enrolled, their health records shall include a physician's statement which identifies the disabling condition and which gives the physician's special instructions for the child's care.

(f) Before infants or toddlers aged 30 months and under are enrolled, they shall have proof of a physical examination within three months prior to admission, signed or stamped by a physician or health care agency. Each infant shall have on file an official health record of the first medical check-up at eight weeks of age.

(g) Exceptions to the above requirements in this section shall be made when:

1. The child's physician or the Department of Health provides a signed and dated statement, giving a medical reason why the child should not be given a specified immunization; or

2. The child's parent provides a written statement that such immunizations conflict with his/her religious tenets and practices.

[3. Care for children of homeless families and/or children in state custody is needed before documentation of immunizations can be confirmed. Care without documentation of immunizations shall not exceed thirty days.]

(h) Accidents and injuries to children shall be noted in their records, including date and time occurred, description of circumstances and action taken by caregivers.

(2) Children's Health Requirements.

(a) Children shall be checked upon arrival and observed for signs of communicable disease during the day. Every sign of illness or injury shall be reported to the parent as soon as possible but no later than the end of the day in which it occurred.

(b) Parents of every child enrolled shall be notified if one of the following communicable diseases has been introduced into the day care home: hepatitis A, food-borne

(Rule 1240-04-01-.06, continued)

outbreaks (food poisoning), salmonella, shigella, measles, mumps, rubella, pertussis, polio, hemophilus influenza type b, meningococcal meningitis. Providers shall report the occurrence of the above diseases to the local health department.

(c) Prescribed and nonprescribed, internal and external medication shall not be administered to a child except under the direction of a physician or with the parent's written authorization. Medications or drugs shall be labeled with the child's name and specific instructions for administering them. Administration of medications and noticeable side effects shall be charted and reported to parents. Medication shall not be handled by children and shall be stored so as to be inaccessible to children.

(d) Good hygiene shall be practiced, such as frequent handwashing; one-time use of tissues, napkins, and washcloths; proper storage and use of personal articles; and hygienic diapering techniques.

(3) Caregivers' Health Requirements.

(a) Before beginning to work, each caregiver shall have written evidence of a physical examination and statement that the caregiver's general physical and mental condition will permit the individual to direct and actively participate in the activities of a group of young children. The form or statement shall be signed or stamped by a physician.

(b) An updated statement of each caregiver's physical health shall be obtained every third year or more often if deemed necessary by the Department. A statement of a caregiver's mental or emotional health shall be obtained from a psychiatrist or clinical psychologist when deemed necessary by the Department.

(c) Each caregiver (whether employed full-time or part-time), volunteers, and others who are in contact with the children 30 or more calendar days per year shall have on file evidence of a tuberculin skin test or chest X-ray with negative results, in accordance with Department of Health recommendations. (See guidelines in Appendix B.)

(d) Caregivers shall not smoke while physically interacting with the children. Parents shall be informed if anyone in the home smokes.

(e) For the protection of children and adults, caregivers and helpers shall wash their hands immediately after changing a child's diaper, or aiding in toileting, before changing or aiding another child.

(f) For the protection of children and adults, when blood is to be handled (e.g., resulting from injury to a child or adult, from nosebleed or from spillage), vinyl or latex gloves shall be used and properly disposed of following use with/by one individual.

(g) Following a diaper change or blood spillage, surfaces shall be cleaned and sanitized with a solution of 1/4 cup chlorine bleach to one gallon of water.

(4) Safety.

(a) The primary caregiver shall have evidence of completing, or being currently enrolled in, a pediatric first aid course (a minimum of three hours) taught by a qualified instructor.

(b) The primary caregiver shall have evidence of completing, or being currently enrolled in, a pediatric CPR course (a minimum of three hours) taught by a qualified instructor.

(c) First aid information shall be posted, and caregivers and helpers shall be familiar with it.

(Rule 1240-04-01-.06, continued)

(d) A first aid kit shall be available to staff. The contents shall include a digital thermometer, bandages, and other items listed in Appendix C.

(e) The home shall have a working telephone accessible to caregivers for incoming and outgoing calls.

(f) These telephone numbers shall be posted near the telephone: fire department, law enforcement, hospital, child abuse hotline, civil defense/emergency management, and numbers where parents may be reached. Rescue squad, ambulance, and poison control center numbers shall also be posted if available in the community.

(g) All homes shall annually present a child sexual abuse prevention program to children enrolled in and cared for by the home.

(h) Suspected abuse or neglect of a child shall be reported immediately to the local DHS office. Failure to do so is, by itself, grounds to deny or revoke the agency's license.

(i) The primary caregiver shall be reasonably prepared to protect children in the event of a disaster by knowing who to contact and how to cooperate with the local Emergency Management Plan.

(j) Emergency transportation shall be planned for and shall be provided as needed.

(k) Firearms and other deadly weapons or tools on the premises shall be secured in such a way that they are inaccessible to children.

(1) Use of swimming pools shall comply with environmental sanitation regulations in Appendix E. Wading pools which have not been approved by the environmentalist shall not be used.

(m) Pets shall be vaccinated in accordance with a veterinarian's recommendation. Unconfined pets and children shall not be together on a regular basis. An adult shall be present while pets are with children. Animals and birds shall not be allowed in areas of food storage, preparation, or service.

Authority: *T.C.A. §§71-1-105(12), 71-3-501 et seq., and 37-1-603(b)(1)(A).* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Amendment filed June 7, 1982; effective September 30, 1982. Repeal and new rule filed December 6, 1983; effective January 5, 1984.*

1240-04-01-.07 TRANSPORTATION.

(1) Management Responsibility, Loading\Unloading and Verification Procedures; Staff Qualifications.

(a) Management Responsibility.

1. Existing child care agencies, or those applying or re-applying for licenses, that provide transportation services, must provide a written statement to the Department describing:

(i) The type(s) of transportation that will be offered, e.g., from the child's home to the child care agency, from the child care agency to the child's school, etc.;

(Rule 1240-04-01-.07, continued)

(ii) The types of vehicles that will be used for the transportation of children, e.g., a 1999 fifteen (15) passenger Ford van;

(iii) Any contracts, agreements or arrangements with any third parties for the provision of transportation services;

(iv) The provider's plan for maintaining compliance with the transportation time limits set forth in 1240-04-01-.07(6);

(v) The provider's policy and procedures for maintaining compliance with the transportation verification procedures set forth in 1240-04-01-.07(1)(b);

(vi) The provider's policy and procedures for attaining and maintaining compliance with child restraint procedures required by: these rules; Tennessee Code Annotated, Title 55, Chapter 9, Part 6; applicable Federal Motor Vehicle Safety Standards relative to child safety restraints, and; the child restraint and vehicle manufacturer's design requirements for the type of child restraints and vehicles used to transport children; and

(vii) The provider's policy and procedures for the emergency evacuation of the vehicle.

2. The child care home's management shall be fully responsible for the transportation of children between home and the child care home, to or from school, and/or on field trips on any vehicle which it operates, for which it contracts or which is otherwise under its direction or control.

3. Vehicles used to transport children and which are owned or operated by, contracted for or which are otherwise under the direction and control of the child care agency, shall carry automobile liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by Rule 1240-04-01-.02(7).

(b) Loading\Unloading and Verification Procedures.

1. The driver of the vehicle or any other designated staff person riding on the vehicle shall use a passenger log to record the name of each individual child received for transport as the child enters the vehicle. No child shall be accounted for by use of a single entry in the log that would include all, or part, of a group of other siblings or relatives with the same last name and with whom the child is being transported. For example, three (3) siblings with the same last name, e.g., "Doe", who are transported on the same vehicle shall not be recorded by the single entry "Doe" which only records the group's last name and is used by the child care home to signify that all three (3) "Doe" children are accounted for. Each child shall, instead, be separately listed by first and last name.

2. During transportation, the passenger log shall be used to take roll each time the vehicle makes a stop as each child is loaded or unloaded.

3. Whenever children being transported are released from the vehicle to their parent or other designated person, the passenger log shall immediately be updated to reflect which children have been released.

4. Immediately upon unloading the last child/children from the vehicle, and to ensure that all the children being transported have been unloaded, the driver and any other staff members riding on the vehicle shall immediately deliver the

(Rule 1240-04-01-.07, continued)

passenger log to the person designated by the child care home in part 5 and shall immediately:

(i) physically walk through the vehicle; and

(ii) inspect all seat surfaces, under all seats and in all compartments or recesses in the vehicle's interior.

5. Additional caregiver/staff review and verification requirements.

(i) The child care home shall also designate a caregiver or management level staff person, other than the person responsible for the recording in the passenger log on the vehicle, who shall provide additional review and additional verification that the children have been unloaded from the vehicle and properly accounted for.

(ii) When unloading children at the child care home or field trip destinations, or when, prior to being parked at the child care home or other location, and to ensure that all children have been unloaded, the person designated pursuant to subpart (i) of this part 5 shall also immediately request the passenger log from the person on the vehicle responsible for maintaining the log and shall immediately:

(I) reconcile the passenger log with the children's attendance records; and

(II) conduct the same inspection as required in subparts (1)(b)4(i) and (ii) above.

(iii) Verification of the passenger logs and attendance records required by this subparagraph (b) shall be made by having the printed name of the persons who complete the logs and records written or printed on the passenger log and attendance record accompanied by the handwritten initials of such persons. Passenger logs and attendance records shall be maintained for a period of one (1) year or until the next re-evaluation of the group child care home for an annual license, whichever is first.

6. The driver or any accompanying staff member shall assure that every child is received by a parent or other designated person.

7. When children are transported to school, they shall be released in accordance with the following procedures:

(i) the children shall be unloaded only at the location designated by the school;

(ii) the children are only allowed to unload from the group child care home's vehicle at the time the school is open to receive them;

(iii) the driver/caregiver shall watch the children who are unloaded from the vehicle walk through the entrance door designated by the school for the children; and

(iv) any additional procedures established by the school.

(Rule 1240-04-01-.07, continued)

8. The provisions of this subparagraph (b) apply to child care agency staff and to personnel operating vehicles for any contracted transportation service for a licensed or approved child care agency or for any other transportation service that is under the direction or control of a child care agency, that provides such services for children enrolled in the child care agency.

(c) Transportation Staff Qualifications.

1. Driver License Requirements.

(i) All persons responsible, or who may in the course of their duties become responsible, at any time, for driving a vehicle that transports children enrolled in the child care agency, shall hold, at a minimum, a current Tennessee driver license with an "F" ("for hire") endorsement pursuant to T.C.A. § 55-50-102(20)(F) unless such persons already have an endorsement or hold a license which the Department of Safety recognizes as inclusive of the "F" endorsement requirements, or shall hold such other license or endorsement provided for by State law or regulation governing driver qualifications for the type or size of vehicle used, or which may otherwise govern driver qualifications, for transportation of children enrolled by licensed or approved child care agencies.

(ii) Effective January 1, 2004, all persons subject to this part 1 shall obtain a certification document from the Department of Safety to signify that they have passed additional written or skills tests required for persons who may, in the course of their duties drive a vehicle that transports children enrolled in a child care agency.

(iii) Effective January 1, 2004, all persons subject to this part 1 shall be required to obtain annual training that is utilized for school bus drivers offered by the Department of Safety or such other equivalent training as the Department of Safety may determine is appropriate.

(iv) Evidence of completion of the requirements in subparts (i)-(iii) for each person employed or otherwise utilized by the agency under any contract or any other arrangement shall be maintained in the records of the child care agency. Failure to obtain or timely exhibit completion of this additional certification when requested shall result in ineligibility of the person from any further driving duties for the child care agency until such requirements are fulfilled.

2. Health Examinations and Drug Screenings.

(i) Health Examinations.

All persons driving vehicles at any time for the transportation of children enrolled in the child care agency shall annually provide to the Department a health statement or statements, based upon an examination of the individual, that are signed by the examining licensed physician, licensed psychologist, licensed clinician, Nurse Practitioner, or Physician's Assistant, verifying that the individual is physically, mentally and emotionally capable in all respects of safely and appropriately providing transportation for children.

(ii) Drug Screenings.

(Rule 1240-04-01-.07, continued)

(I) Any person, in accordance with procedures established by the Department, shall pass a drug screen:

I. Prior to such person being employed as a full or part-time employee with a licensed or approved child care agency for a position which has any duties involving driving any vehicle utilized by the child care agency to transport children enrolled in that child care agency; or

II. Prior to such person being employed, in any position which has any duties involving driving any vehicle utilized to transport children enrolled in any child care agency, as a full-time or part-time employee by a contractor of a licensed or approved child care agency, or by any other persons or entities, any of which transports, for any compensation, children enrolled in the care of the child care agency as part of the agency's transportation program or service for such children offered by such child care agency; or

III. Prior to the assumption, at anytime, of any driving duties by an existing full-time or part-time employee of the licensed or approved child care agency, or, of an existing full-time or part-time employee of a contractor or other person or entity providing transportation, for compensation, to the child care agency as part of such child care agency's transportation program or service.

(II) Effective January 1, 2004, all existing drivers who have been previously assigned by the child care agency or its contractors or by any other person or entity as a driver of any vehicle providing child care transportation for a licensed or approved child care agency, under any arrangement and who have not been tested as required by item (I), shall have a drug screen in accordance with procedures established by the Department.

(iii) The child care agency shall immediately review the results of the drug screen upon receipt, and upon receipt by the child care agency of a positive drug screen result for an employee of the child care agency, or upon receipt of notification of such result for a tested individual from a contractor or other person or entity providing transportation, for compensation, to the child care agency as part of such child care agency's transportation program or service, the child care agency shall immediately:

(I) Notify the Department and prohibit, or require its contractor or other entity providing transportation for compensation to the child care agency as part of the child care agency's transportation program to prohibit, the individual from any driving duties involving any transportation of children enrolled in the child care agency; and

(II) Enter into a safety plan approved by the Department that excludes the individual from driving for the child care agency until the individual passes a drug screen test and is otherwise approved, in writing, by the Department, to provide driving duties involving the transportation of children for the child care agency.

(Rule 1240-04-01-.07, continued)

3. Prior to assuming their duties, all persons responsible, or who may in the course of their duties become responsible, at any time, for transporting children (including drivers and monitors) shall complete Department of Human Services-recognized pre-service transportation training in:

   (i) The proper daily safety inspection of the vehicle set forth in subparagraph (2)(b) below;

   (ii) The proper use of child safety restraints set forth in paragraph (4) and Tennessee Code Annotated, Title 55, Chapter 9, Part 6 and applicable Federal Motor Vehicle Safety Standards relative to child safety restraint systems and vehicle design requirements for the type of vehicle used to transport children;

   (iii) The proper use of the verification procedures set forth in subparagraph (1)(b) above;

   (iv) The proper use of a blood borne pathogen kit;

   (v) The proper procedures for the evacuation of the vehicle based upon the type of vehicle and the ages of the children served; and

   (vi) The developmentally appropriate practices applicable to the behavior management of children during transportation.

4. Following the completion of pre-service transportation training, all persons responsible at any time for the transportation of children (including drivers and monitors), shall complete Department of Human Services-recognized transportation training that includes the subject matter set forth in 1240-04-01-.07(1)(c)3, above, a minimum of every six (6) months.

5. Emergency Aid Training.

   (i) All persons responsible, or who may in the course of their duties become responsible at any time, for the transportation of children shall hold current certification in Infant/Pediatric Cardiopulmonary Resuscitation (CPR) from the American Red Cross, the American Heart Association, or other certifying organization, as recognized by the Department.

   (ii) Effective July 1, 2004, all persons responsible, or who may in the course of their duties become responsible at any time, for the transportation of children shall complete a first aid course sponsored or approved by the American Red Cross, or other first aid course, as recognized by the Department.

6. The provisions of this subparagraph (c) apply to child care agency staff and to personnel operating vehicles for any contracted transportation service for a licensed or approved child care agency or for any other transportation service under the direction or control of a child care agency.

7. The requirements of 1240-04-01-.07(1)(c) do not apply to individuals who provide transportation services exclusively for occasional field trips.

(2) Vehicle Inspections; Passenger Limitations; Vehicle Design Requirements; Child Seating Space Requirements; Emergency Equipment; Prohibition of Firearms or other Weapons on Vehicles.

(Rule 1240-04-01-.07, continued)

(a) The requirements of this paragraph (2) include vehicles used at anytime for the regular child care vehicle(s) and those used as back-up vehicles. Exception: The requirements of this paragraph (2) do not apply to vehicles operated solely for the purpose of providing transportation for occasional field trips.

(b) The child care agency shall maintain, and shall require providers of transportation services for children under contract to the agency or under the agency's direction or control to maintain, documentation that designated child care, contractor, or other entity staff perform daily the following inspections, followed by any necessary repairs or other appropriate actions, before beginning transportation of children for the child care agency:

1. A visual inspection of the vehicle's tires for wear and adequate pressure;

2. A visual inspection for working headlights and taillights, signals, mirrors, wiper blades and dash gauges;

3. An inspection for properly functioning child and driver restraints;

4. An inspection for properly functioning doors and windows;

5. An inspection for the presence of safety equipment required by these rules or any other provisions of law or regulations, and repair or replacement as necessary based upon visual evidence of the need do so;

6. A determination that the vehicle has adequate fuel; and

7. An inspection for, and cleaning of, debris from the vehicle's interior.

(c) The child care agency shall maintain, and shall require providers of transportation services for children under contract to the agency or under the agency's direction or control to maintain, documentation that the vehicles used to transport children receive regular inspections and maintenance by a certified mechanic in accordance with the maintenance schedule recommended by the vehicle manufacturer, and, in addition shall have the following vehicle equipment certified as inspected at least every four thousand (4,000) miles if not covered by, and/or serviced in accordance with the manufacturer's maintenance schedule:

1. Brakes;

2. Steering;

3. Oil levels, coolant, brake, windshield washer and transmission fluids;

4. Hoses and belts.

(d) Beginning January 1, 2004, the Department of Safety will conduct annual vehicle safety inspections on all vehicles used by the child care agency directly, under contract, or under the control or direction of the agency designed by the vehicle manufacturer to carry ten (10) or more passengers. Any necessary maintenance or repair to the vehicles disclosed by the inspections shall be the sole responsibility of the child care agency.

(Rule 1240-04-01-.07, continued)

(e) All documentation of the child care agency or providers of transportation services for children under contract to the agency or under the agency's direction or control shall be made available upon request to Department staff.

(f) No vehicle which does not pass the inspections required in subparagraphs (b), (c) or (d) shall be used by the child care agency or by its contractors, or others subject to the agency's direction and control, to provide transportation services until necessary repairs, as determined by the Department, have been made.

(g) Passenger Restraints, Capacity Limitations and Cargo Requirements.

1. All children and adults riding in a vehicle used to transport a child to and from a child care agency, to and from school, or to and from field trips must be restrained by separate passenger restraint devices in the vehicle's seating area, at a minimum, as required by state or federal law or regulation, or, as otherwise required by these rules.

2. The total number of adults and children in vehicles used for the transportation of children enrolled in a licensed or approved child care agency shall never exceed the manufacturer's rated passenger capacity.

3. In a vehicle being used for the transportation of children enrolled in a licensed or approved child care agency, all cargo, luggage or equipment of any type shall be adequately secured at all times in such manner as to protect the passengers in case of accident or emergency maneuvers.

4. The provisions of this subparagraph (g) also apply to vehicles operated by any contracted transportation service for a licensed or approved child care agency, or for any other transportation service under the direction or control of a child care agency.

(h) Requirements for Child Care Transportation Vehicles Effective January 1, 2007.

1. Effective January 1, 2007 all vehicles that the child care agency operates, for which it contracts, or which are otherwise under its direction or control, that are designed to carry ten (10) or more passengers must conform to all Federal Motor Vehicle Safety Standards (FMVSS) governing either "large" school buses or "small" school buses, as applicable, in accordance with the provisions of the FMVSS described in 49 Code of Federal Regulations Part 571, or as such Part may be amended.

2. Effective January 1, 2007, if buses in either the "large" or "small" classes of school buses under the FMVSS are used, they must have factory-installed passenger restraint anchorages and passenger restraints that are suitable for use in transporting children of any age who are to be transported on either a "large" or "small" school bus.

3. The requirements of this subparagraph (h) do not apply to vehicles used exclusively for the provision of occasional field trips.

(i) A minimum of ten (10) inches seat space per child is required in a vehicle transporting children.

(j) A vehicle used to transport children shall have fire extinguishers, emergency reflective triangles, a first aid kit and a blood-borne pathogenic clean-up kit, and an adult familiar

(Rule 1240-04-01-.07, continued)

with the use of this equipment on board. Emergency exiting procedures shall be practiced on a regular basis by all staff responsible for transporting children.

(k) The carrying, possession or storage of firearms or other weapons is prohibited in vehicles used to transport children.

(3) Vehicle Signage Requirements; Exceptions.

(a) The requirements of this paragraph (3) are effective March 1, 2003, and are applicable to all vehicles used for the transportation of children enrolled in a child care agency licensed or approved by the Department, including vehicles operated by a contractor of the agency or vehicles operated by any other provider of services under the direction or control of the child care agency, unless specifically exempted by the provisions of subparagraph (e) below.

(b) All vehicles used for the transportation of children enrolled in the child care agency must, as determined by the Department, clearly and readily identify to the driving public that the vehicle is used for the transportation of children who are in child care.

1. On each side of the vehicle the following information shall be displayed:

(i) The full name of the child care agency and emergency contact number for the agency in any font or color, including the agency's current logo and lettering scheme; provided that the lettering is not less than one and one-half inches (1½") in height and is clearly readable at a distance of fifty feet (50')on a stationary vehicle in daylight conditions; and

(ii) The words "Child Care Transportation Complaints" followed by the Department of Human Services' toll-free Child Care Transportation Complaint phone number in black lettering in a block font, not less than one and one-half inches (1½") in height. This text shall appear on a clearly contrasting background that is clearly readable at a distance of fifty feet (50') on a stationary vehicle in daylight conditions.

2. On the rear of the vehicle the following information shall be displayed:

(i) The full name of the child care agency and the words "Child Care Transportation Complaints" followed by the Department of Human Services toll-free Child Care Transportation Complaint phone number in black letters in a block font not less than one inch (1") in height on a clearly contrasting background that is clearly readable at a distance of forty feet (40') on a stationary vehicle in daylight conditions.

(ii) The provisions of this part (2) shall not apply to passenger automobiles (excluding minivans) used for transportation by the child care agency with a manufacturer's rated seating capacity of six (6) or fewer passengers.

(c) The information required in subparagraph (b) must be applied to the vehicle in one of the following formats:

1. Painted directly on the vehicle in accordance with the paint manufacturer's instructions using paint recommended by the paint manufacturer as appropriate for use on a vehicle; or

2. A weather-resistant sign securely fastened to the vehicle. The term "securely fastened" includes magnetic signs and signs bolted to the vehicle. The term

(Rule 1240-04-01-.07, continued)

does not include adhesives such as tape or glue unless recommended by the adhesive manufacturer as being appropriate for outdoor use on a vehicle.

(d) Special Requirements for Centralized Transportation.

1. Central operators or any other entity that may own or operate more than one child care agency and which may provide centralized transportation services for its child care agencies; and/or

2. Contractors, or other transportation service providers under the direction or control of the child care agency, which may provide centralized transportation services to more than one child care agency may substitute for the name and phone number of the child care agency required by parts 1240-04-01-.07(3)(b)1 and 2 above the full name and emergency contact number of the central operator, contractor or other transportation service providers under the direction or control of the child care agency. If the name on the vehicle does not clearly designate the agency or entity as one providing child care transportation, words such as "Child Care Transportation Vehicle" or "Child Care Transportation Services", or similar language approved by the Department, must be displayed on the vehicle in a manner that demonstrates, as determined by the Department, that the vehicle is providing child care transportation.

(e) Exceptions to Vehicle Identification Requirements.

1. Vehicles used exclusively for the provision of occasional field trips; and

2. Vehicles used exclusively for the limited provision of emergency transportation, e.g., as a result of the mechanical breakdown of the regular child care vehicle.

3. The Department may, in its discretion, determine if exceptions to the requirements of this paragraph (3) may be made for child care agencies owned, operated, or under the direction or control of a public agency. For purposes of this subparagraph (e), a "public agency" is any entity controlled, owned or operated by a state, county or local entity, or a political subdivision of the State of Tennessee.

4. The Department may, in its discretion, determine if certain child care agencies may be exempted from any or all of the requirements of this paragraph (3) due to facts which may clearly warrant such exemptions.

(4) Child Safety Restraints.

(a) The provisions of this paragraph (4) shall apply to any vehicle used to transport children as of the effective date of these rules, unless stated otherwise by the rule. Any vehicle whether:

1. A passenger car;

2. A stock or custom van or sport utility vehicle;

3. A school bus classified as a "small" or "large" bus as required in FMVSS contained in 49 Code of Federal Regulations Part 571; or

4. Any other vehicle must be properly equipped with the child passenger restraints required by subparagraphs (c) - (f) below and must comply with all other provisions of this paragraph (4).

(Rule 1240-04-01-.07, continued)

(b) Children under four (4) years of age shall never be placed in the front seat of the vehicle.

(c) Children who weigh less than twenty pounds (20 lbs.) shall be placed to face the rear of the vehicle. Children who weigh twenty pounds (20 lbs.) or more shall be placed to face the front of the vehicle unless the special needs of a disabled child otherwise require the child to face the rear of the vehicle.

(d) Children who weigh less than forty pounds (40 lbs.) shall be restrained in a Federally-approved child restraint device in accordance with the child restraint device manufacturer's instructions. The child restraint device shall be secured to the vehicle in accordance with the child restraint device manufacturer's instructions.

(e) Children Between Forty Pounds (40 lbs.) and Eighty Pounds (80lbs.).

1. Children who weigh between forty pounds (40 lbs.) and eighty pounds (80 lbs.) may be restrained in a belt-positioning booster seat (BPBS) that has been secured in accordance with the vehicle and restraint manufacturers' instructions. BPBS devices shall always be secured to the vehicle in accordance with the vehicle and the restraint device manufacturer's instructions. If, however, a BPBS restraint device is not used, the child shall be restrained in both a lap belt and a shoulder belt if available in the vehicle. If a lap and shoulder belt restraint system is not available in the vehicle, the child shall be restrained by a lap belt.

2. Effective January 1, 2007, children who weigh between forty pounds (40 lbs.) and eighty pounds (80 lbs.) shall be restrained in a belt-positioning booster seat (BPBS) in accordance with the BPBS manufacturer's instructions. BPBS devices shall always be secured to the vehicle in accordance with the vehicle and the restraint device manufacturer's instructions.

(f) Children Weighing More Than Eighty (80 lbs.) or Who are Taller Than Four Feet Nine Inches (4'9").

1. Children who weigh more than eighty pounds (80 lbs.) or who are taller than four feet nine inches (4'9") may be restrained in an adult lap belt and shoulder belt that has been secured in accordance with the vehicle manufacturer's instructions. If, however, an adult lap belt and shoulder belt is not used, the child shall be restrained by a lap belt.

2. Effective January 1, 2007, children who weigh more than eighty pounds (80 lbs.) or who are taller than four feet nine inches (4'9") shall be restrained in an adult lap belt and shoulder belt in accordance with the vehicle manufacturer's instructions.

(g) Passenger air bags shall remain turned off unless an adult or a child fifteen (15) years of age or older is riding in the front passenger seat of the vehicle.

(h) No child shall ride on the floor of a vehicle and no child shall be placed with another child in the same restraint device.

(i) Notwithstanding the provisions of this paragraph (4), until January 1, 2007, children of school-age (in kindergarten or any grade level above) shall not be required to use child restraints when being transported in school buses classified in the "large" category under FMVSS.

(Rule 1240-04-01-.07, continued)

(5) Supervision of Children During Transportation.

(a) An adult must be in the vehicle whenever a child is in the vehicle.

(b) Adult Monitor Requirements for Child Care Transportation.

1. An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more children ages six (6) weeks through five (5) years of age, who are not in kindergarten; provided, however an adult monitor, in addition to the driver, is required on the vehicle for all routes exceeding thirty (30) minutes for children ages six (6) weeks through five (5) years of age, who are not in kindergarten, regardless of the numbers of children being transported.

2. An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more non-ambulatory children (permanent or temporary) of any age.

3. On field trips off premises, the number of adults at the destination shall be double the requirements on the adult:child ratio charts in paragraph (2) of subchapter 1240-04-01-.03, Caregiver to Child Ratios and Supervision; provided, however, the adult monitor referenced in parts 1 and 2 of this subparagraph (b) may be used for purposes of this requirement.

(6) Limits on Time Children Are Transported/Transportation Waivers.

(a) Children shall not spend more than forty-five (45) minutes traveling one way; provided, however, this provision is not applicable for occasional field trips.

(b) If extended transportation beyond the limits in subparagraph (a) is necessary in special circumstances, or as may be required by geographic factors, an individualized plan shall be established and signed by the parent(s) and the child care agency and approved by the Department prior to providing such transportation.

(7) Except as otherwise exempted, the provisions of paragraphs (4)—(6) shall apply to all vehicles used for the transportation of children enrolled in a child care agency licensed or approved by the Department, including vehicles provided by a contractor of the agency or vehicles operated by any other provider of services under the direction or control of the child care agency.

Authority: *T.C.A. §§4-5-202, 55-50-102(11) and (20), 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), 71-3-508(c), Acts of 2003, Public Chapter 412, §§1(c), 2, and 3, and 49 Code of Federal Regulations Part 571.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed November 21, 2002; effective February 4, 2003. Amendment by Acts of 2003, Public Chapter 412, §§1(c) and 3 filed June 25, 2003; effective July 1, 2003. Amendment filed September 29, 2003; effective December 13, 2003. Amendment filed October 21, 2004; effective January 4, 2005.*

1240-04-01-.08 FOOD.

(1) Nutritional Needs.

(a) For children in the home at least four hours, one snack (defined as two of these four choices: fluid milk; meat or meat alternate; fruit, vegetable or full-strength juice; or

(Rule 1240-04-01-.08, continued)

whole grain or enriched bread) shall be provided, unless the four-hour period covers a normal meal hour, in which case a meal shall be provided.

(b) Snacks provided shall be nourishing and planned as a part of the day's food allowances. Carbonated drinks, fruit-flavored drinks, imitation milk drinks, and candy shall not be served as snack foods. Powdered milks shall be used only in a cooked food product. (Real juice will be labeled "100% juice" or "full-strength juice". Powdered milk does not meet the requirement.) (See Appendix D for suggested food pattern for snacks.)

(c) For children in the home five to 10 hours, one meal (defined as meat or meat alternates, vegetable and/or fruit, bread or bread product, and milk) and one or two snacks shall be provided, two snacks if the period is as much as seven hours. (See Appendix D for suggested meal patterns.)

(d) For those in the home longer than 10 hours, two meals and two snacks shall be furnished.

(e) Breakfast (defined as fruit, vegetable or full-strength juice; cereal or bread product; and milk) shall be offered to children who arrive before 7:00 a.m. and who have not had breakfast at home.

(f) Diets of infants and other special diets shall be prepared as prescribed by a physician.

(g) The week's menus shall be planned and posted by the first day of each week and remain posted until the following week so that parents can be aware of the food their children are receiving. These menus shall be followed, although reasonable substitutions are permissible if the substituted food contains the same nutrients. The change shall be documented in advance of the meal. (Information on menu-planning is available upon request.)

(2) Meal Service.

(a) Caregivers and children shall wash their hands before eating or prior to any preparation of food.

(b) High chairs and tables on which food is served shall be washed with soap and water prior to and after snacks and meals.

(c) Napkins and forks and/or spoons shall be provided for children who feed themselves.

(d) All formulas and food brought from home shall be labeled with the child's name. Milk shall be placed immediately in the refrigerator. Previously opened baby food jars shall not be accepted by caregivers. All formulas remaining in bottles after feeding shall be discarded.

(e) When children are capable of using a high chair, they shall be allowed to do so and to experiment with food, with feeding themselves, and to eat with fingers or spoon.

(f) Bottles shall not be propped or given to children who are lying flat.

(g) Solid foods shall not be given in a bottle, or with infant feeders, to children of normal eating abilities.

(Rule 1240-04-01-.08, continued)

(h) All infant's feeding schedule shall be made and adapted to a child's need rather than on the hour.

(i) Weaning shall not be started immediately after enrollment but after parents and caregivers have communicated to establish consistency in the weaning process and after a child has become familiar with a cup or glass.

(j) Introduction of new foods to infants and toddlers shall be gradual, one at a time, over a five to seven-day period with parents' approval.

(k) The size of servings shall be adequate to meet children's needs. (Portion size depends on child's age. See Appendix D for chart of age/portion size.)

(l) Food, including dessert, shall not be forced on or withheld from a child.

(m) Floors under tables and high chairs on which food has been served shall be swept and/or vacuumed after each meal and mopped as needed.

Authority: *T.C.A. §§71-1-105(12) and 71-3-501 et seq.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-01-.07).*

1240-04-01-.09 PHYSICAL FACILITIES.

(1) Any new group day care home/facility, or one that is remodeled, enlarged, or changed in any way, shall be approved by a state or authorized local fire safety inspector and by an environmentalist before day care operation can begin.

(2) Group day care homes shall be inspected and approved annually by a state or local fire safety inspector and by an environmentalist. Requirements in Appendices E and F shall be met before a license can be issued. (Requests for inspections are made by the Licensing Counselor.)

(3) Physical facilities shall continue to meet all standards in Appendices E and F and any updated fire prevention or environmental standards which are applicable.

(4) The inside of the home shall provide 30 square feet of usable play space per child, including children who are related to caregivers. (Usable play space does not include office space, bathrooms, or space occupied by large pieces of furniture.)

(5) The home shall have at least two exits directly to the outside, other than from the kitchen.

(6) When infants are in care, the diapering area shall be located as close to a handwashing lavatory as possible but not in the kitchen.

(7) The home shall not be located in a building used for other purposes which would be hazardous or would limit outdoor play.

(8) The outdoor play area shall contain at least 50 square feet of space per child, including children who are related to caregivers.

(9) The areas where children play or are cared for shall be properly maintained. These areas shall be free of hazardous items or materials unless adequately protected by storage, inaccessibility, proper supervision, or other safety procedures. These areas shall present no conditions which are hazardous to children. All such areas shall be free of all animal wastes.

Authority: *T.C.A. §§71-1-105(12) and 71-3-501 et seq.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-01-.08).*

1240-04-01-.10 CARE OF CHILDREN WITH DISABILITIES.

(1) When children with disabilities are enrolled, the home shall provide those children equal opportunity to participate in the same program activities as their peers.

(2) Adaptations to the environment shall be directed toward normalizing the lifestyle of the child with a disability by helping him/her become independent and develop self-help skills.

(3) Any efforts to provide specialized services (e.g., speech/hearing therapy, physical therapy, psychological evaluation, or services for mentally retarded), either directly or by referral, shall be conducted only with written permission by parent and documented in the child's record. Any informational exchange regarding these services shall also be documented.

(4) The home shall have a written individualized evacuation plan, which has been approved by the Licensing Counselor and is practiced in every monthly fire drill, for every child enrolled

(Rule 1240-04-01-.10, continued)

who requires more assistance to evacuate the facility than other children of the same age or in the same group.

Authority: *T.C.A. §§71-1-105(12) and 71-3-501 et seq.* ***Administrative History:*** *Original rule filed April 22, 1992; effective June 6, 1992. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-01-.09).*

1240-04-01-.11 APPENDICES.

(1) The following Appendices referenced in the foregoing rules are incorporated in these rules by reference:

(a) Appendix A - I. Summary of Applicable Laws

II. Questions and Answers About Day Care Licensing

(b) Appendix B - Guidelines for TB Screening

(c) Appendix C - Contents of First Aid Kit

(d) Appendix D - Meal/Snack Patterns and Portion Sizes

(e) Appendix E - Environmental Standards for Group Child Care Homes

(f) Appendix F - Fire Safety Inspection Report

(2) Any conflict between summaries of the language of statutes or regulations in the Appendices and official statutes and regulations will be resolved by reference to the language of the official statutes or regulations.

Authority: *T.C.A. §§71-1-105(12) and 71-3-501 et seq.* ***Administrative History:*** *Original rule filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-01-.10).*

APPENDIX A

I. Summary Of Applicable Laws.

(A) Child Welfare Agencies (*TCA §71-3-501 et seq.)* (A complete copy of the licensing law is available upon request.)

1. Specifies the types of agencies that DHS has a mandate to license. Licensing of day care (less than 24-hour care) begins with five children. (Care for one to four children is exempt.)

2. Provides for development of standards, based on certain criteria by a 16 member "standards committee" appointed by the Commissioner. Standards are to be reviewed (and revised, if needed) every five years.

3. Requires DHS to provide applicants or licensees with assistance in meeting standards.

4. Requires annual application for a license and an application processing fee.

5. Upon receiving fire safety and environmental sanitation approval, provides that DHS will issue a 90-day conditional license if no apparent hazards to the children in care are present.

(Rule 1240-04-01-Appendix A, continued)

6. Provides for denial, suspension, or revocation of license and a waiting period ranging from 60 days to one year prior to reapplication.

7. Provides for appeals and hearings before the Board of Review, which includes representatives from the Departments of Health, Education, of the "advisory board" of DHS, from the appropriate Standards Committee, and three at-large members selected by the others. Appeals from the Board's decision may be made to Chancery Court.

8. Imposes a misdemeanor penalty of imprisonment for six months and a fine of $500 or both for each offense (day) of operating without a license.

9. Requires public agencies to meet the same standards as other child welfare agencies and a method of reporting to the public any uncorrected deficiencies.

10. Requires DHS to regularly inspect agencies without prior notice and grants the Department access to facilities and records in order to make an evaluation of the "kind and quality of work done" and to make recommendations regarding licensure.

11. Requires DHS to investigate reports of noncompliance.

12. Allows DHS to impose civil penalty ($25 - $150) for substantial noncompliance and probation for continued noncompliance.

13. Contains specified and defined exemptions for Parents' Day Out programs, kindergartens, and "drop-in" programs. Also provides a waiver of adult to child ratios and group size requirements for certain Montessori schools.

14. Requires screening for criminal violations of persons applying to work with children through the registry maintained by the 'Tennessee Bureau of Investigation (TBI).

15. Allows DHS to investigate all reports of abuse, neglect, or sexual abuse, even in exempt agencies, and enables DHS to revoke the license of a licensed agency and to enjoin an unlicensed person or agency from continuing to provide child care where abuse of children occurs.

(B) Access to Public Records *(T.C.A §§10-7-503 and 10-7-504).* Requires public bodies to provide any citizen of Tennessee access to public records except for specified confidential records (e.g., medical records, TBI investigative records, students' records). DHS' records on child welfare agencies are public records except as they may contain information obtained in the course of child abuse or neglect investigations.

(C) Child Protective Services *(TCA §§37-1-401 et seq. and 37-1-601 et seq.).*

1. Requires any individual or organization (such as day care agency, hospital, or school) having knowledge of suspected child abuse or neglect to report it to a juvenile judge, the Department of Human Services, or a law enforcement official. (Look in your telephone book under "Child Abuse", or call the county DHS office or local law enforcement.)

2. Requires the identity of a reporting person to be kept confidential, subject to disclosure only by consent of the person or by judicial process. Provides immunity from civil or criminal liability if reports are made in good faith.

3. Gives DHS authority and responsibility to investigate reports of abuse or neglect.

(Rule 1240-04-01-Appendix A, continued)

4. Requires that all written records and information regarding investigations be confidential. Release of information is permissible to certain specified persons and to those having responsibility for administration of the law. Persons found not guilty of severe child abuse or child sexual abuse shall have their names expunged from the TBI's abuse registry.

5. Charges DHS with the responsibility of conducting a continuing publicity and education program to encourage reporting and to strengthen and improve child sexual abuse detection, prevention, and treatment efforts.

(D) Federal Funding.

Section 504 of the Rehabilitation Act of 1973 and Title VI of the Civil Rights Act of 1964 require agencies receiving federal funding to employ nondiscriminatory policies and practices. Persons receiving federal funding such as reimbursement from the USDA Child/Adult Care Food Program, DHS vendor or Transitional Child Care payments, Social Services Block Grants (SSBG), Dependent Care Grant funds for school-age child care, etc.; and persons receiving federal support in the form of space, staff, services, equipment, etc., are required to comply with the following.

1. Title VI of the Civil Rights Act of 1964 by ensuring that no person (child, parent, or employee) in your agency "shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance"; and by employing nondiscriminatory policies and practices and advertising such.

2. Section 504 of the Rehabilitation Act of 1973 by ensuring that no otherwise qualified handicapped person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any program activity solely on the basis of a handicap (applies to children, parents, and employees); and by making reasonable accommodations to serve or hire an otherwise qualified individual with a handicapping condition.

(E) Child Passenger Protection and Safety Belt Use (Transportation) *(TCA §55-9-601 et seq.).*

1. Requires any person transporting a child under the age of four years in a motor vehicle to provide for children's protection by providing and properly using a federally approved child restraint system (manufactured after January 1, 1981). Violation is subject to a $50 fine or 30 days in jail or both.

2. Specifies that no one is to operate a motor vehicle unless all persons four and older in the front seat are properly restrained by a safety belt.

3. Imposes a fine of $50 or 30 days in jail or both for each violation after the first; however, the violator can be cited or arrested only after being cited or arrested for another violation of law.

4. *TCA §§55-50-102(11) and 55-50-102(12)(B)* requires the driver of a vehicle designed to carry 15 or more passengers (including the driver) to have a commercial driver's license.

(F) Administrative Rules and Procedures *(TCA §4-5-301 et seq. and Chapter 1240-5-11 et seq.).*

(Rule 1240-04-01-Appendix A, continued)

1. Provides for an administrative hearing of any contested cases (i.e., on denial or revocation of licenses or on notice of intent to put an agency on probation) after proper notice which includes references to particular statutes and rules involved.

2. Requires that hearings before the members of the Board of Review to be conducted by the administrative judge or a hearing officer, who rules on admissibility of evidence and other matters and otherwise ensures that proceedings are properly carried out.

3. Allows the contesting licensee to be represented (at licensee's own expense) by counsel.

4. Allows the judge or hearing officer at his/her discretion or upon request of licensee or the Department of Human Services to schedule a prehearing conference in order to simplify or expedite the disposition of the appeal action.

5. Requires that the hearing be open to the public.

6. Requires the final order be entered by the Board of Review. The final order shall include conclusions of law, factual findings, prescribed remedy, and procedures and time limits for seeking judicial review.

7. Provides that while an application for a license is pending, an existing license does not expire until disposition of the application has been finally determined, unless the license must be summarily suspended pending completion of the proceedings because the Department determines that "public health, safety, or welfare imperatively requires" emergency action, and notifies licensee of that finding "pending proceedings for revocation or other action".

II. Questions And Answers About Day Care Licensing.

(A) *How does a person get information about opening a child care agency?*

The local county office of the Tennessee Department of Human Services will furnish information; a licensing representative will provide assistance free of charge to an individual or a group that is planning to provide child care.

(B) *How many children am I allowed to care for?*

In Tennessee, a person without a license may care for no more than four children. To care for five to seven children, in addition to "related" children, you must be licensed as a "family day care home" operator. To have eight(8) - twelve (12) children, you must be licensed as a "group" day care home operator. (Under certain conditions, a group day care home may have up to 15 children.)

(C) *How is a license obtained?*

1. After a completed application and the required fee are received, arrangements will be made for a representative to visit your facility and evaluate the day care operation and/or facility in accordance with the required standards in this booklet.

2. Before a day care home can be licensed, it must pass fire safety and environmental sanitation inspections. The licensing representative will explain the procedure for getting inspected.

(D) *What types of licenses are issued?*

(Rule 1240-04-01-Appendix A, continued)

1. An "annual license" is granted when compliance with licensure requirements is confirmed by the Department.

2. A "conditional license" is granted to a new agency for 90 days when it does not meet all the required standards, but there is evidence than an effort is being made to comply with the requirements and it has first met fire safety and environmental sanitation approval.

(E) *Who determines whether a license is issued?*

The Commissioner has ultimate responsibility for issuance or denial, based upon an evaluation and recommendation by a licensing representative of the Department.

(F) *Is the license permanent?*

No, it is issued for up to one year. Prior to its expiration, an evaluation is made to determine whether compliance with requirements is being maintained and reissuance should be recommended.

(G) *Is there a fee?*

Yes, the fee is payable upon application and is nonrefundable. The fee for day care homes is $5 for a family day care home and $10 for a group day care home.

(H) *Where is the license kept?*

It must be posted in a conspicuous place in the day care home during business hours.

(I) *Are licenses transferable?*

No. The license applies only to the agency, organization, and person(s) to whom it is issued. It also applies only to the building approved.

(J) *Does the same license for "day care" cover (1) nighttime care, (2) "drop-in" children, and (3) sick children?*

1. Yes. An agency that provides less than 24-hour care to children during nighttime hours receives the same license as a child care agency operating during daytime hours, and one license covers both programs in the same agency. An agency cannot provide continuous 24-hour care for two or more children without a residential license. If not licensed for day care, a residential license is needed for more than one child. Ask a licensing counselor about the procedure for obtaining a residential license.

2. "Drop-in" children are counted in the ratio and group and can be cared for only if required records are on file before they are cared for.

3. The day care home license also includes care of mildly ill children. Only mildly ill children (i.e., not "contagious") should be cared for in a day care home and only then if staffing is adequate. Mild illnesses are generally those in a recuperative stage (e.g., getting over mumps or influenza).

(K) *Who enforces licensure requirements for a child care system?*

If homes are approved as an extension of a child welfare agency's license, the central operator (the licensee) is responsible for monitoring compliance. The Department of Human Services monitors the agency's compliance as well as licensed homes within a system.

(Rule 1240-04-01-Appendix A, continued)

(L) *What is the procedure when a license is revoked, denied, or suspended?*

The Department may deny, suspend, or revoke a license at any time by giving the owner, operator, or board a written notice by listing the specific reason or reasons for the action. Specified time periods are provided in the law. Any conduct or condition which might immediately jeopardize the safety of children, shall be cause for immediate suspension of the license, pending the outcome of revocation procedures.

(M) *How can an operator or applicant appeal such action?*

The licensing law provides for a Board of Review. If a license is denied or revoked by the Department, a request may be made for a hearing before the review board. An appeal of the decision from the review board may be judicially reviewed. The periods of time allowed for the appeals are set out in the law.

(N) *Where do I call to file a complaint or get a license?*

1. If you have a question about these standards, or if you want to report an unlicensed facility or a facility that is violating licensing requirements, call the DHS county office. It is listed in the telephone directory under Tennessee State Government, Human Services Department. Someone there will refer you to the licensing unit in your area.

   If you want to open a child care facility, call that office before you do anything. You cannot care for a group of five or more children without a license.

2. If you have a question or concern about these standards or the licensing procedure, call or write:

   Day Care Licensing Coordinator
   Tennessee Department of Human Services
   Citizens Plaza Building
   400 Deaderick Street
   Nashville, TN 37248-9800
   Phone: (615) 313-4778

APPENDIX B

RECOMMENDATIONS FOR TUBERCULOSIS SCREENING OF PROGRAMS UNDER THE SUPERVISION OF THE DEPARTMENT OF HUMAN SERVICES[1]

Programs that provide care for periods less than 24 hours per day.

A. Employees.

Employees should be screened for tuberculosis within 90 days prior to but no later than two weeks after employment. The screening examination should include a tuberculin test[2] and if it is positive, a chest X-ray and, if necessary, other specific tests. Prospective or current employees who are known to have a positive tuberculin reaction or who refuse to have a tuberculin skin test shall receive a chest X-ray to rule out infectious tuberculosis. If infectious tuberculosis is ruled out, no further screening is necessary during their employment unless persistent pulmonary symptoms develop or there is contact with tuberculosis.

[1]Tuberculosis screening is not recommended for programs providing care for less than two weeks.
[2]The preferred method is the Mantoux technique using 5 TU PPD.

B. Children.

1. Foreign-Born.

All foreign-born children should present evidence of a tuberculin skin test[3] performed in the United States. This test performed in the United States may have been done at any time after 12 months of age. Any child with a positive tuberculin skin test should be referred to a physician for evaluation. After the initial evaluation, future periodic screening is not required unless the child develops persistent pulmonary symptoms or there is contact with tuberculosis.

2. Native-Born.

Special screening of children born in the United States is not required unless there is history of contact to tuberculosis or there are symptoms and/or physical findings suggestive of tuberculosis.

If the tuberculin test is negative, no future screening is required unless persistent pulmonary symptoms develop or there is contact with tuberculosis. If the tuberculin skin test is positive, the child should be referred to a physician for evaluation.

[3]The preferred method is the Mantoux technique using 5 TU PPD.

APPENDIX C

INVENTORY FOR THE FIRST AID KIT

Every child care setting should have a first aid kit stocked with items on the list below. You can buy the supplies for the first aid kit at drug stores or at hospitals or medical supply stores.

Each first aid kit should be large enough to hold all the necessary supplies for first aid in the child care setting. Use a container that will close tightly. It should be stored where adults can reach it easily, but it must be stored out of reach of children. You should arrange the contents so you can reach items easily without emptying the kit. You should be sure that the contents are wrapped tightly and are sanitary. You should restock the kit after each use.

A first aid kit should contain the following items:

- ☐ First aid cards*
- ☐ Adhesive strip bandages (1/2", 3/4", 1" strips)
- ☐ Gauze bandages (4"x4", nonstick, sterile)
- ☐ Rolled flexible or stretch gauze
- ☐ Bandage tape
- ☐ Nonstick, sterile pads (different sizes)
- ☐ Triangular bandages
- ☐ Small splints
- ☐ Eye dressing or pad
- ☐ Scissors
- ☐ Tweezers
- ☐ Safety pins
- ☐ Thermometer
- ☐ Flashlight with fresh batteries
- ☐ Disposable latex gloves
- ☐ Three-ounce rubber bulb syringe (to rinse out eyes, wounds, etc.)
- ☐ Commercial cold pack or plastic bag for ice cubes
- ☐ Clean cloth
- ☐ Soap
- ☐ Small plastic cup
- ☐ Sealed packages of cleansing wipes
- ☐ Syrup of ipecac (1-ounce bottle)
- ☐ Special items for children with specific health problems (such as bee sting kit or an inhaler for a child with asthma)
- ☐ Emergency Telephone Guide
- ☐ Emergency contact information (phone numbers of the children's parents)
- ☐ Change for pay phone
- ☐ Pen or pencil and note pad

*Can be purchased from American Red Cross; give first aid instructions.

This page may be duplicated by individuals and entities for noncommercial purposes.

Appendix C
American Red Cross Child Care Course
Infant and Child First Aid

APPENDIX D

MEAL PATTERN/PORTION SIZE REQUIREMENTS

If needed, the caregiver should ask for help in planning meals from a nutritionist or dietitian. For homes on the Child and Adult Care Food Program (CACFP), the DHS staff nutritionist is available. The Department of Health, local colleges, and hospitals are also possible resources.

The minimum amounts of food components to be served are as follows:

BREAKFAST

Food Components	Age 1 and 2	Age 3-5	Age 6-12[1]
Milk milk, fluid	½ cup[2]	3/4 cup	1 cup
Vegetables and Fruits Vegetable(s) and/or fruit(s) or full-strength vegetable or fruit juice or an equivalent quantity or any combination of vegetable(s), fruit(s) and juice	¼ cup ¼ cup	1/2 cup 1/2 cup	1/2 cup 1/2 cup
Bread and Bread Alternates[3] bread or cornbread, biscuits, rolls, muffins, etc or cold dry cereal[4] or cooked cereal or cooked pasta or noodle products or an equivalent quantity of any combination of bread/bread alternate	½ slice ½ serving ¼ cup or 1/3 oz. ¼ cup ¼ cup	1/2 slice 1/2 serving 1/3 cup or 1/2 oz. 1/4 cup 1/4 cup	1 slice 1 serving 3/4 cup or 1 oz. 1/2 cup 1/2 cup

[1] Children age 12 and up may be served adult-sized portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities for children age 6 to 12.

[2] A cup means a standard 8 ounce measuring cup.

[3] Bread, pasta or noodle products, and cereal grains shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain or enriched or fortified.

[4] Either volume (cup) or weight (oz.), whichever is less.

(Rule 1240-04-01-Appendix D, continued)

LUNCH OR SUPPER

Food Components	Age 1 and 2	Age 3-5	Age 6-12
Milk milk, fluid	½ cup	½ cup	1 cup
Vegetables and Fruits Vegetable(s) and/or fruit(s)[1]	¼ cup total	½ cup total	¾ cup total
Bread and Bread Alternates bread or cornbread, biscuits, rolls, muffins, etc. or cooked pasta or noodle products or cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate	½ slice ½ serving ¼ cup ¼ cup	½ slice ½ serving ¼ cup ¼ cup	1 slice 1 serving ½ cup ½ cup
Meat and Meat Alternates lean meat or poultry or fish[2] or cheese or eggs or cooked dry beans or peas or peanut butter, or other nut or seed butters or peanuts or soy nuts[3] or an equivalent quantity of any combination of meat/meat alternate	1 oz. 1 oz. 1 egg ¼ cup 2 Tbsp. ½ oz. = 50%	1 ½ oz. 1 ½ oz. 1 egg 3/8 cup 3 Tbsp. ¾ oz. = 50%	2 oz. 2 oz. 1 egg ½ cup 4 Tbsp. 1 oz. = 50%

(See footnotes from breakfast pattern.)

[1] Serve 2 or more kinds of vegetable(s) and/or fruit(s). Full-strength vegetable or fruit juice may be counted to meet not more than ½ of this requirement.

[2] Edible portion as served.

[3] No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purposes of determining combinations, 1 ounce of nuts or seeds is equal to 1 ounce of cooked lean meat, poultry, or fish.

(Rule 1240-04-01-Appendix D, continued)

SUPPLEMENTAL FOOD (SNACKS)

Select two of the following four components. Juice may not be served when milk is served as the only other component. Milk and yogurt are too similar in nutritional value to be used together in the same supplement.

Food Components	Age 1 and 2	Age 3-5	Age 6-12[1]
Milk			
milk, fluid	½ cup	½ cup	1 cup
Vegetables and Fruits			
Vegetable(s) and/or fruit(s)	½ cup	½ cup	¾ cup
or full-strength vegetable or fruit juice	½ cup	½ cup	¾ cup
or an equivalent quantity or any combination of vegetable(s), fruit(s) and juice			
Bread and Bread Alternates			
bread	½ slice	½ slice	1 slice
or cornbread, biscuits, rolls, muffins, etc.	½ serving	½ serving	1 serving
or cold dry cereal	¼ cup or 1/3 oz.	1/3 cup or ½ oz.	¾ cup or 1 oz.
or cooked cereal	¼ cup	¼ cup	½ cup
or cooked pasta or noodle products	¼ cup	¼ cup	½ cup
or an equivalent quantity of any combination of bread/bread alternate			
Meat and Meat Alternates			
lean meat or poultry or fish	½ oz.	½ oz.	1 oz.
or cheese	½ oz	½ oz.	1 oz.
or eggs	½ egg	½ egg	½ egg
or cooked dry beans or peas	1/8 cup	1/8 cup	¼ cup
or peanut butter, or other nut or seed butters	1 Tbsp.	1 Tbsp.	1 Tbsp.
or peanuts or soy nuts	½ oz.	½ oz.	1 oz.
or yogurt, plain, or sweetened and flavored[1]	2 oz. or ¼ cup	2 oz. or ¼ cup	4 oz. or ½ cup
or an equivalent quantity of any combination of meat/meat alternate			

(See footnotes from Breakfast and Lunch patterns.)

[1] Yogurt means commercially coagulated milk products obtained by fermentation that meet milk fat or milk solid requirements to which flavoring foods or ingredients may be added. These products are covered by the FDA's standard of identity for yogurt, lowfat yogurt, and nonfat yogurt.

APPENDIX E

ENVIRONMENTAL STANDARDS FOR GROUP CHILD CARE HOMES

(A) Food Sanitation.

The following standards shall be met for food sanitation:

1. Food shall be in sound condition, free from spoilage, filth, or other contamination; food shall be obtained from sources that comply with all laws relating to food and food labeling. The use of hermetically sealed containers (home canned food) is prohibited.

2. All milk including dry milk powder shall be from a Grade A pasteurized source.

3. Raw fruits and vegetables shall be washed before use.

4. Stuffings, poultry, and pork products shall be cooked to heat all parts of the food to at least 150°F.

5. If a family style feeding process is used, all leftover food from the eating table shall be discarded. Milk and food used in family style feeding shall not be placed on eating table longer than 15 minutes prior to beginning of meal.

6. Potentially hazardous foods requiring cold storage shall be maintained at 45°F or below, and accurate thermometers shall be kept in the refrigerators. Potentially hazardous food requiring hot storage shall be at an internal temperature of 140°F or above. Frozen foods shall be maintained at a temperature of 0°F or below. Thermometers shall be placed in all freezers.

7. Milk and other potentially hazardous foods shall be kept in the proper temperature ranges and be protected properly, except during necessary periods of preparation.

8. All dry food supplies shall be stored in closed containers and labeled unless its identity is unmistakable. These foods shall be stored in a manner to prevent possible contamination and to allow for proper cleaning of the storage area.

9. All food shall be protected from contamination during storage, preparation, transportation, and serving.

10. No poisonous or toxic materials except those required to maintain sanitary conditions and for sanitation purposes may be used or stored in a food-service area of a facility.

11. Poisonous and toxic materials shall be identified, stored, and used only in such a manner and under such conditions as will not contaminate food or constitute a hazard to the population of a facility.

12. All equipment and utensils including plasticware shall be so designed and fabricated of such material and workmanship as to be smooth, easily cleanable, and durable, under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing.

13. The food-contact surfaces of equipment and utensils shall be easily cleanable, nontoxic, corrosion resistant, and nonabsorbent. Hard maple or equivalently nonabsorbent material may be used for cutting boards, blocks, salad bowls, and baker's tables.

(Rule 1240-04-01-Appendix E, continued)

14. Multi-use equipment shall be constructed and repaired with safe materials, including finishing materials; and they shall be corrosion resistant and nonabsorbent; and they shall be smooth and easily cleanable.

15. Equipment in use at the time of adoption of this standard that does not fully meet all of the design and fabrication requirements shall be deemed acceptable in that establishment if it is in good repair, capable of being maintained in a sanitary condition, and the food contact surfaces are nontoxic.

16. All eating and drinking utensils shall be thoroughly washed, rinsed, and sanitized after each use with the exception of single-service utensils which shall be discarded following use.

17. Single-service articles shall be made from nontoxic materials and shall be stored, handled, and dispensed in a sanitary manner.

18. All utensils and food-contact surfaces or equipment used in the preparation, transportation, service, display, or storage of potentially hazardous food shall be thoroughly washed, rinsed, and sanitized prior to such use.

19. Cooking surfaces of equipment shall be cleaned at least once a day.

20. All kitchenware and food-contact surfaces of equipment, exclusive of cooking surfaces of equipment, used in the preparation or serving of food or drink, and all food-storage utensils, shall be washed, rinsed, and sanitized after each use.

21. Nonfood contact surfaces of equipment shall be cleaned as often as is necessary to keep equipment free of accumulation of dust, dirt, food particles, and other debris.

22. Cleaned and sanitized utensils and equipment shall be stored at least six inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust, and other means.

23. In facilities defined by the Department of Human Services as *existing*, a two-compartment sink can be used for washing and rinsing utensils, provided an additional container or sink is used for sanitation of the utensils. For facilities defined by the Department of Human Services as *new*, a three-compartment sink with two drain boards or easily movable dish tables of adequate size shall be required when manual dishwashing procedures are utilized for washing, rinsing, and sanitation of utensils.

    Domestic type dishwashing machines are acceptable provided the temperature at the utensil surface is 160°F after the end of one complete cycle. If 160° is not obtained at the end of one complete cycle, an additional sanitizing rinse for utensils shall be provided in a separate container or sink.

(B) Water Supply.

1. The water supply serving child care facilities shall be provided from a source constructed and operated according to law.

2. There shall be sufficient hot and cold water under pressure to supply the daily needs of a group day care home.

3. Water from a public supply shall be utilized where available.

(Rule 1240-04-01-Appendix E, continued)

4. An approved drinking fountain or individual single service paper cups shall be provided in rooms or adjacent to rooms regularly occupied by the residents.

5. All facilities shall be clean and in good repair.

(C) Sewage Disposal And Plumbing.

1. The facility shall be connected to a public sewage disposal system when such a system is available.

2. The use of a private sewage disposal system shall have the approval of the local health department and it shall be operating satisfactorily.

3. When the private sewage disposal system at an existing facility fails and where a public sewage system is available, the facility shall be connected.

4. Plumbing shall be sized, installed, and maintained according to law. There shall be no cross-connection between the potable water supply and any other water supply.

(D) Solid Waste.

1. There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.

2. Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction, and maintained in good repair.

3. Storage containers, other than bulk, shall be secured properly to prevent spillage.

4. Garbage deposited in outside bulk storage shall be in fly-tight containers (i.e., plastic bags).

5. All garbage shall be removed from the building daily.

6. Garbage and rubbish shall be collected from the premises at least twice weekly.

7. At facilities where twice weekly collection is not provided, all garbage and rubbish shall be disposed of in a manner acceptable to the health authority having jurisdiction (supplement collection by individual hauling, acceptable burying, etc.).

8. Combustible rubbish may be burned, provided such burning meets all local and state laws and regulations relative to incinerators, incineration, and air pollution.

(E) Toilets, Handwashing, And Bathing.

1. One-flush toilet and one handwashing facility for every 12 children shall be provided.

2. All facilities shall be approved and in good repair, and clean.

3. A tightly covered container with plastic liner shall be used for diaper disposal and stored inaccessible to children. This container shall be emptied by closing the liner and disposing of it into an outside garbage receptacle.

4. There shall be soap, hot and cold water under pressure, and individual towels provided wherever a handwashing lavatory is located.

(Rule 1240-04-01-Appendix E, continued)

5. Personnel shall exercise good handwashing practices following diaper changes, the assistance of children in toilet use, and personal toileting.

6. Proper adult supervision shall be exercised for use of toilet and handwashing facilities.

7. Toilet tissue shall be provided on tissue holder at each commode.

8. Tempered water (90°F - 120°F) shall be provided at all handwashing or bathing facilities used by children.

(F) Buildings.

1. Structure.

(a) The building foundation, roof, walls, and window frames shall be free of visible cracks and unsealed openings to prevent entrance of insects and rodents.

(b) Buildings shall be kept clean, in good repair, and painted when necessary.

(c) Gutters and downspouts shall be kept in good repair.

2. Floors shall be easily cleanable, clean, and in good repair.

3. Walls and ceilings shall be kept clean and in good repair.

4. Doors and Windows.

(a) All doors and windows shall be kept clean and in good repair (this includes screens when used).

(b) Window space shall be equal to at least 10 percent of the floor area except in rooms which are air-conditioned and which have artificial light amounting to at least 25 foot candles.

(c) Windows shall be openable unless the room is air-conditioned.

(d) All outside doors and windows used for ventilation shall be screened unless building is air-conditioned.

5. Bedding.

(a) Where provisions are made for staying at a facility overnight, each occupant shall be provided an individual bed with acceptable mattress and waterproof cover, springs, clean linen, and clean cover.

(b) Where children are kept at least six hours but not overnight, individual cots or other approved bedding shall be provided and kept clean and in good repair.

(c) Spacing between mats or cots shall be adequate to promote freedom of movement (approximately two feet between cots and mats).

6. Lighting.

(a) Natural and/or artificial lighting shall equal at least 25 foot candles in all areas used by children and staff.

(b) Fixtures, shades, blinds, etc., shall be clean and in good repair.

7. Heating and Ventilation.

(a) All rooms used by children shall be heated by a system capable of maintaining a temperature of 68°F.

(b) When the outside temperature is 65°F or below, the temperature at child height within the facility shall be no lower than 65°F nor higher than 75°F.

(c) Stoves, hot radiators, steam and hot water pipes, or other objects and electrical outlets in rooms used by the children shall be adequately protected by screens, guards, insulation, or any suitable measures that will protect children from coming in contact with them.

(d) Heat and ventilation units shall be clean and in good repair.

8. Housekeeping.

(a) All parts of the building shall be maintained in clean condition.

(b) All rooms shall be maintained in an orderly manner.

(G) Insect And Rodent Control.

1. The facility shall be reasonably free from flies, other insects, and breeding sites.

2. Approved screens in good repair shall be provided for all doors and windows used for ventilation purposes.

3. When air-conditioning is used, doors and windows shall be kept closed.

4. The facility shall be free of rodents.

5. There shall be no rodent harborage areas.

6. Proper supervision and caution shall be exercised according to label instructions when applying approved insecticides and rodenticides.

(H) Safety.

1. Pesticides, medicines, polishes, disinfectants, and cleaning compounds shall be stored in a manner approved by the local health authority.

2. Sturdy safety rails shall be provided for ramps and steps where there are three or more risers.

3. Bathtubs, if used, shall be provided with safety strips or mats.

4. Glass in hazardous locations in the facility shall be shielded when safety glass is not used. Broken glass objects shall not be permitted in any part of the building or on grounds.

5. All furniture shall be of durable construction, free of sharp projecting corners or surfaces and kept in good repair.

(Rule 1240-04-01-Appendix E, continued)

6. Grounds shall be kept clean and free of hazards that are likely to cause falls. Grounds shall be kept free of excess growth of grass or weeds.

7. Buildings and grounds shall be free of any unprotected, abandoned well, cistern, refrigerator, or similar hazards.

8. Fencing or other acceptable barriers shall be provided for hazardous drainage ditches, cliffs, bluffs, or other similar hazards.

9. Adequate barriers, such as fencing, shall be provided and supervision exercised to prevent children from running on driveways, streets, or highways where a traffic hazard exists.

10. Grounds shall have adequate drainage.

(I) Swimming Pool.

1. Facilities shall comply with state law and regulations for public swimming pools.

2. Facilities utilizing a swimming pool on-site shall have an approved lifeguard on duty or twice the number of adults required in the home. Facilities using an off-site pool shall be assured of the number of lifeguards required on duty.

3. A fence four feet high shall surround the pool.

APPENDIX F

FIRE SAFETY INSPECTION REPORT
NEW AND EXISTING CHILD DAY CARE CENTERS
AND/OR GROUP CHILD CARE HOMES
LICENSED BY THE TENNESSEE DEPARTMENT OF HUMAN SERVICES

Name of Facility _____ Director _____

Street Address _____ Telephone(_____) _____

City/Route_____ State_____ Zip _____

The new life safety code refers to the 1988 Edition while the existing life safety code refers to the 1985 Edition.

	YES	NO	N/A
1. If the building is wood frame construction, is it restricted to two stories in height? NEW LSC 10-7.1.6; EXISTING 11-7.1.6			
2. Does each building used for day care center purposes have access to two out-side exits? NEW LSC 10-7.2.4.1; EXISTING 11-7.2.4.1			

(Rule 1240-04-01-Appendix F, continued)

3. Is the building free of any dead end corridors or spaces (maximum of 20 ft distance or less)? NEW LSC 10-7.2.5.1; EXISTING 11-7.2.6.1 AND 5-5.3.5			
4. If part of the building is used for purposes not under control of the day care operator, are all rooms and spaces used for day care purposes separated from the rest of the building by one-hour fire rated walls and one-hour "B" label door assemblies to include rated steel frames with self-closing units and positive latching devices? NEW LSC 10-7.1.2; EXISTING 11-7.1.2			
5. Is the second floor and/or basement separated from the main floor with one-hour rated construction including at least one-hour "B" label door assemblies (rated frames, closers, and positive latching)? NEW LSC 10-7.3.1; EXISTING 11-7.3.1			
6. Does the facility have an electrically supervised, manually operated fire alarm device which is audible throughout the building? NEW LSC 10-7.3.4, EXISTING 11-7.3.4			
7. If exit doors are located within a required rated enclosure, do the doors swing in the direction of egress? NEW LSC 5-2.1.4.1; EXISTING 5-2.1.4.1			
8. Are smoke detectors installed in accordance with Section 7-6 of the			

(Rule 1240-04-01-Appendix F, continued)

Life Safety Code? NEW LSC 10-7.3.4.5; EXISTING 11-7.3.4.5			
9. Are all fuel burning space heaters, floor furnaces or wall type electrical heaters provided with a protective screen and anchored securely (portable space heaters are not acceptable)? NEW LSC 10-7.5.2; EXISTING 11-7.5.2			
10. Is the building free of any unvented fuel burning heaters? NEW LSC 10-7.5.2.2; EXISTING 11-7.5.2			
11. Are all hallways and other means of exits kept adequately lighted at all times when the building is occupied? NEW LSC 10-7.2.8; EXISTING 11-7.2.8			
12. Are all corridor doors at least 20 minute rated with 20 minute rated frames? (If all classrooms have a door directly to the outside, this requirement may be omitted.) NEW LSC 10-3.6.1; EXISTING 11-3.6.1			
13. Are approved exit lights installed where applicable? (Over stairwell doors, in corridors, exit doors, gym, auditorium, etc.) NEW LSC10-7.2.10; EXISTING 11-7.2.10			
14. Unless classroom doors open directly to the outside, are corridors one			

(Rule 1240-04-01-Appendix F, continued)

hour rated? NEW LSC 10-3.6.1; EXISTING 11-3.6.1			
15. Does each classroom or any other room used for sleeping purposes have a window which can be opened to provide for emergency evacuation? (Not applicable if room has a door directly to the outside) NEW LSC 10-7.2.11.4; EXISTING 11-7.2.11.4, except in the 1985 LSC 101			
16. Are all doors to hazardous areas separated with 45 minute "C" label fire door assemblies? (Storage rooms, furnace rooms, etc.) NEW LSC 10-7.3.2; EXISTING 11-7.3.2			
17. Does the hot water heater have a safety relief valve installed? SMC of SBCCI 304.3.3			
18. Is the garage, storage room or basement area free of flammable or combustible liquids? NEW AND EXISTING LSC 31-1.5			
19. Does this facility have an unannounced fire drill monthly? NEW AND EXISTING LSC 31-3.4			
20. Are all employees informed of their duties for fire drills NEW AND EXISTING LSC 31-3.4.1			
21. Does interior finish have the required flamespread rating? NEW LSC			

(Rule 1240-04-01-Appendix F, continued)

10-7.3.3.1; EXISTING 11-7.3.3.1			
22. Is the building safe from any electrical hazards such as overloaded electrical panel, excessive cords, or frayed wiring? NEW LSC 11-7.5.1.1; EXISTING 11-7.5.1.1			
23. Are all ceilings, regardless of type, constructed with noncombustible material?			
24. Are hazardous areas properly protected? NEW LSC 10-7.3.2; EXISTING 11-7.3.2			
25. Do commercial type cooking appliances have approved fire extinguishing systems installed as required by NFPA 96? NEW LSC 10-7.3.2.1; EXISTING 11-7.3.2			
26. Is emergency lighting provided throughout egress passageways? NEW LSC 10-7.2.9; EXISTING 11-7.2.9			
27. Are closet door latches designed so that children can open the door from inside the closet? NEW LSC 10-7.2.11.1; EXISTING 11-7.2.11.1			
28. Are bathroom door locks designed to permit opening of the locked door from the outside in an emergency? Are the opening devices			

(Rule 1240-04-01-Appendix F, continued)

readily accessible to the staff? NEW LSC 10-7.2.11.2; EXISTING 11-7.2.11.2			
29. Are special protective receptacle covers installed in wall receptacles in areas occupied by children under 5 years of age? NEW LSC 10-7.5.1.2; EXISTING 11-7.5.1.2			

Inspector shall check either item (a) or (b) below:

(a) Facility acceptable. . . . . _____

(b) Facility not acceptable. . . . . _____

(c) If facility is not acceptable, list all deficiencies on a Part 11 Inspection Report form to accompany this report. State at the bottom of the Part II Report that the facility will not be approved or occupied until all deficiencies have been corrected.

_____ _____

SIGNATURE OF INSPECTOR TITLE OF INSPECTOR

(Rule 1240-04-01-Appendix F, continued)

_____	_____
DATE OF INSPECTION	AGENCY OR FIRE DEPARTMENT

Redline

RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
ADULT AND FAMILY SERVICES DIVISION

CHAPTER 1240-04-02
LICENSURE RULES FOR DROP-IN CHILD CARE CENTERS

TABLE OF CONTENTS

1240-04-02-.01	Purpose, Scope of Services and General Licensing Requirements	1240-04-02-.06	Equipment for Children
1240-04-02-.02	Definitions	1240-04-02-.07	Program
1240-04-02-.03	Application Procedures	1240-04-02-.08	Health and Safety
1240-04-02-.04	Ownership, Organization and Administration	1240-04-02-.09	Physical Facilities
1240-04-02-.05	Staff Requirements	1240-04-02-.10	Care of Children with Special Needs

1240-04-02-.01 PURPOSE, SCOPE OF SERVICES AND GENERAL LICENSING REQUIREMENTS.

(1) Scope of Services. These rules are applicable to "drop-in centers" as defined in T.C.A. §71-3-501, et. seq. and these rules.

(2) Purpose of Licensing. The purpose of licensing is the protection of children. These minimum requirements are intended to help promote the adequate health, safety, and supervision of children while in a group care setting.

(3) Basis For Approval of a License.

(a) The approval and continuance of a license for a drop-in center is based upon the following criteria:

1. The safety, welfare and best interests of the children in care;

2. The capability, training and character of the persons providing or supervising the care of children; and the use of such judgment by a caregiver in the performance of any of the caregiver's duties as would be reasonably necessary to prevent injury, harm or the threat of harm to any child in care;

3. Evidence:

(i) That the expected performance of the caregivers, supervisors or management of the child care agency seeking initial licensure or renewal of licensure will be such as to protect children in care from injury, harm or the threat of injury or harm; or

(ii) During licensure, that the actual performance of any of the duties of the caregivers, supervisors or management of a licensed child care agency demonstrates or has demonstrated a level of judgment that a reasonable person would exercise or would have exercised, under existing or under reasonably foreseeable circumstances, that would prevent or would have prevented injury, harm, or the threat of injury or harm, to any child in care;

4. The quality of the methods of care and instruction provided for the children;

5. The suitability of the facilities provided for the care of the children; and

(Rule 1240-04-02-.01, continued)

6. The adequacy of the methods of administration, the management of the child care agency, and the agency's personnel policies, as they relate to the care of children.

(b) General Requirements.

1. The license applies only to the entity to which it is issued. The license is not transferable.

2. The license applies only to the physical location approved for the operation of the drop-in center. A change in the location of the drop-in center automatically voids the license.

3. Compliance with Other Legal Requirements.

(i) In addition to these requirements, it is the responsibility of the applicant/licensee to comply with all applicable local ordinances, including zoning, fire, and environmental ordinances.

(ii) The Department will not intervene on behalf of the child care agency with other Federal, State or local agencies having regulatory control over any other aspects of compliance by the child care agency with laws, regulations or ordinances that may be necessary to become licensed by the Department. The child care agency shall have full responsibility for resolving all issues necessary to obtain approvals of such agencies necessary for the child care agency to receive a license from the Department.

4. Issuance and maintenance of a license is based upon achievement in meeting and maintaining compliance with all requirements set forth in these rules.

5. It is the responsibility of the applicant/licensee to obtain and maintain compliance with all applicable requirements contained in these regulations. Parents/guardians may not waive compliance with any rule, or otherwise authorize the applicant/licensee to not comply with any rule, unless specifically provided for within the provisions of the rule.

(c) Falsification of any information, records or other documents and/or an intentional failure to provide any information, records or other documents required for a license, for participation in, or regulation by, any State or Federal child care services program, shall be the basis for civil penalties, probation, and/or the denial, suspension, or revocation of a license, as appropriate, in accordance with the provisions of T.C.A. §§ 71-3-501 et seq., this Chapter and Chapter 1240-4-5.

(d) Specifications of the License.

1. All programs shall operate at the address stated on the license, and within the licensed capacity set by the Department.

2. All programs shall operate within any restrictions stated on the license or pursuant to any orders of the Department or the Child Care Agency Board of Review.

Authority: *T.C.A. §§4-5-202, 71-3-501 et seq., 71-3-501(8), 71-3-502(a)(2) and (3), and 71-3-509.*
Administrative History: *Chapter 1240-04-02 assigned a new control number, removed and renumbered*

(Rule 1240-04-02-.01, continued)
to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005.

1240-04-02-.02 DEFINITIONS.

(1) Age Appropriate: Materials and practices which are designed to provide safe, appropriate care in accordance with the biological needs and the developmental age of the child.

(2) Annual License. An annual permit issued by the Department to a child care agency, authorizing the licensee to provide child care in accordance with provisions of the license, the law, and the rules and policies of the Department. Issuance of a license is not an endorsement of child care methods or of an agency's operational philosophy. A license is not transferable from one location to another or from one licensee/operator to another. The license may be revoked at any time upon thirty (30) days notice to the licensee; provided, however, if the health, safety, or welfare of the children in care imperatively requires it, the license may be suspended immediately.

(3) Approval. Child care agencies operated by a public entity receive an approval rather than a license. For purposes of these rules, a "public entity' includes the State of Tennessee or any of its political subdivisions or any agency of the Federal government. An approved agency shall meet the same requirements and is evaluated in the same manner as a licensed agency.

(4) Auxiliary Staff. Full and part-time employees of the agency who do not provide caregiving services to the children enrolled in the agency.

(5) Caregiver. Any individual, including the primary caregiver, responsible, or who at any time may become responsible, for meeting the supervision, protection, and basic needs of the child.

(6) Casual Care. Consists of places or facilities operated by any person or entity that provide child care, at the same time, for a minimum of five (5) children, but less than fifteen (15) children, who are not related to the primary caregiver, during short periods of time that do not exceed ten (10) hours per week or six (6) hours per day for any individual child while the parents or other custodians of the children are engaged in short-term activities, not including employment of the parent or other custodian of the child.

(7) Child or Children. A person or persons under eighteen (18) years of age.

(8) Child Care. As defined by T.C.A. § 71-3-501, the provision of supervision, protection and, at a minimum, meeting the basic needs of children who are not related to the licensee, for three (3) or more hours a day, but less than twenty-four (24) hours a day.

(9) "Child care agency" or "agency"

(a) Means a place or facility, regardless of whether it is currently licensed, that is operated as a "family child care home", a "group child care home", a "child care center", or a "drop-in center", as those terms are defined in T.C.A.§ 71-3-501.

(b) The reference to "child care agency" or "agency" in this Chapter shall be deemed to reference a "drop-in center" as defined in T.C.A. 71-3-501(8), unless specifically stated otherwise, or unless the context requires otherwise.

(c) A "drop-in center" differs from "casual care" in that fifteen (15) or more children are cared for at the same time in a "drop-in center" as defined in 1240-04-02-.02(15), while

(Rule 1240-04-02-.02, continued)

"casual care" refers to the care of fewer than fifteen (15) children who are cared for at the same time as defined in paragraph 1240-04-02-.02(6).

(d) A "drop-in center" differs from a "family child care home," a "group child care home," and a "child care center," in that a "drop-in center" is designed to provide short-term child care, not to exceed the limitations specified in paragraph (15) below. Child care provided in the other three (3) specified categories of child care agencies is not subject to the limitations of paragraph (15).

(e) Reference to a "child care agency" or "agency" in these rules also applies to places or entities of an agency seeking or having received an approval under paragraph (3).

(10) Child Care System. The existence of any drop-in centers approved or licensed and used by a licensed and incorporated by any child care agency in its work; or the existence of two (2) or more facilities used for child care purposes which facilities are under the ownership, administration or control of any individual(s), corporation, partnership, cooperative, or other public or private entity of any kind. Each individual agency within such child care system must be individually licensed in accordance with T.C.A. § 71-3-501 et seq.

(11) Commissioner. The chief administrative officer in charge of the Department of Human Services.

(12) Day Care. Synonymous with the definition of "child care."

(13) Department (DHS). The Tennessee Department of Human Services and its authorized representatives.

(14) Director. The person with overall responsibility for the licensed drop-in child care program.

(15) Drop-In Child Care Center.

(a) A place or facility operated by any person or entity providing child care for fifteen (15) or more children at the same time, none of whom are related to the primary caregiver, for short periods of time as follows:

1. Workweek Care.

(i) Provided during regular working hours, Monday through Friday, 6:00 a.m. to 6:00 p.m.

(ii) No individual child may be in child care for more than seven (7) hours per day or fourteen (14) hours per week, exclusive of snow days.

2. Evening and Weekend Care.

(i) Provided weekday evenings after 6:00 p.m. and weekends beginning on Friday at 6:00 p.m. and ending on Sunday at 10:00 p.m.

(ii) An individual child may receive care in excess of seven (7) hours per day, but may not receive care in excess of a total of twenty (20) hours per week, exclusive of snow days.

3. Exception for Snow Days. Drop-in care for school age children may exceed the maximum hours listed in parts 1 and 2, above, during snow days.

(Rule 1240-04-02-.02, continued)

(b) Notwithstanding any other provision of this chapter to the contrary, drop-in centers operated by not-for-profit organizations that provide child care without compensation for no more than two (2) hours per day with a maximum of ten (10) hours per week, while the parent or other custodian is engaged in short-term activities on the premises of the organization, shall register as providing "casual care" and shall not be deemed to be, or regulated as, a drop-in center.

(16) Enrollment. The process of accepting children for care and meeting rules applicable to enrollment.

(17) Group. A specific number of children within a defined age range, assigned to specific staff in an assigned space, which is divided from the space of other groups by a recognizable barrier to define limits and to reduce distraction.

(18) Infant. A child who is six (6) weeks through fifteen (15) months of age. No unrelated child of the licensee who is under six (6) weeks of age shall be accepted into care. Children related to the licensee who are under six (6) weeks of age must be kept in a separate space from children enrolled in the child care agency.

(19) Illegal Operator. An individual or entity who is operating a child care agency without a license or approval pursuant to the provisions of T.C.A. §71-3-501 et seq. or these rules.

(20) Licensee. The person, agency, group or entity to whom a license to operate a child care center is issued and who shall assume ultimate legal and administrative responsibility for the child care center. References to a licensee in the requirements also apply to operators of an agency seeking or having received an approval.

(21) Licensed capacity. The designated maximum number of children permitted in a facility at any one period of time as determined by the Department based upon available space, age of children, adult: child ratios, and group size. Licensed capacity and ages served shall be designated on the license.

(22) Owner. The individual(s), corporation, partnership, cooperative, or other private or public entity of any kind, or any combination thereof, who or which, through their authorized representative(s), assumes, or is legally required to assume, ultimate responsibility for the control of a child care agency.

(23) Parent. A biological, adoptive or foster parent, guardian, legal custodian or relative caregiver who has primary responsibility for a child.

(24) Pre-school Child. A child who is six (6) weeks through five (5) years of age, not in kindergarten. No child unrelated to the licensee who is under six (6) weeks of age shall be accepted into care.

(25) Related Children. The biological or adoptive children of the licensee, step-children, grandchildren, step-grandchildren, siblings of the whole or half-blood, step-siblings, nieces, nephews or foster children of the primary caregiver.

(26) School-Age Child. A child who is five (5) years of age and enrolled in kindergarten or a higher grade.

(27) Snow Day. For purposes of this chapter, a "snow day" is defined as a day when the affected child's school is officially closed by the school system due to weather, teacher in-service, etc.

(28) Staff. Full and part-time caregivers and other employees of any type.

(Rule 1240-04-02-.02, continued)

(29) Substitute. Paid or unpaid persons who are temporary replacements for regular staff.

(30) Supervision. When children are not within the direct sight and sound of an adult, the term "supervision" includes the following requirements:

(a) Children six (6) weeks of age through nine (9) years of age: The adult must be able to hear the child at all times, must be able to see the child with a quick glance, and must be able to physically respond immediately.

(b) Exception during mealtime: An adult must be in the direct sight and sound of children ages six (6) weeks through five (5) years, not in kindergarten, while the child is eating.

(c) Children ten (10) years of age and older: The adult shall know the whereabouts and activities of the children at all times and must be able to physically respond immediately.

(d) Helper devices such as mirrors, electronic sound monitors, etc. may be used as appropriate to meet these requirements.

(31) Temporary License. A permit issued by the Department to a new child care agency authorizing the licensee to begin child care operations. It is valid, unless suspended, for one-hundred and twenty (120) days or until the application for an annual license is finally determined, and is issued upon application by the operator only if the staff and facility do not present any apparent hazards to children, and if the applicant meets the requirements of 1240-04-02-.03(7) and if the facility has received fire safety and environmental sanitation approval. If, at the end of the one-hundred and twenty (120) day period, evidence is provided by the applicant/licensee that such child care agency is suitable and properly managed, that the agency is in compliance with these rules and has the apparent ability to maintain compliance, the Department will issue an annual license to the child care agency.

(32) Toddler. A child who is twelve (12) months of age through thirty (30) months of age.

(33) Volunteer. A person who provides services for the licensee without payment and who is used to supplement, rather than substitute for, the regular staff or substitutes.

Authority: *T.C.A. §§4-5-202, 71-3-501 et seq., 71-3-501(8), 71-3-502(a)(2), and 71-3-503.* ***Administrative History:*** *Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005. Amendment filed November 14, 2006;effective January 28, 2007*

1240-04-02-.03 APPLICATION PROCEDURES.

(1) Applications for a license are obtained through the local county office of the Tennessee Department of Human Services.

(2) Pre-Licensure Orientation Training: The Department will require pre-application training as set forth in 1240-04-02-.05(4)(b) for both the owner and director. In the case of a program that is governed by a board of directors or trustees or is controlled by another public or private entity, this training shall be attended by a designee who is responsible, in addition to the on-site director, for the day-to-day management of the program.

(3) A complete application for a license must be submitted to the Department and signed by the prospective licensee.

(Rule 1240-04-02-.03, continued)

(4) The owner or prospective licensee must provide a federal tax identification number to identify the child care agency. The Department shall not accept individual social security numbers for such purposes.

(5) Application Fees. The application fees for drop-in child care centers are as follows:

(a) Annual Fee: $200.00

(b) Biennial Fee: $250.00

(c) Triennial Fee: $300.00

(6) Receipt of an application begins the evaluation process, which is completed with the issuance or denial of an annual license. This process includes:

(a) At least two (2) visits by a Department Program Evaluator to the drop-in child care center, one of which shall be unannounced;

(b) Review of agency records; and

(c) Requests for information related to licensure requirements.

(7) Upon satisfaction of the following minimum requirements, a temporary license may be issued if:

(a) The Director's qualifications meet the requirements of Chapter 1240-04-02-.05(4);

(b) Three (3) satisfactory references for the Director are verified;

(c) Physical facilities receive fire safety and environmental approval;

(d) The applicant has demonstrated that the applicant and the personnel who will care for the children are capable in all substantial respects to provide appropriate group care for children;

(e) The applicant has reasonably demonstrated that the applicant has the ability and intent to comply and maintain compliance with the licensing law and regulations; and

(f) The Department has determined, after appropriate inspection, that the site is suitable for child care activities and does not endanger the welfare or safety of children.

(g) No temporary or annual license shall issue unless and until the Department determines, in accordance with the provisions of this Chapter and Department policy that the applicant has complied with the provisions of this paragraph (7) and any other applicable provisions of the law or this Chapter.

(8) Right of Inspection.

(a) Receipt of an application and/or acceptance of a license constitutes agreement to allow the Department:

1. The right of entry, without notice, into the child care agency for the purpose of inspection for compliance with these rules; and

(Rule 1240-04-02-.03, continued)

2. The right to observe and account for all children enrolled or present in the drop-in child care center, to determine the status of their health, safety and welfare, and the right to inspect and copy all records related to compliance with these rules.

(b) Refusal to allow entry and/or refusal to allow the Department to inspect the premises or relevant records for compliance with these rules or to observe and account for all children enrolled or present in the drop-in center, to determine the status of their health, safety and welfare, is a basis, by itself, for the summary suspension, revocation, and/or denial of the license and any additional remedies set forth in T.C.A. § 71-3-508.

(9) Upon issuance of an annual license, the licensee shall maintain compliance with the requirements of this Chapter throughout the licensing period.

(10) Re-evaluation.

(a) The Department shall notify the licensee of the re-evaluation of the agency for a renewal of its license before the expiration of the current license.

(b) Application for renewal of the license must be made before the expiration of the existing license, or the existing license will expire upon the expiration date of the licensing period established by the license.

(c) Applicants for the renewal of a license are evaluated in the same manner and must comply with the same requirements as applicants for a new license.

(11) Immediately upon receipt of the license, the licensee shall post near the main entrance and in a conspicuous location:

(a) The current license;

(b) The Department of Human Services' toll-free Child Care Complaint Hotline phone number; and

(c) Any other documents as directed by the Department.

(12) The licensing procedures for a drop-in center are also subject to the requirements of Chapter 1240-4-5, Procedures Affecting Licenses of Child Care Agencies.

Authority: *T.C.A. §§4-5-202, 71-3-501 et seq., 71-3-501(8), and 71-3-502(a)(2).* ***Administrative History:*** *Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005.*

1240-04-02-.04 OWNERSHIP, ORGANIZATION AND ADMINISTRATION.

(1) Statement of Purpose.

(a) An applicant for a license to operate a child care agency shall submit a written statement to the Department of Human Services governing the following areas:

1. A description of all services to be offered to children and parents;

2. Ages of children to be served;

3. Hours of operation;

4. Number and type of meals and snacks to be served, if applicable;

(Rule 1240-04-02-.04, continued)

5. Admission requirements and enrollment procedures; and

6. Provisions for providing or obtaining emergency medical care.

(b) If, after being licensed, a licensee wishes to change the scope or type of service offered to children and families, an amended statement shall be filed with the Department for approval prior to implementation.

(2) Organizational Structure.

(a) The organization of every drop-in child care center shall be such that legal and administrative responsibility is clearly defined, and the licensee must provide any and all documentation reasonably required by the Department to validate such legal and administrative responsibility.

(b) Every drop-in child care center shall have an on site director.

Exception: Following the issuance of an annual license, a drop-in child care center may operate without an on-site director, as deemed appropriate by the Department and within any restrictions that may be established by the Department, for a period of no more than sixty (60) days total within the licensing year.

(3) Liability and Medical Payment Insurance Coverage.

(a) General liability and medical payment insurance coverage shall be maintained on the operations of the child care agency's facilities.

(b) General liability coverage on the operations of the child care agency's facilities shall be maintained in a minimum amount of Five Hundred Thousand Dollars ($500,000) per occurrence and Five Hundred Thousand Dollars ($500,000) general aggregate coverage.

(c) Medical payment coverage shall be maintained in the minimum amount of Five Thousand Dollars ($5,000) for injuries to children resulting from the operation of the child care agency.

(d) The requirements of this paragraph shall not apply to an agency that is under the direct management of a self-insured administrative department of the state, a county or a municipality or any combination of those three (3) or that has, or whose parent entity has, a self-insurance program that provides, as determined by the Department, the coverage and the liability limits required by these rules.

(e) Documentation that the necessary insurance is in effect, or that the administrative department or other entity is self-insured, shall be maintained in the records of the child care agency and shall be available for review and copying by the Department's licensing staff.

(4) Records and Reports.

The following records shall be maintained in an organized manner at the drop-in center and made available to the Department upon request:

~~(a) Children's Records.~~

~~1. Each child shall have a record containing the following information:~~

~~(i) A current information form which includes the child's name, date of birth, name of parent(s), child's and parents' home address(es), emergency contact numbers (e.g., home, work, cell phone, pager, etc., as applicable), and the name and address (home and business or school) of a responsible person to contact in an emergency if the parent(s) cannot be located promptly;~~

~~(ii) Name, address, and telephone number of a physician to call in case of an emergency;~~

~~(iii) Written consent of parent(s) regarding emergency medical care;~~

~~(iv) A child release plan stating to whom the child shall be released and a clear policy concerning the release of child(ren) to anyone whose behavior may place the child(ren) in immediate risk;~~

~~(v) A signed statement from the parent or guardian verifying that the child or children are in good health and current with immunizations; and~~

~~(vi) Daily attendance records for each child.~~

~~2. A child's records shall be kept by the drop-in center for one (1) year following the child's being disenrolled from the center.~~

[(a) Children's Records.

1. Each child shall have a record containing the following information:

(i) A current information form which includes the child's name, date of birth, name of parent(s), child's and parents' home address(es), emergency contact numbers (e.g., home, work, cell phone, pager, etc., as applicable), and the name and address (home and business or school) of a responsible person to contact in an emergency if the parent(s) cannot be located promptly;

(ii) Name, address, and telephone number of a physician to call in case of an emergency;

(iii) Written consent of parent(s) regarding emergency medical care;

(iv) A child release plan stating to whom the child shall be released and a clear policy concerning the release of child(ren) to anyone whose behavior may place the child(ren) in immediate risk;

(v) A signed statement from the parent or guardian verifying that the child or children are in good health and current with immunizations; and

(vi) Daily attendance records for each child.

2. A child's records shall be maintained in a central location within the agency and shall be kept by the drop-in center for one (1) year following the child's being disenrolled from the center. Exception: The health record shall be returned to the parent/guardian upon request when the child leaves the agency.

(Rule 1240-04-02-.04, continued)

3. All children, including related children younger than age nine (9), shall have required records on file before care is provided. Exception: After an initial eligibility determination, children of homeless families and/or children in state custody may receive care prior to providing required documentation as determined by the Department.]

(b) Staff Records.

1. The following information shall be secured when employing staff, maintained in each employee's record, updated as changes occur, and shall be maintained in the individual employment record for at least one (1) year following the separation of the employee from the agency:

(i) Name, birth date, social security number, address, and telephone number of all staff members, including volunteers, and a contact for each staff member in an emergency;

(ii) Educational background and educational experiences, including dates and places of diplomas received, and conferences, courses, and workshops attended in the preceding year;

(iii) Health records as directed under subchapter 1240-04-02-.08(11), Health and Safety;

(iv) At least three (3) written references, with documented interviews of each reference, on each new staff member;

(v) Written, verified record of employment;

(vi) Date of employment and date of separation from the agency; and

(vii) Daily attendance (including time in/out) of staff members.

(viii) Verification of the status check on the Department of Health's Vulnerable Persons Registry required by Rule 1240-04-02-.05(e)4.

2. Professional credentials of staff shall be available to parents.

(5) Right to Privacy/Confidentiality.

The licensee and agency staff shall not disclose or knowingly permit the use by other persons of any information concerning a child or family except as required by law or regulation or as may be necessary to be disclosed to public authorities in the performance of their duties and which may be necessary for the health, safety, or welfare of any child enrolled at the center or his or her family.

(6) Admission of Children and Communication with Parents.

~~(a) Before accepting a child for care, the parent or guardian shall register the child by providing:~~

~~1. All the information in paragraph (4)(a) above; and~~

~~2. A statement regarding the estimated amount of time that the parent anticipates that the child will be in attendance at the drop-in center.~~

(Rule 1240-04-02-.04, continued)

[(a) Before accepting a child for care, the parent or guardian shall register the child by providing:

1. The agency shall not admit a child into care until the parent/guardian has supplied the agency with a completed application, a signed statement from the parent or guardian verifying that the child or children are in good health and current with immunizations, and a health history. Exception: After an initial eligibility determination, children who are homeless and/or children in state custody may receive care prior to providing all required documentation as determined by the Department. Care without documentation of immunizations shall not exceed thirty days.

2. A statement regarding the estimated amount of time that the parent anticipates that the child will be in attendance at the drop-in center.]

(b) A child shall be at least six (6) weeks old before being accepted in a drop-in center.

(c) No child shall be accepted into child care in excess of the maximum allowable hours as set forth in paragraph 1240-04-02-.02(15). The drop-in center shall maintain and make available to the Department attendance records verifying that no child receives care in excess of the maximum allowable hours.

(d) The drop-in center shall make the licensure rules for drop-in care available to parents of children enrolled.

(e) During normal operating hours, parents shall be permitted immediate access to their children, and ready access to all areas of the child care facility shall be granted Department representatives and inspection authorities (i.e., fire safety, sanitation, and health).

(f) Parents shall be informed in advance of the child's removal from the premises except in cases of emergencies or removal by the Department of Children's Services or a law enforcement agency pursuant to law.

(7) Care of School-Age Children on Snow Days.

(a) A drop-in center may not accept any school-age child for care unless:

1. The Department has previously determined that the center is an appropriate and safe location for school-age children on snow days.

2. The drop-in center applied for, and was granted, a license which specifically authorizes the licensee to provide such care. Any such authorization to provide such care shall be noted on the license.

(b) The Department shall set a limit on the number of school-age children that a center may accept at any given time based upon the amount of space that the center has available.

(c) No child thirteen (13) years of age or older may be cared for by a drop-in center on a snow day.

(d) In order to assure that the center is capable of providing safe care to the additional numbers of children needing care during school closings, the center shall annually provide the Department with an updated list of trained caregivers and staff available for emergency call duty.

(Rule 1240-04-02-.04, continued)

(8) Transportation.

Transportation that is under the direction or control of the drop-in center, including contracted transportation services, is prohibited.

[(9) Data Reporting. Agencies shall submit data as requested by the Department quarterly on topics such as but not limited to: active enrollment, homeless children, non-traditional hours, deaths/serious injuries, child abuse, English as a Second Language/dual language learners, and children with disabilities.]

[(10) The agency's policies shall include/address, at a minimum:

(a) Criteria for the disenrollment of children [see expulsion policy requirements in 1240-04-02-.04(10)(l)];

(b) Specific criteria concerning the release of children; includes responsibility until signed out;

(c) Written parental permission for observation of children by non-child care agency staff;

(d) Behavior management techniques;

(e) Hours of operation;

(f) Late fees;

(g) Rates;

(h) Inclement weather;

(i) Emergency policy;

(j) Whether the environment is smoke free;

(k) Meal Service policy; and

(l) Expulsion of a child, which policy shall be:

1. Clearly articulated to staff and parents;

2. Developmentally appropriate and consistent;

3. Non-discriminatory;

4. Other options shall be considered prior to expulsion, such as but not limited to reducing the number of days or amount of time the child may attend, or if applicable, referrals to the Center on the Social and Emotional Foundations for Early Learning (CSEFEL), Early Intervention System, Individuals with Disabilities Education Act (IDEA);

5. Aggregate data that includes reasons for expulsions shall be maintained and reported to the Department annually.]

Authority: *T.C.A. §§4-5-202, 71-3-501 et seq., and 71-3-502(a)(2).* ***Administrative History:*** *Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective*

(Rule 1240-04-02-.04, continued)
March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005. Amendment filed November14, 2006; effective January 28, 2007.

1240-04-02-.05 STAFF REQUIREMENTS.

(1) Responsibility for Staff.

(a) The applicant/licensee shall be responsible for selecting individuals of suitable character to work with children.

(b) The director shall be responsible for the daily supervision of the staff and program.

(c) An appropriate staff member meeting the qualifications for a "caregiver" at the drop-in center shall be designated to be in charge in the absence of the director.

(d) The applicant/licensee and the director shall be responsible for ensuring that the behavior of staff reflects knowledge and understanding of the special needs, growth, and developmental patterns of young children, as well as an understanding of appropriate activities. Such behavior shall be evaluated in staff's performance evaluations.

~~(e) Criminal History Background Review and Abuse Registry Requirements; Exclusions from Contact with Children, Waivers from Exclusions; Appeals of Waiver Denials.~~

~~1. Individuals Requiring a Fingerprint Criminal History Background Review and Abuse (Vulnerable Persons) Registry Check:~~

~~(i) Any individual applying to work as a paid employee, director or manager of the child care agency in a position that will require or allow the individual to have contact with children at any time;~~

~~(ii) Any individual applying to work as a new substitute and who is expected to offer, or who provides, at least thirty-six (36) hours of substitute services to the agency in any calendar year;~~

~~(iii) Any individual applying for a license to operate a child care agency that is not the renewal of an existing license, or any individual who otherwise seeks to be an operator, as defined by the rules of the Department, of a child care agency, as defined in T.C.A. § 71-3-501, and who will, in the course of their role as licensee, have significant contact, as determined by the Department, with the children in care. For purposes of this paragraph, "operator" shall be an individual who is an owner or administrator of a child care agency or child care system;~~

~~(iv) Residents of a New Agency. Any individual who is a resident of the child care agency and who is fifteen (15) years of age or older upon the date the agency receives its initial temporary license or, if the agency has been issued an annual license, then upon the date the agency received its annual license; and~~

~~(v) New Residents of an Existing Agency. Any individual who is fifteen (15) years of age or older upon moving into a licensed/approved child care agency.~~

~~2. Pending outcome of the criminal history background review as described in this paragraph, and the outcome of the review of the individual's status on the~~

(Rule 1240-04-02-.05, continued)

~~Department of Health's Vulnerable Persons Registry, the applicant for employment or a substitute or volunteer position, or for a license to operate, shall be conditional and shall be dependent upon the results of these background checks.~~

~~3. Requirements for Submission of a Fingerprint Sample.~~

~~(i) Criminal History Disclosure Form. Individuals identified in subparagraph (a) shall complete and sign the Criminal History Disclosure Form provided by the Department.~~

~~(I) The failure to properly complete all sections of the Criminal History Disclosure Form shall result in the individual being prohibited from working, substituting, residing in or acting as a licensee for the child care agency.~~

~~(II) The failure to disclose all criminal history information may result in the individual being:~~

~~I. Excluded from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and~~

~~II. Referred for criminal prosecution pursuant to the provisions of state law.~~

~~(ii) Fingerprint Sample. The child care agency shall be responsible for obtaining and submitting the fingerprint sample of any person required by this Chapter in the form and manner directed by the Department:~~

~~(I) Within ten (10) calendar days of the first day of beginning employment or substitute status;~~

~~(II) Within ten (10) calendar days of the license application or seeking operator status;~~

~~(III) Within ten (10) calendar days of the application for an initial license for a facility in which the person resides; or~~

~~(IV) Within ten (10) calendar days after the resident moves into the child care facility.~~

~~(iii) Unless otherwise notified by the Department, the child care agency shall be responsible for all costs associated with obtaining the fingerprint sample, and the Department will pay for the costs of the criminal background check by the Tennessee Bureau of Investigation.~~

~~4. Vulnerable Persons Registry. The child care agency shall be responsible for determining, within the same time periods as set forth in subpart (e)3(ii) above, the status on the Department of Health's Vulnerable Persons Registry of any individual who is required by part 1 above to undergo a criminal history background review. Verification of such status check shall be maintained in the employee's record pursuant to the requirements set forth in 1240-04-02-.04(4)(b).~~

[(e) Criminal Background Check and State Registry/Records Review Procedures.

(Rule 1240-04-02-.05, continued)

1. Criminal Background and Abuse Registry Disclosures and Reviews; Fingerprinting Requirements.

(i) The following persons are required to have a background check no more than ninety (90) days before having access to any child care agency:

(I) Any person who owns or operates a child care agency and will have significant contact with children;

(II) Any person who applies to work in a child care agency as an employee, director or manager;

(III) Any person who will provide substitute services to a child care agency for more than thirty-six (36) hours in a calendar year and who is counted in the adult: child ratio; and

(IV) Any person who is fifteen (15) years of age or older who will reside in a child care agency.

(ii) New background checks are required for all staff and residents when an agency moves from one class of care to another, such as when a family home becomes a group home or when an agency is sold and staff remain employed by the new owner or any time an agency is issued a license that is not the renewal of an existing license. Exception: Does not apply to background checks completed within the last ninety (90) days.

(iii) Background checks are required for all staff at least every five (5) years.

(iv) Requirements for Disclosure of Criminal/Juvenile and State Register History and Fingerprinting.

(I) The individuals identified in subparagraph (1)(a) above shall:

I. Complete a criminal/juvenile/administrative findings history disclosure form;

II. Submit fingerprint samples for a criminal and juvenile records background check; and

III. Complete a criminal, juvenile background check/state review consisting of:

A. An investigation of a person's criminal background history by the Tennessee Bureau of Investigation (TBI) and through the Federal Bureau of Investigation's (FBI) national database;

B. An investigation of a person's juvenile records history that is available to the TBI;

C. A review of any available juvenile court records, if determined necessary by DHS;

D. A search of the vulnerable persons registry (VPR), maintained by the Tennessee Department of Health;

E. A search of the TN sexual offender registry (SOR), maintained by the TBI; and

F. A search of the DCS registry of indicated perpetrators of abuse or neglect of children.

G. A search of any state or federal registries required by the Child Care and Development Block Grant Act.

2. Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Children Prior to Completion of Criminal History Review.

(i) A child care agency, substitute pool, or staffing agency shall be responsible for registration of persons required to have a background check. The responsible entity shall ensure that the process is completed prior to employment.

(ii) A child care agency may not permit any person who is required to have a background check to assume any role or to have access to children until the agency receives written verification from the Department that the person is cleared to work/reside in the agency.

(iii) Failure to Complete or Disclose Information on Criminal Disclosure Form.

(I) Failure to properly complete all sections of the Criminal/Administrative History Disclosure Form shall result in the individual being prohibited from assuming any position for which a background review is required.

(II) Failure to disclose all criminal and administrative history information may result in the person being:

I. Excluded by the Department from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and

II. Referred to the appropriate district attorney for criminal prosecution.

(iv) The Department will pay for the costs of performing one background check per person per agency per year.

(v) The child care agency shall be responsible for costs associated with the background check if:

(I) The fingerprint sample is rejected and the fingerprint sample must be resubmitted;

(II) The agency submits a second fingerprint sample for an individual when the initial background check has not been completed; or

(III) The agency submits a fingerprint sample for a purpose unrelated to obtaining approval for a prospective employee, volunteer, etc. to have access to child care.

(Rule 1240-04-02-.05, continued)

3. Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Children.

(i) No person shall be employed, be a licensee or operator or, provide substitute services, reside, or have any access to children in a child care agency if the criminal background check identifies an excludable criminal offense for which the person has:

(I) Been convicted of, pled guilty or no contest to (or to a lesser included offense);

(II) Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or

(III) Been named in a pending warrant, indictment, presentment, or petition.

(ii) An excludable criminal offense involves:

(I) The physical, sexual or emotional abuse or neglect of a child;

(II) A crime of violence against a child, or any person;

(III) Any offense, including a lesser included offense, involving the manufacture, sale, distribution or possession of any drug; or

(IV) Any offense that presents a threat to the health, safety or welfare of children.

(V) The criminal offenses for which a person will be excluded from a child care agency include but are not limited to the following offenses as well as their lesser included offenses (even if not listed here):

I. Aggravated arson (T.C.A. § 39-14-302);

II. Aggravated assault (T.C.A. § 39-13-102);

III. Aggravated child abuse (T.C.A. § 39-15-402);

IV. Aggravated child neglect (T.C.A. § 39-15-402);

V. Aggravated cruelty to animals (T.C.A § 39-14-212);

VI. Aggravated kidnapping (T.C.A. § 39-13-304);

VII. Aggravated rape (T.C.A. § 39-13-502);

VIII. Aggravated rape of a child (T.C.A. § 39-13-531);

IX. Aggravated robbery (T.C.A. § 39-13-402);

X. Aggravated sexual battery (T.C.A. § 39-13-504);

(Rule 1240-04-02-.05, continued)

XI. Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);

XII. Aggravated vehicular homicide (T.C.A. § 39-13-218);

XIII. Arson (T.C.A. § 39-14-301);

XIV. Assault (T.C.A. § 39-13-101);

XV. Carjacking (T.C.A. § 39-13-404);

XVI. Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);

XVII. Criminal attempt, under T.C.A. § 39-12-101, to commit any criminal offense that requires exclusion from child care;

XVIII. Criminal exposure to HIV (T.C.A. § 39-13-109);

XIX. Criminal homicide (T.C.A. § 39-13-201);

XX. Criminally negligent homicide (T.C.A. § 39-13-212);

XXI. Cruelty to Animals (T.C.A § 39-14-202);

XXII. Custodial interference (T.C.A. § 39-13-306);

XXIII. Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);

XXIV. Domestic assault (T.C.A. § 39-13-111);

XXV. Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);

XXVI. Especially aggravated burglary (T.C.A. § 39-14-404);

XXVII. Especially aggravated kidnapping (T.C.A. § 39-13-305);

XXVIII. Especially aggravated robbery (T.C.A. § 39-13-403);

XXIX. Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);

XXX. Exploitation of a minor by electronic means (T.C.A. § 39-13-529);

XXXI. False imprisonment (T.C.A. § 39-13-302);

XXXII. First degree murder (T.C.A. § 39-13-202);

XXXIII. Incest (T.C.A. § 39-13-302);

XXXIV. Indecent exposure (T.C.A. § 39-13-511);

(Rule 1240-04-02-.05, continued)

XXXV. Involuntary labor servitude (T.C.A. § 39-13-307);

XXXVI. Kidnapping (T.C.A. § 39-13-105);

XXXVII. Rape (T.C.A. § 39-13-503);

XXXVIII. Rape of a child (T.C.A. § 39-13-522);

XXXIX. Reckless endangerment (T.C.A. § 39-13-103);

XL. Reckless homicide (T.C.A. § 39-13-215);

XLI. Robbery (T.C.A. § 39-13-401);

XLII. Second degree murder (T.C.A. § 39-13-210);

XLIII. Sexual battery (T.C.A. § 39-13-505);

XLIV. Sexual battery by an authority figure (T.C.A. § 39-13-527);

XLV. Sexual exploitation of a minor (T.C.A. § 39-17-1003);

XLVI. Solicitation of a minor (T.C.A. § 39-13-528);

XLVII. Stalking (T.C.A. § 39-17-315);

XLVIII. Statutory rape (T.C.A. § 39-13-506);

XLIX. Statutory rape by an authority figure (T.C.A. § 39-13-532);

L. Trafficking a person for sexual servitude (T.C.A. § 39-13-309);

LI. Vehicular assault (T.C.A. § 39-13-106);

LII. Vehicular assault while intoxicated (T.C.A. § 39-13-106);

LIII. Vehicular homicide (T.C.A. § 39-13-213);

LIV. Voluntary manslaughter (T.C.A. § 39-13-211); and

LV. Weapons offenses (unlawful possession, carrying, use, etc.).

(iii) No person may be employed as a driver or serve as a driver for a child care agency if the person:

(I) Is currently charged with; or

(II) Has been convicted of, or pled guilty, within the last five (5) years to any of the following criminal offenses:

I. Vehicular homicide;

(Rule 1240-04-02-.05, continued)

II. Accidents involving death or personal injury;

III. Accidents involving damage to a vehicle;

IV. Driving under the influence of an intoxicant, drug or drug producing stimulant; or

V. Any felony involving the use of a motor vehicle while under the use of any intoxicant.

4. Exclusion from access to child care based on a listing on a state registry.

(i) No person shall be employed, be a licensee or operator, provide substitute services, reside, or have any access to children in a child care agency if the results of the state registry review identify the person as being:

(I) Listed on the Vulnerable Persons Registry;

(II) Listed on the Sexual Offender Registry; or

(III) Indicated in the records of the Department of Children's Services as a perpetrator of abuse or neglect of a child.

5. Supplemental Background Checks Subsequent to Licensing, Employment or Residence in a Child Care Agency.

(i) The Department may, at any time, require a new background check of any individual with access to children in a child care agency.

(I) For an individual who was not subject to a background check prior to assuming a role, the individual's existing status in their role shall be conditional upon the satisfactory outcome of any requested background check.

6. Any person who is excluded shall remain excluded pending the outcome of any appeals or waiver review or any determination that the basis for exclusion no longer exists.

7. An individual will also be excluded if a criminal or juvenile proceeding, registry or administrative background review requiring exclusion or any other provision of law is discovered and verified in any manner.

8. If a child care agency, substitute pool or staffing agency receives information from a source other than the Department that requires them to exclude an employee, substitute, volunteer, or resident they shall immediately exclude the person from any access to children and notify the Department on the same business day by calling the child and adult care complaint hotline.

9. The exclusion of such persons from access to child care shall be conducted pursuant to T.C.A. § 71-3-507 and this rule.

10. Failure of a child care agency to perform the required background check before allowing a person access to child care or to immediately exclude individuals with a criminal history or state registry review status that requires exclusion, shall be the basis for the immediate suspension, denial or revocation of the child care agency's license.]

(Rule 1240-04-02-.05, continued)

(f) Exclusion of Persons from Contact with Children.

1. Prohibited Criminal or Abuse or Neglect History.

(i) No individual with a prohibited criminal history as defined below, regardless of whether such individual is required by these rules to undergo a criminal history background review, may work, substitute or volunteer in a child care agency, or be a resident, licensee, director or manager of a child care agency who has access to children, or be an operator who has significant contact with children or otherwise have unrestricted access to children in any manner whatsoever.

(ii) An individual shall be immediately and automatically excluded from child care or any contact whatsoever with children, as described above, if the individual's criminal history includes:

(I) A criminal conviction or a no-contest or guilty plea; or any pending criminal action, including individuals subject to any warrant, indictment, presentment, etc.; or placement in a pretrial diversion; or,

(II) A pending juvenile action or previous juvenile adjudication, which, if an adult, would constitute a criminal offense; and

(III) Any of the circumstances in items (I) or (II) above involves any of the following criminal offenses:

I. Any offense (including a lesser included offense) involving the physical, sexual or emotional abuse or gross neglect of a child, or involving a threat to the health, safety or welfare of a child;

II. Any offense (including a lesser included offense) involving violence or the threat of violence against another person; and/or

III. Any offense (including a lesser included offense) involving the manufacture, sale, distribution or possession of any drug.

(iii) An individual shall also be immediately and automatically excluded from child care or from access in any manner whatsoever to the children in the care of the agency, if the individual:

(I) Reveals a prohibited or potentially prohibited criminal history on the Criminal History Disclosure Form; or

(II) Is listed on the Department of Health's Vulnerable Persons Registry; and/or

(III) Is known to the management or licensee of a child care agency as a perpetrator of child abuse or child sexual abuse or to have a prohibited criminal history, or who is identified to the child care agency's management or licensee by the Department of Human Services or by the Department of Children's Services as a validated perpetrator of abuse of a child based upon an investigation conducted by the Department of Children's Services or by the child protective services agency of any other state; or, who at anytime is

(Rule 1240-04-02-.05, continued)

identified by any person or entity to the child care agency's management or licensee and is confirmed by the Department of Human Services as having a prohibited criminal history.

(iv) Exclusion from driving duties. An individual with a prohibited history as set forth below shall be immediately and automatically excluded from providing driving duties on behalf of the child care agency if the individual:

(I) Has a pending criminal action (including warrants, indictments, presentments, etc.), is completing a pretrial diversion, or has been convicted of or pled guilty to any offense involving the use of a motor vehicle while under the influence of any intoxicant, which constitutes a violation of T.C.A. §§ 39-13-213; 55-10-101; 55-10-102 or 55-10-401; or

(II) Has been convicted of or pled guilty to any felony involving the use of a motor vehicle while under the influence of any intoxicant. In such case, the individual shall not be employed or otherwise serve as a driver for a child care agency for a period of five (5) years from the date of the conviction or guilty plea.

(v) Exclusions for Child Neglect. An individual who has been identified by the Department of Children's Services as having neglected a child based on an investigation conducted by that Department or any child protective services agency of any state, and who has not been criminally charged or convicted or pled guilty or no-contest as stated above, shall be supervised by another adult while providing care for children.

2. The child care agency shall immediately, upon receipt, review the results of the criminal history background review and Vulnerable Persons Registry and shall immediately exclude any individual with a prohibited history as directed by the Department.

3. Failure to exclude individuals with a criminal history or abuse or neglect finding.

Failure to immediately exclude any individual subject to exclusion or supervision pursuant to this subchapter and T.C.A. § 71-3-507, as directed by the Department, may result in the immediate suspension, denial or revocation of the child care agency's license.

(g) Waivers from Exclusions Due to Criminal or Abuse or Neglect History.

1. Any person who is excluded or whose license is denied based upon the results of the criminal history background review, or based upon any other determination, may request in writing to the Department's Director of Licensing within ten (10) calendar days of receiving notice of such exclusion or denial a waiver from these automatic exclusion requirements.

2. Excluded individuals, prior to receiving official notice of the exclusion or denial from the Department, may also make a written request for a waiver by letter or directly on the Department's Criminal History Disclosure Form.

3. Requests for a waiver shall state the basis for the request, including any extenuating or mitigating circumstances that would, in the person's opinion, clearly warrant an exemption from the exclusion. Any documentary evidence may also be submitted with the request.

(Rule 1240-04-02-.05, continued)

4. Requests for waivers shall be heard by an advisory committee and reviewed by the Department in accordance with the provisions of T.C.A. § 71-3-507.

5. Any person who is excluded from providing care or services to children under any provisions of this subchapter shall remain excluded pending the outcome of any exemption review and appeals.

(h) Supplemental Background Checks.

1. The Department may, at anytime, request that the criminal background or status on the Department of Health's Vulnerable Persons Registry of any individuals having access to children under any of the circumstances set forth in this subchapter be reviewed using the processes described above or in T.C.A. § 71-3-507. All other provisions applicable to any pre-employment or post-employment, residential or access status of any individual shall apply to any background review conducted pursuant to this subparagraph (h).

2. The employment status of persons for whom a post-employment criminal history background review was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a child care agency for whom a criminal history background review was conducted after license approval or after employment or assuming duties as a volunteer or subsititute, and who were not otherwise subject to a pre-status applicant background check and to the exclusionary provisions provided in this subchaper, shall be governed by the provisions of this subchapter and T.C.A. § 71-3-507.

(2) Staff Qualifications.

(a) Every staff person, including volunteers, practicum students, and substitutes, shall be physically, mentally, and emotionally capable of performing his/her duties satisfactorily.

1. The Department may require, in its sole discretion, any individual, whether a pending or current employee, volunteer or any other person, who has contact with children in the care of the agency to undergo a mental health examination, physical health examination, or drug screening test when, in the Department's sole determination, there is reasonable cause to believe that such individual may have an impairment that potentially poses a risk of harm to children in the care of the agency. An individual requested to undergo such examinations or screenings may refuse to do so, but will not be permitted to have any further contact with children in the care of the child care agency until completion of the examination and satisfactory evidence is provided to the Department that the person does not represent a risk of harm to the children in the agency's care.

2. Safety Plans.

(i) Pending the outcome of such testing, the Department may require, in its sole discretion, the child care agency to enter into a safety plan approved by the Department that prohibits or limits such individual's contact with children in the care of the child care agency.

(ii) The Department may otherwise require, in its sole discretion, that the child care agency enter into a long-term or permanent safety plan that prohibits or limits an impaired individual's contact with children in the care of the agency.

(Rule 1240-04-02-.05, continued)

(iii) Failure to adhere to the safety plan shall be grounds for action by the Department against the child care agency's license as permitted by T.C.A. § 71-3-508(c).

(iv) The child care agency or any individual whose employment status is directly and adversely impacted by a safety plan or by refusal to undergo an examination as directed by the Department, may, at any time during the existence of the plan or during the pendency of the directive for an examination, request, in writing, that the Director of Licensing conduct an intradepartmental review of a safety plan. Such review shall be conducted by the Director or the Director's designee within five (5) business days of the written request.

(v) Any individual whose employment status is directly and adversely impacted by a safety plan that has been in effect for more than ten (10) business days or by their refusal to undergo an examination as directed by the Department, and who has requested an intradepartmental review pursuant to subpart (iv), may appeal the plan's application to such individual or the directive to undergo testing to the Department by filing a written request for an administrative hearing before the Department's Appeals Division within ten (10) days of the Director's decision. The hearing shall be held by the Division within twenty (20) business days of the receipt of the request for an administrative hearing.

(vi) Any safety plan that exceeds ninety (90) days when proposed or that continues for more than ninety (90) days may be appealed by the child care agency to the Child Care Agency Board of Review.

(b) A person who has a physical, mental, or emotional condition which is in any way potentially harmful to children shall not be present with the children.

(c) Each new employee must be provided a copy of these rules.

(d) Each new employee shall serve a probationary period of three (3) to six (6) months, during which close supervision is provided. Staff performance shall be reviewed prior to the end of the probationary period. All employees shall have annual reviews. Discussion of evaluations with staff shall be documented.

(e) Contents of Employee Records

1. The agency's records shall contain verification that, prior to assuming duties, each new employee has received orientation in, and is able to explain:

(i) Child care philosophy;

(ii) Job description;

(iii) Personnel policies;

(iv) Emergency procedures;

(v) Discipline policies, and

(vi) Policies for receiving and dismissing children.

(Rule 1240-04-02-.05, continued)

2. Within the first two (2) weeks of employment, each employee shall receive instruction in disease control and health promotion. Such training shall be documented in the agency's records.

3. Within the first thirty (30) days of employment, each employee shall receive instruction in parent-center communication, and an overview of licensing requirements. Such training shall be documented in the agency's records.

(f) Training.

1. Notwithstanding any other requirements of Title 71, Chapter 3, Part 5 of the Tennessee Code Annotated, training requirements for the staff of any Drop-In Child Care Center shall be limited to basic health and safety precautions as well as the detection and reporting of child abuse and neglect for children in the center's care.

2. Within the first thirty (30) days of employment, all staff working with children shall receive training in the detection, reporting, and prevention of child abuse. Such training shall be documented in the agency's records.

[(f) Training of New Employees

1. Prior to assuming duties, each new employee shall receive documented instruction in and have a working knowledge of:

(i) Program philosophy and policies;

(ii) Job description;

(iii) Emergency health and safety procedures;

(iv) Behavior management procedures;

(v) Detection, reporting, and prevention of child abuse;

(vi) Procedures for receiving and releasing children;

(vii) Safe sleep procedures;

(viii) Shaken baby syndrome/abusive head trauma;

(ix) Meal service and safe food preparation policies;

(x) Supervision during high risk activities such as eating and outdoor play;

(xi) Food allergies;

(xii) Expectations for communications with parent/guardian;

(xiii) Disease control and health promotion;

(xiv) An overview of licensing requirements;

(xv) Information on risks of Cytomegalovirus (CMV) to female employees of childbearing age;

(Rule 1240-04-02-.05, continued)

(xvi) A minimum of two (2) hours pre-service training as recognized by the Department; and

(xvii) Documentation of the requirements in this subparagraph (f) shall be maintained in the staff file.]

[(g) Ongoing Training Requirements – any ongoing training required for employees shall include health and safety topics, such as but not limited to:

1. Prevention and control of infectious diseases (including immunization);

2. Prevention of sudden infant death syndrome and use of safe sleeping practices;

3. Administration of medication, consistent with standards for parental consent;

4. Prevention of and response to emergencies due to food and allergic reactions;

5. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

6. Prevention of shaken baby syndrome and abusive head trauma;

7. Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

8. Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

9. Precautions in transporting children (if applicable); and

10. First aid and pediatric cardiopulmonary resuscitation.]

(3) Substitutes.

(a) The names, addresses, telephone numbers and dates of service shall be recorded for all substitutes in the staff personnel records of the drop-in center.

(b) Substitutes shall comply with the orientation requirements of 1240-04-02-.05(2)(e).

(c) Substitutes acting as caregivers shall meet the training requirements of 1240-04-02-.05(5)(c) if they have acted as caregivers for two hundred (200) or more hours in the previous calendar year.

(d) Substitutes providing services for thirty-six (36) hours or more in a calendar year are required to have a criminal background check pursuant to 1240-04-02-.05(1)(e), and shall meet the same requirements as regular staff for physical examinations as required by 1240-04-02-.08(11)(a); provided, however, that persons serving temporarily as caregivers in field service placements as part of an educational course of study or

(Rule 1240-04-02-.05, continued)

other curriculum requirement shall not be considered as substitutes for purposes of this rule.

(4) Director of a Drop-in Child Care Center.

(a) The drop-in center shall have an on-site director [except as otherwise permitted pursuant to 1240-4-.04(2) above]. The director shall have earned a high school diploma or its equivalent and one (1) year of full time documented work experience with young children in a group setting.

(b) Prior to issuance of the first annual license, the licensee and director shall complete a child care orientation course offered through or recognized by the Department. New directors of child care agencies currently licensed shall complete the orientation course within (3) months of assuming the position.

(c) The director shall have evidence of completing at least six (6) clock hours annually of Department-recognized training. At least three (3) of these hours shall be in administration, management or supervisory training.

(d) The director shall complete four (4) hours of pre-employment training, which is offered or recognized by the Department, that includes, but is not limited to, training in interviewing and evaluating caregivers for service in an agency and in working effectively with parents. If the Department determines that the director has received specific training meeting the requirements of this part within three (3) years prior to employment, the requirement of this part may be waived by the Department.

(5) Caregivers.

(a) Each caregiver who is used to meet the minimum required adult:child ratio must be at least eighteen (18) years of age.

(b) At least one (1) caregiver who is present in the agency shall be able to read and write English.

(c) Caregivers shall have evidence of receiving at least three (3) clock hours annually in Department-recognized training.

(d) New caregivers shall complete two (2) clock hours of pre-service orientation training offered or recognized by the Department. For purposes of this rule, " pre-service" orientation shall mean that such orientation occurs within the first thirty (30) days of employment with the agency. Pending completion of the orientation training, the caregiver's status is conditional. Failure of the caregiver to complete the required two (2) hours of pre-service orientation shall require that the employee be removed from caregiver duties for children until completion of the training.

(e) Auxiliary Staff.

1. Any auxiliary staff persons (e.g., maintenance staff, kitchen staff, etc.,) shall be physically and mentally capable of performing satisfactorily in their respective positions.

2. Any auxiliary staff directly employed by the center shall receive orientation to their position within the first two (2) weeks of employment. This training shall include:

(i) Personnel policies;

(Rule 1240-04-02-.05, continued)

(ii) Job responsibilities;

(iii) Parent communication;

(iv) Daily schedule and routine;

(v) Center policies regarding discipline;

(vi) Detection and reporting of child abuse; and

(vii) Emergency procedures.

Authority: *T.C.A. §§4-5-202,71-1-105(5) and (12), 71-3-501 et seq., 71-3-501(8), and 71-3-502(a)(2).* ***Administrative History:*** *Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005. Amendment filed November 14, 2006; effective January 28, 2007.*

1240-04-02-.06 EQUIPMENT FOR CHILDREN.

(1) General.

(a) All indoor and outdoor equipment shall be safe for use with the applicable age group and shall be properly maintained to avoid any potential risk to children.

(b) Equipment shall not contain any dangerous angles, sharp edges, splinters, nails sticking out, open S-hooks or pinch points that are within children's reach.

(c) Damaged equipment shall be repaired or removed immediately.

(d) Equipment shall be kept clean by washing frequently.

(e) There shall be age appropriate equipment and furnishings for each age group in attendance.

(f) In infant/toddler areas, equipment and space shall be provided for climbing, crawling, and pulling without the restraint of playpens or cribs.

(2) Indoor Play Equipment.

(a) Any equipment which may present a fall hazard, such as television sets, bookcases, appliances, etc. shall be secured or supported so that they will not fall or tip over.

(b) Indoor equipment, materials, and toys shall be available to allow children to make choices among different active play activities and among different quiet play activities.

(c) Toys, educational, and play materials shall be organized and displayed within children's reach to allow children to select and return items independently.

(d) No materials that contain small parts that can be inhaled or swallowed which may present a potential choking hazard shall be accessible to children under three (3) years of age.

(3) Outdoor Play Equipment.

(a) If outdoor play equipment is provided, it shall be age appropriate.

(Rule 1240-04-02-.06, continued)

(b) The Consumer Products Safety Commission's "Handbook on Public Playground Safety" or similar authority shall be used for guidance on playground construction and maintenance.

(c) All outdoor play equipment shall be placed to avoid injury. Fall zones shall extend at least six (6) feet away from the perimeter of equipment and away from retainer structures, fences, and other equipment and out of children's traffic paths.

(d) Resilient surfacing material shall cover fall zones in the manner and depth directed by the Department in accordance with the recommendations set forth in subparagraph 3(b) above.

(e) Supports for climbers, swings, and other heavy equipment that could cause injury if toppled shall be securely anchored to the ground, even if the equipment is designed to be portable.

(4) Naptime and Sleeping Equipment.

(a) There shall be equipment for napping or sleeping.

(b) All nap/sleep equipment shall be properly maintained and comply with the following requirements:

1. Individual cots or two-inch mats shall be provided for mature toddlers and for children through age five (5).

2. Individual beds or cots shall be provided for children sleeping for extended periods of more than two and one half (2-1/2) hours, such as during nighttime care.

3. A clean sheet or towel shall be used to cover whatever the child sleeps on.

4. A clean coverlet shall be available to each child.

5. Each infant shall have an individual crib (at least twenty-two inches (22") x thirty-six inches (36") with an open top. Mattresses and foam pads shall be covered with safe, waterproof material. Soiled sheets and coverlets shall be replaced immediately.

Authority: *T.C.A. §§4-5-202, 71-3-501 et seq., and 71-3-502(a)(2).* ***Administrative History:*** *Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005.*

1240-04-02-.07 PROGRAM.

(1) Schedule and Routines.

(a) Rest for the children shall occur as needed.

(b) A child shall not be left in a crib or on a cot for an unreasonable length of time.

(c) Agencies providing nighttime care shall provide calming activities preceding bedtime, including listening to a story or soft music, etc., and individual/adult attention shall be provided as needed.

(Rule 1240-04-02-.07, continued)

(d) Children shall not be forced to sit on the potty or toilet for more than five (5) minutes.

(2) Television, Videos, and Computers.

(a) All television, computer/video games, programs/movies shown shall be designed for children's education and/or enjoyment. Programs/movies/games with violent or adult content (including "soap operas") shall not be permitted in children's presence. Programs/movies shall be age appropriate for the viewers.

(b) All programs, videos, and movies must be previewed by staff for content.

(c) Parents shall be informed of movie showings and ratings of the movies to be shown.

(d) Other activities shall be available to children during television/movie viewing or computer/video game use.

(e) Computer/video game use must be monitored by staff.

(3) Behavior Management and Guidance.

(a) Attention spans and skills of children shall be considered so that caregivers do not require behaviors of children which are developmentally inappropriate.

(b) Discipline shall be reasonable, appropriate, and in terms the children can understand.

(c) Punishment that is shaming, humiliating, frightening, verbally abusive, or injurious to children shall not be used.

(d) Punishment shall not be related to food, rest, or toileting.

(e) Spanking or any other type of corporal punishment is prohibited. ("Corporal punishment" is the infliction of bodily pain as a penalty for behavior of which the punisher disapproves.)

(f) Caregivers shall not focus solely upon unacceptable behavior.

(g) Praise and encouragement of good behavior shall be used.

(h) When a child is engaging in unacceptable behavior the caregiver shall, prior to using punishment, attempt to distract the child's attention and substitute a desirable activity.

(i) Time Out.

1. Use of time-outs shall be reasonable and age appropriate.

2. A time-out shall take place in an appropriate location based upon the development of the child.

3. The length of each time-out session shall be based on the age of the child and shall not exceed one (1) minute per each year of the child's age.

(4) Age-Appropriate Activities.

(a) Age-appropriate activities shall be available for all ages of children the center is licensed to serve.

(Rule 1240-04-02-.07, continued)

(b) Interaction by staff with infants/toddlers should stimulate the development of language, gross motor, fine motor, social/personal, cognitive, and self-help skills. Examples of such activities include music, dramatic play, story time, free activity periods, outdoor play, and the opportunity to explore many materials, situations, and roles.

(5) Swimming. Swimming is prohibited.

(6) Personal Safety Curriculum.

(a) For ages three (3) through school-age, a curriculum shall be offered that shall include instruction, at least once a year, in personal safety.

(b) Personal Safety Curriculum Components and Guidelines.

1. The personal safety curriculum shall include a Department-recognized component for the prevention of child abuse, including, for children four (4) years of age and older, a child sexual abuse prevention component.

2. The curriculum shall be based upon curriculum guidelines provided by the Department to the child care provider in any suitable format. The child care provider may choose terminology and instructional methods for this curriculum with a goal of providing clear, effective and appropriate instruction to the children in personal safety, including the prevention of all forms of child abuse.

(c) Personal Safety Instruction Requirements for School-Age Children.

1. For school-age children, the curriculum shall include instruction for reporting physical, sexual or verbal abuse.

2. Children of school-age shall not be required to receive personal safety instruction from the child care agency if they annually receive personal safety instruction as required by this paragraph (6) in the curriculum of their local public education agency, or, if they receive such instruction in any other educational setting, as approved, in either circumstance, by the Department.

3. Documentation of Personal Safety Instruction in Educational Settings.

(i) Written documentation, in a form and manner approved by the Department, verifying that annual personal safety instruction as required by this paragraph (6) is being provided in a public educational setting to each child enrolled in the child care agency, shall be maintained on file with the Department.

(ii) For children who do not attend public schools, the child care provider shall secure and maintain documentation, in a form and manner approved by the Department, verifying that each school-age child enrolled in the child care agency is receiving annual personal safety instruction as required by this paragraph (6).

(d) Beginning October 1, 2008, the personal safety curriculum used by a child care agency shall be made available by the child care agency to parents and legal guardians for review. The child care agency shall use a standard notification form developed by the Department that will be provided to the parents or legal guardians by the child care agency to confirm that the parents/guardians have been notified of the curriculum to be used and of their opportunity to review the personal safety curriculum.

(Rule 1240-04-02-.07, continued)

(e) The record of each enrolled child shall include a copy of the signed notification form acknowledging that parents/legal guardians have been provided an opportunity to review the agency's personal safety curriculum, and have been notified of the sexual abuse/personal safety curriculum for their child.

(f) If parents/legal guardians have questions regarding the personal safety curriculum, a representative of the child care agency shall meet with the parents/legal guardians to discuss the curriculum.

Authority: *T.C.A. §§4-5-202, 4-5-209, 71-3-501 et seq., 71-3-502, 71-3-502(a)(2), 71-3-502(l) and 2008 Tenn. Pub. Acts 1032.* ***Administrative History:*** *Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005. Public necessity rule filed October 1, 2008; effective through March 15, 2009. Amendment filed December 29, 2008; effective March 14, 2009.*

1240-04-02-.08 HEALTH AND SAFETY.

(1) Supervision and Grouping of Children.

(a) The management of the center shall maintain a system that allows personnel to know the whereabouts of each child in their care. This system shall include a mandatory visual inspection of all areas of the building and grounds immediately prior to closing the center for the day in order to ensure that no children have been unintentionally left.

(b) Children must have adult supervision at all times as defined in section 1240-04-02-.02 (29).

(c) No child (ren) shall be left unattended for any reason.

(d) Caregivers shall not leave the group until replacement(s) have arrived.

(e) Arrangements shall be made so that in an emergency, a caregiver, without having to leave the group, can call by phone or voice for a second adult to help.

(f) Age Categories and Adult: Child Ratios.

1. Children shall be placed in age-appropriate groups and with adequate adult supervision as established in parts 2-5 below.

2. Single-age Grouping

Age	Adult:Child Ratio
Infant (6 weeks to 12 months)	1:4
Toddler (12 months to 24 months)	1:10
2 years	1:12
3 years	1:15
4 years	1:18
5 years (not in Kindergarten)	1:20
K & Above	1:22

3. Multi-Age Grouping.

(i) The adult:child ratio of a multi-age grouping shall be determined by the age of the majority of the children in the group; provided, however:

(Rule 1240-04-02-.08, continued)

(I) No majority age: If the ages of the children are evenly divided, and thus there is not a majority age, the adult:child ratio shall be determined by the age of the youngest child in the group.

(II) Infants: The adult: child ratio of any group containing an infant shall be determined solely by the number of infants in the group as set forth in subparagraphs (ii) and (iii) below.

(ii) The adult: child ratio for any multi-age grouping containing three (3) or more infants is 1:4.

(iii) The adult: child ratio for a multi-age group containing one (1) or two (2) infants is as follows:

Majority Age	One Infant	Two Infants
Toddlers (12 to 24 months)	1:8	1:6
2 Years	1:10	1:8
3 Years	1:12	1:10
4 Years	1:15	1:12
5 Years (not in Kindergarten)	1:17	1:13
K & Above	1:19	1:15

4. When more than fourteen (14) children are present, children under two (2) years of age must have their own designated area.

5. The Federal Americans with Disabilities Act guidelines shall be consulted to determine the appropriate adult: child ratios for children with special needs.

(2) Sudden Infant Death Syndrome.

(a) Infants under six (6) months of age:

1. Shall be positioned on their backs or sides when placed in a crib for sleeping;

2. Shall not be wrapped tightly in blankets; and

3. Shall be checked by a caregiver every thirty (30) minutes by touching them.

4. Infants who have been identified to the center as suffering from gastric reflux, or who the center should reasonably know are experiencing excessive spitting-up and/or sinus or respiratory congestion, shall be checked by a caregiver every fifteen (15) minutes by touching them.

(b) Bedding for Infants under six (6) months of age:

1. Soft bedding is prohibited.

2. Pillows are prohibited.

3. Bottles shall never be propped, nor otherwise be placed on or near the child's bedding.

(c) If a child appears to not be breathing, emergency medical assistance shall be immediately provided.

(Rule 1240-04-02-.08, continued)

(d) The failure to comply with the requirements of this paragraph (2) by themselves, shall be a basis for the denial, revocation, or suspension of all or part of the center's license.

(3) Children's Health Records.

(a) Before a child older than eight (8) weeks is accepted for care, a written statement signed by the parents that includes a list of allergies, medical conditions, and age appropriate shots shall be on file. If a child who was accepted for care at six (6) weeks of age continues in care at eight (8) weeks, the written statement described in the preceding sentence shall be in the child's record before care for that child may continue.

(b) If children with mental, physical or other impairment or with a medical disorder are enrolled and special care is needed, their health records shall include a statement identifying the condition and giving any and all special instructions for the child's care.

(4) Children's Health.

(a) Children shall be checked upon arrival and observed for signs of communicable disease during the day. Symptomatic children shall not be admitted. Every sign of illness shall be reported to the parent as soon as possible, but no later than the end of the day in which it occurred.

(b) Accidents and injuries to children shall be documented, including date and time occurred, description of circumstances, and action taken by caregivers. Injuries of more than a minor nature shall be reported as soon as possible to parents, but no later than the end of the day in which they occurred.

(5) Nutritional Needs.

(a) A meal or a supplement shall be available every three (3) hours according to a normal feeding pattern as follows:

1. Three (3) to five (5) hours: One (1) feeding; and

2. Five (5) to six (6) hours: Two (2) feedings.

(b) Special-needs diets shall be served as prescribed by a parent or physician. Such feeding instructions must be in writing and signed by the parent/guardian or physician.

(c) Food shall not be forced on, or withheld, from children. Foods served as part of the meal/supplement pattern shall not be used as reward, nor shall food be used or withheld as punishment.

(d) Meals or supplements prepared outside the center (e.g., sack lunches or catered food) shall be monitored by center staff.

(e) The feeding schedule for infants shall be in accordance with the child's needs rather than according to the hour.

(6) Meal Service.

(a) Children shall be supervised during mealtime as set forth in 1240-04-02-.08(1). The failure to properly supervise children during mealtime may, in itself, result in the

(Rule 1240-04-02-.08, continued)

immediate suspension of all or part of the center's authority to operate under its license.

(b) Sanitation.

1. Caregivers and children shall wash their hands according to prescribed handwashing techniques (see subparagraph (11)(c) below).

2. Furniture and cabinets where food is prepared or served shall be washed with soap and water and sanitized before and after snacks and meals.

3. Sanitizing agents shall comply with the requirements set by the Department of Health and/or the local jurisdiction environmental inspector.

4. The floors under areas where food is served shall be swept and/or vacuumed after each meal and cleaned as needed.

(c) Solid foods (including cereal) shall never be mixed with liquid foods, nor shall they otherwise be provided in a bottle or infant feeder unless authorized by the written and signed instructions of a licensed physician. Failure to comply with this rule may, in itself, immediately result in the suspension of all or part of the center's license to operate.

(d) Individual napkins, utensils and dishes shall be provided for children who feed themselves, as appropriate for the type of feeding. Routine food service dishes, utensils, and bottles shall be break-resistant and shall not be glass.

(e) All formulas and food brought from home shall be labeled with the child's name. Milk shall be in an insulated container and stored with the child's individual ice pack or placed immediately in the refrigerator. Once milk has been warmed, it shall not be re-warmed or returned to the refrigerator. For optimum digestion, formula is to be served at body temperature.

(f) Microwave ovens shall not be accessible to pre-school children.

(g) School-age children shall use microwaves only under direct supervision.

(h) Bottled breast milk, infant bottles, and formula shall not be heated in a microwave oven. Other bottle warming devices shall be used safely, according to directions and shall not be accessible to children.

(i) In order to reduce the risk of splash or burn, children shall not be held, nor otherwise allowed in close proximity to the adult removing a bottle from a crockpot or other bottle-warming device.

(j) An adult must test, and allow cooling, as needed, all heated food prior to serving.

(k) Previously opened baby food jars shall not be accepted in the center. If food is fed directly from the jar by the caregiver, the jar shall be used for only one feeding.

(l) Infants shall be held while being fed as long as they are unable to sit in a high chair, an infant seat, or at the table. Bottles shall not be propped, and a child shall not be given a bottle while lying flat.

(7) Medication.

(Rule 1240-04-02-.08, continued)

(a) The center shall not administer any medication, internal or external, except upon written authorization signed by a licensed physician, licensed physician's assistant, or licensed nurse clinician.

(b) Authorized medications shall be labeled with the child's name and the specific instructions for their administration.

(c) Administration of medications and noticeable side effects shall be charted and reported to parents.

(d) Medication shall not be accessible by, or otherwise handled by, children.

1. Exception: Children may self-administer medication with the written authorization of a physician.

2. Staff shall monitor the child's self-administration and shall document the date and time of the self-administration in the child's file.

(e) Medications shall be made inaccessible to children by storing them in locked compartment or container.

1. Exceptions:

(i) Emergency medications requiring immediate administration, including, but not limited to, injections for anaphylactic allergic reactions, asthma treatments, etc., may be stored in unlocked containers that are clearly inaccessible to children.

(ii) Self-administered medication shall be stored in a locked container unless prescribed for the child to self-administer "as needed". Medication that is self-administered as needed shall be held by the caregiver or shall otherwise be stored in such a manner as to allow immediate access while insuring that the medication remains inaccessible to other children.

(iii) Medication requiring refrigeration that is kept in a refrigerator used for food storage shall be put in a leak-proof locked container. Keys for these compartments shall be inaccessible to children.

(8) Prohibited practices and products

(a) Smoking is prohibited inside the drop-in center and in the presence of children. No smoking signs shall be posted conspicuously within the facility.

(b) The use of alcoholic beverages is prohibited during the hours of operation of the center.

(c) Firearms are prohibited in the drop-in center and are otherwise prohibited in the presence of children enrolled at the drop-in center.

(d) Any activities on the premises or property which may place children at risk are prohibited.

(9) Diapering

(a) Children shall immediately be diapered/changed and cleaned when wet or soiled.

(Rule 1240-04-02-.08, continued)

(b) The diapering area shall be off the floor, have a washable surface, be located near a handwashing lavatory and shall not be in a food preparation/service area. Exception: school-age special needs children may be placed on a non-absorbent mat which protects the floor from contamination.

(c) All diapering surfaces must be nonporous and shall be sanitized after use with each child by using solutions described or otherwise permitted in paragraph (10) below.

(10) Cleaning Solutions for General Cleaning and Sanitizing Purposes.

(a) For general cleaning and sanitizing purposes, a fresh solution of one quarter (1/4) cup chlorine bleach to one (1) gallon of water (or one [1] tablespoon bleach to one [1] quart of water) shall be made daily.

(b) Substitutions for the bleach solution required in subparagraph (a) that are approved for the child care setting by the Department of Health are permissible.

(11) Staff Health.

(a) Within thirty (30) days after beginning to work, all staff members shall have on file written evidence of a physical examination within the last three (3) years and a statement that their general physical and mental condition will permit them to direct and actively participate in the activities of a group of young children with reasonable accommodation, if necessary. The form or statement shall have the signature or stamp of a licensed physician, a certified nurse practitioner, or a certified physician's assistant.

(b) An updated statement of each staff member's physical health shall be obtained every third year or more often if deemed necessary by the Department.

(c) For the protection of children and adults, the Centers for Disease Control guidelines for handwashing and diapering procedures shall be followed.

(d) For the protection of children and adults, when blood is to be handled (e.g., resulting from injury to a child or adult, from nosebleed, or from spillage), vinyl or latex gloves shall be used and properly disposed of following use with/by one individual. Following blood spillage, surfaces shall be cleaned and sanitized.

(12) Safety.

(a) At least one staff member who has current certification or equivalent in infant/child Cardiopulmonary Resuscitation (CPR) shall be on duty at all times.

(b) When school age children are present, at least one staff member who has current certification or the equivalent in adult CPR shall be on duty at all times.

(c) At least one staff member who has current certification or the equivalent, as recognized by the Department, in infant/child first aid shall be on duty at all times.

(d) Current and comprehensive first aid information shall be available to all staff who interact with children and they shall be familiar with such information.

(e) A standard first aid kit (such as one approved by the American Red Cross) shall be available to the staff.

(Rule 1240-04-02-.08, continued)

(f) Kitchen knives and other potentially dangerous utensils or tools shall be secured so that they are not accessible to children.

(g) The drop-in center, in consultation with appropriate local authorities, shall develop a written plan to protect children in the event of disaster such as, but not limited to, fire, tornado, earthquake, chemical spills, floods, terrorist attacks, etc.

(h) The center's disaster plan referenced in subparagraph (g), above, must be reviewed with new staff within ten (10) days of beginning employment. All staff must review the plan a minimum of every six (6) months.

(i) Emergency telephone numbers shall be posted next to the telephone and readily available to any staff member as follows:

1. Fire department;

2. Police department/sheriff;

3. Hospital;

4. Child abuse hotline;

5. Local emergency management agency, if available in the community;

6. Rescue squad, if available in the community;

7. Ambulance, if available in the community;

8. Poison control center telephone numbers shall also be posted, if available in the community;

9. If a generic number (such as, but not limited to, 911) is operable in the community, it shall be posted in addition to the above numbers; and

10. Numbers where parents can be reached shall be readily available to all staff.

(13) Duty to Report Child Abuse and Neglect.

(a) Duty to Report.

1. Every operator, owner, licensee, director, or staff member of, or substitute staff member or volunteer in a child care agency licensed by the Department of Human Services is individually responsible, and is required by T.C.A. §§ 37-1-403 and 37-1-605, to immediately report any reasonable suspicion of child abuse or neglect to the Department of Children's Services, local law enforcement or the judge of the juvenile court in the county of the child's residence.

2. Determining Suspicion of Abuse/Neglect.

(i) Due to both the immediate risk to children's safety, as well as to the extreme risk of destroying or losing critical evidence, the agency and/or individual staff shall not delay reporting possible abuse or neglect in an attempt to conduct an investigation to verify the abuse/neglect allegations.

(ii) In determining a reasonable suspicion for purposes of reporting, the agency shall limit questioning of the child and may make only the most

(Rule 1240-04-02-.08, continued)

basic inquiries necessary to determine if any reasonable possibility of abuse or neglect exists.

(iii) The agency does not have to, and shall not attempt to, validate (or "prove") the allegation prior to making a report as required by this paragraph (13). A final determination of the validity of the report of abuse or neglect shall be made exclusively by the Department of Children's Services and/or by law enforcement based upon the report by the child care agency's staff.

3. Each center shall develop procedures, approved by the Department of Human Services in conformity with DCS policy, for staff to follow to report suspected abuse and neglect.

4. Any statement from a child reasonably indicating abuse/neglect of that child or another child or any evidence of abuse/neglect observed on a child shall be immediately reported by staff to the Department of Children's Services in a manner specified by that department, to local law enforcement or to the judge of the juvenile court in the county of the child's residence.

(b) The telephone numbers of the Department of Children's Services, the local law enforcement or the juvenile judge of the county of the child's residence for staff to call to report suspected abuse and neglect shall be posted in a conspicuous location by each telephone.

(c) Prohibited Procedures for Reporting Suspected Child Abuse/Neglect/Penalties.

1. The agency shall not develop or implement a policy that inhibits, interferes with or otherwise affects the duty of any staff, including substitutes and volunteers, to report suspected abuse or neglect of a child as required by subparagraph (a) above and T.C.A. §§ 37-1-403 and 605, and shall not otherwise directly or indirectly require staff to report to the agency management or seek the approval of agency management prior to any individual staff member reporting the suspected abuse or neglect.

2. A report of suspected child abuse or neglect of a child enrolled in the child care agency by the operator, owner, licensee, director or staff member of, or substitute staff member or volunteer in, a child care agency shall not be made to any other entities or persons, including, but not limited to, hospitals, physicians, or educational institutions as an alternative to or substitute for the reporting requirements to the persons or entities specifically listed in subparagraph (a) above.

3. The operator, owner, licensee, director, or staff member of, or substitute staff member or volunteer in, the child care agency shall not suggest to, advise or direct a parent or caretaker of a child enrolled in the child care agency to make a report of suspected child abuse or neglect regarding that parent's or caretaker's own child who is enrolled in the child care agency as a means of fulfilling the duty of the operator, owner, licensee, director, or staff member of, or substitute staff member or volunteer in, the child care agency to report child abuse or neglect as required by T.C.A. §§ 37-1-403 and 37-1-605.

4. Because the statutory requirements of T.C.A. §§ 37-1-403 and 37-1-605 do not authorize the prohibited procedures described in parts 1-3 of this subparagraph (c) to fulfill the statutory duty of any person, and especially the duty of those licensed by the State of Tennessee to care for and protect vulnerable children, to make timely and effective reports of child abuse and neglect to appropriate

(Rule 1240-04-02-.08, continued)

investigative agencies, and because the prohibited procedures described in parts 1-3 of this subparagraph (c) are completely unreliable procedures to ensure that the appropriate authorities are able to timely and satisfactorily investigate suspected child abuse or neglect, any action that does not comply in all respects with subparagraph (a) above will not fulfill the statutory duty to report child abuse or neglect and the licensing requirements of this Chapter.

5. Failure to Report Properly Is Grounds for Suspension, Denial or Revocation of the Agency License.

(i) Failure to make the reports required by subparagraph (a) above or the use of the prohibited methods described in parts 1-3 of this subparagraph (c) as an attempt to fulfill the duty to report suspected child abuse or neglect, for children in the care of the child care agency are, by themselves, grounds for suspension, denial or revocation of the agency's license.

(ii) If the facts establish by a preponderance of the evidence that there has not been strict compliance with the requirements of subparagraph (a) above or that the prohibited procedures described in parts 1-3 of this subparagraph (c) have been utilized as an alternative means of fulfilling the requirements of subparagraph (a) above, these circumstances shall create a rebuttable presumption for the Administrative Law Judge and the Child Care Agency Board of Review that the duty to report child abuse or neglect has not been fulfilled, and this ground for suspension, denial, or revocation of the agency's license by the Department of Human Services shall be sustained unless such presumption is rebutted by a preponderance of the evidence.

(d) Agency Duties During Investigations of Child Abuse and Neglect; Custodial Authority of Children.

1. Every operator, owner, licensee, director, or staff member of, or substitute staff member or volunteer in, a child care agency licensed by the Department of Human Services shall fully cooperate with all agencies involved in the investigation of child abuse or neglect, and with the Department of Human Services in efforts to provide protection for children enrolled in the child care agency.

2. The agency shall provide access to records of children and staff.

3. The agency shall allow appropriate investigators to interview children and staff.

4. The agency shall not interfere with a child abuse and neglect investigation.

5. The agency shall protect the child by requesting the investigator's identification.

6. The agency shall maintain confidentiality of the investigation and shall not disclose the investigation or details of the investigation except as required to carry out procedures for the protection of children or as otherwise directed by the Department of Children's Services, law enforcement or the Department of Human Services.

(e) Upon notification of a pending abuse/neglect investigation of any agency staff member or resident of a home-based center, the agency shall enter into a Safety Plan with the Department regarding the individual's access to the agency and to children in the care of the agency.

(Rule 1240-04-02-.08, continued)

(f) All agency staff, including non-caregiving staff, shall receive training every six (6) months regarding procedures to report child abuse and neglect.

Authority: *T.C.A. §§4-5-202, 37-1-101 et seq., 37-1-113, 37-1-401 et seq., 37-1-601 et seq., 71-3-501 et seq., and 71-3-502(a)(2),* ***Administrative History:*** *Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005. Amendment filed November 14, 2006; effective January 28, 2007*

1240-04-02-.09 PHYSICAL FACILITIES.

(1) Inspections.

(a) Facilities that have been unlicensed, relocated, and/or renovated, and new construction, major renovations, additions to existing facilities, and /or changes in occupancy shall comply with the standards of the fire prevention division of the Tennessee Department of Commerce and Insurance and of the Division of Food and General Sanitation of the Department of Health.

(b) Fire safety requirements and environmental standards shall be met before a license can be issued.

(c) Requests for inspections are made by the Department, but it is the responsibility of the applicant to obtain verification of the inspections and the approvals. The Department of Human Services will not intervene with Federal, State or local agencies on behalf of an applicant/licensee in any effort to obtain the approvals required by this Chapter.

(2) Plans. Plans for new construction must be drawn by a registered architect or engineer and submitted to the fire prevention division of the Department of Commerce and Insurance and to the local health department when required by such departments and in accordance with the respective departments' procedures.

(3) Continuing compliance.

(a) Physical facilities shall at all times meet all requirements and codes applicable to child care as set forth by the fire safety section of the Department of Commerce and Insurance and the Food and General Sanitation section of the Department of Health, as well as any updated fire safety or environmental standards for child care adopted by these departments.

(b) Failure to maintain such approved inspections may, in itself, result in the immediate suspension of all or part of the drop-in center's license.

(4) Annual inspection. All facilities shall be inspected and approved annually by either state codes enforcement officers or authorized local fire safety inspectors and environmentalists.

(5) The drop-in center shall not be located in a building used for purposes that are or may potentially be hazardous to children.

(6) There shall be a working telephone in the center. If answering machines/voice mail must be used, they shall be monitored at thirty (30) minute intervals (except when staff and children are off premises) so that emergency messages can be received. Parents shall be informed that answering machines/voice mails are used.

(7) Facilities shall provide at least thirty (30) square feet of useable indoor play space per child, not including restrooms, halls, kitchen, or office space. Each nap room must also contain thirty (30) square feet of floor space per child.

(Rule 1240-04-02-.09, continued)

(8) Outdoor play areas shall contain a minimum of fifty (50) square feet of useable play space for each child using the area at one time.

(9) The areas where children play or are cared for shall be properly maintained. These areas shall be free of hazardous items or materials unless adequately protected by storage, inaccessibility, proper supervision, or other safety procedures. These areas shall present no conditions which may be hazardous to children. All such areas shall be free of all animal wastes.

(10) Trampolines are prohibited.

Authority: *T.C.A. §§4-5-202, 71-3-501 et seq., and 71-3-502(a)(2)..* ***Administrative History:*** *Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005.*

1240-04-02-.10 CARE OF CHILDREN WITH SPECIAL NEEDS.

(1) In addition to the preceding rules, if children with disabilities are cared for in the center, the requirements of paragraphs (2) and (3) below shall be met.

(2) When children with disabilities are enrolled, all reasonable and appropriate efforts shall be made to provide those children with equal opportunities to participate in the same program activities as their peers.

(3) The drop-in center shall have written emergency plans for children with disabilities where more assistance would be needed in case of an emergency. Examples: non-ambulatory children, or children with a hearing or visual impairment.

Authority: *T.C.A. §§4-5-202, 71-3-501 et seq., and 71-3-502(a)(2).* ***Administrative History:*** *Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005.*

RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
ADULT AND FAMILY SERVICES DIVISION

CHAPTER 1240-04-03
LICENSURE RULES FOR CHILD CARE CENTERS

TABLE OF CONTENTS

1240-04-03-.01	Scope and Purpose	1240-04-03-.11	Food
1240-04-03-.02	Definitions	1240-04-03-.12	Physical Facilities
1240-04-03-.03	Basis for Issuance of a License	1240-04-03-.13	Transportation
1240-04-03-.04	Procedures for Obtaining a License	1240-04-03-.14	Extended Care
1240-04-03-.05	Ownership, Organization and Administration	1240-04-03-.15	Care of Children with Special Needs
1240-04-03-.06	Supervision	1240-04-03-.16	Sick Child Care
1240-04-03-.07	Staff		
1240-04-03-.08	Equipment for Children		
1240-04-03-.09	Program		
1240-04-03-.10	Health and Safety		

1240-04-03-.01 SCOPE AND PURPOSE.

(1) Scope of Rules. These rules are applicable to the licensing of child care centers that care for thirteen (13) or more children, ages six (6) weeks - seventeen (17) years of age for less than twenty-four (24) hours per day as defined by T.C.A. §§ 71-3-501 et seq. Any conflict between this Chapter and any other rules of the Department concerning the licensing procedures and regulations governing child care center standards and licensing and appeal procedures for child care centers shall be resolved by reference to these rules.

(2) Purpose of Licensing. The primary purpose of licensing is the protection of children. These minimum requirements seek to maintain the adequate health, safety, and supervision of children while in a group care setting. The secondary purpose of licensing is to promote developmentally appropriate child care.

Authority: *T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2).* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed April 22, 1992; effective June 6, 1992. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Repeal and new rule filed June 20, 2006; effective September 3, 2006.*

1240-04-03-.02 DEFINITIONS.

For purposes of this Chapter, the following definitions are applicable:

(1) Administrative Hearing. A fair hearing that is held under the Administrative Procedures Act rather than in a court of law. The purpose of the hearing is to allow an agency the opportunity to challenge licensing enforcement actions taken by the Department.

(2) Annual License. An annual permit issued by the Department to a child agency, authorizing the licensee to provide child care in accordance with provisions of the license, the law, and requirements (rules) of the Department.

(3) Applicant. The owner or owner's authorized representative who is required, pursuant to the provisions of these rules, to sign the application for a license.

(Rule 1240-04-03-.02, continued)

(4) Auxiliary staff. Full and part-time employees of the agency who provide non-caregiving services.

(5) Capacity. The maximum number of children who can be physically located in the child care space at any given point in time. See also, "Licensed Capacity".

(6) Caregiver. An individual, whether paid or unpaid, including the Primary Caregiver, who is responsible for meeting the supervision, protection, and basic needs of the child, and who is used to meet the adult:child ratios required by these rules.

(7) C.C.P. Certified Childcare Professional. An early childhood educational credential granted by the National Child Care Association.

(8) C.D.A. Child Development Associate. An early childhood educational credential granted by the National Council for Professional Recognition.

(9) Child or Children. A person or persons under eighteen (18) years of age.

(10) Child Care. As defined by T.C.A. § 71-3-501, the provision of supervision and protection, and, at a minimum, meeting the basic needs, of a child or children for less than twenty-four (24) hours a day.

(11) Child Care Center. "Child care center" means any place or facility operated by any person or entity that provides child care for three (3) or more hours per day for at least thirteen (13) children who are not related to the primary caregiver; provided, that a child care agency shall not be classified as a "child care center" that operates as a "group child care home" and keeps three (3) additional school-age children as permitted in subdivision (27); provided, further, that all children, related or unrelated shall be counted in the adult-to-child supervision ratios and group sizes applicable to child care centers; with the exception, that if the child care center is operated in the occupied residence of the primary caregiver, children nine (9) years of age or older who are related to the primary caregiver will not be counted in determining the adult-to-child supervision ratios or group sizes applicable to child care centers if such children are provided a separate space from that occupied by the child care center. The Department may permit children in the separate space to interact with the children in the licensed child care center in such manner as it may determine is appropriate.

(12) Child Care Agency. "Child care agency" or "agency" means, and only where the context requires in any other provision of law:

(a) A place or facility, regardless of whether it is currently licensed, that is operated as a "family child care home", a "group child care home", a "child care center", or a "drop-in center", as those terms are defined in this part; or

(b) A place or facility that provides child care for three (3) or more hours per day for five (5) or more children who are not related to the primary caregiver.

(13) Child Care System. The existence of two (2) or more facilities used for child care purposes which are under the ownership, administration, or control of any individual(s), corporation, partnership, cooperative, or other public or private entity of any kind.

(14) Commissioner. The executive head of the Department of Human Services, appointed by the Governor.

(15) Conventional Care. Child care services provided between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday.

(Rule 1240-04-03-.02, continued)

(16) Day Care. Synonymous with definition of "child care", above.

(17) Department (DHS). The Tennessee Department of Human Services and its authorized representatives.

(18) Developmentally Appropriate. Practices which use a knowledge of child development to identify the range of appropriate behaviors, activities, and materials for a specific age group. This knowledge is used in conjunction with an understanding about individual children's growth patterns, strengths, interests, and experiences to design the most appropriate learning environment. A developmentally appropriate curriculum provides for all areas of a child's development, physical, emotional, social, and cognitive, through an integrated approach.

(19) Director. The on-site manager for the agency who has overall responsibility for the daily oversight of all staff and direct child care services.

(20) Drop-In Child Care Center. A place or facility operated by any person or entity providing child care, at the same time, for fifteen (15) or more children, who are not related to the primary caregiver, for short periods of time, not to exceed fourteen (14) hours per week and for not more than seven (7) hours per day for any individual child during regular working hours, Monday - Friday 6:00 a.m. to 6:00 p.m.; provided, however, that a drop-in center may provide such child care during evenings after 6:00 p.m. and weekends, Friday, 6:00 p.m. - Sunday, 10:00 p.m., so long as the drop-in center provides no more than a total of twenty (20) hours per week, exclusive of snow days, defined as days when the school of the affected child is closed; provided, further, that drop-in centers may provide such care during snow days; provided, however, that, notwithstanding any other requirements of this part, training requirements for the staff of this class of child care agency shall be limited to basic health and safety precautions and the detection and reporting of child abuse and neglect for children in care; provided, further, that, notwithstanding any other provision of this chapter to the contrary, drop-in centers operated by not-for-profit organizations that provide child care for no more than two (2) hours per day with a maximum of ten (10) hours per week without compensation, while the parent or other custodian is engaged in short-term activities on the premises of the organization, shall register as providing casual care and shall not be deemed to be a drop-in center or regulated as a drop-in center.

(21) Exemption. A finding by the Department that, pursuant to the provisions of T.C.A. § 71-3-503, a program involving children is not required to be licensed by the Department of Human Services.

(22) Extended Care. Child care services offered between the hours of 6:00 p.m. and 6:00 a.m., Monday through Friday, and weekend child care.

(23) Family Child Care Home. Any place or facility that is operated by any person or entity that provides child care for three (3) or more hours per day for at least five (5) children but not more than seven (7) children who are not related to the primary caregiver; provided, that the maximum number of children present in the family child care home, including related children of the primary caregiver shall not exceed twelve (12), with the exception that, if the family child care home is operated in the occupied residence of the primary caregiver, children related to the primary caregiver nine (9) years of age or older will not be counted in determining the maximum number of children permitted to be present in a "family child care home" if those children are provided a separate space from that occupied by the family child care home. The Department may permit children in the separate space to interact with the children in the licensed family child care home in such manner as it may determine is appropriate.

(Rule 1240-04-03-.02, continued)

(24) Field Trip. Any off-site activity that is not a part of the regular curriculum of the child care agency and which occurs away from the general premises of the child care agency's licensed facility and beyond reasonable walking distance.

(a) In order to meet the requirement that the trip not be a part of the regular curriculum, the trip must be an occasional activity that does not represent a regular, ongoing service or program of the agency.

(b) Regularly-scheduled trips (for example, weekly trips) do not meet the definition of a field trip, regardless of whether the regularly-scheduled trips are to different destinations.

(25) Foster Home. A home approved by the Department of Children's Services or a licensed child-placing agency for the residential care of children. Any other agency type that may place children with surrogate families is not considered a "Foster Home" for the purposes of these Rules.

(26) Group. A specific number of children comprising a specific age range and assigned to specific staff in an assigned space that is divided from the space of other groups by a recognizable barrier.

(27) Group Child Care Home. Any place or facility operated by any person or entity that provides child care for three (3) or more hours per day for at least eight (8) children who are not related to the primary caregiver; provided, however, that the maximum number of children present in a group child care home, including those related to the primary caregiver, shall not exceed twelve (12) children, with the exception that, if the group child care home is operated in the occupied residence of the primary caregiver, children related to the primary caregiver nine (9) years of age or older will not be counted in determining the maximum number of children permitted to be present in a group child care home, if those children are provided a separate space from that occupied by the group child care home; and, provided, further, that up to three (3) additional school-age children, related or unrelated to the primary caregiver, may be received for child care before and after school, on school holidays, on school snow days and during summer vacation. The Department may permit children in the separate space to interact with the children in the licensed group child care home in such manner as it may determine is appropriate.

(28) Home School. For the purposes of these rules home schooling is defined as the provision of full-time educational services, as recognized by the Department of Education, to a child by the child's parent in the child's primary residence.

(29) Infant. A child who is six (6) weeks through fifteen (15) months of age.

(30) Law. Statutory or regulatory provisions affecting the operation of a child care agency including, but not limited to, the licensing law as contained in T.C.A. §§ 71-3-501 through 71-3-513, Chapter 1240-4-5, and these rules.

(31) Licensee. The owner, as defined by these rules, to whom a license to operate a child care facility is issued.

(32) Licensed Capacity. The designated maximum number of children permitted in a facility as determined by the Department based upon available space, age of children, adult:child ratios, and group size. Licensed capacity shall be designated on the license.

(33) Meal. Meat or meat substitute, vegetable and/or fruit, bread or bread product, and fluid milk

(Rule 1240-04-03-.02, continued)

(34) Off-Site Activity. Any activity which occurs away from the general premises of the child care agency's licensed facility and beyond reasonable walking distance.

(35) Operator. The individual who is an owner or administrator of a child care agency or child care system.

(36) Owner. The individual(s), corporation, partnership, cooperative, or other private or public entity of any kind, or any combination thereof, who or which, either individually or through their authorized representatives, assume, or is legally required to assume, ultimate legal and administrative responsibility for the management and control of a child care agency.

(37) Parent. A biological, legal, or adoptive parent, and includes, for purposes of this Chapter, a guardian, legal or physical custodian or other caretaker of a child, any of whom has primary responsibility for a child.

(38) Physical Restraint. As used in these rules, a therapeutic safe-hold method of temporarily restraining a child who is at imminent risk of serious self-inflicted injury which is performed by trained personnel after all other methods of alleviating the danger to the child have failed.

(a) The term "safe-hold" includes any technique through which an adult attempts to immobilize a violent child by wrapping their limbs around the child. The term does not include holds administered for the sole purpose of providing comfort or security to a distressed child.

(b) The term "serious self-inflicted injury" includes, but is not limited to, violent outbursts in which a child throws himself/herself against a wall, is hitting or cutting himself/herself, etc.

(39) Preschool Child. A general term for any child who is six (6) weeks through five (5) years of age and not in kindergarten, including children who are more specifically defined under this subchapter as an "Infant" or a "Toddler".

(40) Related. As used in this Chapter, any children of the following relationships by marriage, blood, or adoption: children, step-children, grandchildren, siblings, step-siblings, nieces, and nephews of the primary caregiver. The term related includes any "grand" or "great" relationship (e.g., great niece, great grandchild, etc.) within the relationships indicated.

(41) School-age Child. A child who is five (5) years of age and enrolled in kindergarten through seventeen (17) years of age. A five (5) year-old may be classified as a school-age child in the summer immediately preceding the child's fall entry into kindergarten.

(42) Sick Child Care. The provision, for three (3) or more hours per day and less than twenty-four (24) hours per day, of the supervision, protection, and meeting the basic needs of children who have short term illness, symptoms of illness, or who have a medical or technological dependency that requires continuous nursing intervention.

(43) Snack. A fluid drink and two (2) of the following components, provided, however, that a fluid drink shall not be required if a fluid drink is chosen as one of these components:

(a) Vegetables or fruits;

(b) Bread or bread alternates;

(c) Meat or meat alternates; or

(d) Fluid milk.

(Rule 1240-04-03-.02, continued)

(44) Staff. Full and part-time caregivers, employees, or unpaid volunteers of the agency.

(45) Substitute. Paid or unpaid persons who are replacements for regular staff.

(46) Supervision. For the purposes of this Chapter, when children are not within the direct sight and sound of an adult, the term "supervision" means the following requirements:

(a) Children six (6) weeks of age through nine (9) years of age:

1. The adult must be able to hear the child at all times, must be able to see the child with a quick glance, and must be able to physically respond immediately.

2. Exception during mealtime: An adult must be in the direct sight and sound of children ages six (6) weeks through five (5) years, not in kindergarten, while the child is eating.

(b) Children ten (10) years of age and older:

1. The adult shall know the whereabouts and activities of the children at all times and must be able to physically respond immediately.

2. Each child shall be greeted and received by the specific caregiver assigned who will have ultimate responsibility and accountability for their supervision, oversight and care.

(c) Mixed-age Groups. When children ages ten (10) years or above are grouped with children under ten (10) years of age, the minimum supervision requirements for children ages six (6) weeks through nine (9) years, as set forth in subparagraph (a) above, shall be followed.

(d) Helper devices such as mirrors, electronic sound monitors, etc. may be used as appropriate to meet these requirements.

(47) Temporary License. A permit issued by the Department to a new child care agency allowing and authorizing the temporary licensee to begin child care operations while the agency attempts to attain full compliance with all other applicable regulations. The temporary license is valid, unless suspended, for one hundred twenty (120) days or until the Department grants or denies the application for an annual license.

(48) Toddler. A child who is twelve (12) months through thirty (30) months of age.

(49) Vehicle for Child Care. Any vehicle that is under the direction or control of the child care agency or which is utilized by the child care agency through contract or other agreement, and which is used to provide transportation for children enrolled in the agency, including all vehicles owned or operated by the agency, by a contractor for the agency, or by any other third party providing services to or on behalf of the agency.

(50) Volunteer. A person who provides services for a child care agency without payment and who is used to supplement the regular staff or substitutes, but who is not used to meet the required adult:child ratios; provided, however, that volunteers can be used to meet the required adult:child ratios at the field trip destination.

(51) Youth. A person who is ten (10) years of age through seventeen (17) years of age.

(Rule 1240-04-03-.02, continued)

Authority: *T.C.A. §§4-5-202; 71-1-105(5); 71-3-501 et seq.; 71-3-502(a)(2).* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed January 7, 1987; effective April 29, 1987. Amendment filed April 22, 1992; effective June 6, 1992. Amendment filed July 1, 1993; effective September 14, 1993. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Amendment filed September 29, 2000; effective December 13, 2000. Amendment filed October 17, 2001; effective December 31, 2001. Repeal and new rule filed June 20, 2006; effective September 3, 2006.*

1240-04-03-.03 BASIS FOR ISSUANCE OF A LICENSE.

(1) Annual License.

(a) All child care agencies are required by Tennessee law to be licensed annually by the Department, unless determined by the Department to be exempt from licensing pursuant to the provisions of T.C.A. § 71-3-503.

(b) Issuance of a license is not an endorsement of child care methods or of an agency's operational philosophy. A license is not transferable from one location to another or from one licensee/operator to another.

(c) All or any part of the license may be revoked at any time upon thirty (30) days notice to the licensee; or if the health, safety, or welfare of the children in care imperatively requires, the license, or any part of the license, may be suspended immediately.

(2) Exemption from Licensure.

(a) A child care agency claiming an exemption pursuant to T.C.A. § 71-3-503 shall submit to the Department's licensing director, or designee, a sworn, written request for exemption in such manner and form as the Department may require. The request shall provide a detailed description of the operation of the program or activity, the program's or activity's purpose and the applicant's basis for claiming an exemption. The Department shall provide a written response to the exemption request stating the reasons the exemption was granted or denied.

(b) Recognition of exemption from licensure by the Department does not exempt the child care agency from compliance with any other local, state, or federal requirements applicable to its operation.

(3) Issuance of the license is based upon the following criteria:

(a) The safety, welfare and best interests of the children in the care of the agency;

(b) The capability, training and character of the persons providing or supervising the care to the children and the use of such judgment by a caregiver in the performance of any of the caregiver's duties as would be reasonably necessary to prevent injury, harm or the threat of harm to any child in care;

(c) The quality of the methods of care and instruction provided for the children;

(d) The suitability of the facilities provided for the care of the children; and

(e) The adequacy of the methods of administration and the management of the child care agency, the agency's personnel policies, and the financing of the agency.

(Rule 1240-04-03-.03, continued)

(4) The licensee must maintain compliance with the licensing criteria listed in paragraph (3) above and any other licensing criteria throughout the licensing year.

(5) Foster Homes may not receive a license to operate a child care facility within the foster home. The Department may, in its discretion, waive this requirement if circumstances clearly warrant such an exemption. The request for a waiver shall be submitted in writing to the Department's Licensing Director.

(6) Falsification of Information. Includes but is not limited to falsified or forged records, documents, and/or concealment of services or children from monitoring by the Department. Falsification of any information required for licensure shall be grounds for suspension, denial, or revocation of the license.

(7) Scope of Licensed or Exempt Operation.

(a) Licensed capacity shall be designated on the license. All programs shall operate within the licensed capacity or exemption criteria, the hours of operation, the specific age ranges, services offered, and at the address designated on the license or at which the operation was exempted.

(b) All programs shall operate within any restrictions stated on the license.

Authority: *T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2) and (3), and 71-3-503(a)(6),(8), and (9).* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed January 7, 1987; effective April 29, 1987. Amendment filed April 22, 1992; effective June 6, 1992. Amendment filed July 1, 1993; effective September 14, 1993. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Withdrawal of repeal of 1240-04-03-.03(4)(f) and (1) filed August 31, 1998. Amendment filed September 29, 2000; effective December 13, 2000. Repeal and new rule filed June 20, 2006; effective September 3, 2006.*

1240-04-03-.04 PROCEDURES FOR OBTAINING A LICENSE.

(1) Licensing Procedures.

(a) The procedures for licensing, administrative actions, probation, civil penalties, and suspension, denial, revocation of licenses and appeals of licensing actions taken by the Department are contained in Chapters 1240-4-5, 1240-5-13 and this Chapter.

(b) The Department may initiate administrative licensing action and/or judicial action against the licensee pursuant to any provisions of T.C.A. § 71-3-501 et seq. and Chapters 1240-4-5, 1240-5-13, this Chapter or any other provisions of the law.

(c) Any conflict between the definitions and procedures contained in Chapters 1240-4-5 and 1240-5-13 and this Chapter shall be resolved by reference to the provisions of this Chapter.

(2) When an individual or group is giving consideration to opening a child care service/business, the local county office of the Tennessee Department of Human Services must be contacted to obtain an application.

(Rule 1240-04-03-.04, continued)

(3) The applicant shall attend one pre-application training session as provided by the Department. In the case of a program that is governed by a board of directors or trustees, this training shall be attended by the applicant. If the applicant is not responsible for the day-to-day management of the program, this training shall be attended by both the applicant and the individual responsible for the day-to-day management.

(4) In addition to the training required in paragraph (3) above, new directors/managers shall attend a pre-service orientation training as provided by the Department and which is at least four (4) hours in length. In the case of a program that is governed by a board of directors or trustees, this training shall be attended by an individual who is responsible for the day-to-day management of the program.

(5) A completed application form shall be signed by the owner or the owner's authorized representative and shall be submitted to the Department in the form and manner directed by the Department.

(a) The failure to fully complete all application forms and/or submit all required supporting documentation as directed by the Department shall void the application for a license.

(b) Application fees must be submitted by certified check or money order prior to the issuance of a license; provided, however, that government agencies may submit checks drawn on government accounts.

(6) Issuance of a Temporary License to New Child Care Agencies shall require:

(a) Submission of all required application documentation and the license fee;

(b) Verification that the administrative structure of the agency, as required by subchapter 1240-04-03-.05, appropriately identifies and provides structures and procedures for the full-time management of the center;

(c) Verification that the qualifications for management positions fully comply with the requirements in Chapter 1240-04-03-.07 and subparagraph (j) below;

(d) Verification of three (3) satisfactory written references for the director/management;

(e) Verification that the physical facilities have received fire safety and environmental approval;

(f) Verification that the on-site director/manager has successfully completed a criminal background check and has a negative criminal history as required by T.C.A. § 71-3-507 and this Chapter;

(g) Verification that the applicant and the personnel who will care for the children are capable in all substantial respects to care for the children;

(h) Verification that the applicant has the apparent ability and intent to comply with the licensing law and regulations;

(i) Verification by the Department, after appropriate on-site inspection, that the site is suitable for child care activities and does not endanger the welfare or safety of children;

(j) Verification that the applicant, owner, director or an employee of the agency has not previously been associated in an ownership or management capacity with any child care agency that has been cited by the Department for violations of this part or the Department's regulations, including the agency for which the application is pending,

(Rule 1240-04-03-.04, continued)

unless the Department determines that a reasonable basis exists to conclude that such individual is otherwise qualified to provide child care; and

(k) Verification that the criteria in 1240-04-03-.03(3) support the issuance of a restricted or unrestricted license.

(7) Denial or Restriction of Temporary License.

(a) If the Department determines that any of the requirements set forth in this Chapter has not been, or cannot be, satisfactorily met, then it may deny the application for a temporary license.

(b) If the Department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted temporary license that permits operation of a child care agency, but limits the agency's authority in one (1) or more areas of operation.

(c) Appeals of the denial or restriction of a license are governed by Chapters1240-4-5 and 1240-5-13.

(8) Terms of the Temporary Licensure Period.

(a) The temporary license shall remain in effect, unless suspended, for a period of one hundred and twenty (120) days, or until such time as the Department grants or denies the application for an annual license, whichever is later.

(b) During the temporary licensure period the licensee must attain and maintain compliance with all applicable licensing regulations. The failure to obtain and maintain such compliance during this period may result in the denial of the application for an annual license.

(9) Evaluation Process for Annual License During the Temporary Licensing Period.

(a) The temporary license is issued to authorize the temporary licensee to begin child care operations while the agency attempts to attain full compliance with all other applicable regulations.

(b) The Department shall perform a minimum of two (2) visits to the child care center during the temporary licensing period, at least one (1) of which shall be unannounced.

(c) The Department shall perform at least one (1) observation of the caregivers' interaction with children during the temporary licensing period.

(d) During the temporary licensing period, the applicant must provide verification, including any required supporting documentation as directed by the Department, of compliance with all applicable licensing regulations and further, that the applicant otherwise meets, or has continued to meet, all the requirements set forth in paragraph (6) above.

(e) During the temporary licensure period the Department shall determine whether an annual or restricted annual license shall be issued to the applicant.

(f) If the Department determines that any of the requirements set forth in this Chapter has not been, or cannot be, satisfactorily met then it may deny the application for an annual license.

(Rule 1240-04-03-.04, continued)

(g) If the Department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted temporary license that permits operation of a child care agency, but limits the agency's authority in one (1) or more areas of operation.

(h) Issuance of an Annual License. The Department shall issue an annual license if the Department determines that the applicant:

1. Has fully complied with all laws and regulations governing the specific classification of child care agency for which the application was made; and

2. Has demonstrated a reasonable probability that the applicant can maintain compliance with all licensing regulations during the annual license period.

3. Upon issuance of an annual license, the licensee must maintain compliance with all applicable licensing regulations and restrictions on the license, if any, throughout the licensing period.

(10) Re-Licensure Evaluation Process.

(a) Agencies currently licensed by the Department must submit an application for re-licensure prior to the expiration of the existing license. The failure to submit a complete application prior to the expiration of the current license shall result in the automatic termination of the annual license upon the expiration date, and a new application for a temporary license will be required.

(b) In addition to the evaluation requirements set forth in paragraphs (6) and (9) above, applicants for re-licensure shall be evaluated for the Report Card and Star-Quality Child Care Program as set forth in Chapter 1240-4-7.

(c) Upon demonstration of compliance with all laws and regulations governing the specific classification of child care agency for which the application was made; and, if the applicant has demonstrated a reasonable probability that the applicant can maintain compliance with all licensing regulations during the annual license period, the Department shall issue a new annual license.

(d) If the Department determines that any of the requirements set forth in this Chapter has not been, or cannot be, satisfactorily met, then it may deny the application for an annual license.

(e) If the Department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted annual license that permits operation of a child care agency, but limits the agency's authority in one (1) or more areas of operation.

(11) Upon receipt of an application for a license, and throughout the temporary licensing period and during the annual licensing period, immediate access to all areas of the child care facility shall be granted to all Department representatives and other inspection authorities (i.e., fire safety, sanitation, health, Department of Children's Services, etc.) during operating hours.

(12) If the Department determines, as a result of its inspections or investigations or those of other local, state or federal agencies or officials, or through any other means, that a plan is necessary to insure the safety of the children in the care of the child care center the Department may require the center to implement such safety plan.

(Rule 1240-04-03-.04, continued)

***Authority**: T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), and 71-3-508(c). Administrative History: Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed April 22, 1992; effective June 6, 1992. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Repeal and new rule filed June 20, 2006; effective September 3, 2006.*

1240-04-03-.05 OWNERSHIP, ORGANIZATION, AND ADMINISTRATION.

(1) Required Written Statement of Agency's Purpose.

(a) An applicant for a license to operate a child care agency shall submit a written statement in the form and manner directed by the Department which provides the following information:

1. A description of all services to be offered to children and parents;

2. Ages of children to be served;

3. Planned hours of operation;

4. Meal service plan, including the number and type of meals and snacks to be served, as applicable;

5. Admission requirements and enrollment procedures; and

6. Plans for the provision for emergency medical care.

(b) If, after being licensed, a licensee wishes to change the scope or type of service offered to children and families, an amended statement shall be filed with the Department for approval prior to implementation of the changes.

(2) Organizational Structure.

(a) The organization of every child care center shall be such that legal and administrative responsibility is clearly defined in writing, in the form and manner directed by the Department, with such writing accompanying the application for a license.

(b) Every child care center shall have an on-site director.

(c) Following the issuance of an annual license a child care center may operate without an on-site director for a period of no more than sixty (60) days total within the licensing year. A qualified person, as determined by the Department, shall be in charge in the interim.

(3) Finances and Legal and Regulatory Status.

(a) In order to ensure the appropriate continuity of care for children the applicant must provide a reasonable plan with a proposed budget for the financial support of a center. The proposal must demonstrate adequate funding for both preliminary and ongoing costs associated with staffing, equipment and safe operation. Adequate financing of the center's operation shall be maintained throughout the licensing year.

(Rule 1240-04-03-.05, continued)

(b) Proposed budgets and other relevant financial records shall be immediately available to the Department upon request.

(c) If any child care agency is the subject of any bankruptcy or receivership petition or order, or any other action that may affect the financial status or operational status of the child care agency, including but not limited to foreclosure notices, liens, etc., or, if any child care agency is the subject of any local, state or federal regulatory action, such as, but not limited to, the fire safety, health, environmental zoning or local, state or federal program compliance status or tax enforcement proceedings, the agency's management shall immediately notify the Department and shall provide current documentation of the status of the agency, including copies of necessary administrative and/or court legal documents applicable to that status.

(4) Insurance.

(a) General liability, automobile liability and medical payment insurance coverage shall be maintained on the operations of the child care agency's facilities and on the vehicles owned, operated or leased by the child care agency and as follows:

1. General liability coverage on the operations of the child care agency facilities shall be maintained in a minimum amount of five hundred thousand dollars ($500,000) per occurrence and five hundred thousand dollars ($500,000) general aggregate coverage.

2. Medical payment coverage shall be maintained in the minimum amount of five thousand dollars ($5,000) for injuries to children resulting from the operation of the child care agency.

3. Automobile coverage for agencies that transport children:

(i) Automobile liability coverage shall be maintained in a minimum amount of five hundred thousand dollars ($500,000) combined single limit of liability.

(ii) Medical payment coverage shall be maintained in the minimum amount of five thousand dollars ($5,000) for injuries to children being transported in vehicles owned, operated or leased by the child care agency.

(b) The requirements of this paragraph shall not apply to an agency that is under the direct management of a self-insured administrative department of the state, a county or a municipality, or any combination of those three (3), or that has, or whose parent entity has, a self-insurance program that provides, as determined by the Department, the coverages and the liability limits required by these rules.

(c) Documentation that the necessary insurance is in effect, or that the adminstrative department or other entity is self-insured, shall be maintained in the records of the child care agency and shall be available for review by the Department.

(5) Enrollment Restrictions.

(a) Enrollment of children under six (6) weeks of age is prohibited.

(b) Children shall not be in care for more than twelve (12) hours in a twenty-four (24) hour period except in special circumstances (e.g., acute illness of or injury to parents, severe weather conditions, natural disaster, and unusual work hours). In such cases every effort shall be made to minimize the amount of time spent in the child care

(Rule 1240-04-03-.05, continued)

agency by exploring and documenting alternatives (i.e., part time care, care with a relative, etc).

(c) Individualized plans for the care of a child in excess of twelve (12) hours due to special circumstances shall be signed by the parent and the director and must be approved by the Department. Plans shall be updated annually.

~~(d) The agency shall not admit a child into care until the parent has supplied the agency with a completed application, immunizations record (for children over two (2) months of age), and a health history.~~

[(d) The agency shall not admit a child into care until the parent/guardian has supplied the agency with a completed application, valid Tennessee Department of Health Official Immunization Certificates record (for children over two (2) months of age), and a health history. Exception: After an initial eligibility determination, children who are homeless and/or children in state custody may receive care prior to providing all required documentation as determined by the Department. Care without documentation of immunizations shall not exceed thirty days.]

(e) All children physically present in the facility shall be counted in the adult:child ratio and group size, and shall have all required records on file before care is provided.

~~(f) The agency shall maintain written documentation that the parent performed an on-site visit to the agency to review the agency's facility and child care policies and practices prior to the child being enrolled into care.~~

[(f) The agency shall maintain written documentation that the parent/guardian performed an on-site visit to the agency prior to the child being enrolled into care and that the agency provided and reviewed parent engagement strategies recognized by the Department with the parent during the required pre-placement visit. Exception: A pre-placement visit is not required for children of homeless families.]

(6) Requirements for Communication with Parents.

(a) A copy of the agency's policies, procedures, and the Department's Summary of Licensing Requirements shall be supplied to the parent/ upon admission of the child. The agency's policies shall include:

~~1. Criteria for the disenrollment of children; and~~

~~2. Specific criteria concerning the release of children to anyone whose behavior may place the children at immediate risk.~~

[1. Criteria for the disenrollment of children [see expulsion policy requirements in 1240-04-03-.05(13)];

2. Specific criteria concerning the release of children to anyone whose behavior may place the children at immediate risk;

3. Written parental permission for observation of children by non-child care agency staff;

4. Behavior management techniques;

5. Hours of operation;

(Rule 1240-04-03-.05, continued)

6. Late fees;

7. Rates;

8. Inclement weather;

9. Emergency policy;

10. Whether the environment is smoke free; and

11. Meal Service policy.]

(b) The agency shall require the parent to sign for receipt of the policies and Licensing Summary, and the signed receipt shall be maintained by the agency in the child's file.

(c) Parents shall be permitted to see the professional credential(s) of staff upon request.

(d) The agency shall implement a plan for regular and ongoing communication with parents. This plan shall include but not be limited to communication concerning curriculum, changes in personnel, or planned changes affecting children's routine care. Documentation shall be maintained for the most recent quarter.

(e) During operating hours, parents shall be permitted immediate access to their children.

1. The agency shall grant access to noncustodial parents if the noncustodial parent provides the agency with a valid court order granting the noncustodial parent access to the child during agency operating hours; provided, however, that such access is not otherwise restricted or prohibited by an Order of Protection or other legal document.

2. The custodial parent may not prohibit or restrict, or require the agency to prohibit or restrict, the noncustodial parent's access to the child while in the care of the agency if the noncustodial parent meets the provisions of part (e)1 above.

3. The agency may place reasonable restrictions on access by any parent as needed to limit disruption of the children's routines, e.g., limiting the number of days each week the parent may visit, the duration of the visit, etc. Any such limitations or restrictions must be clearly stated in the agency policy provided to the parent upon enrollment of the child, or at any subsequent time if the agency's policy is changed.

(f) Parents shall give written permission in advance of the child's removal from the premises, including prior notification and consent for each off-site activity, except in cases of emergencies or investigative procedures conducted pursuant to the child protective service laws or other applicable laws.

(g) Children shall be signed in and out of the center by the custodial parent or other person specifically authorized by the parent or the appropriate staff person. Center staff shall verify parental authorization and the identity of any person to whom a child is released.

(h) An abuse prevention awareness program for parents shall be offered at least once a year. The program shall include a child abuse prevention component, as recognized by the Department with information on the detection, reporting, and prevention of child abuse in child care agencies and in the home.

(i) Notifying Parents of Licensing Violations.

(Rule 1240-04-03-.05, continued)

1. Within the licensing year, after issuing two (2) formal notices of licensing violations, a notice of Probation, or after issuing any type of legal enforcement order, the Department may, in its discretion, require the agency to notify parents and funding sources of the circumstances. Such notification shall be a letter prepared by the Department to be provided to each parent or posted in the center with parents' signatures indicating that they have seen the letter.

2. The Department may, in its discretion, notify parents and funding sources of any decision affecting the child care agency rendered by the Child Care Agency Board of Review pursuant to Chapter 1240-5-13 or by any court.

(7) General Record Requirements.

(a) All records required by this Chapter shall be maintained in an organized manner on-site at the agency and shall be immediately available to the Department upon request.

(b) A child's records shall be kept for one (1) year following the child's leaving the agency; provided, however, that the health record shall be returned to the child's parent upon request when the child leaves the agency.

(c) Staff records shall be maintained for at least one (1) year following the separation of the staff from the agency.

[(d) All children, including related children younger than age nine (9), shall have required records on file before care is provided. Exception: After an initial eligibility determination, children of homeless families and/or children in state custody may receive care prior to providing required documentation as determined by the Department.]

(8) Children's Records.

(a) General Requirements for Children's Records shall include:

1. A current information form, which shall be updated annually and as changes occur, and which shall include:

(i) The child's name and date of birth;

(ii) Name of parent(s);

(iii) Child's and parents' home addresses and phone numbers;

(iv) Parents' business addresses, phone numbers and work hours;

(v) Any special needs or relevant history of the child or the child's family; and

(vi) The name and address (home and business or school) of a responsible person to contact in an emergency if parents cannot be located promptly.

2. Name, address, and telephone number of a physician to call in case of an emergency.

3. Written consent of parent regarding emergency medical care.

4. A written plan stating to whom the child shall be released.

(Rule 1240-04-03-.05, continued)

5. Written transportation agreement between parent and the center regarding daily transportation between the home and the center and the center and the school. If parents have a third-party transportation arrangement, verification and details of the arrangement shall be maintained in the child's file.

6. A copy of the child's health history provided by the child's parent or other caretaker, which need not be signed or certified by a health care provider, shall be on file in the center and shall be available to appropriate staff.

7. Daily attendance records that include the time in and time out for each child.

8. Prior written permission of parent for each off-site activity.

9. Immunization Record.

   (i) The agency shall maintain a written record in the child's file, as set forth in subparagraphs (b) and (c) below, verifying that the child has been immunized according to current Department of Health guidelines.

   (ii) Exceptions to this immunization record requirement may be made only if:

      (I) The child's physician or the health department provides a signed and dated statement, giving a medical reason why the child should not be given a specified immunization; or

      (II) The child's parent provides a signed written statement that such immunizations conflict with his/her religious tenets and practices.

      [(III) Care for children of homeless families and/or children in state custody is needed before documentation of immunizations can be confirmed. Care without documentation of immunizations for such children shall not exceed thirty days.]

10. Reports of Incidents, Accidents, Injuries and Fatalities.

   (i) Incidents, accidents and injuries shall be reported to the parent as soon as possible, but no later than the child's release to the parent or authorized representative.

   (ii) Incidents, accidents and injuries to children shall be documented immediately as follows:

      (I) Date and time of occurrence;

      (II) Description of circumstances; and

      (III) Action(s) taken by the agency.

   (iii) Documentation of incidents, accidents and injuries to children shall be filed in the child's record no later than one (1) business day immediately following the occurrence.

   (iv) The Department shall be notified of any child fatality at the agency no later than one (1) calendar day immediately following the death.

(Rule 1240-04-03-.05, continued)

(b) Preschool Children's Record Requirements.

1. Additional information for infants, toddlers and all non-verbal children shall be recorded and shared with parents daily as follows: the time and amount of feeding, any incidence of excessive spitting up, toileting and/or times of diaper changes, sleep patterns, and developmental progress.

2. Before a child under the age of thirty (30) months of age is accepted for care, the parent shall provide proof of a physical examination within three (3) months prior to admission, signed or stamped by a physician or health care provider. This record must be kept on file at the agency.

3. A copy of each preschool child's immunization record, signed or stamped by a certified health care provider, shall be on file in the child care center and shall be available to the appropriate staff.

(c) School-age Children's Record Requirements.

1. The information form for school-age children shall list the name, address, and phone number of the school the child attends.

2. Before a school-age child is accepted for care, the center shall have on file a statement from the parent (or the school) that the child's immunizations are current and that his/her health record is on file at the specified school which the child attends.

3. The records of any child who is five (5) years old in an agency which lacks approved kindergarten status for purposes of T.C.A. § 49-6-201 shall include a signed acknowledgment by the child's parents that recognizes that the child's attendance does not satisfy the mandatory kindergarten prerequisite for the child's enrollment in first grade. The statement of acknowledgment shall be signed by the parent and maintained in the child's file.

(d) Record Requirements for Children with Special Needs. A daily activity record that consists of a daily accounting of anything and everything the child did that day for children with special needs must be maintained.

(9) Staff Record Requirements Shall Include:

(a) Name, birth date, the social security number used by the employer for Federal/State tax purposes, address, and telephone number of all staff members, including volunteers, and a contact for each staff member in an emergency;

(b) Educational background and educational experiences, including dates and places of diplomas received, and conferences, courses, and workshops attended in the preceding year;

(c) Documentation, signed by the examining licensed physician, licensed psychologist, licensed clinician, Nurse Practitioner or Physician's Assistant, verifying that the staff person is physically, mentally and emotionally capable of safely and appropriately providing care for children in a group setting. The documentation shall be on file within ten (10) calendar days of employment or starting to work;

(d) An updated statement of each staff member's physical health shall be obtained every third (3rd) year, or more often if deemed necessary by the Department;

(Rule 1240-04-03-.05, continued)

(e) At least three (3) references from non-relatives, either written or with documented interviews of each reference, on each new staff member;

(f) Written, verified record of employment history;

(g) Documentation of annual performance reviews;

(h) Date of employment and date of separation from the agency;

(i) Daily attendance (including time in/out) of staff;

(j) Signed and completed criminal history disclosure form;

(k) Verification of criminal background check results;

(l) Verification of Vulnerable Persons Registry results;

(m) Driver records shall additionally contain:

1. Copy of driver's license showing proper endorsement;

2. Verification of a passed drug screen; and

3. Verification of Cardiopulmonary Resuscitation (CPR) and First Aid certifications; and

(n) Volunteer Records. Records of volunteers shall be maintained on-site at the agency and must include the names, addresses, telephone numbers and dates of service for all volunteers.

(10) Right to Privacy/Confidentiality.

The licensee and agency staff shall not disclose or knowingly permit the use by other persons of any information concerning a child or family except as required by law, regulation or court order, or as may be necessary to be disclosed to public authorities in the performance of their duties and which may be necessary for the health, safety, or welfare of any child enrolled at the center or of the child's family.

(11) Posting of License, Report Card, and Other Required Documentation.

(a) During the hours of operation, the current license to operate the child care center shall be posted near the main entrance in a conspicious location.

(b) During the hours of operation, the agency Report Card shall be posted near the main entrance in a conspicious location.

(c) The Department's toll-free child care complaint number shall be posted in a conspicuous location.

(d) The Department of Children's Services' child abuse reporting number shall be posted near the main entrance in a conspicuous location and at each telephone.

(e) A copy of all current applicable Department licensing rules shall be maintained in a central space and available to all staff and parents.

(Rule 1240-04-03-.05, continued)

(f) No smoking signs shall be posted in a conspicuous manner; provided, however, that such signs are not required in child care agencies which are operated within private residences.

(g) The agency shall post any other materials as directed by the Department.

(12) Release of Children.

(a) Children shall only be released to a responsible designated person in accordance with the child release plan required by these rules. The agency shall verify the identity of the authorized person by requiring presentation of a photo identification.

(b) The person to whom the child is released must sign the child out of the agency.

(c) Children shall not be released to anyone whose behavior may, as deemed by a reasonable person, place the child in imminent risk; provided, however, that if the agency reasonably believes that refusal to release the child could place staff or other children in imminent risk the agency may release the child, but must immediately call 911 or other local emergency services number.

[(13) The agency shall have a written expulsion policy.

(a) The policy shall be:

1. Clearly articulated to staff and parents;

2. Developmentally appropriate and consistent; and

3. Non-discriminatory.

(b) Other options shall be considered prior to expulsion, such as but not limited to reducing the number of days or amount of time the child may attend, or if applicable, referrals to the Center on the Social and Emotional Foundations for Early Learning (CSEFEL), Early Intervention System, Individuals with Disabilities Education Act (IDEA).

(c) Procedures shall be developed to allow for a planned transition of a child to another program if expulsion must occur.

(d) Aggregate data that includes reasons for expulsions shall be maintained and reported to the Department annually.]

[(14) Data Reporting. Agencies shall submit data as requested by the Department quarterly on topics such as but not limited to: active enrollment, homeless children, non-traditional hours, deaths/serious injuries, child abuse, English as a Second Language/dual language learners, and children with disabilities.]

Authority: *T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2).* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed April 22, 1992; effective June 6, 1992. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Repeal and new rule filed June 20, 2006; effective September 3, 2006.*

1240-04-03-.06 SUPERVISION.

(1) Supervision Procedures.

(a) Agency Responsibility for the Children's Supervision.

1. The management of the agency shall maintain a system that enables all children in the agency's care to receive a level of supervision of their status and activities that is appropriate to their age and their developmental, physical and mental status so as ensure their health and safety and that allows agency personnel to know the whereabouts of each child in their care.

2. This system shall include a mandatory visual inspection of all areas of the building and grounds immediately prior to closing the agency for the day in order to ensure that no children have been unintentionally left in any part of the agency's facilities or in any vehicles that the agency uses to transport children.

(b) Children six (6) weeks of age through nine (9) years of age:

1. The adult must be able to hear the child at all times, must be able to see the child with a quick glance, and must be able to physically respond immediately.

2. Exception during mealtime: An adult must be in the direct sight and sound of children ages six (6) weeks through five (5) years, not in kindergarten, while the child is eating.

(c) Children ten (10) years of age and older:

1. The adult shall know the whereabouts and activities of the children at all times and must be able to physically respond immediately.

2. Each child shall be greeted and received by the specific caregiver assigned who will have ultimate responsibility and accountability for their supervision, oversight and care.

3. When children, age ten (10) and above, are permitted to leave one caregiver's assigned area and go to another, the center shall implement a system to track the whereabouts of each child and recognize the transfer of responsibility from one caregiver to another.

(d) Mixed-age Groups. When children ages ten (10) years or above are grouped with children under ten (10) years of age, the minimum supervision requirements for children ages six (6) weeks through nine (9) years, as set forth in subparagraph (b) above, shall be followed.

(e) Helper devices such as mirrors, electronic sound monitors, etc. may be used as appropriate to meet these requirements.

(f) Caregivers shall monitor children's toileting and be aware of their activities while respecting the privacy needs of the child.

(g) When more than twelve (12) children are present on the premises, but a second (2nd) adult is not required by the adult:child ratio rules contained in this Chapter, a second (2nd) adult must be physically available on the premises.

(h) The agency shall maintain a plan, approved by the Department, that enables a caregiver in an emergency situation to call a second (2nd) adult who can respond

(Rule 1240-04-03-.06, continued)

quickly while maintaining as much supervision of the children in care as is possible under the circumstances.

(i) If children with special needs are enrolled, Section 504 of the federal Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) guidelines shall be consulted regarding the number of caregivers that a reasonable accommodation of a child's disability may require.

(j) All children for whom care is provided at any one time shall be included in the agency's enrollment, square footage allowance, and licensed capacity.

(k) Auxiliary staff may be used as emergency substitutes if their qualifications permit, but not while performing other duties.

(l) If meals are served, any person responsible for preparing meals and washing the dishes shall not be included in the adult:child ratio while preparing these meals or washing dishes.

(m) When more than twelve (12) children in first grade and above are present, a separate group, a separate space, and a separate program shall be provided for them.

(2) Assignment of Children to Groups.

(a) Each child must be on roll in a defined group and assigned to that group with a specific caregiver(s).

(b) Maximum group size requirements shall be maintained at all times with the exception of meals served in common dining rooms, napping in common nap rooms, or outdoors on the playground.

(c) When infants are cared for in a center with older children, they shall not be grouped with children older than thirty (30) months of age, and a separate area shall be provided for them.

(d) Extended Care. Children age thirteen (13) months and older may be grouped together while sleeping in overnight care.

(e) In order to assure the continuity of care for children and their caregivers, the children shall be kept with the same group throughout the day and shall not be moved, shuffled, or promoted to a new group until required based upon the developmental needs of the child; provided, however, that:

1. Groups, excluding infants and toddlers, may be combined for short periods for a special activity, e.g., special assembly, visiting performers or community helpers, etc., of no more than thirty (30) minutes duration per day as long as adult:child ratios are met.

2. Groups, excluding infants and toddlers, may be combined, for up to one (1) hour at the beginning of the day and for up to one (1) hour at the end of the day as set forth in Adult:Child Ratio Chart 3 in part (3)(d)3 below.

(f) Each group must have a "home base" with enough space for the entire group.

(3) Required Adult:Child Ratios.

(Rule 1240-04-03-.06, continued)

(a) The adult:child ratios shall be maintained by the child care agency while the children are indoors and on the playground.

(b) Adult:child ratios and group sizes may exceed the required limit by up to ten percent (10%), rounded to the nearest whole number, for no more frequently than three (3) days per week; provided, however:

1. Infant and toddler groups may never exceed the required ratios and group sizes;

2. The licensed capacity of the classroom may not be exceeded; and

3. The Department may modify or terminate this 10% variance in individual cases according to the provisions for issuance of a restricted license pursuant to T.C.A. § 71-3-502(d)(7)(B).

(c) Any number of children in excess of the adult:child ratios requires a second qualified adult caregiver; provider, however, that the maximum group size shall not be exceeded.

(d) Adult:Child Ratio Charts

1. Chart 1 – Single Age Grouping & Adult:Child Ratio Chart.

Single-Age Grouping	8	12	14	16	18	20	No Max
Infants: Six (6) wks.–Fifteen (15) mos.	1:4						
Toddlers (Twelve (12) mos.–Thirty (30) mos.)		1:6					
Two (2) years (Twenty-Four (24) mos.–Thirty-Five (35) mos.)			1:7				
Three (3)years					1:9		
Four (4)years						1:13	
Five (5) years						1:16	
School-Age (K and above)							1:20

2. Chart 2 – Multi-Age Grouping & Adult:Child Ratio Chart.

Multi-Age Grouping	10	16	18	20	22	24	No Max
Infants/Toddlers: Six (6) wks.–Thirty (30) mos.	1:5						
Two (2)-Four (4) years		1:8					
Two and One-Half (2½)–Three (3) years (Thirty (30)–Forty-Seven(47) mos.)			1:9				
Two and One-Half (2½)–Five (5) years				1:11			
Two and One-Half (2½)–Twelve (12) years	1:10						

(Rule 1240-04-03-.06, continued)

Three (3)–Five (5) years (includes Three (3)–Four (4) years)					1:13		
Four (4)–Five (5) years						1:16	
Five (5)–Twelve (12) years							1:20

3. Chart 3 – Allowable Combined Grouping & Adult:Child Ratio Chart for first/last hour of each day only:

Maximum Grouping Size and Adult:Child Ratios				
	10	15	20	
2.5–12 years	1:10			
3–12 years		1:15		
4–12 years			1:20	

(4) Naptime Supervision (Requirements for Naptime and Nighttime Care).

(a) At naptime and during nighttime care, after the children have settled down, adult:child ratios may be relaxed so long as the children are adequately protected and all of the following requirements are met:

1. At least one (1) adult shall be awake and supervising the children in each nap room/sleeping area;

2. Infant/toddler ratios shall be maintained; and

3. The adult:child ratio for children ages thirty-one (31) months and above can be fifty percent (50%) of the required ratio if there are enough adults on the premises so that the adult:child ratio required for children when they are awake shall be met immediately in an emergency.

(b) Maximum group size limits do not apply as long as the appropriate adult:child ratio is met at the fifty percent (50%) level.

(c) Sudden Infant Death Syndrome. Because of the possibility of Sudden Infant Death Syndrome:

1. Infants shall be positioned on their backs when placed in a crib for sleeping.

2. In order to avoid the risk of smothering, soft bedding for infants is prohibited.

3. Infants shall not be wrapped tightly or swaddled in blankets for sleeping.

4. Infants shall be touched by a caregiver every fifteen (15) minutes in order to check breathing and body temperature.

5. Pillows shall be prohibited for infants.

6. If a child appears not to be breathing, the agency must immediately begin CPR and call for emergency medical assistance.

7. Before any caregiver can assume caregiving duties of any type in an infant room they shall be oriented in the foregoing SIDS procedures.

(Rule 1240-04-03-.06, continued)

(d) Naproom Lighting. The areas where infants sleep shall be lit in a manner which allows the caregiver to quickly, at a glance, verify that the child's head is uncovered, that the child is breathing, and otherwise visually verify the child's condition.

(5) Playground Supervision.

(a) The same adult:child ratios are applicable for the playground as in the classrooms.

(b) A playground supervision plan shall be written and implemented which includes:

1. Arrival and departure procedures;

2. Supervision assignments of staff to assure that all areas of the playground can be seen so that all children can remain within sight of the caregivers;

3. Identification of which staff will merely supervise in their assigned zone while other caregivers, if any, interact with children as play facilitators;

4. Emergency plans specific to a variety of circumstances, such as, child injury, weather evacuation, toileting and other personal care needs of children or staff, etc.; and

5. A communication link among playground supervisors and a designated staff person, if available, inside the agency.

(6) Supervision During Off-Site Activities.

(a) Preschool Children. The adult:child ratios in charts 1 and 2 must be doubled during off-site activities.

(b) School-age Children.

1. The number of trained caregivers required to be present on off-site activities shall be at a minimum, equivalent to the number that would be required in the classroom; additional adults to meet the following off-site ratios in chart 4 may be caregivers, volunteers or unpaid staff.

2. Chart 4 - Off-Site Activities for School-age Children

Number of Children On Activity	Trained Caregivers	Additional Adults	Total Adults Required
1 - 20	1	1	2
21 - 30	2	1	3
31 - 40	2	2	4
41 - 50	3	2	5

(c) A minimum of two (2) adults is required for any off-site activity.

(d) The center must maintain a system utilizing an off-site attendance roll which tracks the whereabouts of each child while off the center premises.

(7) Supervision While Swimming. When children are swimming, the adult:child ratios in Chart 5 and the following requirements shall be met:

(a) Chart 5 - Swimming Adult:Child Ratio Chart.

(Rule 1240-04-03-.06, continued)

Age Group	Ratio
Infants(Six (6) wks-Twelve (12)months)	1:1
Toddlers/twos (Thirteen (13) –Thirty-Five (35) months)	1:2
Three (3) Year Olds	1:4
Four (4)Year Olds	1:6
Five (5) Year Olds	1:8
School-Age (K And Above)	1:10

(b) Although group swimming for infants and toddlers is not prohibited, it is not recommended due to the high risk.

(c) At least one (1) adult present shall have a current certificate in advanced aquatic lifesaving skills. This person must supervise from above the level of the swimmers, preferably from an elevated lifeguard chair or otherwise from the pool deck.

(d) The lifeguard may not be included in the required adult:child ratio while performing lifeguard duties.

(e) Remaining caregivers shall supervise children who are both in and out of the water.

(8) Transportation Supervision. Supervision for transportation of children shall comply with rules in 1240-04-03-.13.

Authority: *T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2).* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Amendment filed June 7, 1982; effective September 30, 1982. Amendment filed June 27, 1985; effective September 13, 1985. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed January 7, 1987; effective April 29, 1987. Amendment filed April 22, 1992; effective June 6, 1992. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Amendment filed November 18, 1999; effective January 31, 2000. Amendment filed September 29, 2000; effective December 13, 2000. Amendment filed August 27, 2001; effective November 10, 2001. Amendment filed November 21, 2002; effective February 4, 2003. Repeal and new rule filed June 20, 2006; effective September 3, 2006.*

1240-04-03-.07 STAFF.

(1) Responsibility for Staff.

(a) The board, owner, applicant/licensee, or other designated agent of the child care center shall be responsible for selecting qualified individuals of suitable character and ability to work with children.

(b) The director, with the guidance of the board or owner of the center, shall be responsible for supervision, training and evaluation of the staff, the program and the day-to-day operation of the center.

(c) Each location where children are kept shall have an on-site director.

(d) To be designated as such, the on-site director of a center which is in operation up to twelve (12) hours a day shall be physically present in the center daily at least half of the

(Rule 1240-04-03-.07, continued)

total hours of operation. If a program operates more than one (1) shift the on-site director shall be physically present at least one shift.

(e) To be designated as the director or person in charge (on a daily basis) of a multi-site child care program, he/she shall be employed full-time in that capacity.

(f) An assistant director or other staff member shall be designated to be in charge in the absence of the director and all staff shall be notified of this designation.

(g) Management shall evaluate all staff in the performance of their duties. Caregivers shall be evaluated for knowledge and understanding of growth and development patterns of children and understanding of appropriate activities for children as well as those with special needs.

(2) General Staff Qualifications.

(a) Every staff person, including auxiliary staff, substitutes, volunteers, and practicum students, shall be physically, mentally, and emotionally capable of using the appropriate judgment for the care of children and otherwise performing his/her duties satisfactorily.

(b) A person who has a physical, mental, or emotional condition which is in any way potentially harmful to children shall not be present with the children.

(c) Every staff person, both paid and unpaid, who are under the age of eighteen (18) years must be supervised by an adult while in the presence of children.

(d) At least one (1) adult available on the premises at all times during child care operating hours must be able to read and write English.

~~(e) Prior to assuming duties, each new employee shall receive orientation in, and be able to explain:~~

~~1. Program philosophy;~~

~~2. Job description;~~

~~3. Emergency procedures;~~

~~4. Policies regarding discipline of children;~~

~~5. Policies regarding the reporting of child abuse; and~~

~~6. Policies for receiving and dismissing children.~~

[(e) Prior to assuming duties, each new employee shall receive documented instruction in, and have a working knowledge of:

1. Program philosophy and policies;

2. Job description;

3. Emergency health and safety procedures;

4. Behavior management procedures;

(Rule 1240-04-03-.07, continued)

5. Detection, reporting, and prevention of child abuse;

6. Procedures for receiving and releasing children;

7. Safe sleep procedures;

8. Shaken baby syndrome/abusive head trauma;

9. Meal service and safe food preparation policies;

10. Supervision during high risk activities such as eating and outdoor play;

11. Food allergies;

12. Expectations for communications with parent/guardian;

13. Disease control and health promotion;

14. An overview of licensing requirements;

15. Information on risks of Cytomegalovirus (CMV) to female employees of childbearing age;

16. A minimum of two (2) hours pre-service training as recognized by the Department; and

17. Documentation of the requirements in this subparagraph (h) shall be maintained in the staff file.]

(f) Within the first two (2) weeks on the job, each employee (including auxiliary staff, such as bus driver, cook, etc.) shall receive instruction in:

1. Child abuse detection, reporting, and prevention;

2. Parent-center communication;

3. Disease control and health promotion;

4. An overview of licensing requirements; and

5. Information on risks of infection to female employees of childbearing age.

[(g) Ongoing Training Requirements – any ongoing training required for employees shall include health and safety topics, such as but not limited to:

1. Prevention and control of infectious diseases (including immunization);

2. Prevention of sudden infant death syndrome and use of safe sleeping practices;

3. Administration of medication, consistent with standards for parental consent;

4. Prevention of and response to emergencies due to food and allergic reactions;

5. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

6. Prevention of shaken baby syndrome and abusive head trauma;

7. Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

8. Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

9. Precautions in transporting children (if applicable); and

10. First aid and pediatric cardiopulmonary resuscitation.]

(~~g~~[h]) All training must be documented in the agency's records and be available for review by the Department's staff at anytime.

(~~h~~[i]) The agency must maintain written documentation that each employee has read the full set of all applicable licensure rules. In addition, a copy of such rules shall be maintained in an area that is readily accessible to all staff.

(3) Multi-Site Personnel Qualifications.

(a) Multi-Site Coordinator. The multi-site coordinator must meet the same requirements listed below for a single-site child care center director.

(b) Qualifications of On-Site Director under a Multi-Site Coordinator.

1. At least two (2) years of college training or a Department-recognized credential in addition to at least one (1) year of full-time (paid or unpaid) documented work experience with young children in a group setting; or

2. A high school diploma or equivalent educational credential recognized by the Department in addition to at least two (2) years of full-time (paid or unpaid) documented work experience with young children in a group setting.

(4) Qualifications for Director of a Single-Site Child Care Center.

(a) The director shall meet at least one (1) of the minimum qualifications listed in the chart below:

If Minimum Education Is:	The Minimum Group Care Experience Required Is:
Graduation from an accredited four-year (4-year) college	(1) year of full-time (paid or unpaid) experience in a group setting
Sixty (60) semester hours (two [2] years) of college training, with at least thirty (30) hours of which shall be in business or management, child or youth development, early childhood education or related field	Two (2) years of full-time (paid or unpaid) experience in a group setting
High School Diploma (or Department-recognized equivelent), and Tennessee Early Childhood Training Alliance (TECTA) certificate for completing thirty (30) clock hours of orientation training, or the equivalent as	Four (4) years of full-time (paid or unpaid) experience in a group setting

(Rule 1240-04-03-.07, continued)

recognized by the Department	
Has been continuously employed as an on-site child care director or a child care agency owner since July 1, 2000	Not Applicable

(b) Training Requirements:

1. Prior to issuance of the first annual license. Owners (or a designee thereof who is not the on-site director) and directors shall complete a child care orientation course sponsored by the Department.

2. During the first year of employment a new director shall:

(i) Complete an orientation course sponsored by the Department within three (3) months of assuming her position; provided, however, that this course shall not be required if the director has:

(I) Received specific training meeting the requirements of this part within three (3) years prior to employment; or

(II) Earned a Bachelors degree, an Associates degree in child development or early childhood education, a CDA credential, or a CCP credential;

(ii) Have evidence of receiving at least thirty-six (36) hours of Department-recognized, competency-based training, at least six (6) hours of which must be in administration, management or supervisory training; or

(iii) Earn credit for the year in one (1) academic course in administration, child development, early childhood education, health/safety or other related field.

3. After the first (1st) year of employment, the director shall:

(i) Earn credit during the year in one academic course in administration, child development, early childhood education, health/safety or other related field; or

(ii) Have evidence of receiving at least eighteen (18) clock hours annually in Department-recognized workshops, competency-based training, or one-to-one consulting sessions:

(I) Six (6) hours of training shall be in administration, management or supervisory training; and

(II) Four (4) hours of the required eighteen (18) hours may be earned by conducting training.

(5) Assistant Director Qualifications.

(a) The on-site assistant director shall have at least two (2) years of college training or a Department-recognized credential and one (1) year of full-time (paid or unpaid) documented work experience in a group setting; or

(Rule 1240-04-03-.07, continued)

(b) The on-site assistant director shall have earned a high school diploma or equivalent educational credential recognized by the Department and two (2) years of full-time (paid or unpaid) documented work experience in a group setting.

(6) Caregiver Qualifications.

(a) Each caregiver shall be at least eighteen (18) years of age. Exception: Sixteen (16) and seventeen (17) year-old students currently enrolled in a Department-recognized vocational child care program may be counted in the adult-child ratio; provided, however, that they shall always be under the direct supervision of an adult and shall not be left alone with a group of children.

(b) Each group shall have at least one (1) caregiver present who has a high school diploma or equivalent educational credential as recognized by the Department.

(c) Training for Caregivers During the First (1st) Year of Employment.

1. New caregivers shall complete, within the first (1st) thirty (30) days of employment with the agency, two (2) clock hours of pre-service orientation training offered or recognized by the Department. Pending completion of the orientation training, the caregiver's employment status as a caregiver with the agency is conditional.

2. New caregivers shall additionally complete sixteen (16) hours of Department-recognized, competency-based training within the first (1st) year of employment, six (6) hours of which must be completed within the first six (6) months of employment.

3. Failure of the caregiver to complete the required two (2) hours of pre-service orientation and/or failure to complete the required six (6) hours of training within the first (1st) six (6) months of employment shall require that the employee be removed from caregiver duties until completion of the training.

4. Exception. Caregivers who have been employed in child care during the last three (3) years, hold a Bachelors or Associates degree in child development or a related field, or who hold a CDA credential or CCP credential as recognized by the Department shall instead comply with the training requirements for experienced caregivers required in subparagraph (d) below.

(d) Training for Caregivers After the First (1st) Year of Employment.

1. Experienced caregivers shall complete at least twelve (12) clock hours annually of Department-recognized, competency-based training.

2. A maximum of two (2) hours training credit annually may be credited for Child and Adult Care Food Program (CACFP) training.

3. At least six (6) hours of the required training must be non-agency based, e.g., obtained outside of the center.

4. Up to four (4) hours training credit annually may be earned by conducting training.

5. Credit for Tennessee Early Childhood Training Alliance Orientation Training. Completion of a thirty (30) hour orientation class through the TECTA program shall satisfy the caregiver's minimum annual training requirements for two (2) years.

(Rule 1240-04-03-.07, continued)

(7) Substitutes.

(a) The names, addresses, telephone numbers and dates of service shall be recorded for all substitutes in the staff personnel records of the agency.

(b) Substitutes shall comply with the same orientation requirements of these rules for all agency staff.

(c) Substitutes who have acted as caregivers for two hundred (200) or more hours in the previous calendar year shall meet the training requirements contained in these requirements for caregivers.

(d) Substitutes providing services for thirty-six (36) hours or more in a calendar year shall:

1. Meet the criminal background check requirements contained in these rules; and

2. Meet the same requirements as regular staff for the physical examination required by these rules.

(e) Practicum Students. Persons serving temporarily as caregivers in field service placements as part of an educational course of study or other curriculum requirement shall not be considered as substitutes for purposes of this paragraph.

(8) Volunteers.

(a) Volunteers may be used to provide services and supplement the required caregivers or substitutes without payment, but are not counted to meet the adult:child ratios. If counted in the adult:child ratio, or provide services for more than twenty (20) hours per calendar week, volunteers shall meet the qualifications for substitutes as set forth in paragraph 1240-04-03-.07(7) above.

(b) Management shall be responsible for and supervise the activities of volunteers to assure safety of the children.

(c) Records for volunteers shall be maintained as required in 1240-04-03-.05.

~~(9) Criminal Background and Vulnerable Persons Registry Review Requirements.~~

~~(a) Individuals Requiring a Fingerprint Criminal Background Review and Abuse (Vulnerable Persons) Registry Check:~~

~~1. Any individual applying to work as a paid employee, director or manager of the child care agency in a position that will require or allow the individual to have contact with children at any time;~~

~~2. Any individual applying to work as a new substitute and who is expected to offer, or who provides, at least thirty (36) hours of substitute services to the agency in any calendar year;~~

~~3. Any individual applying for a license to operate a child care agency that is not the renewal of an existing license, or any individual who otherwise seeks to be an operator, as defined by the rules of the Department, of a child care agency as defined in § 71-3-501, and who will, in the course of their role as licensee, have significant contact, as determined by the Department, with the children in care.~~

(Rule 1240-04-03-.07, continued)

~~For purposes of this paragraph, "operator" shall be an individual who is an owner or administrator of a child care agency or child care system;~~

~~4. Residents of a New Agency. Any individual who is a resident of the child care agency and who is fifteen (15) years of age or older upon the date the agency receives its initial temporary license or, if the agency has been issued an annual license, then upon the date the agency received its annual license; and~~

~~5. New Residents of an Existing Agency. Any individual who is fifteen (15) years of age or older upon moving into a licensed/approved child care agency.~~

~~(b) Pending outcome of the criminal background check as described in this paragraph and the outcome of the review of the individual's status on the Department of Health's Vulnerable Persons Registry, the applicant for employment or a substitute or volunteer position, or for a license to operate shall be conditional and shall be dependent upon the results of these background checks.~~

~~(c) Requirements for Submission of a Fingerprint Sample.~~

~~1. Criminal History Disclosure Form. Individuals identified in subparagraph (a) shall complete and sign the Criminal History Disclosure Form provided by the Department.~~

~~(i) The failure to properly complete all sections of the Criminal History Disclosure Form shall result in the individual being prohibited from working, substituting, residing in or acting as a licensee for the child care agency.~~

~~(ii) The failure to disclose all criminal history information may result in the individual being:~~

~~(I) Excluded from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and~~

~~(II) Referred for criminal prosecution pursuant to the provisions of state law.~~

~~2. Fingerprint Sample. The child care agency shall be responsible for obtaining, and submitting the fingerprint sample of any person required by this Chapter in the form and manner directed by the Department:~~

~~(i) Within ten (10) calendar days of the first day of beginning employment or substitute status;~~

~~(ii) Within ten (10) calendar days of the license application or seeking operator status;~~

~~(iii) Within ten (10) calendar days of the application for an initial license for a facility in which the person resides; or~~

~~(iv) Within ten (10) calendar days after the resident moves into the child care facility.~~

~~3. Vulnerable Persons Registry. The child care agency shall be responsible for determining, within the same time periods as set forth in part (c)2 above, the status on the Department of Health's Vulnerable Persons Registry of any~~

(Rule 1240-04-03-.07, continued)

~~individual who is required by subparagraph (a) above to undergo a criminal history background check. Verification of such status check shall be maintained in the employee's record pursuant to the requirements set forth in 1240-04-03-.05.~~

~~4. Unless otherwise notified by the Department, the child care agency shall be responsible for all costs associated with obtaining the fingerprint sample, and the Department will pay for the costs of the criminal background check by the Tennessee Bureau of Investigation.~~

[(9) Criminal Background Check and State Registry/Records Review Procedures.

(a) Criminal Background and Abuse Registry Disclosures and Reviews; Fingerprinting Requirements.

1. The following persons are required to have a background check no more than ninety (90) days before having access to any child care agency:

(i) Any person who owns or operates a child care agency and will have significant contact with children;

(ii) Any person who applies to work in a child care agency as an employee, director or manager;

(iii) Any person who will provide substitute services to a child care agency for more than thirty–six (36) hours in a calendar year and who is counted in the adult: child ratio; and

(iv) Any person who is fifteen (15) years of age or older who will reside in a child care agency.

2. New background checks are required for all staff and residents when an agency moves from one class of care to another, such as when a family home becomes a group home or when an agency is sold and staff remain employed by the new owner or any time an agency is issued a license that is not the renewal of an existing license. Exception: Does not apply to background checks completed within the last ninety (90) days.

3. Background checks are required for all staff at least every five (5) years.

4. Requirements for Disclosure of Criminal/Juvenile and State Register History and Fingerprinting.

(i) The individuals identified in subparagraph (1)(a) above shall:

(I) Complete a criminal/juvenile/administrative findings history disclosure form;

(II) Submit fingerprint samples for a criminal and juvenile records background check; and

(III) Complete a criminal, juvenile background check/state review consisting of:

(Rule 1240-04-03-.07, continued)

I. An investigation of a person's criminal background history by the Tennessee Bureau of Investigation (TBI) and through the Federal Bureau of Investigation's (FBI) national database;

II. An investigation of a person's juvenile records history that is available to the TBI;

III. A review of any available juvenile court records, if determined necessary by DHS;

IV. A search of the vulnerable persons registry (VPR), maintained by the Tennessee Department of Health;

V. A search of the TN sexual offender registry (SOR), maintained by the TBI;

VI. A search of the DCS registry of indicated perpetrators of abuse or neglect of children; and

VII. A search of any state or federal registries required by the Child Care and Development Block Grant Act.

(b) Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Children Prior to Completion of Criminal History Review.

1. A child care agency, substitute pool, or staffing agency shall be responsible for registration of persons required to have a background check. The responsible entity shall ensure that the process is completed prior to employment.

2. A child care agency may not permit any person who is required to have a background check to assume any role or to have access to children until the agency receives written verification from the Department that the person is cleared to work/reside in the agency.

3. Failure to Complete or Disclose Information on Criminal Disclosure Form.

(i) Failure to properly complete all sections of the Criminal/Administrative History Disclosure Form shall result in the individual being prohibited from assuming any position for which a background review is required.

(ii) Failure to disclose all criminal and administrative history information may result in the person being:

(I) Excluded by the Department from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and

(II) Referred to the appropriate district attorney for criminal prosecution.

4. The Department will pay for the costs of performing one background check per person per agency per year.

5. The child care agency shall be responsible for costs associated with the background check if:

(Rule 1240-04-03-.07, continued)

(i) The fingerprint sample is rejected and the fingerprint sample must be resubmitted;

(ii) The agency submits a second fingerprint sample for an individual when the initial background check has not been completed; or

(iii) The agency submits a fingerprint sample for a purpose unrelated to obtaining approval for a prospective employee, volunteer, etc. to have access to child care.

(c) Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Children.

1. No person shall be employed, be a licensee or operator or, provide substitute services, reside, or have any access to children in a child care agency if the criminal background check identifies an excludable criminal offense for which the person has:

(i) Been convicted of, pled guilty or no contest to (or to a lesser included offense);

(ii) Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or

(iii) Been named in a pending warrant, indictment, presentment, or petition.

2. An excludable criminal offense involves:

(i) The physical, sexual or emotional abuse or neglect of a child;

(ii) A crime of violence against a child, or any person;

(iii) Any offense, including a lesser included offense, involving the manufacture, sale, distribution or possession of any drug; or

(iv) Any offense that presents a threat to the health, safety or welfare of children.

(v) The criminal offenses for which a person will be excluded from a child care agency include but are not limited to the following offenses as well as their lesser included offenses (even if not listed here):

(I) Aggravated arson (T.C.A. § 39-14-302);

(II) Aggravated assault (T.C.A. § 39-13-102);

(III) Aggravated child abuse (T.C.A. § 39-15-402);

(IV) Aggravated child neglect (T.C.A. § 39-15-402);

(V) Aggravated cruelty to animals (T.C.A § 39-14-212);

(VI) Aggravated kidnapping (T.C.A. § 39-13-304);

(VII) Aggravated rape (T.C.A. § 39-13-502);

(Rule 1240-04-03-.07, continued)

(VIII) Aggravated rape of a child (T.C.A. § 39-13-531);

(IX) Aggravated robbery (T.C.A. § 39-13-402);

(X) Aggravated sexual battery (T.C.A. § 39-13-504);

(XI) Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);

(XII) Aggravated vehicular homicide (T.C.A. § 39-13-218);

(XIII) Arson (T.C.A. § 39-14-301);

(XIV) Assault (T.C.A. § 39-13-101);

(XV) Carjacking (T.C.A. § 39-13-404);

(XVI) Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);

(XVII) Criminal attempt, under T.C.A. § 39-12-101, to commit any criminal offense that requires exclusion from child care;

(XVIII) Criminal exposure to HIV (T.C.A. § 39-13-109);

(XIX) Criminal homicide (T.C.A. § 39-13-201);

(XX) Criminally negligent homicide (T.C.A. § 39-13-212);

(XXI) Cruelty to Animals (T.C.A § 39-14-202);

(XXII) Custodial interference (T.C.A. § 39-13-306);

(XXIII) Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);

(XXIV) Domestic assault (T.C.A. § 39-13-111);

(XXV) Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);

(XXVI) Especially aggravated burglary (T.C.A. § 39-14-404);

(XXVII) Especially aggravated kidnapping (T.C.A. § 39-13-305);

(XXVIII) Especially aggravated robbery (T.C.A. § 39-13-403);

(XXIX) Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);

(XXX) Exploitation of a minor by electronic means (T.C.A. § 39-13-529);

(XXXI) False imprisonment (T.C.A. § 39-13-302);

(Rule 1240-04-03-.07, continued)

(XXXII) First degree murder (T.C.A. § 39-13-202);

(XXXIII) Incest (T.C.A. § 39-13-302);

(XXXIV) Indecent exposure (T.C.A. § 39-13-511);

(XXXV) Involuntary labor servitude (T.C.A. § 39-13-307);

(XXXVI) Kidnapping (T.C.A. § 39-13-105);

(XXXVII) Rape (T.C.A. § 39-13-503);

(XXXVIII) Rape of a child (T.C.A. § 39-13-522);

(XXXIX) Reckless endangerment (T.C.A. § 39-13-103);

(XL) Reckless homicide (T.C.A. § 39-13-215);

(XLI) Robbery (T.C.A. § 39-13-401);

(XLII) Second degree murder (T.C.A. § 39-13-210);

(XLIII) Sexual battery (T.C.A. § 39-13-505);

(XLIV) Sexual battery by an authority figure (T.C.A. § 39-13-527);

(XLV) Sexual exploitation of a minor (T.C.A. § 39-17-1003);

(XLVI) Solicitation of a minor (T.C.A. § 39-13-528);

(XLVII) Stalking (T.C.A. § 39-17-315);

(XLVIII) Statutory rape (T.C.A. § 39-13-506);

(XLIX) Statutory rape by an authority figure (T.C.A. § 39-13-532);

(L) Trafficking a person for sexual servitude (T.C.A. § 39-13-309);

(LI) Vehicular assault (T.C.A. § 39-13-106);

(LII) Vehicular assault while intoxicated (T.C.A. § 39-13-106);

(LIII) Vehicular homicide (T.C.A. § 39-13-213);

(LIV) Voluntary manslaughter (T.C.A. § 39-13-211); and

(LV) Weapons offenses (unlawful possession, carrying, use, etc.).

3. No person may be employed as a driver or serve as a driver for a child care agency if the person:

(i) Is currently charged with; or

(ii) Has been convicted of, or pled guilty, within the last five (5) years to any of the following criminal offenses:

(Rule 1240-04-03-.07, continued)

(I) Vehicular homicide;

(II) Accidents involving death or personal injury;

(III) Accidents involving damage to a vehicle;

(IV) Driving under the influence of an intoxicant, drug or drug producing stimulant; or

(V) Any felony involving the use of a motor vehicle while under the use of any intoxicant.

(d) Exclusion from access to child care based on a listing on a state registry.

1. No person shall be employed, be a licensee or operator, provide substitute services, reside, or have any access to children in a child care agency if the results of the state registry review identify the person as being:

(i) Listed on the Vulnerable Persons Registry;

(ii) Listed on the Sexual Offender Registry; or

(iii) Indicated in the records of the Department of Children's Services as a perpetrator of abuse or neglect of a child.

(e) Supplemental Background Checks Subsequent to Licensing, Employment or Residence in a Child Care Agency.

1. The Department may, at any time, require a new background check of any individual with access to children in a child care agency.

(i) For an individual who was not subject to a background check prior to assuming a role, the individual's existing status in their role shall be conditional upon the satisfactory outcome of any requested background check.

(f) Any person who is excluded shall remain excluded pending the outcome of any appeals or waiver review or any determination that the basis for exclusion no longer exists.

(g) An individual will also be excluded if a criminal or juvenile proceeding, registry or administrative background review requiring exclusion or any other provision of law is discovered and verified in any manner.

(h) If a child care agency, substitute pool or staffing agency receives information from a source other than the Department that requires them to exclude an employee, substitute, volunteer, or resident they shall immediately exclude the person from any access to children and notify the Department on the same business day by calling the child and adult care complaint hotline.

(i) The exclusion of such persons from access to child care shall be conducted pursuant to T.C.A. § 71-3-507 and this rule.

(j) Failure of a child care agency to perform the required background check before allowing a person access to child care or to immediately exclude individuals with a

(Rule 1240-04-03-.07, continued)

criminal history or state registry review status that requires exclusion, shall be the basis for the immediate suspension, denial or revocation of the child care agency's license.]

(10) Exclusion of Persons from Contact with Children.

(a) Prohibited Criminal or Abuse or Neglect History.

1. No individual with a prohibited criminal history as defined below, regardless of whether such individual is required by these rules to undergo a criminal background check, may work, substitute or volunteer in a child care agency, or be a resident, licensee, director or manager of a child care agency who has access to children, or be an operator who has significant contact with children or otherwise have unrestricted access to children in any manner whatsoever.

2. An individual shall be immediately and automatically excluded from child care or any contact whatsoever with children, as described above, if the individual's criminal history includes:

(i) A criminal conviction or a no-contest or guilty plea; or any pending criminal action, including individuals subject to any warrant, indictment, presentment. etc.; or placement in a pretrial diversion; or,

(ii) A pending juvenile action or previous juvenile adjudication, which, if an adult, would constitute a criminal offense; and

(iii) Any of the circumstances in subparts (i) or (ii) above involves any of the following criminal offenses:

(I) Any offense (including a lesser included offense) involving the physical, sexual or emotional abuse or gross neglect of a child, or involving a threat to the health, safety or welfare of a child;

(II) Any offense (including a lesser included offense) involving violence or the threat of violence against another person; and/or

(III) Any offense (including a lesser included offense) involving the manufacture, sale, distribution or possession of any drug.

3. An individual shall also be immediately and automatically excluded from child care or from access in any manner whatsoever to the children in the care of the agency, if the individual:

(i) Reveals a prohibited or potentially prohibited criminal history on the Criminal History Disclosure Form; or

(ii) Is listed on the Department of Health's Vulnerable Persons Registry; and/or

(iii) Is known to the management or licensee of a child care agency as a perpetrator of child abuse or child sexual abuse or to have a prohibited criminal history, or who is identified to the child care agency's management or licensee by the Department of Human Services or by the Department of Children's Services as a validated perpetrator of abuse of a child based upon an investigation conducted by the Department of Children's Services or by the child protective services agency of any other state; or, who at anytime is identified by any person or entity to the child care agency's

(Rule 1240-04-03-.07, continued)

management or licensee and is confirmed by the Department of Human Services as having a prohibited criminal history.

4. Exclusion from driving duties. An individual with a prohibited history as set forth below shall be immediately and automatically excluded from providing driving duties on behalf of the child care agency if the individual:

(i) Has a pending criminal action (including warrants, indictments, presentments, etc.), is completing a pretrial diversion, or has been convicted of or pled guilty to any offense involving the use of a motor vehicle while under the influence of any intoxicant, which constitutes a violation of T.C.A. §§ 39-13-213; 55-10-101; 55-10-102 or 55-10-401; or

(ii) Has been convicted of or pled guilty to any felony involving the use of a motor vehicle while under the influence of any intoxicant. In such case, the individual shall not be employed or otherwise serve as a driver for a child care agency for a period of five (5) years from the date of the conviction or guilty plea.

5. Exclusions for Child Neglect. An individual who has been identified by the Department of Children's Services as having neglected a child based on an investigation conducted by that Department or any child protective services agency of any state, and who has not been criminally charged or convicted or pled guilty or no-contest as stated above, shall be supervised by another adult while providing care for children.

(b) The child care agency shall immediately review the results of the criminal background check and Vulnerable Persons Registry review upon receipt and shall immediately exclude any individual with a prohibited history as directed by the Department.

(c) Failure to exclude individuals with a criminal history or abuse or neglect finding.

Failure to immediately exclude any individual subject to exclusion or supervision pursuant to this subchapter or T.C.A. §71-3-507, as directed by the Department, may result in the immediate suspension, denial or revocation of the child care agency's license.

(11) Waivers from Exclusions Due to Criminal or Abuse or Neglect History.

(a) Any person who is excluded or whose license is denied based upon the results of the criminal history background review or based upon any other determination may request in writing to the Department's Director of Licensing within ten (10) calendar days of receiving notice of such exclusion or denial, a waiver from these automatic exclusion requirements.

(b) Excluded individuals, prior to receiving official notice of the exclusion or denial from the Department, may also make a written request for a waiver by letter or directly on the Department's Criminal History Disclosure Form.

(c) Requests for a waiver shall state the basis for the request, including any extenuating or mitigating circumstances that would, in the person's opinion, clearly warrant an exemption from the exclusion. Any documentary evidence may also be submitted with the request.

(d) Requests for waivers shall be heard by an advisory committee and reviewed by the Department in accordance with the provisions of T.C.A. §71-3-507.

(Rule 1240-04-03-.07, continued)

(e) Any person who is excluded from providing care or services to children under any provisions of this subchapter shall remain excluded pending the outcome of any exemption review and appeals.

(12) Supplemental Background Checks

(a) The Department may, at anytime, request that the criminal background or status on the Department of Health's Vulnerable Persons Registry of any individuals having access to children under any of the circumstances set forth in this subchapter be reviewed using the processes described above or in T.C.A. § 71-3-507. All other provisions applicable to any pre-employment or post-employment, residential or access status of any individual shall apply to any background review conducted pursuant to this paragraph (12).

(b) The employment status of persons for whom a post-employment criminal background check was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a child care agency for whom a criminal background check was conducted after license approval or after employment or assuming duties as a volunteer or subsititute, and who were not otherwise subject to a pre-status applicant background check and to the exclusionary provisions provided in this subchaper, shall be governed by the provisions of this subchapter and T.C.A. § 71-3-507.

Authority: *T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), and 71-3-507.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed April 22, 1992; effective June 6, 1992. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Withdrawal of new rule 1240-04-03-.07(4)(e) and (m)1. filed August 31, 1998. Amendment filed September 29, 2000; effective December 13, 2000. Stay of effective date filed December 8, 2000 by The House Government Operations Committee for subparts 3, 4, 11, 12, 13 and 14 of subparagraph (e) of paragraph (4). The new effective date for the these subparts is February 13, 2001. Amendment filed August 27, 2001; effective November 10, 2001. Amendment filed October 17, 2001; effective December 31, 2001. Amendment filed September 29, 2003; effective December 13, 2003. Repeal and new rule filed June 20, 2006; effective September 3, 2006.*

1240-04-03-.08 EQUIPMENT FOR CHILDREN.

(1) General.

(a) The manufacturer's safety instructions shall be followed for the use and/or installation of all indoor and outdoor equipment and appliances. Such instructions shall be retained and communicated to all appropriate staff.

(b) All indoor and outdoor equipment shall be well-made and safe. There shall be no dangerous angles, no sharp edges, splinters, protruding nails, nuts and bolts, heavy or hard swing seats, head entrapment spaces, no open S-hooks or pinch points, etc. within children's reach.

(c) Electrical cords on equipment for children shall be inaccessible to the children.

(d) Damaged or unsteady equipment shall be repaired or removed from the room or playground immediately.

(Rule 1240-04-03-.08, continued)

(e) Equipment shall be kept clean by washing frequently with soap and water.

(f) There shall be developmentally-appropriate equipment and furnishings for each age group in attendance.

(g) Individual lockers or cubbies, separate hooks and shelves or other containers, placed at children's reaching level, shall be provided for each child's belongings.

(h) In infant/toddler rooms, equipment and space shall be provided for climbing, crawling, and pulling without the restraint of playpens or cribs.

(2) Indoor Play Equipment.

(a) Pieces of equipment, such as television sets, bookcases, shelves and appliances, shall be secured or supported so that they will not fall or tip over.

(b) Sufficient indoor equipment, materials, and toys shall be available to:

1. Meet the active and quiet play needs of all children enrolled;

2. Provide a variety of developmentally appropriate activities so that each child has at least three (3) choices during play time; and

3. Adequately provide for all the activities required in the Program subchapter (1240-04-03-.09) of these rules.

(c) Toys, educational materials, and play materials shall be organized and displayed within children's reach so that they can select and return items independently.

(d) Toys and teaching aids that are small or that have small parts that can be inhaled or swallowed shall be inaccessible to infants and toddlers.

(3) Outdoor Play Equipment.

(a) There shall be developmentally appropriate outdoor play equipment for all children who are in care more than three (3) daylight hours.

(b) All outdoor play equipment and materials shall be sufficient in amount and variety so that children have an opportunity to participate in a minimum of at least three (3) different types of play using either stationary equipment and/or portable play materials.

(c) All outdoor play equipment shall be placed to avoid injury:

1. Fall zones shall extend six (6) feet away from the perimeter of climbing equipment and away from retainer structures, fences, and other equipment and out of children's traffic paths.

2. Agencies with a playground continually licensed since prior to January 1, 2002, shall be permitted to maintain fall zones of at least four (4) feet; provided, however that any expansion or addition shall comply with the six (6) foot fall zone required by part 1 above.

(d) Anchorage of Equipment.

(Rule 1240-04-03-.08, continued)

1. Supports for climbers, swings, and other heavy equipment that could cause injury if toppled shall be securely anchored to the ground, even if the equipment is designed to be portable.

2. Portable equipment shall otherwise be anchored to the ground if the height and weight of the equipment exceeds the height and weight of the smallest child who will use the equipment.

(e) An acceptable resilient surfacing material, as recognized by the Department, shall cover fall zones in accordance with the following chart:

Resilient Surfacing Material	Minimum Acceptable Depth
Wood chips or Mulch	Six (6) inches
Double Shredded Bark	Six (6) inches
Pea Gravel	Six (6) inches
Medium Gravel	Eight (8) inches
Fine Sand	Eight (8) inches
Course Sand	Eight (8) inches
Artificial (Manufactured) Surface	As Recommended by Manufacturer

(4) Naptime and Sleeping Equipment.

(a) Napping or sleeping equipment shall be available for each preschool child who is in care for six (6) hours or more.

(b) A quiet rest area and cots or mats shall be available for all children who want to rest or nap; provided, however, that no child shall be forced to nap.

(c) No child shall be forced to stay on a cot or on a mat for an extended period of time.

(d) All nap/sleep equipment shall be clean and in good repair, and shall comply with the following requirements:

1. Individual cots or two-inch (2") mats shall be provided for children ages twelve (12) months through five (5) years.

2. Individual beds or cots shall be provided for children sleeping for extended periods of more than two and one half (2 1/2) hours, such as during nighttime care.

3. Each child under twelve (12) months shall have an individual, free-standing, crib at least twenty-two inches (22") x thirty-six inches (36") with an open top.

4. Mattresses and foam pads shall be upholstered with a safe, waterproof material.

5. A clean sheet or towel shall be used to cover whatever the child sleeps on.

6. A clean coverlet shall be available to each child.

7. Soiled sheets and coverlets shall be replaced immediately.

8. For health and safety reasons each crib, cot, bed or mat shall be labeled to assure that each child naps on his own bedding.

(Rule 1240-04-03-.08, continued)

Authority: *T.C.A. §§4-5-201 et seq., 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2).* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed April 22, 1992; effective June 6, 1992. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Repeal and new rule filed June 20, 2006; effective September 3, 2006.*

1240-04-03-.09 PROGRAM.

(1) Schedule and Routines.

(a) Routines such as snacks, meals, and rest shall occur at approximately the same time each day.

(b) There shall be a balance between child's choice and adult-directed activities.

(c) There shall be alternating periods of vigorous activity and quiet play or rest throughout the day.

(d) Special consideration shall be given to providing early morning and late afternoon activities that will help children cope with possible unhappiness over separation from parents and end-of-day fatigue.

(e) Each caregiver shall be responsible for providing consistent care for a specific infant(s)/toddler(s). "Consistent care" includes, but is not limited to: planning and record-keeping for the child, communication, general interaction with and routine care of the child.

(f) The caregiver(s) shall give individual attention to each child, in addition to the time devoted to diapering and feeding.

(g) Children shall not be left in restraining devices such as swings, car seats, or high chairs (in excess of thirty (30) minutes). Stimulation shall be provided to children in those settings.

(h) Opportunities shall be provided for children to interact with one another.

(i) Opportunities shall be provided for children to be by themselves to play alone or do homework, if they choose, in a small, quiet area away from other activities.

(j) Children ten (10) years and older shall be encouraged to participate in the planning of their own schedules and activities.

(k) Extended Care. Children shall be given the same opportunities for developmentally appropriate activities during extended care hours as during conventional care hours.

(2) Television, Radio, Videos, and Computers.

(a) Programs, movies, computer games, and music with violent or adult content (including "soap operas") shall not be permitted in children's presence.

(b) Programs/movies/computer games shall be developmentally appropriate for the viewers.

(Rule 1240-04-03-.09, continued)

(c) Parents shall be informed of movie showings and video/computer games and their ratings.

(d) Videos, movies, and video/computer games must be previewed by staff for content.

(e) If television, video tapes/DVDs, video/computer games, and/or movies are used, they shall be limited to:

1. Two (2) hours per day, or the length of a movie if more than two (2) hours in the case of school-agers.

2. Extended Care. Television viewing by children during night care between 6 p.m. and 6 a.m., shall be limited to one (1) hour.

(f) All programs shall be designed for children's education and/or enjoyment.

(g) Up to one (1) additional hour per day, but not more than three (3) days per week, can be added to viewing time for computer use.

(h) School-age children may use computers for completion of homework with no time limitations.

(i) Computers, if used, shall be located in view of a caregiver for monitoring purposes.

(j) Computers which allow internet access by the children shall be equipped with monitoring or filtering software, or an analogous software protection, which limits children's access to inappropriate web sites, e-mail, and instant messages.

(k) Other activity choices shall be available to children during television/movie viewing or computer use.

(3) Outdoor Play and Playground Routines.

(a) An opportunity for outdoor play shall be extended to children of all ages who are in care more than three (3) daylight hours; provided, however, for agencies where outdoor play is prohibitive or dangerous, as determined in the discretion of the Department, unoccupied indoor space providing fifty (50) square feet per child is acceptable.

(b) Children shall be allowed to experience a variety of weather conditions:

1. Children shall be provided an opportunity for outdoor play when the temperature range, after adjustment for wind chill and heat index, is between thirty-two (32) degrees and ninety-five (95) degrees Fahrenheit and not raining;

2. Children shall be properly dressed and the length of time outside adjusted according to the conditions and the age of the children.

(c) Caregivers shall be alert for signs of dehydration, heat stroke, frostbite, etc., dependent upon the season.

(d) Each agency shall develop a set of age appropriate playground rules that uses positive language. Rules shall be posted in each play area.

(4) Reclining Rest Period:

(Rule 1240-04-03-.09, continued)

(a) A reclining rest period of at least one (1) hour shall be provided for all preschool children in care for six (6) hours or more. Extended Care: Children shall be allowed reasonable rest time as indicated in the extended night care schedule.

(b) Each child shall be allowed to form his or her own patterns of sleep.

(c) A child shall not be left in a crib or on a cot for an unreasonable length of time.

(5) Behavior Management and Guidance.

(a) Attention spans and skills of children shall be considered so that caregivers do not require children to engage in developmentally inappropriate behavior.

(b) Discipline shall be reasonable, appropriate, and in terms the children can understand.

(c) Discipline that is potentially shaming, humiliating, frightening, verbally abusive, or injurious to children shall not be used.

(d) Discipline shall not be related to food, rest, or toileting.

(e) Spanking or any other type of corporal punishment is prohibited. ("Corporal punishment" is the infliction of bodily pain as a penalty for behavior of which the punisher disapproves.)

(f) Caregivers shall not focus solely upon unacceptable behavior.

(g) Praise and encouragement of good behavior shall be used.

(h) Efforts shall be made to help children develop a feeling of self-worth beginning at infancy and continuing throughout the school-age years.

(i) When a child is engaging in unacceptable behavior the caregiver shall, prior to disciplining the child, first distract the child's attention and substitute a desirable activity.

(j) Time out shall be reasonable and developmentally appropriate.

1. Time out shall take place in an appropriate location within sight of the caregiver.

2. The length of each time out session shall be based on the age of the child and shall not exceed one (1) minute per each year of age of the child; provided, however, that in no event shall any child below the age of thirty-six (36) months be placed in time-out for more than three (3) minutes, and no child between thirty-six (36) months and sixty (60) months of age shall be placed in time-out for longer than five (5) minutes.

(6) Physical Care-Toilet.

(a) Toilet training shall never be started until a child has been in the child care setting long enough to feel comfortable.

(b) Toilet training shall not be started until a child is able to understand, to do what is asked of them, and to communicate their need to use the bathroom.

(c) Children shall not be made to sit on the potty or toilet for more than five (5) minutes.

(Rule 1240-04-03-.09, continued)

(d) Children shall be diapered or cleaned immediately in a safe, sanitary manner.

(7) Educational Activities.

(a) Activities shall be based on developmentally appropriate educational practices.

(b) A daily program shall provide opportunities for learning, self-expression, and participation in a variety of creative activities such as art, music, literature, dramatic play, science, and health.

(c) Staff shall plan ahead for developmentally appropriate activities; written lesson plans shall be provided for children of each age group.

(d) Indoor physical activities, requiring children to use both large and small muscles, shall be provided for children of each age group.

(e) For infants/toddlers, a portion of the day shall include floor time for activities that develop physical, social, language and cognitive skills.

(f) Because of the importance of language development and communication skills infants and toddlers shall have language experiences with adults on a daily basis.

(g) Personal Safety Curriculum.

1. For ages three (3) through school-age, a curriculum shall be offered that shall include instruction, at least once a year, in personal safety.

2. Personal Safety Curriculum Components and Guidelines.

(i) The personal safety curriculum shall include a Department-recognized component for the prevention of child abuse, including, for children four (4) years of age and older, a child sexual abuse prevention component.

(ii) The curriculum shall be based upon curriculum guidelines provided by the Department to the child care provider in any suitable format. The child care provider may choose terminology and instructional methods for this curriculum with a goal of providing clear, effective and appropriate instruction to the children in personal safety, including the prevention of all forms of child abuse.

3. Personal Safety Instruction Requirements for School-Age Children.

(i) For school-age children, the curriculum shall include instruction for reporting physical, sexual or verbal abuse.

(ii) Children of school-age shall not be required to receive personal safety instruction from the child care agency if they annually receive personal safety instruction as required by this subparagraph (g) in the curriculum of their local public education agency, or, if they receive such instruction in any other educational setting, as approved, in either circumstance, by the Department.

(iii) Documentation of Personal Safety Instruction in Educational Settings.

(I) Written documentation, in a form and manner approved by the Department, verifying that annual personal safety instruction as

(Rule 1240-04-03-.09, continued)

required by this subparagraph (g) is being provided in a public educational setting to each child enrolled in the child care agency, shall be maintained on file with the Department.

(II) For children who do not attend public schools, the child care provider shall secure and maintain documentation, in a form and manner approved by the Department, verifying that each school-age child enrolled in the child care agency is receiving annual personal safety instruction as required by this subparagraph (g).

4. Beginning October 1, 2008, the personal safety curriculum used by a child care agency shall be made available by the child care agency to parents and legal guardians for review. The child care agency shall use a standard notification form developed by the Department that will be provided to the parents or legal guardians by the child care agency to confirm that the parents/guardians have been notified of the curriculum to be used and of their opportunity to review the personal safety curriculum.

5. The record of each enrolled child shall include a copy of the signed notification form acknowledging that parents/legal guardians have been provided an opportunity to review the agency's personal safety curriculum, and have been notified of the sexual abuse/personal safety curriculum for their child.

6. If parents/legal guardians have questions regarding the personal safety curriculum, a representative of the child care agency shall meet with the parents/legal guardians to discuss the curriculum.

(8) Extended Care. Agencies providing nighttime care shall meet the following additional requirements:

(a) Calming activities preceding bedtime shall be provided, e.g., listening to a story or soft music. In addition, individual/adult attention shall be provided as needed.

(b) Routine personal hygiene shall be encouraged and supervised. A plan shall be made with parents for brushing teeth, baths, bed dress, etc.

Authority: *T.C.A. §§4-5-201 et seq., 4-5-202; 4-5-209, 71-1-105(5), 71-3-501 et seq., 71-3-502, 71-3-502(a)(2), 71-3-502(l) and 2008 Tenn. Pub. Acts 1032.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998, new effective date October 31, 1998. Repeal and new rule filed June 20, 2006; effective September 3, 2006. Public necessity rule filed October 1, 2008; effective through March 15, 2009. Amendment filed December 29, 2008; effective March 14, 2009.*

1240-04-03-.10 HEALTH AND SAFETY.

(1) Children's health records shall be maintained as directed under subchapter 1240-04-03-.05.

(2) Children shall be immunized in accordance with current Department of Health guidelines unless exempted pursuant to 1240-04-03-.05. The agency shall maintain written policies for the disenrollment of children who fail to comply with Department of Health immunization guidelines in a timely manner.

(Rule 1240-04-03-.10, continued)

(3) Children shall be checked upon arrival and observed for signs of communicable disease during the day.

(4) A child's temperature must be taken using a non-invasive method unless otherwise prescribed by a physician.

(5) Symptomatic children shall be removed from the group until parents are contacted and health issues are resolved.

(6) Universal precautions, as defined by the Department of Health, shall be followed when handling or cleaning bodily fluids.

(7) First Aid.

(a) A standard first aid kit (for example, one approved by the American Red Cross) shall be available to all staff, and all staff shall be familiar with its contents and use.

(b) At least one staff member who has current certification or equivalent in first aid from a certifying organization recognized by the Department shall be on duty at all times. The course shall be a minimum of three (3) hours and shall be taught by a certified first aid instructor. Extended Care: All staff shall have certification or equivalent in first aid from a certifying organization recognized by the Department.

(c) Current and comprehensive first aid information shall be available to all staff who interact with children and the agency shall provide periodic training and updates on basic first aid and the use of the first aid kit.

(8) Emergency Treatment.

(a) Cardiopulmonary Resuscitation (CPR) Requirements.

1. At least one staff member on duty shall hold current certification in Infant/Pediatric Cardiopulmonary Resuscitation (CPR) from the American Red Cross, the American Heart Association, or other certifying organization, as recognized by the Department.

2. Extended Care. All staff shall be certified in Infant/Pediatric Cardiopulmonary Resuscitation (CPR) from a certifying organization recognized by the Department.

(b) The initial CPR course shall be a minimum of four (4) hours and shall be taught by an individual currently certified, as recognized by the Department, to provide CPR instruction.

(c) When school-age children are present, and/or in a school-age only program, at least one staff member shall hold current certification, pursuant to the requirements listed in subparagraphs (a) and (b) above, in Adult CPR. Extended Care: All staff shall be certified pursuant to the requirements listed in subparagraphs (a) and (b) above, in adult CPR.

(9) Preparation for Emergencies.

(a) The agency, in consultation with appropriate local authorities, shall develop a written plan to protect children in the event of disaster such as, but not limited to, fire, tornado, earthquake, chemical spills, floods, etc. and shall inform parents of the plan.

(Rule 1240-04-03-.10, continued)

(b) The agency shall implement these emergency procedures through timely practice drills to meet local regulations and local emergency services plans and shall maintain documentation of drills for one year. Extended Care: At least one (1) of these drills shall be conducted during extended care hours.

(c) The following emergency telephone numbers shall be posted next to all telephones and be readily available to any staff member:

1. Fire Department;

2. Police Department/Sheriff;

3. Nearest Hospital Emergency Room;

4. Child Abuse Hotline;

5. Local Emergency Management Agency;

6. Ambulance or Rescue Squad; and

7. Poison Control Center.

(d) If 911 or a similar generic number is operable in the community, it shall be posted in addition to the above numbers.

(e) All home/work contact numbers for parents shall be readily available to all staff.

(10) Contagious Conditions:

(a) Impetigo and diagnosed strep shall be treated appropriately for twenty-four (24) hours prior to readmission of the child to the center.

(b) Children diagnosed with scabies or lice shall have proof of treatment and be free of nits prior to readmission.

(c) The agency may not provide care and/or isolation for a child with a contagious condition unless written instructions are obtained from a licensed physician or certified health care provider.

(d) Parents of every child enrolled shall be notified immediately if one of the following communicable diseases has been introduced into the agency:

1. Hepatitis A;

2. Food borne outbreaks (food poisoning);

3. Salmonella;

4. Shigella;

5. Measles, mumps, and/or rubella;

6. Pertussis;

7. Polio;

(Rule 1240-04-03-.10, continued)

8. Haemophilus influenza type B;

9. Menigococcal meningitis; and

10. Any other illness identified by the state or local Department of Health.

(e) The agency shall report the occurrence of any of the above diseases to the local health department as soon as possible, but no later than the end of the day in which it occurred.

(11) Notification to Parents of Accidents, Injuries, Illnesses.

(a) Serious injuries, including but not limited to, massive bleeding, broken bones, head injuries, possible internal injury, etc. shall be reported to the parent immediately to arrange for emergency treatment.

(b) Signs of serious illness, including but not limited to, high temperature, disorientation, coughing, vomiting or diarrhea with blood present, severe difficulty breathing, seizure, etc. shall be reported to the parent immediately to arrange for emergency treatment.

(c) Accidents, injuries, and every sign of illnesses shall be reported, or a reasonable attempt made to report, to the parent as soon as possible, but no later than the child's release to the parent or authorized representative.

(d) In no event shall the agency delay seeking emergency treatment due to a delay in making contact with the parent.

(12) Medications.

(a) All medications, prescribed and non-prescribed, shall be received from the parent by a designated staff person or management level staff person.

(b) An alternate staff person shall be available to administer medication in the event the designated staff person is absent.

(c) The staff person designated in subparagraph (a) above shall document verification of the following:

1. The parent's written authorization to administer each medication;

2. That the medicines or drugs are in the original prescription container, are not out of date, and are labeled with the child's name;

3. The specific dosage and times the medication is to be administered to the child; and

4. That the parent has provided the agency with instructions on the methods of administration.

(d) The following documentation of administration shall be maintained in the child's file and a copy provided to the parent:

1. Times medications administered;

2. Noticeable side effects; and

(Rule 1240-04-03-.10, continued)

3. Name of staff person administering medication to child.

(e) The parent shall sign documentation verifying that:

1. The administration information required by subparagraph (c) above was received; and

2. Unused medication was returned to the parent.

(f) Medication shall not be handled by children. Exception: A physician's authorization for the current school year shall be on file for school-age children who must have self-administered medication.

(g) Medication shall never be administered in bottles or infant feeders unless authorized by a physician.

(h) Accessibility of Medications.

1. All medications, prescription and non-prescription, whether requiring refrigeration or not, shall be stored in a locked compartment or container.

2. If medications requiring refrigeration are kept in a refrigerator used for food storage, the medicine shall be put in a leak-proof locked container.

3. Keys for these compartments/containers shall be inaccessible to children.

4. Exception for Emergency Administration. Medication requiring emergency administration, as directed by the physician, nurse practitioner or physician's assistant, e.g., "EpiPen", asthma inhaler, etc., may be kept in an unlocked container that is inaccessible to children.

(i) Unused medications shall be returned to the parent.

(13) Prohibited Practices and Products.

(a) Smoking.

1. Smoking is not permitted in the presence of children.

2. Under state law, smoking in child care centers that are not private homes is restricted within a child care facility to areas where children are not permitted access, and parents must be given notice that the facility has a smoking area.

(i) No smoking signs must be posted conspicuously within the facility as provided by state law.

(ii) Federal law prohibits smoking in any part of a child care facility that is not a private residence if the facility is constructed, operated, or maintained with Federal funds.

(b) Alcoholic Beverages.

1. The use of alcoholic beverages is not permitted in child care centers during the hours of operation of the center.

(Rule 1240-04-03-.10, continued)

2. Alcoholic beverages shall not be located in the designated child care space when children are present.

(c) Illegal or inappropriate activities on the premises, property, or in a vehicle on the facility property or used for transportation of children enrolled in the child care center, or any activity that otherwise places children at risk are prohibited.

(d) Firearms shall not be on the premises of a child care agency, in any vehicle used to transport children or in the presence of a child. Exception: In a private residence, firearms and other deadly weapons or tools on the premises shall be secured in such a way that they are inaccessible to children.

(e) Kitchen knives and other potentially dangerous utensils or tools shall be secured so that they are inaccessible to children.

(f) Staff's personal belongings (such as, but not limited to, contents of purses, backpacks, coat pockets, diaper bags, etc.) shall be inaccessible to children at all times.

(14) Diapering.

(a) Children shall be diapered/changed and cleaned immediately when wet or soiled.

(b) For the protection of children and adults, the Centers for Disease Control guidelines for handwashing and diapering procedures shall be followed.

(c) The diapering area and/or toilet training area shall be located near a handwashing lavatory and shall be located in a separate area from the food preparation area.

(d) All diapering surfaces shall be off the floor, nonporous, and shall be sanitized using the following cleaning solutions for general cleaning and sanitizing purposes:

1. For general cleaning and sanitation purposes, a fresh solution of one quarter (1/4) cup chlorine bleach to one gallon of water (or one (1) tablespoon chlorine bleach to (1) quart of water) must be made daily.

2. Substitutions for the bleach solution required in part 1 above, that are approved for the child care setting by the Department of Health are permissible.

3. The solution required in part 1 above is not appropriate for items associated with food preparation or for items that children frequently place in their mouths, and the Health Department does not permit the use of higher concentration than these in food preparation areas. Specific jurisdictions may have even more stringent requirements; therefore, the local health department should be consulted.

(e) A tightly covered container with plastic liner shall be used for diaper disposal and shall be inaccessible to children. This container shall be emptied by closing the liner and disposing of it in an outside receptacle.

(f) Special Needs Children.

1. If older children are enrolled who lack independent toileting abilities, rules regarding diapering of preschool children shall apply.

2. Children shall be changed in a location designated for that purpose and which provides privacy from other children and adults.

(Rule 1240-04-03-.10, continued)

3. School-age children may be diapered on the floor on a nonporous, washable diapering surface that adequately protects the floor from contamination.

4. The floor beneath the diapering surface shall be immediately cleaned after each diapering.

5. The diapering area shall be located near a handwashing lavatory. This area shall be in a separate location from the food preparation area.

(15) Naptime Care.

(a) In order to avoid the spread of airborne diseases children shall be positioned on mats in a face to feet alternating pattern.

(b) Spacing of cots, cribs, and mats shall allow sufficient space to walk between them.

(16) Tuberculosis Screening.

(a) Tuberculosis (TB) screening prior to on-going contact with children is required for any individual who:

1. Was born in a country other than the United States, Canada, Western Europe, Australia, New Zealand, and Japan;

2. Has a weakened immune system (Human Immunodeficiency Virus [HIV], cancer, taking chemotherapy drugs, etc.); or

3. Has been recently exposed to tuberculosis.

(b) Any individual who has had a cough for three (3) weeks or longer shall be evaluated by a physician for tuberculosis.

(c) Future screening is not required for individuals who have been treated for TB or latent TB infection unless persistent pulmonary symptoms develop or there is contact with tuberculosis.

(d) All children born in countries other than the United States, Canada, Western Europe, Australia, New Zealand, and Japan shall present evidence of a tuberculin skin test performed in the United States at any time after twelve (12) months of age. Any child with a positive tuberculin skin test shall be referred to a physician for evaluation. After the initial evaluation, future periodic screening is not required unless the child develops persistent pulmonary symptoms or there is contact with tuberculosis.

(17) Staff Health.

(a) Staff health records shall be maintained as directed under subchapter 1240-04-03-.05.

(b) A statement of mental or emotional health shall be obtained from a psychiatrist or clinical psychologist when deemed necessary by the Department.

(18) Duty to Report Child Abuse and Neglect.

(a) Duty to Report.

(Rule 1240-04-03-.10, continued)

1. Every operator, owner, licensee, director, or staff member of, or substitute staff member or volunteer in a child care agency licensed by the Department of Human Services is individually responsible, and is required by Tennessee Code Annotated, §§ 37-1-403 and 37-1-605, to immediately report any reasonable suspicion of child abuse or neglect to the Department of Children's Services, local law enforcement or the judge of the juvenile court in the county of the child's residence.

2. Determining Suspicion of Abuse/Neglect.

   (i) Due to both the immediate risk to children's safety, as well as to the extreme risk of destroying or losing critical evidence, the agency and/or individual staff shall not delay reporting possible abuse or neglect in an attempt to conduct an investigation to verify the abuse/neglect allegations.

   (ii) In determining a reasonable suspicion for purposes of reporting, the agency shall limit questioning of the child and may make only the most basic inquiries necessary to determine if any reasonable possibility of abuse or neglect exists.

   (iii) The agency does not have to, and shall not attempt to, validate (or "prove") the allegation prior to making a report as required by this paragraph (18). A final determination of the validity of the report of abuse or neglect shall be made exclusively by the Department of Children's Services and/or by law enforcement based upon the report by the child care agency's staff.

3. Each center shall develop procedures, approved by the Department of Human Services in conformity with DCS policy, for staff to follow to report suspected abuse and neglect.

4. Any statement from a child reasonably indicating abuse/neglect of that child or another child or any evidence of abuse/neglect observed on a child shall be immediately reported by staff to the Department of Children's Services in a manner specified by that department, to local law enforcement or to the judge of the juvenile court in the county of the child's residence.

(b) The telephone numbers of the Department of Children's Services, the local law enforcement or the juvenile judge of the county of the child's residence for staff to call to report suspected abuse and neglect shall be posted in a conspicuous location by each telephone.

(c) Prohibited Procedures for Reporting Suspected Child Abuse/Neglect/Penalties.

1. The agency shall not develop or implement policy that inhibits, interferes with or otherwise affects the duty of any staff, including substitutes and volunteers, to report suspected abuse or neglect of a child as required by subparagraph (a) above and Tennessee Code Annotated, §§ 37-1-403 and 605, and shall not otherwise directly or indirectly require staff to report to the agency management or seek the approval of agency management prior to any individual staff member reporting the suspected abuse or neglect.

2. A report of suspected child abuse or neglect of a child enrolled in the child care agency by the operator, owner, licensee, director or staff member of, or substitute staff member or volunteer in, a child care agency shall not be made to any other entities or persons, including, but not limited to, hospitals, physicians, or educational institutions as an alternative to or substitute for the reporting

(Rule 1240-04-03-.10, continued)

requirements to the persons or entities specifically listed in subparagraph (a) above.

3. The operator, owner, licensee, director, or staff member of, or substitute staff member or volunteer in, the child care agency shall not suggest to, advise or direct a parent or caretaker of a child enrolled in the child care agency to make a report of suspected child abuse or neglect regarding that parent's or caretaker's own child who is enrolled in the child care agency as a means of fulfilling the duty of the operator, owner, licensee, director, or staff member of, or substitute staff member or volunteer in, the child care agency to report child abuse or neglect as required by Tennessee Code Annotated, §§ 37-1-403 and 37-1-605.

4. Because the statutory requirements of Tennessee Code Annotated, §§ 37-1-403 and 37-1-605 do not authorize the prohibited procedures described in parts 1-3 of this subparagraph (c) to fulfill the statutory duty of any person, and especially the duty of those licensed by the State of Tennessee to care for and protect vulnerable children, to make timely and effective reports of child abuse and neglect to appropriate investigative agencies, and because the prohibited procedures described in parts 1-3 of this subparagraph (c) are completely unreliable procedures to ensure that the appropriate authorities are able to timely and satisfactorily investigate suspected child abuse or neglect, any action that does not comply in all respects with subparagraph (a) above, will not fulfill the statutory duty to report child abuse or neglect and the licensing requirements of this Chapter.

5. Failure to Report Properly Is Grounds for Suspension, Denial or Revocation of the Agency License.

   (i) Failure to make the reports required by subparagraph (a) above or the use of the prohibited methods described in parts 1-3 of this subparagraph (c) as an attempt to fulfill the duty to report suspected child abuse or neglect, for children in the care of the child care agency are, by themselves, grounds for suspension, denial or revocation of the agency's license.

   (ii) If the facts establish by a preponderance of the evidence that there has not been strict compliance with the requirements of subparagraph (a) above or that the prohibited procedures described in parts 1-3 of this subparagraph (c) have been utilized as an alternative means of fulfilling the requirements of subparagraph (a) above, these circumstances shall create a rebuttable presumption for the Administrative Law Judge and the Child Care Agency Board of Review that the duty to report child abuse or neglect has not been fulfilled, and this ground for suspension, denial, or revocation of the agency's license by the Department of Human Services shall be sustained unless such presumption is rebutted by a preponderance of the evidence.

(d) Agency Duties During Investigations of Child Abuse and Neglect; Custodial Authority of Children.

1. Every operator, owner, licensee, director, or staff member of, or substitute staff member or volunteer in, a child care agency licensed by the Department of Human Services shall fully cooperate with all agencies involved in the investigation of child abuse or neglect, and with the Department of Human Services in efforts to provide protection for children enrolled in the child care agency.

2. The agency shall provide access to records of children and staff.

(Rule 1240-04-03-.10, continued)

3. The agency shall allow appropriate investigators to interview children and staff.

4. The agency shall not interfere with a child abuse and neglect investigation.

5. The agency shall protect the child by requesting the investigator's identification.

6. The agency shall maintain confidentiality of the investigation and shall not disclose the investigation or details of the investigation except as required to carry out procedures for the protection of children or as otherwise directed by the Department of Children's Services, law enforcement or the Department of Human Services.

(e) Upon notification of a pending abuse/neglect investigation of any agency staff member or resident of a home-based center, the agency shall enter into a Safety Plan with the Department regarding the individual's access to the agency and to children in the care of the agency.

(f) All agency staff, including non-caregiving staff, shall receive training every six (6) months regarding procedures to report child abuse and neglect.

(19) A parent shall be notified before the child leaves the premises except in emergency circumstances, except that an authorized investigator with the Department of Children's Services or local law enforcement may take a child off the premises of the agency if he/she has obtained custody of the child as follows:

(a) Voluntary placement agreement with the parent;

(b) Court order;

(c) Emergency assumption of custody under T.C.A. §37-1-113 without parental permission;

(d) If the child's parent or legal guardian is present and approves; or

(e) In conjunction with investigative procedures under the child abuse laws.

Authority: *T.C.A. §§4-5-201 et seq., 37-1-113, 37-1-401 et seq., 37-1-403, 37-1-601 et seq., 37-1-605, 39-17-1601 et seq., 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), and 71-3-508; and 20 U.S.C. § 6081 et seq.* ***Administrative History:*** *Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed April 22, 1992; effective June 6, 1992. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Amendment filed November 21, 2002; effective February 4, 2003. Amendment by Acts of 2003, Public Chapter 412, §§1(c) and 3 filed June 25, 2003; effective July 1, 2003. Amendment filed September 29, 2003; effective December 13, 2003. Amendment filed October 18, 2004; effective January 1, 2005. Amendment filed August 3, 2005; effective October 17, 2005. Repeal and new rule filed June 20, 2006; effective September 3, 2006.*

1240-04-03-.11 FOOD.

(1) Nutritional Needs.

(Rule 1240-04-03-.11, continued)

(a) If the agency provides meals, the agency shall provide developmentally appropriate meals, snacks, and drinks for each child that are of sufficient proportions and nutritional value to meet each child's health needs in accordance with the following minimum requirements:

1. For children in care at least four (4) hours, one (1) snack shall be provided, unless the four (4) hour period covers a normal meal hour, in which case a meal shall be served; provided, however that, if the child is fed their meal at home or in school the child shall be served two (2) snacks in lieu of a meal.

2. Children in care five (5) to six (6) hours shall be provided one (1) meal and one (1) or two (2) snacks; provided, however that, if the child is fed their meal at home or in school the child shall be served two (2) snacks in lieu of a meal.

3. Children in care seven (7) to ten (10) hours shall be provided one (1) meal and one (1) or two (2) snacks.

4. Children in care longer than ten (10) hours shall be provided two (2) complete meals and one (1) or two (2) snacks.

5. A meal shall be offered to children who arrive before 7:00 a.m. and have not had breakfast at home.

6. Extended Care. For extended night care children, meal and snack service will not apply while children are asleep, but snacks will be offered if the child awakens and indicates hunger.

(b) Appropriate foods shall be encouraged; highly inappropriate foods, e.g. foods high in sugar and/or fat content, but containing low nutritional value, shall be discouraged.

(c) Powdered milks shall be used only in a cooked food product.

(d) All special needs diets shall be prepared as prescribed by a physician or by the written instructions of the parent.

(e) In order for parents to be aware of the food their children are receiving the week's menus shall be planned and posted by the first day of each week and remain posted throughout the week.

1. These menus shall be followed, although reasonable substitutions are permissible, if the substituted food contains the same nutrients.

2. Any change shall be documented in advance of the meal.

(f) Food shall not be forced on or withheld from children.

(g) Food as Behavior Management.

1. Foods served as part of the meal/supplement pattern shall not be used as reward; nor shall food be used or withheld as a form of discipline.

2. Desserts and sweets shall not be used as rewards or a form of discipline.

(h) New foods shall be introduced to infants and toddlers one at a time over a five (5) to seven (7) day period with parent's approval.

(Rule 1240-04-03-.11, continued)

(i) The feeding schedule for infants shall be in accordance with the child's need rather than according to the hour.

(j) Staff shall support and facilitate a parent's decision to continue breast feeding.

(k) Parents and caregivers shall work together when weaning an infant to ensure consistency in the weaning process. Weaning shall be delayed until after an infant adjusts to group care.

(l) Children shall not be permitted to carry a bottle with them throughout the day.

(2) Meal Service.

(a) Caregivers and children shall wash their hands with soap and water.

(b) High chairs and tables on which food is prepared and served shall be washed with soap and water and sanitized prior to and after snacks and meals.

(c) Floors under tables and high chairs on which food is served shall be swept and/or vacuumed after each meal and cleaned as needed.

(d) Dishes and Utensils.

1. Napkins, individual forks and/or spoons shall be provided for children who feed themselves.

2. Individual dishes as necessary for the type of feeding shall be provided.

3. Routine food service dishes, utensils, and bottles shall be break-resistant.

(e) Due to the extreme risk of choking, solid foods (including cereal) shall not be given in bottles or with infant feeders to children with normal eating abilities unless authorized by a physician. Violation of this rule may result in suspension, revocation or denial of the agency's ability under its license to provide infant care.

(f) To avoid choking, foods shall be appropriate for the eating and chewing abilities of children. Hotdogs, if served to preschool children, shall be finely chopped or quartered lengthwise because they swell if trapped in a child's throat.

(g) At mealtime, children shall be seated at tables and chairs of appropriate size, and adults shall sit with them.

(h) Formula and Food Brought from Home:

1. All formulas and food brought from home shall be labeled with the child's name.

2. Milk shall be placed immediately in the refrigerator.

3. Once milk has been warmed, it shall not be re-warmed or returned to the refrigerator.

4. For optimum digestion, formula is to be served at body temperature.

5. Frozen breast milk shall be dated when expressed.

6. All formulas remaining in bottles after feeding shall be discarded.

(Rule 1240-04-03-.11, continued)

(i) Microwaves, Bottle Warmers, and Crock Pots. In order to prevent scald and splash burns:

1. Microwave ovens, bottle warming devices, and crock pots, including cords, shall not be accessible to preschool children.

2. School-age children shall use microwaves only under direct supervision.

3. Children shall never be held while removing a bottle from a crock pot or warming device.

4. The "splash zone" area immediately surrounding microwaves, crock pots and warming devices shall be kept inaccessible to children at all times.

5. All crock pots, bottle warmers and other warming devices shall be maintained at the device's lowest available temperature setting.

6. Crock pots and bottle warming devices shall be secured in such a manner as to prevent them from tipping over, splashing or spilling.

7. Bottled breast milk, infant bottles, and formula shall not be heated in a microwave oven.

8. To prevent scalding, liquid and solid foods heated in a microwave shall be carefully checked for "hot spots" prior to serving.

(j) Previously opened baby food jars shall not be accepted in the center. If food is fed directly from the jar by the caregiver, the jar shall be used for only one feeding.

(k) Infants shall be held while being fed as long as they are unable to sit in a high chair, an infant seat, or at the table.

(l) To avoid the risk of serious injury or choking, children shall always be restrained in the high chair manufacturer's restraint device while sitting in a high chair. Children who are too small or are too large to be restrained using the manufacturer's restraint device shall not be placed in a high chair.

(m) Bottles shall not be propped, and a child shall not be given a bottle while lying flat.

(n) When children are capable of using a high chair, they shall be allowed to do so and to experiment with food, with feeding themselves, and to eat with fingers or a spoon.

(o) Children shall never be left without adult supervision while eating.

(3) Food Storage.

(a) Potentially hazardous foods requiring cold storage shall be maintained at 45 degrees F or below, and accurate thermometers for measurement of the food temperature shall be kept in the refrigerators where such food is stored.

(b) Potentially hazardous food requiring hot storage shall be maintained at an internal temperature of 140 degrees F or above.

(c) Frozen foods shall be maintained at a temperature of 0 degrees F or below.

(Rule 1240-04-03-.11, continued)

(d) Thermometers shall be placed in all freezers and all other cold storage equipment.

(e) All dry food supplies shall be stored in closed containers. These foods shall be stored in a manner to prevent possible contamination and to allow for proper cleaning of the storage area. Containers of food shall be stored a minimum of six inches above the floor or on movable dollies.

(f) All food shall be protected from contamination during storage, preparation, transportation, and serving.

(g) No poisonous or toxic materials except those required for sanitization purposes may be used or stored in a food-service area of a facility.

(4) Food Sanitation.

(a) Home canned food and raw milk are prohibited.

(b) Raw fruits and vegetables shall be washed before use.

(c) All eating and drinking utensils shall be thoroughly cleaned and sanitized after each use with the exception of single-service utensils which shall be discarded following use.

(d) Single-service articles shall be made from nontoxic materials and shall be stored, handled, and dispensed in a sanitary manner.

(e) All utensils and food-contact surfaces or equipment used in the preparation, transportation, service, display, or storage of potentially hazardous food shall be thoroughly cleaned and sanitized prior to and after each use.

(f) Milk and food shall not be placed on the table longer than fifteen (15) minutes prior to the beginning of the meal to avoid contamination and spoilage.

Authority: *T.C.A. §§4-5-201 et seq., 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2).* ***Administrative History:*** *Original rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-03-.10). Repeal and new rule filed June 20, 2006; effective September 3, 2006.*

1240-04-03-.12 PHYSICAL FACILITIES.

(1) Inspections and Compliance with Fire, Health and Safety Standards.

(a) All facilities shall annually pass an inspection verifying compliance with all applicable state and local fire and environmental requirements.

(b) The following facilities, in addition to meeting the requirements set forth in subparagraph (a) above, shall pass inspection by the State Fire Marshall's Division of the Tennessee Department of Commerce and Insurance and the Food and General Sanitation Division of the Tennessee Department of Health:

1. Facilities that are currently unlicensed;

2. Facilities that have not previously been approved by the State Fire Marshall;

3. Facilities that have relocated; and/or

(Rule 1240-04-03-.12, continued)

4. Existing facilities with renovations, new construction, additions to, and/or changes in occupancy.

(2) Neither a temporary nor an annual license shall be issued unless all of the following requirements are met:

(a) The physical facility meets all requirements set forth in paragraph (1) above;

(b) The physical facilities (indoor and outdoor) present no apparent hazards; and

(c) The physical facilities are otherwise deemed appropriate by the Department for the safe care of children.

(3) Requests for inspections shall be made by the Department, but it is the responsibility of the applicant to obtain verification of the inspections and the approvals.

(4) Building Plans. Plans for new construction must be drawn by a registered architect or engineer and submitted to the State Fire Marshall and to the local health department when required by such departments and in accordance with the respective departments' procedures.

(5) Continuing Compliance. Physical facilities shall maintain compliance with all applicable codes as set forth in paragraph (1) above, throughout the licensing year, and shall additionally comply with any updated standards issued by the Department of Health and the State Fire Marshal.

(6) The agency shall not be located in a building used for purposes which would be hazardous to the children or would prohibit outdoor play unless the agency is an inner city agency which has requested and been granted an exception from the Department pursuant to the requirements for "Outdoor Play" found in paragraph 1240-04-03-.09(3) of this Chapter.

(7) Telephones and Other Communication Devices.

(a) Due to the potential unreliability of cellular phones and the potential failure of cordless phones during power outages and other emergencies at least one (1) working, land-line telephone shall be present in the agency.

(b) If answering machines/voice mail must be used, they shall be monitored at thirty (30) minute intervals (except when staff and children are off premises) so that emergency messages can be received.

(c) Parents shall be informed that answering machines/voice mail are used.

(8) Licensed Capacity of Physical Space.

(a) The maximum number of children who may be present inside a physical space (e.g., the agency's "licensed capacity") shall be determined in accordance with the minimum square footages set forth in this paragraph; provided, however, the Department may, in its discretion as determined reasonably necessary to maintain the health and safety of the children in care, restrict the agency's licensed capacity below the maximum which is set forth in these rules.

(b) A minimum of thirty (30) square feet of usable indoor play space must be provided for each child.

(Rule 1240-04-03-.12, continued)

(c) Each naproom must contain a minimum of thirty (30) square feet of floor space per child.

(d) Teen parenting vocational classes shall have a separate space for the group, with a minimum of thirty-five (35) square feet of usable play space per child that is apart from the classroom space for students.

(e) Occupational/vocational child care classes shall have a separate space for the group, with a minimum of thirty-five (35) square feet per child of usable space, apart from the classroom space for students. The designated separate space may be located in the same room and divided by movable barriers less than four feet (4') in height.

(f) For the purposes of calculating square footage requirements, any area used as restrooms, halls, kitchen, or office space, and any space used by cribs or large pieces of furniture, shall not be considered "usable indoor play space" and shall not be counted toward the agency's licensed capacity.

(g) Rooms with sufficient floor space, as defined by the requirements set forth in these rules, may be divided and used for more than one (1) group; provided, however, that each area is adequately equipped and arranged and that each group shall have the security of a stable classroom space.

(h) Adequate Plumbing Facilities. The agency shall have the minimum number of toilets and handwashing sinks as established by the Department in accordance with the:

1. Requirements of any applicable local ordinances and regulations;

2. Proximity of the plumbing to the classroom(s); and

3. Ages of the children served.

(9) Outdoor Play Area.

(a) Outdoor play areas shall contain a minimum of fifty (50) square feet of usable play space for each child using the area at one time.

(b) Agencies Initially Licensed After January 1, 2002. The outdoor play area must be enclosed by a fence or barricade at least four feet (4') in height; provided, however, that the agency may request that the Department, in its discretion, waive such requirement upon a clear showing that the the lack of such fence or barricade poses no apparent or potential risk to children.

(c) The areas where children play or are cared for shall be properly maintained:

1. A written playground maintenance plan shall be prepared by the agency to address routine, remedial, and preventive maintenance and to designate who is responsible for each maintenance need.

2. A pre-play/care inspection of the outdoor play area shall be completed by the agency before children play outdoors.

3. The play/care areas shall be free of hazardous items or materials unless adequately protected by storage, inaccessibility, proper supervision, or other safety procedures.

(Rule 1240-04-03-.12, continued)

4. These play/care areas shall otherwise present no conditions which may be hazardous to children.

5. All such play/care areas shall be free of all animal wastes.

(10) Equipment Hazards.

(a) Cords on window blinds shall be inaccessible to children.

(b) Electrical cords on equipment shall be inaccessible to children.

(c) All indoor and outdoor areas shall be kept safe by the absence of, or the immediate removal or repair of, any object, fixture, equipment, or substance in the facility or grounds that could potentially cause injury to a child.

(11) General Sanitation and Safety of Building and Grounds.

(a) Water Supply.

1. The drinking water supply serving child care facilities shall be from a source approved by the health authority having jurisdiction.

2. Drinking water from individual single service cups or an approved drinking fountain shall be provided in all occupied rooms.

(b) Sewage and Waste Disposal.

1. Connection to a public sewage disposal system shall be made where possible. The use of a private sewage disposal system shall have the approval of the local health department and it shall be operating satisfactorily.

2. All garbage shall be removed from the building daily.

3. All garbage storage receptacles shall be outside and kept closed with tight-fitting lids.

4. The area surrounding the garbage containers shall be kept clean.

(c) Building, Grounds and Pools.

1. The building shall be kept clean and maintained in good repair, without unsafe cracks, leaks or unsatisfactory plumbing.

2. All outside doors and windows shall be screened and operable unless air-conditioning is operational.

3. Adequate natural and/or artificial lighting shall be provided throughout the facility.

4. All rooms used by children shall be maintained at a temperature of between 68 degrees to 78 degrees F by means of heating, cooling or ventilation sources approved for use.

5. Stoves, hot radiators, steam and hot water pipes, fans, or other shall be adequately protected by screens, guards, insulation, or suitable measures that will protect children from coming in contact with them.

(Rule 1240-04-03-.12, continued)

6. Broken glass, trash and debris shall be kept removed from the building and grounds.

7. Building and grounds shall be kept free of unprotected ponds, wells, cisterns, refrigerator or similar hazards.

8. Swimming pools shall be fenced to prevent entry of children without adult supervision.

9. Swimming pools and/or wading pools shall not be used without prior approval by the Health Department.

10. Grounds, tire swings and containers shall have adequate drainage to prevent standing water that can breed mosquitoes and other insects.

11. If animals or birds are kept in classrooms as pets, they shall be caged away from the food storage and preparation or service area, and cages kept clean.

12. Turtles shall not be kept as pets due to the risk of salmonella.

Authority: *T.C.A. §§4-5-201 et seq., 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2).* ***Administrative History:*** *Original rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-4-1-.11). Repeal and new rule filed June 20, 2006; effective September 3, 2006.*

1240-04-03-.13 TRANSPORTATION.

(1) Management Responsibility.

(a) Prior to offering child care transportation services of any type, directly or by contract, all new and existing child care agencies must provide written notice to the Department.

(b) Unless specifically noted otherwise within the context of the rule, the agency is responsible for compliance with all transportation provisions of this subchapter, regardless of whether the agency provides transportation directly, through a third party by contract or otherwise.

(c) The child care agency's management shall be fully responsible for the transportation of children between the child's home and the agency, to or from school, and/or for off site activities, on any vehicle which it operates, for which it contracts or which is otherwise under its direction or control.

(d) Prior to providing transportation services of any type all existing and new child care agencies must provide a written statement to the Department:

1. Stating the type(s) of transportation that will be offered, e.g., from the child's home to the child care agency, from the child care agency to the child's school, etc.;

2. Listing and describing the vehicles that will be used for the transportation of children; for example, "2002 small white school bus";

(Rule 1240-04-03.13, continued)

3. Describing any contracts, agreements or arrangements with any third (3rd) parties for the provision of transportation services, with copies of such contracts or agreements or arrangements available upon the Department's request;

4. Describing the agency's plan for maintaining compliance with the transportation time limits set forth in this Chapter;

5. Describing the agency's policy, procedures and staff training plans for maintaining compliance with the responsibilities for loading, unloading, and tracking each child as set forth in this Chapter;

6. Describing the agency's management plan for ensuring all transportation staff properly perform their duties in accordance with the licensing rules and agency policies and procedures;

7. Describing the agency's policy, procedures and staff training plans for attaining and maintaining compliance with all applicable child safety restraint requirements as set forth in these rules and state law; and

8. Describing the provider's policy, procedures and staff training plans for the emergency evacuation of the vehicle.

(e) Vehicles used to transport children and which are owned or operated by, contracted for or which are otherwise under the direction or control of the child care agency, shall carry automobile liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by rule 1240-04-03-.05(4) of this Chapter.

(2) Supervision of Children During Transportation.

(a) An adult must be in the vehicle whenever a child is in the vehicle.

(b) An adult must be seated behind the steering wheel if the motor is running and children are being loaded and/or are on board.

(c) Adult Monitor Requirements.

1. An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more children ages six (6) weeks through five (5) years of age, who are not in kindergarten.

2. An adult monitor, in addition to the driver, is required on the vehicle for all routes exceeding thirty (30) minutes for children ages six (6) weeks through five (5) years of age, who are not in kindergarten, regardless of the total number of children being transported.

3. An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more non-ambulatory children (permanently or temporarily non-ambulatory) of any age.

4. An adult monitor shall not be seated in the front passenger seat, but shall be seated in the vehicle in a position which will allow:

(i) Each child to be seen with a quick glance;

(ii) Each child to be heard at all times;

(Rule 1240-04-03.13, continued)

(iii) Each child's activities to be observed; and

(iv) The monitor to respond immediately should there be an emergency.

(3) Responsibility for Loading, Unloading and Tracking Each Child.

(a) Passenger Log:

1. A passenger log provided by, or in a format approved by the Department shall be used to track each child during transportation.

2. The first and last name of each child received for transport shall be recorded on the passenger log. A sibling group shall not be listed as a single group entry, for example, "Smith children".

3. Either the driver of the vehicle or the monitor shall be designated by management as the person responsible for completing the log.

(b) Loading Procedures:

1. As each child is loaded onto the vehicle the time the child was placed on the vehicle shall be recorded onto the passenger log by the person designated to keep the log.

2. If the child was loaded from home, the parent or other authorized person will additionally sign the log indicating that the child was placed on the vehicle.

(c) Unloading Procedures:

1. The individual designated by the agency as responsible for the log shall update it immediately upon the child being released from the vehicle. The designated staff member shall update the log by:

(i) Recording the time the child was released; and

(ii) Initialing next to the time of release.

2. When the child is released to a parent or other authorized person, that person must sign the log indicating that the child was released to them.

(d) Confirming that Every Child Is Off of the Vehicle.

1. Driver Responsibilities. Immediately upon unloading the last child and to ensure that all children have been unloaded the driver shall:

(i) Physically walk through the vehicle;

(ii) Inspect all seat surfaces, under all seats and in all compartments or recesses in the vehicle's interior;

(iii) Sign the log, with the driver's full name, indicating the children are all unloaded; and

(iv) Give the passenger log to the monitor, or to the additional reviewer if no monitor is required.

(Rule 1240-04-03.13, continued)

2. Monitor Responsibilities. If a monitor was also on the vehicle the monitor shall:

   (i) Physically walk through the vehicle;

   (ii) Inspect all seat surfaces, under all seats and in all compartments or recesses in the vehicle's interior;

   (iii) Sign the log with the monitor's full name indicating the children are all unloaded; and

   (iv) If the monitor has been designated by the agency as responsible for keeping the log, the monitor shall give the log to the additional reviewer as set forth below.

3. Additional Reviewer Responsibilities:

   (i) Agency management shall designate an additional person, who did not ride on the vehicle, to conduct an inspection once the vehicle has been unloaded.

   (ii) The additional reviewer shall:

      (I) Physically walk through the vehicle;

      (II) Inspect all seat surfaces, under all seats and in all compartments or recesses in the vehicle's interior;

      (III) Reconcile the passenger log with the agency's attendance roll to verify that each child is off the vehicle and present in his assigned classroom. This transfer of responsibility of each child shall be verified by the reviewer's full signature on the passenger log; and

      (IV) Immediately notify the director or other individual designated in charge of any discrepancies between the passenger log and the attendance roll.

(e) Loading/Unloading Children at School.

1. When children are transported to school, they shall be released in accordance with the following procedures:

   (i) Children shall be unloaded only at the location designated by the school;

   (ii) Children shall be unloaded from the agency's vehicle only at the time the school is open to receive them;

   (iii) The driver/monitor shall watch the children who are unloaded from the vehicle walk through the entrance door designated by the school for the children; and

   (iv) Any additional procedures established by the school.

2. After all the children have been unloaded at school, the vehicle shall return to the center for the review procedures outlined above.

(Rule 1240-04-03.13, continued)

3. When children are picked up from school they shall be loaded on the vehicle at the location designated by the school using all applicable procedures for logging of children's presence on the vehicle, release and inspection contained in this subchapter 1240-04-03-.13.

4. The child care agency shall develop written policy approved by the Department that:

(i) Contains procedures for the driver to follow in the event that a child scheduled to be picked up does not report to the vehicle; and

(ii) Insures that children will have adult supervision should the driver need to try to locate a missing child.

(f) Unloading Children at the End of the Day. When children are unloaded at the end of the day and the vehicle does not return to the center for the additional review that confirms every child is off the vehicle, the center shall develop procedures, approved by the Department, to:

1. Verify that all children are off the vehicle; and

2. Verify that each child was released to a responsible person authorized by the parent.

(4) Vehicle Monitoring Devices.

(a) All vehicles used by or on behalf of the agency for the transportation of children that are designed to transport six (6) or more passengers must be equipped with a child safety monitoring device approved by the Department which prompts staff to inspect the vehicle for children before an alarm sounds; provided, however, that such device shall not be required:

1. On vehicles in which all the children being transported are five (5) years of age and in kindergarten, or older, unless any of the children are developmentally or physically disabled or non-ambulatory; or

2. On vehicles used exclusively for occasional field trips.

(b) Only devices approved by the Department are authorized for use on such a vehicle.

(5) Transportation Staff Qualifications.

(a) All drivers and monitors (employed by the agency or provided through contract or otherwise), shall comply with all applicable transportation staff qualifications set forth in this subchapter.

(b) Documentation of all transportation staff qualifications shall be kept on file at the agency and shall be immediately available to the Department upon request.

(c) Drivers license. At a minimum, the person driving a vehicle used to transport children in a child care agency shall posses a current, valid Tennessee driver license with an "F" ("For Hire") endorsement or an equivalent endorsement recognized by the Department of Safety as meeting the minimum qualifications for transportation of children enrolled in child care agency in the applicable type of vehicle in which the children are being transported.

(Rule 1240-04-03.13, continued)

(d) Department of Safety Driver Requirements.

1. Persons transporting children for a child care agency shall have available for review by the Department of Human Services documentation of any training and testing required and provided by the Department of Safety.

2. All persons subject to this paragraph (5) shall obtain a certification document from the Department of Safety to signify that they have passed additional written or skills tests required for persons who may, in the course of their duties, drive a vehicle that transports children enrolled in a child care agency.

3. All persons subject to this paragraph (5) shall be required to obtain annual training that is utilized for school bus drivers offered by the Department of Safety or such other equivalent training as the Department of Safety may determine is appropriate.

(e) Health Examinations for Drivers: The agency or the contractor providing transportation services shall maintain documentation, updated annually and signed by the examining licensed physician, licensed psychologist, licensed clinician, Nurse Practitioner or Physician's Assistant, verifying that the individual who drives a vehicle transporting the children for the child care agency is physically, mentally and emotionally capable of safely and appropriately providing transportation for children.

(f) Drug Screenings for Drivers.

1. Individuals shall pass a drug screening test in accordance with procedures established by the Department:

(i) No later than ten (10) days prior to the individual being employed full or part-time as a driver (contract or otherwise) who provides transportation services for compensation on behalf of the agency; or

(ii) No later than ten (10) days prior to an existing employee (contract or otherwise) assuming driving duties, at any time.

2. The child care agency management shall immediately review the results of the drug screen upon receipt.

3. Upon receipt of a positive drug screen result for the individual being considered for driving duties or upon receipt of notification by a contractor or other person or entity providing transportation for compensation regarding such individual, the child care agency shall immediately:

(i) Notify the Department and prohibit the individual from any duties involving children enrolled in the child care agency; and

(ii) Enter into a safety plan approved by the Department that excludes the individual from driving for the child care agency until the individual passes a drug screen test and is otherwise approved, in writing, by the Department, to perform driving duties involving the transportation of children for the child care agency.

4. The agency shall be responsible for verifying that a contractor, or other person or entity providing transportation for compensation to the child care agency has not employed or assigned any driving duties for the agency to any individual who fails to pass a drug screen as required by this subparagraph.

(Rule 1240-04-03.13, continued)

(g) Prior to assuming their duties, all individuals responsible, or who may in the course of their duties become responsible at any time for transporting children (including drivers and monitors), shall complete Department-recognized pre-service training in:

1. The proper daily safety inspection of the vehicle as required by these rules;

2. The proper use of child safety restraints required by these rules and state law;

3. The proper loading, unloading, and tracking of children as required by these rules;

4. The proper use of a blood-borne pathogen kit, first aid kit, and other required vehicle emergency equipment as required by these rules;

5. The proper verification procedures for the evacuation of the vehicle based upon the type of vehicle and the ages of the children served; and

6. The developmentally appropriate practices applicable to the behavior management of children during transportation.

(h) Following the completion of pre-service transportation training, all persons responsible at any time for the transportation of children (including drivers and monitors), shall complete Department-recognized transportation training on transportation rules every six (6) months.

(i) Emergency Aid Training. All persons responsible (including all drivers and monitors), or who in the course of their duties may become responsible at any time, for the transportation of children shall hold current certification in:

1. Infant/Pediatric Cardiopulmonary Resuscitation (CPR) from the American Red Cross, the American Heart Association, or other certifying organization as recognized by the Department; and

2. A first aid course sponsored or approved by the American Red Cross, or other first aid course, as recognized by the Department.

(j) The training requirements set forth in this paragraph do not apply to individuals who provide transportation services exclusively for occasional field trips.

(6) Vehicle Requirements and Inspections.

(a) The requirements of this paragraph include vehicles used at anytime by the agency or by a contractor for the agency as the regular child care vehicle(s) and/or as back-up vehicles.

(b) The following equipment shall be maintained in the vehicle and stored in a manner which is not readily accessible to children:

1. Fire extinguisher;

2. Emergency reflective triangles;

3. First aid kit;

4. Blood-borne pathogenic clean-up kit; and

(Rule 1240-04-03.13, continued)

5. Seat-belt cutter or similar device manufactured and designed to immediately release the vehicle's child restraint system(s) in an emergency.

(c) The driver or monitor assigned to the vehicle shall be familiar with the location and use of all equipment required under subparagraph (b) above.

(d) Emergency exiting procedures shall be practiced on a regular basis by all staff responsible for transporting children.

(e) The carrying, possession or storage of firearms or other weapons, alcohol or illegal substances in child care vehicles is prohibited.

(f) The child care agency shall maintain documentation that the following daily inspections have been performed and any necessary repairs completed or other appropriate action taken before transporting children:

1. A visual inspection of the vehicle's tires for wear and adequate pressure;

2. A visual inspection for working headlights and taillights (brake lights and back-up lights), signals, mirrors, wiper blades and dash gauges;

3. An inspection for properly functioning child and driver safety restraints;

4. An inspection for properly functioning doors and windows;

5. An inspection for the presence of safety equipment required by these rules or any other provisions of law or regulations, and repair or replacement as necessary based upon visual evidence of the need to do so;

6. A determination that the vehicle has adequate fuel; and

7. An inspection for, and cleaning of, debris from the vehicle's interior.

(g) The child care agency shall maintain documentation that the following maintenance is performed:

1. Receive regular inspections and maintenance by a certified mechanic in accordance with the maintenance schedule recommended by the vehicle manufacturer, and

2. Have the following vehicle equipment certified as inspected at least every four thousand (4,000) miles if not covered by, and/or otherwise serviced in accordance with the manufacturer's maintenance schedule:

(i) Brakes;

(ii) Steering;

(iii) Oil levels, coolant, brake, windshield-washer and transmission fluids;

(iv) Hoses and belts; and

(v) Tires.

(Rule 1240-04-03.13, continued)

(h) Department of Safety Inspections. All child care vehicles that are designed by the vehicle manufacturer to carry ten (10) or more passengers must be inspected in accordance with the schedule established by the Department of Safety. Any maintenance or repair to the vehicles disclosed by the inspections shall be the sole responsibility of the child care agency.

(i) No vehicle which does not pass the inspections required in this paragraph (6) shall be used by the child care agency or by its contractors, or others subject to the agency's direction and control, to provide transportation services until necessary repairs, as determined by the Department, have been made.

(7) Passenger Safety Restraints.

(a) The provisions of this paragraph (7) apply to all transportation, including field trip transportation, provided by or on behalf of the agency.

(b) All child care vehicles must have a rear seat, i.e., passenger seating located behind the driver position that has been factory-installed or professionally retrofitted, and must have factory-installed or professionally retrofitted passenger restraint anchorages and passenger restraints as required by the provisions of this paragraph (7) for the age and size of the driver/passengers being transported and the type of vehicle being used; provided, however, that passenger restraint devices which are designed by the manufacturer to be attached to the seat by the end-user, e.g., add-on restraint systems such as infant carriers and harness systems, are not required to be factory-installed.

(c) All restraints must be used in accordance with the restraint manufacturer's instructions and must be secured to the vehicle in accordance with the vehicle manufacturer's and the restraint manufacturer's instructions.

(d) Passenger air bags shall remain turned off unless an adult or a child fifteen (15) years of age or older is riding in the front passenger seat of the vehicle.

(e) No child or adult shall ride on the floor of a vehicle.

(f) No child shall be placed with another child in the same restraint device.

(g) Children under four (4) years of age shall always be placed in a rear seat of the vehicle. For the purposes of this paragraph (7), a "rear seat" in any vehicle which is categorized as a "school bus" shall mean any passenger seat that has been factory-installed or professionally retrofitted and that is located behind the bus driver or behind the bus entrance which is directly to the right of the bus driver.

(h) Effective September 1, 2007, all vehicles with a Federal Motor Vehicle Safety Standards ("FMVSS") classification of "Small School Bus" or "Multi-function School Activity Bus" and a Gross Vehicle Weight Rating (GVWR) of ten thousand pounds (10,000 lbs.) or less must, in accordance with federal law, be manufactured with a "Type 2" restraint device, i.e., a lap and shoulder belt assembly) at each designated seating position, except at side-facing positions at which a "Type 1" restraint device, i.e., a lap belt, must be used.

1. Child Restraint Requirements for Vehicles Manufactured before September 1, 2007.

Child passenger restraint equipment and usage requirements contained in this paragraph (7) applicable to any vehicles manufactured before September 1,

(Rule 1240-04-03.13, continued)

2007, that are subject to the class/weight requirements of this subparagraph (h) shall continue to apply after such date, except as amended by law or regulation.

2. Child Restraint Requirements for Vehicles Manufactured on or after September 1, 2007.

In addition to all other child passenger restraint equipment and usage requirements of this paragraph (7) applicable to any vehicles that are subject to the class/weight requirements of this subparagraph (h), children ages nine (9) years or older shall be restrained in a "Type 2" restraint device, i.e., a lap and shoulder belt, at each designated seating position in such vehicles manufactured on or after September 1, 2007, except that, at side-facing positions, a "Type 1" restraint device, i.e., a lap belt, must be used.

(i) Child Restraint Requirements under Applicable State or Federal Law.

In addition to the requirements set forth in subparagraphs (a) through (h) above, all children shall be restrained in accordance with the requirements for child passenger restraint systems set forth in Tennessee Code Annotated, §§ 55-9-601—55-9-603 and any applicable federal law or regulation.

(j) Adult Restraint Requirements.

1. Adult Restraint Requirements for Vehicles with a Gross Vehicle Weight Rating (GVWR) of 8,500 lbs. or less:

All adults operating or riding in any vehicle subject to the weight classification in this part 1 shall be restrained in a "Type 2" restraint, i.e., lap and shoulder belt assembly); provided, however, that if the seating position is not equipped with a Type 2 restraint, the adult must be restrained with a "Type 1" restraint device i.e., a lap belt.

2. Effective September 1, 2007 all vehicles with a Federal Motor Vehicle Safety Standards ("FMVSS") classification of "Small School Bus" or "Multi-function School Activity Bus" and a Gross Vehicle Weight Rating (GVWR) of ten thousand pounds (10,000 lbs.) or less must, in accordance with federal law, be manufactured with a "Type 2" restraint device, i.e., a lap and shoulder belt assembly) at each designated seating position, except at side-facing positions at which a "Type 1" restraint device, i.e., a lap belt, must be used.

(i) Adult Restraint Requirements for Vehicles Manufactured Before September 1, 2007.

Adult driver/passenger restraint equipment and usage requirements contained in this paragraph (7) applicable to any vehicles manufactured before September 1, 2007, that are subject to the class/weight requirements of this part 2 shall continue to apply after such date, except as amended by law or regulation.

(ii) Adult Restraint Requirements for Vehicles Manufactured on or After September 1, 2007.

In addition to all other adult driver/passenger restraint equipment and usage requirements of this paragraph (7) applicable to any vehicles that are subject to the class/weight requirements of this part 2, adults operating or riding in such vehicles shall be restrained in a "Type 2" restraint device,

(Rule 1240-04-03.13, continued)

i.e., a lap and shoulder belt at each designated seating position in such vehicles manufactured on or after September 1, 2007, except that, at side-facing positions, a "Type 1" restraint device, i.e., a lap belt, must be used.

(8) Capacity Limitations and Cargo Requirements.

(a) The total number of adults and children in vehicles used for the transportation of children enrolled in the agency shall never exceed the manufacturer's rated passenger capacity.

(b) All cargo, luggage or equipment of any type shall be adequately secured at all times in such manner as to protect the passengers in case of accident or emergency maneuvers.

(9) Requirements for Child Care Transportation Vehicles Effective January 1, 2007.

(a) All vehicles used by a child care agency that are designed to carry ten (10) or more passengers must conform to all Federal Motor Vehicle Safety Standards (FMVSS) governing either "large" school buses or "small" school buses, as applicable, in accordance with the provisions of the FMVSS described in 49 Code of Federal Regulations Part 571, or as such law may be amended.

(b) The requirements of this paragraph do not apply to vehicles used exclusively for the provision of occasional field trips.

(10) Vehicle Signage Requirements.

(a) The requirements of this paragraph are applicable to all vehicles used for the transportation of children enrolled in the agency, including vehicles operated by a contractor of the agency or vehicles operated by any other provider of services under the direction or control of the child care agency, unless specifically exempted by these rules.

(b) On each side of the vehicle the following information shall be displayed in a block font that is not less than one and one-half inches (1½") in height:

1. The full name of the child care agency and emergency contact number for the agency in any font or color, including the agency's current logo and lettering scheme, which is clearly readable at a distance of fifty feet (50') on a stationary vehicle in daylight conditions; and

2. The words "Child Care Transportation Complaints" followed by the Department's toll-free Child Care Complaint phone number in black text on a clearly contrasting background that is clearly readable at a distance of fifty feet (50') on a stationary vehicle in daylight conditions.

(c) On the rear of the vehicle the following information shall be displayed:

1. The full name of the child care agency and the words "Child Care Transportation Complaints" followed by the Department's toll-free Child Care Complaint phone number in black letters in a block font not less than one inch (1") in height on a clearly contrasting background that is clearly readable at a distance of forty feet (40') on a stationary vehicle in daylight conditions.

2. Exception: Display of the Complaint number is not required on passenger automobiles (excluding minivans) used for transportation by the child care

(Rule 1240-04-03.13, continued)

agency with a manufacturer's rated seating capacity of six (6) or fewer passengers.

(d) The vehicle signage required by these rules shall be applied to the vehicle in one of the following formats:

1. Painted directly on the vehicle in accordance with the paint manufacturer's instructions using paint recommended by the paint manufacturer as appropriate for use on a vehicle; or

2. A weather-resistant sign securely fastened to the vehicle. The term "securely fastened" includes magnetic signs and signs bolted to the vehicle. The term does not include adhesives such as tape or glue unless recommended by the adhesive manufacturer as being appropriate for outdoor use on a vehicle.

(e) Special Requirements for Centralized Transportation.

1. Central transportation operations or any other entity that may own or operate more than one child care agency and which may provide centralized transportation services for its child care agencies; and/or

2. Contractors, or other transportation service providers under the direction or control of the child care agency, which may provide centralized transportation services to more than one child care agency may substitute for the name and phone number of the child care agency the full name and emergency contact number of the central operator, contractor or other transportation service providers under the direction or control of the child care agency. If the name on the vehicle does not clearly designate the agency or entity as one providing child care transportation, words such as "Child Care Transportation Vehicle" or "Child Care Transportation Services", or similar language approved by the Department, must be displayed on the vehicle in a manner that demonstrates, as determined by the Department, that the vehicle is providing child care transportation.

(f) Exceptions to Vehicle Identification Requirements.

1. Vehicles used exclusively for the provision of occasional field trips; and

2. Vehicles used exclusively for the limited provision of emergency transportation, e.g., as a result of the mechanical breakdown of the regular child care vehicle.

3. The Department may, in its discretion, waive the requirements of this paragraph for any child care agencies owned, operated, or under the direction or control of a public agency.

4. The Department may, in its discretion, waive the requirements of this paragraph if circumstances clearly warrant such an exemption.

(11) Limits on Time Children Are Transported/Transportation Waivers.

(a) Children shall not spend more than forty-five (45) minutes traveling one way to or from the agency's facility or to or from school; provided, however, this provision is not applicable to field trips.

(b) If extended transportation beyond the limits in subparagraph (a) is necessary in special circumstances, or as may be required by geographic factors, an individualized plan for

(Rule 1240-04-03.13, continued)

each child shall be established and signed by the parent and the child care agency and approved by the Department prior to providing such transportation.

Authority: *T.C.A. §§4-5-201 et seq., 55-9-601 through 55-9-603, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), and 71-3-502(d)(7)(C)(iii); and 49 C.F.R. §§ 571 et seq. and 49 C.F.R.§ 571.208.* ***Administrative History:*** *Original rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-4-1-.12). Repeal and new rule filed June 20, 2006; effective September 3, 2006.*

1240-04-03-.14 EXTENDED CARE.

(1) Extended care services may be offered by an agency as an additional component to conventional care services, or the agency may exclusively provide extended care services.

(2) In order to facilitate the availability of child care services during extended care hours while ensuring the health, safety and welfare of children during such hours, any agency which is licensed to provide child care services during extended care hours shall comply with the following "Extended Care" rules in addition to the rules otherwise contained in this Chapter:

(a) Definitions contained in 1240-04-03-.02(22).

(b) Supervision as required in 1240-04-03-.06(3)(d) - adult:child ratios.

(c) Program 1240-04-03-.09.

1. Schedule and Routines, paragraph (1)(k);

2. Television, Videos and Computers, paragraph (2)(e);

3. Reclining Rest Period, paragraph (4)(a); and

4. Extended Care, paragraph (8).

(d) Health and Safety, 1240-04-03-.10.

1. First Aid, paragraph (7)(b);

2. Emergency Treatment, paragraph (8)(a)(2) and (8)(c); and

3. Preparation for Emergencies, paragraph (9)(b).

(e) Food, 1240-04-03-.11, paragraph (1)(a)(6).

Authority: *T.C.A. §§4-5-201 et seq., 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2)..* ***Administrative History:*** *Original rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Amendment filed October 17, 2001; effective December 31, 2001. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-4-1-.13). Repeal and new rule filed June 20, 2006; effective September 3, 2006.*

1240-04-03-.15 CARE OF CHILDREN WITH SPECIAL NEEDS.

(Rule 1240-04-03-.15, continued)

(1) When children with disabilities are enrolled, all reasonable and appropriate efforts shall be made to provide each child an equal opportunity to participate in the same program activities as their peers.

(2) Parents or other appropriate individual identified by the parent shall provide information and, as appropriate, training for caregivers regarding special needs/techniques/emergency measures/etc., as utilized in the child's home to ensure the child's safety and well-being.

(3) Adaptations to the environment shall be directed toward normalizing the lifestyle of the child by helping the child to become independent and develop self-help skills.

(4) Behavior management techniques or program activities which would tend to demean or isolate the child are prohibited.

(5) The agency shall inform parents of any specialized services available from the agency, and if the agency is aware of any specialized services available through third parties, shall additionally inform the parent of such services.

(6) Efforts to provide specialized services (e.g., speech/hearing therapy, physical therapy, psychological evaluation, or services for the mentally retarded) either directly or by referral, shall be conducted only with written permission by the parent and documented in the child's record. Any information exchange regarding these services that is shared with or received from third parties shall also be documented.

(7) Emergency Plans.

(a) The agency shall have written individualized emergency plans for each disabled child who requires more assistance in emergencies than other children of the same age or in the same group.

(b) The emergency plan shall be approved by the Department.

(c) The agency shall maintain documentation that the Emergency Plan is practiced monthly.

(8) Each non-verbal child's daily activities, including, as applicable to the individual child, the time and amount of feeding, elimination, times of diaper changes, sleep patterns, and developmental progress, shall be recorded and shared with the parents daily.

(9) Diapering of School-age Children with special needs shall be completed as required by Rule 1240-04-03-.10.

(10) Physical Restraint. In order to avoid an extremely high risk of physical injury or death for children subject to this subchapter 1240-04-03-.15, the child care agency shall not use physical restraint, as defined by rule 1240-04-03-.02(38), unless approved to do so by the Department and in accordance with all of the requirements of this paragraph.

(a) Least Restrictive Alternative. The agency shall attempt to alleviate the danger to the child by exhausting all methods which are least restrictive to the child's mobility prior to applying a safe-hold restraint on the child, including but not limited to:

1. Calming the child through talking, distraction toward favored activities, and other developmentally appropriate behavior management techniques;

2. Removing any implements which the child is using or could use to self-inflict injury;

(Rule 1240-04-03-.15, continued)

3. Physically removing the child to a secured or otherwise less dangerous area; and

4. Physically blocking the child from access to walls, equipment and other materials which the child is using or could use to self-inflict injury.

(b) Prior to using physical restraint that has been approved by the Department, the agency shall have developed a clear written policy on the acceptable use of physical restraints that is approved by the Department and which includes, at a minimum, the following:

1. Criteria, including the medical authorization required by these rules, for the identification of specific individual children for whom the use of physical restraints is not prohibited;

2. Criteria for the identification and authorization of specific individual staff to administer the physical restraint;

3. Provisions for the initial and ongoing training of staff authorized to administer physical restraint;

4. Provisions for alternative available methods of behavior management and procedures requiring their use prior to administering physical restraint;

5. Procedures for the immediate notification of the parent after physical restraint is administered; and

6. Policies and procedures for insuring compliance with all other requirements contained within this paragraph (10).

(c) The agency shall maintain in the child's health record required by 1240-04-03-.05 a written statement, updated annually and signed by a physician or licensed clinician, which states that the child does not have any medical or physical condition that would contraindicate the use of physical restraint. The agency is prohibited from administering physical restraint on any child whose health record does not contain this current statement.

(d) The agency shall maintain written documentation, signed by the parent, that the possible use of physical restraint has been discussed and explained in detail with the parent at the time their child is enrolled in the agency.

(e) Physical restraint shall only be administered by staff members who have completed training approved by the Department on the proper administration of physical restraint.

1. This training shall be updated annually.

2. The agency shall maintain documentation of the training in the staff record required by 1240-04-03-.05.

(f) In order to assure that the child can be checked for signs of distress and to otherwise monitor the appropriate application of the physical restraint, the agency is prohibited from administering physical restraint unless a second (2nd) trained staff member is available on the premises to assist.

1. The second (2nd) trained staff member shall be called immediately upon the determination being made that physical restraint will be necessary.

(Rule 1240-04-03-.15, continued)

2. Untrained staff are prohibited from assisting in any manner whatsoever in the administration of the physical restraint.

(g) Administration of the physical restraint must cease immediately upon the child no longer posing an imminent threat to herself/himself, regardless of whether the child is continuing to exhibit inappropriate or unacceptable behavior.

(h) Emergency 911 or local emergency services must be contacted for assistance if a child remains uncontrollable and continues to pose a threat to himself/herself after five (5) continuous minutes of restraint have been applied.

(i) After an incident using physical restraint the agency shall create a written incident report within one (1) business day that is available to the parent and to the Department and which documents:

1. The date and time the potentially dangerous behavior began;

2. A description of the means in which the behavior escalated;

3. All alternative methods which were used to manage the behavior;

4. The exact methods, including a physical description, used to administer the restraint;

5. The child's physical appearance and behavior following administration of the restraint; and

6. The identification of all staff who interacted with the child in any manner whatsoever during this time period and the nature of their interaction.

Authority: *T.C.A. §§4-5-201 et seq., 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2).* ***Administrative History:*** *Original rule filed November 21, 2002; effective February 4, 2003 (Formerly 1240-4-1-.14). Repeal and new rule filed June 20, 2006; effective September 3, 2006.*

1240-04-03-.16 SICK CHILD CARE.

(1) Scope of Services. Agencies that provide sick child care as either an exclusive service or as a component of an existing child care service must, in addition to the rules contained in this Chapter, comply with the rules contained in this subchapter 1240-04-03-.16. Any conflict between the provisions of subchapter 1240-04-03-.16 and subchapters 1240-04-03-.01 through 1240-04-03-.15, inclusive, shall be resolved by reference to the requirements contained in this subchapter 1240-04-03-.16.

(2) Statement of Agency Services, Policies and Procedures.

(a) An applicant for a license to operate a child care agency providing sick child care services shall submit a written statement to the Department, in the form and manner directed by the Department, which provides the following information:

1. If sick child care services will be operated in the same facility as non-sick child care, the child care agency's provisions for maintaining the physical and operational separation of the sick child care and non-sick child care services;

2. A description of the types of sick care child care services that are to be offered to children and, as applicable, to parents/family;

(Rule 1240-04-03-.16, continued)

3. Ages of children to be served;

4. Types of illnesses/symptoms that will be served and types that will be excluded;

5. Admission requirements and enrollment procedures not included in the agency's Statement of Purpose as required by 1240-04-03-.05;

6. Hours of operation;

7. Plans for feeding children as appropriate to each child's age and illness;

8. Procedures for cleaning, sanitizing and infection control;

9. Staff training plan;

10. Methods of daily care including record keeping, reports;

11. Policy, procedures, and staff training plan for emergency medical care; and

12. Procedures for staff communication with parent and health care providers.

(b) After being licensed, if a licensee wishes to change the scope or type of service offered to children and families, an amended statement shall be filed with the Department for approval prior to implementation.

(3) Medical Protocols.

(a) The sick care agency management shall develop a medical protocol for specific illness groups in accordance with best practices and the requirements of these rules, and otherwise review and update agency policies in accordance with such best practices. Medical protocol and policies shall be developed in consultation with a licensed family, internal medicine or pediatric physician, or a licensed nurse practitioner/clinician with specialization in family or pediatric medicine.

(b) The responsible physician or nurse must review and provide an updated, signed, approval of such protocols at least annually, and at any time that the agency changes its scope of services. In addition, the physician or nurse must otherwise be available on an ongoing basis for medical consultation.

(4) Admission and Enrollment Requirements.

(a) Children must be at least six (6) weeks of age and no more than twelve (12) years of age for admission to the sick child care agency.

(b) Children between the ages of six (6) weeks and six (6) months with a fever of 101 to 102 degrees Fahrenheit (F) shall not be admitted until a written statement is provided from a licensed physician or nurse practitioner/clinician which states that it is acceptable for the infant to attend the sick child care agency.

(c) Children with any of the following symptoms shall not be accepted for care:

1. Temperature greater than 103 degrees Fahrenheit (F) and unresponsive to medication;

2. Neck pain or stiffness;

(Rule 1240-04-03-.16, continued)

3. Exhibiting confusion;

4. Unequal pupils;

5. Dehydration;

6. Undiagnosed non-clear eye discharge;

7. Untreated TB;

8. Excessive, persistent crying;

9. Head trauma with vomiting;

10. Severe or persistent pain;

11. Contagious stages of pertussis, measles, mumps, rubella, diphtheria, chicken pox, mumps, hepatitis B, unless such child is isolated from other children in a contagious room with its own exterior entrance and ventilation system; provided, however, that children with chicken pox and mumps shall not be cared for simultaneously in the same contagious room;

12. Untreated lice, scabies, pinworm, ringworm unless the child can be isolated from other children;

13. Rapid or labored breathing;

14. Undiagnosed rash;

15. Persistent vomiting and/or severe diarrhea; and

16. Other conditions as determined by the nurse or medical consultant.

(d) All children shall be evaluated by the Registered Nurse prior to admission and upon arrival each day.

(5) Children's Records.

(a) The records required by this paragraph shall be maintained in an organized manner on-site at the center and made available to the Department upon request.

(b) A care plan shall be developed and updated daily for each child. The care plan shall be completed with the assistance of the child's parent and shall be verified by the parent's signature and date on the plan.

(c) A chart shall be maintained for each sick child in care.

(d) The following records must be obtained prior to enrolling the child and must additionally be updated annually, or as changes occur:

1. A current information form which includes the child's name, date of birth, name of parents, child's and parents' home addresses, parents' business addresses, home and work phone numbers, work hours, social history, and the name and address (home and business or school) of a responsible person to contact in an emergency if parent cannot be located promptly. This information shall be updated annually, or as changes occur;

(Rule 1240-04-03-.16, continued)

2. Name, address, and telephone number of a physician to call in case of an emergency;

3. Written consent of parent regarding emergency medical care;

4. A child release plan stating to whom the child shall be released and procedures for allowing the refusal to release children to anyone whose behavior may place the children at immediate risk;

5. Daily attendance records for each child to include time in and time out;

6. Child's care plan;

7. Physical assessment;

8. History of illness;

9. Admission form;

10. Medication permission form;

11. Immunization record; and

12. Daily health record, including activities, vital signs, intake, output, and administration of medication.

(6) Staff.

(a) A Registered Nurse with at least one (1) year of pediatric experience shall be present at all times that sick children are in care.

(b) In agencies that exclusively provide sick child care, the director shall not be required to meet the provisions set forth in 1240-04-03-.07(4) if:

1. The director holds a BSN; and

2. At least one (1) full-time caregiver has a minimum of four (4) years of experience in early childhood and/or education.

(c) At least fifty percent (50%) of caregivers shall have at least one (1) year experience in early childhood care and/or education.

(d) All staff must have current pediatric CPR and First Aid certification.

(e) Within the first two (2) weeks of employment all staff shall receive training in the following areas:

1. A general overview of the agency's medical protocols;

2. General infection control procedures, including handwashing, handling of contaminated items/universal precautions, use of sanitizers, food handling, and washing and disinfecting toys;

3. Care of children with common mild childhood illnesses;

(Rule 1240-04-03-.16, continued)

4. Recognition and documentation of illness signs and symptoms;

5. Proper temperature monitoring methods;

6. Nutrition for ill children;

7. Communication with parents of ill children;

8. When and how to call for medical assistance;

9. Notification to the local public health department of communicable diseases;

10. Emergency procedures;

11. The child abuse reporting requirements set forth in subchapter 1240-04-03-.10(18) of these rules;

12. Developmentally appropriate activities for children who are ill; and

13. Staff members who are responsible, or who may in the course of their duties become responsible, for the care of infants shall additionally complete training on the SIDS requirements set forth in subchapter 1240-04-03-.06(4) of these rules.

(f) Each director and caregiver shall have at least six (6) clock hours of continuing education annually which is recognized by the Department, three (3) hours of which shall relate to the care of ill children and the prevention and control of communicable disease.

(g) After the first year of employment:

1. All staff shall annually receive a general refresher overview of the agency's medical protocols.

2. Any staff member who cares for infants or may in the course of their duties become responsible for the care of infants shall additionally annually complete refresher training on the SIDS requirements set forth in section 1240-04-03-.06(4) of these rules.

(7) Grouping of Adults and Children.

(a) The adult:child ratios and maximum group sizes contained in the following charts shall be maintained at all times.

Chart 1: Children three (3) months through twenty-three (23) months

Ratio	Maximum Group Size
1:3	9

Chart 2: Children twenty-four (24) months to twelve (12) years

Ratio	Maximum Group Size
1:4	12

(Rule 1240-04-03-.16, continued)

(b) In a multi-age grouping the adult:child ratio and maximum group size shall be determined based upon the requirement for the youngest aged child in the group. Exception: Children under sixteen (16) months may not be grouped with children age three (3) years and above.

(c) Children shall additionally be grouped based upon the type of illness:

1. Children with respiratory illnesses, gastrointestinal illnesses and non-infectious illnesses shall be cared for in a separate room from each other; and

2. Children shall otherwise be separated in accordance with the agency's medical protocols.

(d) Children who begin their day in a sick child care center shall remain there throughout the day and shall not be permitted to return to any other part of the child care center or to any other child care center.

(e) Staff may care for well children on the same day that they care for sick children only if all of the following conditions are met:

1. Prior to exiting the sick child center and entering the well child center the staff shall follow handwashing and all other sanitation requirements in compliance with these rules and the agency's medical protocols; and

2. Prior to exiting the well child center and entering the sick child center the staff shall follow handwashing and all other sanitation requirements in compliance with these rules and the agency's medical protocols.

(f) Staff caring for sick children must not prepare food for well children or enter the kitchen used to prepare food for well children.

(8) Equipment.

(a) Furnishings, objects, and equipment must be maintained in good repair, and cleaned and sanitized daily and as needed.

(b) Separate rest equipment shall be available to each child in attendance.

(9) Program.

(a) The licensee providing sick child care pursuant to this subchapter shall develop, maintain, and implement a written plan to ensure the provision of a variety of indoor activities designed to meet the needs of mildly ill children. Such activities shall include, but are not limited to:

1. Quiet and active play;

2. Rest and relaxation;

3. Eating;

4. Toileting;

5. Individual attention; and

6. Children being comforted by care providers.

(Rule 1240-04-03-.16, continued)

(b) Outdoor play is prohibited.

(c) Transportation provided by the agency is prohibited.

(d) Children shall be allowed to rest/nap as desired. Children shall have access at all times to rest/nap areas without distraction or disturbance from other activities.

(e) Drinking water and other fluids consistent with the child's condition shall be available at all times.

(f) All medications shall be kept locked and the key shall be available only to personnel authorized to administer medication; provided, however, that medications requiring emergency administration, including, but not limited to, asthma inhalers and EpiPens, may be kept in an unlocked location which is inaccessible to children.

(10) Infection Control.

(a) Only disposable diapers shall be used for children using diapers.

(b) Diapering practices outlined in subchapter 1240-04-03-.10 shall be followed.

(c) Drinking fountains are prohibited.

(d) If meals and snacks are served, disposable cups, plates, utensils, and napkins shall be used.

(e) Only liquid soap from a dispenser is allowed.

(f) Carpet is prohibited.

(g) Walls and floors in rooms where sick care is provided and all linens, furnishings objects, and equipment used by or with sick children must be cleaned and disinfected a minimum of daily and more often as needed.

(h) Toys handled by a child shall be cleaned with soap and water, then sanitized before handling by another child.

(i) All handled toys shall be sanitized at the end of each day.

(j) Non-washable toys shall not be provided. If such toys are brought from home (for example, a stuffed animal which would require machine washing for proper sanitation) they must be limited to personal use articles that are not shared between children.

(11) Physical Facilities.

(a) No furnishings, toys, or materials shall be shared.

(b) The physical space designated for sick child care shall not be used by children or staff from any other component of the center when sick children are in care; provided, however, unless otherwise restricted pursuant to rule 1240-04-03-.16(11)(m) below, staff and children may enter and exit the sick care facility through the non-sick care facility.

(c) Rooms shall be separated by a floor to ceiling wall or separate structure.

(Rule 1240-04-03-.16, continued)

(d) There shall be no shared space, furnishings, fixtures, toys, supplies, or equipment if the facility serves both sick and well children.

(e) The use of potty chairs is prohibited.

(f) There shall be a minimum of fifty (50) sq. feet of usable play space per child, not including cribs, large pieces of furniture, restrooms, halls, kitchen, or office space, with a minimum of three (3) feet between cots/beds.

(g) Rest rooms, sinks for toileting/diapering and food preparation areas used for sick care must be separate from those used for well children.

(h) Rest rooms shall have a minimum of one (1) toilet per ten (10) children.

(i) A washer and a dryer shall be provided on site or the licensee shall contract with a laundry service to wash smocks, linens, shoulder cloths, scrubs and other non-disposable clothing and linens.

(j) Rooms shall be designed to allow separate areas for resting and sleeping.

(k) Telephones shall be located for ready access by staff in every child care area or an intercom system shall be provided to communicate with staff.

(l) A program providing only sick child care shall not be required to have outdoor play space or equipment.

(m) Contagious Room.

1. No child who requires separation in a contagious room may be enrolled unless authorized by the agency's medical protocols and a contagious room is provided for the care of a child in that condition.

2. The contagious room must be located in a separate room with its own entrance from the outside, and must additionally contain a separate toilet and handwashing facilities, separate toys and equipment, and a separate ventilation/air system.

Authority: *T.C.A. §§ 4-5-201 et seq.; 71-1-105(5); 71-3-501 et seq.; 71-3-502(a)(2).* ***Administrative History:*** *Original rule filed June 20, 2006; effective September 3, 2006.*

Redline

RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
ADULT AND FAMILY SERVICES DIVISION

CHAPTER 1240-04-04
STANDARDS FOR FAMILY CHILD CARE HOMES

TABLE OF CONTENTS

1240-04-04-.01 Introduction
1240-04-04-.02 Ownership and Administration
1240-04-04-.03 Staff
1240-04-04-.04 Equipment
1240-04-04-.05 Program
1240-04-04-.06 Health and Safety
1240-04-04-.07 Transportation
1240-04-04-.08 Food
1240-04-04-.09 Physical Facilities
1240-04-04-.10 Care of Children With Disabilities
1240-04-04-.11 Appendices

1240-04-04-.01 INTRODUCTION.

(1) Purpose Of Licensing. The primary purpose of licensing is the protection of children. Minimum requirements seek to maintain adequate health, safety, and supervision of children while in a group care setting. Develop mental (comprehensive) child care provides appropriate educational experience, health services, and social services to children and their families.

(2) Types Of Agencies. Child care services may be offered by family day care homes, group day care homes, day care or child development centers, nursery schools, day nurseries, and kindergartens - as well as schools or agencies providing before and after school care. Regardless of name, purpose, or auspices, all are subject to licensure unless exempt by law. (See specific definitions below:)

(3) General Standards And Requirements.

(a) Issuance of a license is based on achievement in meeting and maintaining compliance with minimum standards or requirements, set forth in these rules. The license applies only to the agency, organization, or person(s) to which or to whom it is issued and only to the building and premises approved for the operation of the child welfare agency. In addition to state licensing requirements, it is the responsibility of the applicant/licensee to comply with all applicable local ordinances, including zoning ordinances and business tax licenses or other locally required permits.

(b) A day care home must comply with all requirements in these rules to receive an annual license. In addition to fire safety and environmental sanitation approval, the applicant must demonstrate good faith intent to comply with these rules before a conditional license may be issued. Failure to meet such requirements, or to demonstrate good intention in meeting them in the case of a conditional license, shall constitute grounds for denial of a license or for revocation of a license already issued.

(c) Appendices to these rules which contain fire safety, health, environmental sanitation regulations, summaries of applicable laws, and other information are incorporated herein by reference.

(4) Legal Basis For Licensing. *TCA §71-3-501 et seq.* provide for defining, inspection, licensing, and regulation of child welfare agencies including day care homes. (See Appendix A for summary of applicable laws.) The Tennessee Department of Human Services has responsibility for licensing all such agencies offering child care to groups of children.

(Rule 1240-04-04-.01, continued)

(5) Definitions. For the purpose of this Chapter, the following definitions are applicable:

(a) Annual License. An annual permit issued by the Department to a child welfare agency or to a child care system central operator, authorizing the licensee to provide child care in accordance with provisions of the license, the law, and requirements (rules) of the Department. Issuance of a license is not an endorsement of child care methods or of an agency's operational philosophy. A license is not transferable from one location to another or from one licensee/operator to another.

(b) Approved Day Care Home. An approved day care home is a day care home which is related through contractual or employment arrangements to a central operator. The approved day care home must meet the same requirements and must have been evaluated by the central operator in the same manner as an individual licensed day care home.

(c) Caregiver(s). Any person who provides all or part of the care of a group of children, including the primary caregiver.

(d) Central Operator. The individual(s), or the corporation, partnership, cooperative, or other private or public entity of any kind, who or which, through their authorized representative(s), in addition to other activities, if any, owns, administers or operates a child care system. The central operator shall have ultimate responsibility for the administration/operation of any or all day care homes and child care centers in the system and shall, together with the primary caregiver, sign the application for a license. The central operator shall be the licensee.

(e) Child. A person under 17 years of age.

(f) Child Care. The wide variety of arrangements made by parents (or guardians) for the care outside of their home of children under 17 years of age, for less than 24-hour periods, without transfer of custody.

(g) Child Care System. The existence of any day care homes approved or licensed and used by a licensed and incorporated day care agency or a licensed child-placing agency in its work; or the existence of two (2) or more facilities used for day care purposes which facilities are under ownership, administration or control of any individual(s), corporation, partnership, cooperative, or other public or private entity of any kind.

(h) Commissioner. The executive head of the Department of Human Services, appointed by the Governor.

(i) Conditional License. A permit issued by the Department to a new child welfare agency or to a new child care system central operator, permitting and authorizing the licensee to begin child care operations. It is valid for ninety (90) days and is issued upon application by the operator only if the staff and facility do not present any apparent hazards to the children that may be in care and only if the facility has received fire safety and environmental sanitation approval. If, at the end of the 90-day period, evidence is provided by the applicant/licensee that such child welfare agency is suitable and properly managed and that the agency is in compliance with these rules, the Department will issue an annual license to the child welfare agency.

(j) Day Care. Synonymous with definition of child care, above.

(k) Department (DHS). The Tennessee Department of Human Services and its representatives.

(Rule 1240-04-04-.01, continued)

(l) Family Day Care Home. A home (an occupied residence) operated by a person for the purpose of receiving therein a minimum of five and a maximum of seven children under 17 years of age, who are not related (see definition below) to such person and whose parent(s) or guardian(s) are not residents in the same house, for less than 24-hours per day for care, without transfer of legal custody.

(m) Group Day Care Home. Any facility operated by a person, social agency, corporation or institution, or any other group which receives a minimum of eight and a maximum of 12 children (and up to three additional school-age children who will only be present before and after school, on school holidays, on school snowdays, and during school summer vacation) for less than 24-hours per day for care outside their own homes, without transfer of legal custody. Before a group day care home opens, fire safety and environmental inspectors must approve the facility.

(n) High School Diploma. As used in the context of caregivers' qualifications, refers to a document recognizing graduation from an accredited institution, public or private, based on the issuing state's required number of academic credits, including passing a GED test. As used in this Chapter, a certificate or statement of attendance or similar document or correspondence or video course do not qualify as or for a high school diploma.

(o) Infant. A child who is six weeks through 15 months of age.

(p) Law. The licensing law as contained in *TCA §§71-3-501* through *71-3-530*, and related statutes or other referenced statutes or regulations.

(q) Licensee. The person(s), agency(ies), or central operator to whom a license is issued and who must assume ultimate responsibility for a day care home or homes. In a single-site home, the licensee is the primary caregiver. In a child care system of approved homes, the central operator is the licensee. (The term as used herein also refers to an agency.)

(r) Parent. A biological or adoptive parent, guardian, or custodian who has primary responsibility for a child.

(s) Preschool Child. A person who is 31 months through five years of age. The term includes infants and toddlers.

(t) Primary Caregiver. The adult who is responsible for direct care and supervision of children in a day care home and for the daily operation of a home. In a family day care home which is not operated by a central operator, the primary caregiver is the licensee. Duties may include hiring, training, and supervision of other caregivers.

(u) Related. As used in this Chapter, any children under age nine of the following relationships by marriage, blood, or adoption: children, step-children, grandchildren, siblings, step-siblings, nieces, and nephews of the primary caregiver.

(v) School-age Child. A person who is five years of age and in kindergarten or older (refers to kindergarten through grade six).

(w) Staff. Full and part-time caregivers, employees, and volunteers if any.

(x) Substitute. Paid or unpaid persons who are replacement for regular staff. The names, addresses, telephone numbers and dates of service shall be recorded for all substitutes in the staff personnel records of the home. Substitutes providing services

(Rule 1240-04-04-.01, continued)

for thirty-six (36) hours or more in a calendar year are required to have a criminal background check pursuant to 1240-04-04-.03(1)(a)6 and shall meet the same requirements for regular staff for physical examinations as required by 1240-04-04-.06(3); provided, however, for purposes of 1240-04-04-.03(1)(a)6, persons serving temporarily as caregivers in field service placements as part of an educational course of study or other curriculum requirement shall not be considered as substitutes for purposes of this rule.

(y) Toddler. A child who is 16 months through 30 months of age.

(z) Volunteer. A person who provides services for a child care agency without payment and who is used to supplement regular staff or substitutes. The volunteer shall not be used to meet classroom adult:child ratios. The names, addresses, telephone numbers and dates of service for all volunteers shall be recorded in the staff personnel records of the home.

(6) Procedures For Getting A License.

(a) The Department offers one prelicensure consultation session. When an individual or group is giving consideration to opening a child care service/business, the local county office of the Tennessee Department of Human Services should be contacted. The individual or group will be given the name of a licensing representative who will serve as their consultant.

(b) The Department will offer prelicensure training to prospective providers of day care. Interested persons or groups should contact a licensing representative to determine the date of the next meeting in their area.

(c) The licensing representative will inform the interested individuals or entity of the appropriate time to apply for a license. The family day care home application fee is $5.

(d) Upon satisfaction of the following minimum requirements, a conditional license may be issued:

1. Primary caregiver's qualifications meet the requirements (see Chapter 1240-04-04-.03);

2. Three satisfactory references for the primary caregiver are verified; and

3. Physical facilities receive fire safety and environmental approval.

4. If the staff and facility do not present any apparent hazards to the children in care.

(e) Receipt of an application begins the evaluation process which is completed with the issuance or denial of an annual license. This process includes:

1. At least one unannounced visit to the day care home;

2. Observation of caregivers' interaction with children;

3. Review of agency records;

4. Request for written and oral information related to licensure requirements; and

(Rule 1240-04-04-.01, continued)

5. Use of an evaluation checklist, itemizing requirements and noting compliance or noncompliance, a copy of which is left with the applicant.

(f) Upon issuance of an annual license, the licensee is expected to maintain compliance with requirements throughout the year.

(g) Near the end of a licensing term, the licensee will be notified by mail of a scheduled reevaluation for a new license. Application for renewal must be made prior to the expiration of the existing license. The reevaluation process is similar to the initial evaluation, but agencies receiving two consecutive annual licenses are rewarded with a shorter, less involved reevaluation and/or fewer reevaluations. A home accredited by the National Association for Family Day Care (NAFDC) may be reevaluated every three years. (See "Appendix A" for further information regarding the licensing process.)

(7) Licensing Action And Appeal Rights. Procedures for applications, suspensions, denials, revocations of licenses and appeal rights as governed by Chapter 1240-5-1-1.

(8) Grace Period. Because the amount of in-service training required has been increased, new agencies and new primary caregivers will be granted a reasonable grace period if needed to obtain the required hours of training.

(9) Investigations Of Child Abuse And Neglect; Custodial Authority Of Children.

(a) A child care provider is required by law to cooperate with the Department and other investigators by reporting any suspected child abuse and neglect to the Department. The child care provider must further cooperate by providing access to the records of children and staff and by allowing investigators to interview children and staff.

(b) A child care provider should protect the child by requesting the investigator's identification and by knowing who is entitled to custody of the child. An investigator may take a child off of the premises of the agency if he/she has obtained custody of the child through voluntary placement agreement with the parent, through court order or through emergency assumption of custody under *TCA §37-1-113* without parental permission or if the child's parent or legal guardian is present and approves, or in conjunction with investigative procedures under the child abuse laws.

(c) Child care providers do not have a right to be present during interviews with staff or children or to receive information or results of the interviews or investigations concerning child abuse or neglect unless directly related to efforts to enforce the child abuse or licensing laws.

Authority: *T.C.A. §§4-5-201 et seq., 71-1-105, 71-3-501 et seq., and Acts 2000, ch. 981, §§8 and 14.* ***Administrative History:*** *Original rule certified June 10, 1974. Repeal and new rule filed October 28, 1976; effective January 14, 1977. Repeal filed March, 17, 1980; effective June 29, 1980. New rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed April 30, 1996; effective July 14, 1996. Amendment filed September 29, 2000; effective December 13, 2000.*

1240-04-04-.02 OWNERSHIP AND ADMINISTRATION.

(1) Ownership/Sponsorship.

(a) The licensee of a family day care home shall be the primary caregiver.

(b) A family day care home shall be the residence of the primary caregiver.

(Rule 1240-04-04-.02, continued)

(c) The primary caregiver in a family day care home shall assume responsibility for daily operation of the home and shall meet specified qualifications prior to licensure. (See Chapter 1240-04-04-.03.)

(d) The central operator of a child care system shall have ultimate responsibility for the operations of any day care homes in the system. The central operator and the primary caregiver shall sign an application for a license for each home sponsored (unless sponsoring agency is classified public or unless homes are to be approved).

(e) The name, address, and phone number of an applicant, central operator, and all primary caregivers shall be made known to the Department of Human Services and to parents of children enrolled in the home(s) and shall become public record.

(f) The applicant/licensee shall notify DHS before changing location of a family day care home.

(g) Day care agencies sharing common land shall be located in separate facilities and shall not share equipment or facilities with the exception of outdoor equipment and play area, which shall be used by children from one agency at a given time.

(2) Policies.

(a) A new primary caregiver shall complete in the presence of the Licensing Counselor the "Checklist of Services" or write out a Statement of Purpose.

(b) A family child care home shall have written policies concerning

1. Services offered;

2. Provision for children's individual needs;

3. The home's admission policies and enrollment procedures;

4. Fees charged (if applicable) and plan for payment;

5. Handling of children's personal belongings; ~~and~~

6. If the agency provides transportation for children in the agency's care, the written statement required by 1240-04-04-.07(1)(a) describing transportation plans, procedures and equipment utilized in the transportation process and parental permission for trips away from facility~~.~~[;]

[7. Criteria for the disenrollment of children [see expulsion policy requirements in 1240-04 04-.02(b)(18);

8. Specific criteria concerning the release of children; includes responsibility until signed out;

9. Written parental permission for observation of children by non-child care agency staff;

10. Behavior management techniques;

11. Hours of operation;

12. Late fees;

(Rule 1240-04-04-.02, continued)

13. Rates;

14. Inclement weather;

15. Emergency policy;

16. Whether the environment is smoke free;

17. Meal Service policy; and

18. The agency shall have a written expulsion policy.

(i) The policy shall be:

(I) Clearly articulated to staff and parents;

(II) Developmentally appropriate and consistent; and

(III) Non-discriminatory.

(ii) Other options shall be considered prior to expulsion, such as but not limited to reducing the number of days or amount of time the child may attend, or if applicable, referrals to the Center on the Social and Emotional Foundations for Early Learning (CSEFEL), Early Intervention System, Individuals with Disabilities Education Act (IDEA).

(iii) Procedures shall be developed to allow for a planned transition of a child to another program if expulsion must occur.

(iv) Aggregate data that includes reasons for expulsions shall be maintained and reported to the Department annually.]

(c) A policy statement signed by both the primary caregiver and the parent shall be given to the parent, and a signed copy or other documentation that parent received a copy shall be kept on file.

(3) Enrollment Of Children And Parent Involvement.

(a) Children shall be at least six weeks of age before entering day care.

(b) Prior to admission of children, the parent shall submit a completed information (application) form and current health record. [See 4(c) below and Chapter 1240-04-04-.06.]

(c) A copy of "Summary of Licensing Requirements" (furnished by the Department) shall be given to the parent(s) of each child enrolled.

(d) During normal hours of operation, parents shall be permitted access to their children and ready access to all licensed areas of the home and premises shall be granted to Department representatives and Inspection authorities (i.e., Fire Safety, Sanitation, and Health).

(e) Parents must be informed in advance of the child's removal from the premises except in cases of emergencies or pursuant to investigative procedures conducted pursuant to the child abuse laws.

(Rule 1240-04-04-.02, continued)

[(f) The agency shall not admit a child into care until the parent/guardian has supplied the agency with a completed application, valid Tennessee Department of Health Official Immunization Certificates record (for children over two (2) months of age), and a health history. Exception: After an initial eligibility determination, children who are homeless and/or children in state custody may receive care prior to providing all required documentation as determined by the Department. Care without documentation of immunizations shall not exceed thirty days.

(g) The agency shall maintain written documentation that the parent/guardian performed an on-site visit to the agency prior to the child being enrolled into care and that the agency provided and reviewed parent engagement strategies recognized by the Department with the parent during the required pre-placement visit. Exception: A pre-placement visit is not required for children of homeless families.]

(4) Records.

The following records shall be kept and shall be available to the Department:

(a) An annual operating budget (actual or projected), which includes a statement of income and expenditures. Adequate financing of the day care operation shall be maintained.

(b) Staff records including:

1. Recommendations from three nonrelated references on each applicant and caregiver. The central operator's/primary caregiver's reference information shall be given to the licensing counselor;

2. Training received during the year for each caregiver;

3. Reserved;

4. Adult health records.

(c) Children's health records.

(d) Daily attendance records on children; on staff if more than one caregiver.

(e) A record on each child which includes the following information:

1. Name, date of birth, name of parent(s), home address. business address and telephone, work hours, child's background information, transportation plan, and the names of persons allowed to pick the child up.

2. The following information shall be kept where it can be found quickly in an emergency: the name, address, and telephone number of the person parents wish to be called if they cannot be reached. The name, address, and telephone number of a doctor to call in an emergency, written permission of parent authorizing emergency medical care.

3. A written plan of how the primary caregiver intends to communicate daily with parents of every child below 31 months of age.

~~(f) Children's records shall be kept for one year following the child's leaving the agency.~~

(Rule 1240-04-04-.02, continued)

[(f) All children, including related children younger than age nine (9), shall have required records on file before care is provided. Exception: After an initial eligibility determination, children of homeless families and/or children in state custody may receive care prior to providing required documentation as determined by the Department.

(g) Data Reporting - Agencies shall submit data as requested by the Department quarterly on topics such as but not limited to: active enrollment, homeless children, non-traditional hours, deaths/serious injuries, child abuse, English as a Second Language/dual language learners, and children with disabilities.]

(5) Right To Privacy/Confidentiality. The licensee and caregivers shall not disclose or knowingly permit the use of by other persons any information concerning a child or family except as required by law or regulation.

(6) Posting Of License. During the hours of operation, an up-to-date license to operate a family day care home shall be posted near the main entrance where anyone entering may see it.

(7) Liability and Medical Payment Insurance Coverage.

(a) General liability, automobile liability and medical payment insurance coverage shall be maintained on the vehicles owned, operated or leased by the child care agency and on the operations of the child care agency's facilities.

(b) Automobile liability coverage shall be maintained in a minimum amount of Three Hundred Thousand Dollars ($300,000) combined single limit of liability. The requirement of this subparagraph only applies to child care programs that transport children.

(c) General liability coverage on the operations of the child care agency facilities shall be maintained in a minimum amount of Three Hundred Thousand Dollars ($300,000) per occurrence and Three Hundred Thousand Dollars ($300,000) general aggregate coverage, or Three Hundred Thousand Dollars ($300,000) per occurrence.

(d) Medical payment coverage as the primary coverage, shall be maintained in the minimum amount of Five Thousand Dollars ($5,000) for injuries to children being transported in vehicles owned, operated or leased by the child care agency under subparagraph (b), and in the minimum amount of Five Thousand Dollars ($5,000) for injuries to children resulting from the operation of the child care agency under subparagraph (c).

(e) The requirements of this paragraph shall not apply to an agency that is under the direct management of a self-insured administrative department of the state, a county or a municipality or any combination of those three (3) or that has, or whose parent entity has, a self-insurance program that provides, as determined by the Department, the coverages and the liability limits required by these rules.

(f) Documentation that the necessary insurance is in effect, or that the administrative department or other entity is self-insured, shall be maintained in the records of the child care agency and shall be available for review by the Department's licensing staff.

Authority: *T.C.A. §§4-5-201 et seq., 4-5-202, 71-1-105, 71-3-105(5), 71-3-501 et seq., 71-3-502(a)(2), 71-3-502(4)(B), and Acts 2000, ch. 981, §§3(a)(4) and 14.* ***Administrative History:*** *Original rule certified June 10, 1974. Repeal and new rule filed October 28, 1976; effective January 14, 1977. Repeal filed March 17, 1980; effective June 29, 1980. New rule filed December 6, 1983; effective January 5,*

(Rule 1240-04-04-.03, continued)
1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed July 1, 1993; effective September 14, 1993. Amendment filed November 18, 1999; effective January 31, 2000. Amendment filed September 29, 2000; effective December 13, 2000. Amendment filed August 30, 2001; effective November 13, 2001. Amendment filed November 21, 2002; effective February 4, 2003.

1240-04-04-.03 STAFF.

(1) Qualifications.

(a) All Caregivers.

1. Every staff person, including volunteers, practicum students, and substitutes, shall be physically, mentally, and emotionally capable of performing his/her duties satisfactorily.

(i) Drug Screening for Child Care Vehicle Drivers Upon Reasonable Cause.

(I) The Department, in its sole discretion, may require any individual, who drives or may drive at any time any vehicle transporting children on behalf of the agency or its contractors, to undergo a drug screening test when, in the Department's sole determination, there is reasonable cause to believe that such individual may have an impairment or possible impairment that potentially poses a risk of harm to children in the care of the agency caused by the use, or possession and potential use, of any drug. For purposes of this part, the term "drug" shall include alcohol.

(II) An individual directed to undergo such examinations or screenings may refuse to do so, but will not be permitted to drive a vehicle transporting children in the agency or have any further contact with children in the care of the child care agency until evidence is provided that is satisfactory, in the Department's discretion, to demonstrate that the individual does not represent a risk of harm to the children in the agency's care.

(ii) Safety Plans.

(I) The Department may require, in its sole discretion, the child care agency to enter into a safety plan approved by the Department that prohibits or limits such individual's contact with children in the care of the child care agency pending the outcome of such testing.

(II) The Department may otherwise require, in its sole discretion, that the child care agency enter into a long-term or permanent safety plan that prohibits or limits the driving duties by an individual described in part 1 for, or contact by such individual with, children in the care of the agency.

(III) Failure to adhere to the safety plan shall be grounds for action by the Department against the child care agency's license as permitted by T.C.A. § 71-3-508(c).

(IV) The child care agency, or any individual whose employment status is directly and adversely impacted by a safety plan or by refusal to undergo an examination as directed by the Department may, at any

(Rule 1240-04-04-.03, continued)

time during the existence of the plan or during the pendency of the directive for an examination, make written request to the Director of Licensing for an intradepartmental review of the safety plan. Such review shall be conducted by the Director or the Director's designee within ten (10) business days of receipt of the written request.

(V) Any individual or child care agency that has received an adverse decision from the intradepartmental review set forth in subpart (IV) above, may appeal such safety plan to the Department by filing a written request for an administrative hearing before the Department's Administrative Procedures Division within ten (10) business days of the Director's decision. The hearing shall be held by the Division within twenty (20) business days of the receipt of the request for an administrative hearing.

(VI) Any safety plan that exceeds ninety (90) days when proposed or that continues for more than ninety (90) days may be appealed by the child care agency to the Child Care Agency Board of Review.

2. A person who has a physical, mental, or emotional condition which is in any way harmful to children shall not be present with the children.

3. To be counted in the caregiver to child ratio, caregivers shall be at least 16 years of age and able to read and write, and be supervised by an adult.

4. Caregivers shall be of suitable character to work with young children.

5. Reserved.

~~6. Criminal history and abuse registry background checks; appeals; exemptions.~~

~~(i) Each person:~~

~~(I) Applying to work with children as a paid employee, a director, or manager of a child care agency;~~

~~(II) Applying to work as a new substitute in a child care agency;~~

~~(III) Who applies for a license for, or who otherwise seeks to operate (an "operator") a child care agency as defined in TCA §§ 71-3-501 et seq. and who has significant contact with children in the course of the role of operator. For purposes of this subparagraph, an "operator" shall be an individual who is an owner or administrator of a child care agency or a child care system; or~~

~~(IV) Fifteen (15) years of age or older who resides in a child care agency or who moves into a child care agency following initial licensure shall:~~

~~I. Complete a criminal history disclosure form as approved by the Department;~~

~~II. Supply a fingerprint sample in a manner prescribed by the Tennessee Bureau of Investigation in accordance with procedures established by the Department, and shall submit to a fingerprint based criminal history check to be conducted by~~

(Rule 1240-04-04-.03, continued)

~~the Department and the Tennessee Bureau of Investigation in accordance with procedures established by the Department;~~

~~III. Submit to a review of their status on the Department of Health's vulnerable persons registry under Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated.~~

~~IV. Agree to release all records relating to his or her criminal history to the child care agency and to the Department so that the criminal history information can be verified.~~

~~(ii) The entity that is seeking to employ the person or use the person as a substitute, or which has the person residing in the agency, or the licensee or operator of a child care agency, shall be responsible for obtaining, and submitting the fingerprint sample and any information necessary to process the criminal history review, in such manner as may be required by the Department, to the Tennessee Bureau of Investigation within ten (10) days of the first day of beginning employment or substitute status, or within ten (10) days of the license application or seeking operator status, or, within ten (10) days of the application for an initial license for a facility in which the person resides or within ten (10) days after the resident moves into the child care facility.~~

~~(iii) The child care agency shall be responsible for all costs associated with obtaining, handling and processing of the fingerprint sample which is submitted to the Tennessee Bureau of Investigation. The Department of Human Services will pay for the costs of processing the criminal records background check with the Tennessee Bureau of Investigation using the applicant's fingerprint sample. The Department shall only pay for one (1) processing fee that is required by the Tennessee Bureau of Investigation. If the fingerprint sample is rejected, and further costs are required to process the fingerprint, the child care agency is responsible for any further costs, regardless of the number of efforts required to obtain a valid fingerprint sample.~~

~~(iv) Pending outcome of the fingerprint background check and the Department of Health's vulnerable person's registry the applicant for employment, for a license or for operator or for a substitute position shall be conditional and shall be dependent upon the background check. No person whose criminal history disclosure form describes a criminal history or other activities within the prohibitions of subpart (vii) shall be permitted to be employed as a caregiver, a substitute, director, nor may such person be allowed to be a licensee, or an operator who has significant contact with the children in the agency's care, nor shall such person be permitted to reside in or otherwise have access to children in the child care facility while children are present.~~

~~(v) A copy of the disclosure form and the results of the criminal history check and the results of the inquiry to the Department of Health's vulnerable persons registry shall be maintained in the child care agency's records for review by the Department of Human Services.~~

~~(vi) The child care agency shall immediately review the report of the background check received from the Department and the Tennessee Bureau of Investigation, and shall immediately consult with the Department to resolve any questions relative to the person's status. Upon determination that the person's status prohibits the person from having~~

(Rule 1240-04-04-.03, continued)

~~access to children as described in subpart (vii), the child care agency shall immediately exclude such person from access to children. Failure to exclude the person under this part or subpart (iv) will result in immediate suspension of the child care agency's license.~~

~~(vii) Exclusions from access to children based upon criminal history or other status.~~

~~(I) No person shall be employed, or otherwise act, as a caregiver or as a substitute caregiver for children in a child care agency, nor shall any person be a licensee, director, or be an operator who has significant contact with children in a child care agency, nor shall a person who is a resident in a child care agency have access to or contact with children in a child care agency, nor shall any other person have any access to children in a child care agency whatsoever, who:~~

~~I. has any pending warrant, indictment or presentment;~~

~~II. has been convicted, pled guilty to or pled no contest to any crime or charge, or~~

~~III. has any pending juvenile proceeding or previous juvenile finding which, if an adult, would result in any crime or charge, involving:~~

~~A. Any crime, including a lesser included offense derived from any crime involving the physical, sexual, or emotional abuse or gross neglect of a child or any other crimes involving a threat to the health, safety or welfare of a child; or~~

~~B. Any crime of violence, including a lesser included offense derived from a crime of violence against another person; or~~

~~C. Any crime involving, or lesser included offenses derived from any crime involving, the manufacture, sale, distribution or possession of any drug; or~~

~~D. A violation of TCA §§ 39-13-213; 55-10-101; 55-10-102 or 55-10-401 or any felony involving use of a motor vehicle while under the influence of any intoxicant. Such persons under this subitem may not for a period of five (5) years from the date of the conviction or guilty plea be employed or serve as a driver transporting children for a child care agency.~~

~~IV. Is listed on the abuse registry maintained by the Department of Health pursuant to Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated; or~~

~~V. Known to the management or licensee of a child care agency as a perpetrator of child abuse or child sexual abuse or who is identified to the child care agency's management or licensee by the Department of Human Services or by the Department of~~

(Rule 1240-04-04-.03, continued)

~~Children's Services as a validated or indicated perpetrator of abuse of a child based upon an investigation conducted by the Department of Children's Services or by the child protective services agency of any other state; and~~

~~A. who is associated in providing care or ancillary services in any manner within a child care agency; or~~

~~B. who is a family member or other person residing at the child care agency's facility(ies) or adjacent residence of the caregiver; or~~

~~C. who has unrestricted access to children in the child care agency as determined by the Department of Human Services.~~

~~(II) An employee or volunteer who has been identified by the Department as having neglected a child based on an investigation conducted by the Department of Children's Services, or any child protective services agency of any state, and who has not been criminally charged or convicted or pled guilty as stated above, shall be supervised by another adult while providing care for children.~~

~~(viii) Appeals of exclusions.~~

~~(I) Any person who is excluded or whose license or operator status is denied based upon the results of the criminal history background review may appeal the exclusion or denial to the Department within ten (10) days of the mailing date of the notice of such exclusion or denial to the subject person.~~

~~(II) If timely appealed, the Department shall provide an administrative hearing pursuant to Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated in which the appellant may challenge the accuracy of the report, and may challenge the failure to grant an exception to the exclusion or denial required by this subsection if a rule for such purpose has been promulgated by the Department pursuant to subpart (ix).~~

~~(III) The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified in the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the report was generated, has been dismissed, nolled or has resulted in an acquittal.~~

~~(ix) Exemptions from exclusions.~~

~~(I) The Department will consider the granting of exemptions from the prohibitions under subpart (vii).~~

~~(II) The person seeking the exemption may indicate the request on the disclosure form, or may seek the exemption by written request to the Commissioner at any time. The request shall state the basis for the~~

(Rule 1240-04-04-.03, continued)

~~request, including any extenuating or mitigating circumstances that would, in the person's opinion, justify an exemption from the exclusion. Any documentary evidence may also be submitted with the request.~~

~~(III) Advisory group to review exemption requests.~~

~~I. The Department will establish an advisory group composed, at a minimum, of law enforcement personnel, persons experienced in child protective services, persons experienced in child development issues and child care providers licensed by the Department to review the requested exemption and advise the Department as to whether such request is warranted.~~

~~II. At the Department's request, the advisory group shall review the written request and any other evidence in any other form which it determines necessary to determine the status of the exemption request.~~

~~III. Based upon the recommendation of the advisory group, the Department shall make the final determination regarding an exemption. The exemption shall only be granted if the circumstances, as reviewed and determined by the advisory group and the Department, clearly warrant the exemption. The decision will be filed with the child care agency and shall be maintained in the Department's record concerning the agency and shall be open to public inspection.~~

~~(IV) Appeal of exemption decision.~~

~~I. The Department shall notify in writing the person making the request for exemption of the decision regarding the exemption request and the basis for the decision. A person aggrieved by the Department's determination may appeal the decision by filing a written request with the Commissioner within ten (10) days of the mailing date of the decision as shown by the date of the notice. If timely appealed, the person shall be granted an administrative hearing under the provisions of TCA §§ 4-5-301 et seq.~~

~~II. The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified on the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal or juvenile charge except to show that such charge was, or since the criminal background history report was generated, has been dismissed, nolled or has resulted in an acquittal.~~

~~(x) Alternate and Supplementary Criminal Background Checks.~~

~~(I) The Department of Human Services may, at its own expense, utilize background checks pursuant to the provisions of TCA § 71-3-507(g) or (h) to determine the criminal history or other status on the~~

(Rule 1240-04-04-.03, continued)

~~Department of Health's abuse registry of persons applying to work or who are current employees, licensees, operators or volunteers or current residents of child care agencies or persons working with contractors of the Department who are not otherwise required by the provisions of this subparagraph or any other provisions of law to undergo a criminal history background check. The Department may also utilize the abuse registry of the Department of Health under Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated, for such persons.~~

~~(II) The Department may require such individuals to complete a disclosure form as required by subpart (i) and to undergo a fingerprint sample. The Department will submit the form and the fingerprints to the Tennessee Bureau of Investigation for review.~~

~~(III) Status Pending Background Check.~~

~~I. Pending the outcome of the background check, if required, the applicant for employment or licensee or operator status or for a substitute or volunteer services position, shall be in a conditional status with the child care agency or the Department contractor, and such status shall be dependent upon the outcome of the background check.~~

~~II. The employment status of persons for whom a post-employment criminal background check was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a child care agency for whom a criminal background check was conducted after license approval, and who were not otherwise subject to a pre-status applicant background check and to the exclusionary provisions provided in this part, shall be governed by any regulations which may govern their status in a regulated entity or by applicable employment law.~~

~~(IV) Name Searches.~~

~~I. As a further supplemental method of criminal background history review for any applicants for employment, license or operator status, or for substitute or volunteer status with child care agencies, or with the Department or its contractors, as listed in subdivision TCA § 71-3-501(g)(1) or with the entities which the Department may regulate, or for residents of new child care agencies, or for current employees, licensees, operators, substitutes or volunteers of child care agencies or for current residents of child care agencies, the Department may require such persons to submit a disclosure form as set forth in part 1, a copy of which shall be maintained with the Department and shall be filed with the entity with whom such person is associated, and may require such person to agree to release all records involving the person relating the criminal history of such person.~~

~~II. The Department may, by agreement with the Tennessee Bureau of Investigation, access the Bureau's criminal history computer database using only the name of the person and~~

(Rule 1240-04-04-.03, continued)

~~such other person as contained on the disclosure form or such other information as may be available. If the Department determines it to be necessary, then the Department may require fingerprint verification pursuant to items (I) and (II) above.~~

~~(V) All provisions of subpart (vii) including, but not limited to, the exclusion of individuals from providing care, from being licensed for the care of children or having access to children upon determination of the criminal background or perpetrator of such individual, the suspension of operations of regulated, certified or approved entities that fail to exclude persons with a criminal background, and the exemptions from the exclusionary provisions shall be applicable to persons having criminal backgrounds or perpetrator status as determined by the processes established by this part.~~

~~(VI) Any person disqualified from care for or access to children based upon the results of the criminal history background review under this part may appeal that determination to the Department as provided in subpart (viii).~~

~~(VII) Nothing in this part shall be construed to prevent the exclusion of any individual from providing care for, from being licensed or approved for the care of children pursuant to this part or from having access to a child in a child caring situation if a criminal or juvenile proceeding background or perpetrator status is discovered and verified in any other manner other than through a procedure established pursuant to this chapter. All procedures, rules, and appeal processes established pursuant to this subparagraph for the protection of children and the due process rights of excluded individuals shall also be applicable to such individuals.~~

~~(xi) Nothing in this part shall be construed to mean that any other law which mandates that criminal background checks be conducted on applicants for employment, license or operator status, for substitute or volunteer positions or for resident status is made voluntary, repealed or superseded in any manner by the provisions of this subparagraph, and the provisions of subpart (x) are supplementary to, and are not in lieu of any mandatory provisions for such other statutorily required criminal background checks.~~

[6. Criminal Background Check and State Registry/Records Review Procedures.

(i) Criminal Background and Abuse Registry Disclosures and Reviews; Fingerprinting Requirements.

(I) The following persons are required to have a background check no more than ninety (90) days before having access to any child care agency:

I. Any person who owns or operates a child care agency and will have significant contact with children;

II. Any person who applies to work in a child care agency as an employee, director or manager;

(Rule 1240-04-04-.03, continued)

III. Any person who will provide substitute services to a child care agency for more than thirty-six (36) hours in a calendar year and who is counted in the adult: child ratio; and

IV. Any person who is fifteen (15) years of age or older who will reside in a child care agency.

(II) New background checks are required for all staff and residents when an agency moves from one class of care to another, such as when a family home becomes a group home or when an agency is sold and staff remain employed by the new owner or any time an agency is issued a license that is not the renewal of an existing license. Exception: Does not apply to background checks completed within the last ninety (90) days.

(III) Background checks are required for all staff at least every five (5) years.

(IV) Requirements for Disclosure of Criminal/Juvenile and State Register History and Fingerprinting.

I. The individuals identified in subparagraph (1)(a) above shall:

A. Complete a criminal/juvenile administrative findings history disclosure form;

B. Submit fingerprint samples for a criminal and juvenile records background check; and

C. Complete a criminal, juvenile background check/state review consisting of:

(A) An investigation of a person's criminal background history by the Tennessee Bureau of Investigation (TBI) and through the Federal Bureau of Investigation's (FBI) national database;

(B) An investigation of a person's juvenile records history that is available to the TBI;

(C) A review of any available juvenile court records, if determined necessary by DHS;

(D) A search of the vulnerable persons registry (VPR), maintained by the Tennessee Department of Health;

(E) A search of the TN sexual offender registry (SOR), maintained by the TBI; and

(F) A search of the DCS registry of indicated perpetrators of abuse or neglect of children.

(G) A search of any state or federal registries required by the Child Care and Development Block Grant Act.

(Rule 1240-04-04-.03, continued)

(ii) Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Children Prior to Completion of Criminal History Review.

(I) A child care agency, substitute pool, or staffing agency shall be responsible for registration of persons required to have a background check. The responsible entity shall ensure that the process is completed prior to employment.

(II) A child care agency may not permit any person who is required to have a background check to assume any role or to have access to children until the agency receives written verification from the Department that the person is cleared to work/reside in the agency.

(III) Failure to Complete or Disclose Information on Criminal Disclosure Form.

I. Failure to properly complete all sections of the Criminal/Administrative History Disclosure Form shall result in the individual being prohibited from assuming any position for which a background review is required.

II. Failure to disclose all criminal and administrative history information may result in the person being:

A. Excluded by the Department from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and

B. Referred to the appropriate district attorney for criminal prosecution.

(IV) The Department will pay for the costs of performing one background check per person per agency per year.

(V) The child care agency shall be responsible for costs associated with the background check if:

I. The fingerprint sample is rejected and the fingerprint sample must be resubmitted;

II. The agency submits a second fingerprint sample for an individual when the initial background check has not been completed; or

III. The agency submits a fingerprint sample for a purpose unrelated to obtaining approval for a prospective employee, volunteer, etc. to have access to child care.

(iii) Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Children.

(I) No person shall be employed, be a licensee or operator or, provide substitute services, reside, or have any access to children in a child

care agency if the criminal background check identifies an excludable criminal offense for which the person has:

I. Been convicted of, pled guilty or no contest to (or to a lesser included offense);

II. Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or

III. Been named in a pending warrant, indictment, presentment, or petition.

(II) An excludable criminal offense involves:

I. The physical, sexual or emotional abuse or neglect of a child;

II. A crime of violence against a child, or any person;

III. Any offense, including a lesser included offense, involving the manufacture, sale, distribution or possession of any drug; or

IV. Any offense that presents a threat to the health, safety or welfare of children.

V. The criminal offenses for which a person will be excluded from a child care agency include but are not limited to the following offenses as well as their lesser included offenses (even if not listed here):

A. Aggravated arson (T.C.A. § 39-14-302);

B. Aggravated assault (T.C.A. § 39-13-102);

C. Aggravated child abuse (T.C.A. § 39-15-402);

D. Aggravated child neglect (T.C.A. § 39-14-302);

E. Aggravated cruelty to animals (T.C.A. § 39-14-212);

F. Aggravated kidnapping (T.C.A. § 39-13-304);

G. Aggravated rape (T.C.A. § 39-13-502);

H. Aggravated rape of a child (T.C.A. § 39-13-531);

I. Aggravated robbery (T.C.A. § 39-13-402);

J. Aggravated sexual battery (T.C.A. § 39-13-504);

K. Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);

L. Aggravated vehicular homicide (T.C.A. § 39-13-218);

M. Arson (T.C.A. § 39-14-301);

(Rule 1240-04-04-.03, continued)

N. Assault (T.C.A. § 39-13-101);

O. Carjacking (T.C.A. § 39-13-404);

P. Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);

Q. Criminal attempt, under T.C.A. § 39-12-101, to commit any criminal offense that requires exclusion from child care;

R. Criminal exposure to HIV (T.C.A. § 39-13-109);

S. Criminal homicide (T.C.A. § 39-13-201);

T. Criminally negligent homicide (T.C.A. § 39-13-212);

U. Cruelty to Animals (T.C.A § 39-14-202);

V. Custodial interference (T.C.A. § 39-13-306);

W. Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);

X. Domestic assault (T.C.A. § 39-13-111);

Y. Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);

Z. Especially aggravated burglary (T.C.A. § 39-14-404);

AA. Especially aggravated kidnapping (T.C.A. § 39-13-305);

BB. Especially aggravated robbery T.C.A. § 39-13-403);

CC. Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);

DD. Exploitation of a minor by electronic means (T.C.A. § 39-13-529);

EE. False imprisonment (T.C.A. § 39-13-302);

FF. First degree murder (T.C.A. § 39-13-202);

GG. Incest (T.C.A. § 39-13-302);

HH. Indecent exposure (T.C.A. § 39-13-511);

II. Involuntary labor servitude (T.C.A. § 39-13-307);

JJ. Kidnapping (T.C.A. § 39-13-105);

KK. Rape (T.C.A. § 39-13-503);

(Rule 1240-04-04-.03, continued)

LL. Rape of a child (T.C.A. § 39-13-522);

MM. Reckless endangerment (T.C.A. § 39-13-103);

NN. Reckless homicide (T.C.A. § 39-13-215);

OO. Robbery (T.C.A. § 39-13-401);

PP. Second degree murder (T.C.A. § 39-13-210);

QQ. Sexual battery (T.C.A. § 39-13-505);

RR. Sexual battery by an authority figure (T.C.A. § 39-13-527);

SS. Sexual exploitation of a minor (T.C.A. § 39-17-1003);

TT. Solicitation of a minor (T.C.A. § 39-13-528);

UU. Stalking (T.C.A. § 39-17-315);

VV. Statutory rape (T.C.A. § 39-13-506);

WW. Statutory rape by an authority figure (T.C.A. § 39-13-532);

XX. Trafficking a person for sexual servitude (T.C.A. § 39-13-309);

YY. Vehicular assault (T.C.A. § 39-13-106);

ZZ. Vehicular assault while intoxicated (T.C.A. § 39-13-106);

AAA. Vehicular homicide (T.C.A. § 39-13-213);

BBB. Voluntary manslaughter (T.C.A. § 39-13-211); and

CCC. Weapons offenses (unlawful possession, carrying, use, etc.).

(III) No person may be employed as a driver or serve as a driver for a child care agency if the person:

I. Is currently charged with; or

II. Has been convicted of, or pled guilty, within the last five (5) years to any of the following criminal offenses:

A. Vehicular homicide;

B. Accidents involving death or personal injury;

C. Accidents involving damage to a vehicle;

D. Driving under the influence of an intoxicant, drug or drug producing stimulant; or

E. Any felony involving the use of a motor vehicle while under the use of any intoxicant.

(iv) Exclusion from access to child care based on a listing on a state registry.

(I) No person shall be employed, be a licensee or operator, provide substitute services, reside, or have any access to children in a child care agency if the results of the state registry review identify the person as being:

I. Listed on the Vulnerable Persons Registry;

II. Listed on the Sexual Offender Registry; or

III. Indicated in the records of the Department of Children's Services as a perpetrator of abuse or neglect of a child.

(v) Supplemental Background Checks Subsequent to Licensing, Employment or Residence in a Child Care Agency.

(I) The Department may, at any time, require a new background check of any individual with access to children in a child care agency.

I. For an individual who was not subject to a background check prior to assuming a role, the individual's existing status in their role shall be conditional upon the satisfactory outcome of any requested background check.

(vi) Any person who is excluded shall remain excluded pending the outcome of any appeals or waiver review or any determination that the basis for exclusion no longer exists.

(vii) An individual will also be excluded if a criminal or juvenile proceeding, registry or administrative background review requiring exclusion or any other provision of law is discovered and verified in any manner.

(viii) If a child care agency, substitute pool or staffing agency receives information from a source other than the Department that requires them to exclude an employee, substitute, volunteer, or resident they shall immediately exclude the person from any access to children and notify the Department on the same business day by calling the child and adult care complaint hotline.

(ix) The exclusion of such persons from access to child care shall be conducted pursuant to T.C.A. § 71-3-507 and this rule.

(x) Failure of a child care agency to perform the required background check before allowing a person access to child care or to immediately exclude individuals with a criminal history or state registry review status that requires exclusion, shall be the basis for the immediate suspension, denial or revocation of the child care agency's license.]

7. Reserved

(Rule 1240-04-04-.03, continued)

8. All caregivers shall be able to explain emergency procedures to follow in case of fire, serious injury or illness of a child or a caregiver, or disaster.

9. All caregivers shall have training in detection, reporting, and prevention of child abuse.

10. All caregivers shall have a minimum of two hours training annually, in addition to other required training in specific subject areas.

(b) Primary Caregiver.

1. A primary caregiver or any substitute for him/her, shall be 18 years of age or older.

2. A primary caregiver shall be able to read and write English.

3. A primary caregiver shall complete a DHS-sponsored child-care orientation class within three months of licensure.

4. A primary caregiver shall annually complete at least four hours of workshops or other training, or present evidence of four hours of consultation or of personal study (one-time only), in child care or a related field. After the first year of licensure, this training shall be in addition to other required training [such as Child and Adult Food Care Program (CAFCP), personal safety or first aid, etc.].

5. A primary caregiver shall not be employed at any other occupation during child care operating hours.

(c) Central Operator.

1. In order to receive a license, the central operator or person in charge of a child care system (or multiple homes) shall have:

(i) Graduated a four-year college or university and completed one year of full-time work experience with a group of young children; or

(ii) Completed some formal college training in early childhood education or child development (or related field), or received a Child Development Associate (CDA) credential or National Association of Family Day Care (NAFDC) accreditation, and completed one year of full-time work experience with a group of young children; or

(iii) A high school diploma or its equivalent (See "Definitions" in Chapter 1240-04-04-.01) and two years full-time work experience with a group of young children.

2. The central operator or person in charge of the child care system shall complete a DHS-sponsored child-care orientation class within three months of licensure.

[(d) Prior to assuming duties, each new employee shall receive documented instruction in, and have a working knowledge of:

1. Program philosophy and policies;

2. Job description;

(Rule 1240-04-04-.03, continued)

3. Emergency health and safety procedures;

4. Behavior management procedures;

5. Detection, reporting, and prevention of child abuse;

6. Procedures for receiving and releasing children;

7. Safe sleep procedures;

8. Shaken baby syndrome/abusive head trauma;

9. Meal service and safe food preparation policies;

10. Supervision during high risk activities such as eating and outdoor play;

11. Food allergies;

12. Expectations for communications with parent/guardian;

13. Disease control and health promotion;

14. An overview of licensing requirements;

15. Information on risks of Cytomegalovirus (CMV) to female employees of childbearing age;

16. A minimum of two (2) hours pre-service training as recognized by the Department; and

17. Documentation of the requirements in this subparagraph (h) shall be maintained in the staff file.]

[(e) Ongoing Training Requirements – any ongoing training required for employees shall include health and safety topics, such as but not limited to:

1. Prevention and control of infectious diseases (including immunization);

2. Prevention of sudden infant death syndrome and use of safe sleeping practices;

3. Administration of medication, consistent with standards for parental consent;

4. Prevention of and response to emergencies due to food and allergic reactions;

5. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

6. Prevention of shaken baby syndrome and abusive head trauma;

7. Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

(Rule 1240-04-04-.03, continued)

8. Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

9. Precautions in transporting children (if applicable); and

10. First aid and pediatric cardiopulmonary resuscitation.]

(2) Caregiver To Child Ratios And Supervision.

(a) An adult caregiver (at least 18 years of age) shall be present and supervising children in care at all times.

(b) The total number of children (including "related" children under nine years of age) shall not exceed 12. (See Chapter 1240-04-04-.01 for definition of "related".)

(c) A family day care home shall comply with one of the following two options at all times.

1. Family Day Care Homes with One Caregiver:

(i) The total number of children in a family day care home with one caregiver shall not exceed seven, including 'related' children under nine years of age, and

(ii) In a home with one caregiver, the number of children under two years of age shall not exceed four.

2. Family Day Care Homes with More than Seven Children:

(i) If the number of children, including the primary caregiver's "related" children (See Chapter 1240-04-04-.01 for definition of "related"), exceeds seven, one of the following options shall be met at all times:

Option	Group Size and Ages	Caregivers Required
A	More than 7 children (including "related" children under age 9), no more than 4 under age 2.	2
B	More than 7 children (including "related" children under age 9), with more than 4 under age 2.	3

(d) If any child's physical or mental condition requires special care, or when a field trip is taken off premises, the number of caregivers required (any option) shall be increased by one.

Authority: *T.C.A. §§4-5-201 et seq., 4-5-209, 71-1-105, 71-3-501 et seq., 71-3-502(a)(2), 71-3-508(c), Acts 2000, ch. 981, §§8 and 14 and Acts 2003, Ch. 412, § 2.* ***Administrative History:*** *Original rule certified June 10, 1974. Repeal and new rule filed October 28, 1976; effective January 14, 1977. Repeal filed March 17, 1980; effective June 29, 1980. New rule filed December 6, 1983; effective January 5,*

(Rule 1240-04-04-.04, continued)
1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed July 1, 1993; effective September 14, 1993. Amendment filed September 29, 2000; effective December 13, 2000. Amendment filed September 29, 2003; effective December 13, 2003.

1240-04-04-.04 EQUIPMENT.

(1) General.

(a) All equipment shall be well made and safe with no sharp edges, splinters, or other conditions which present a hazard for children.

(b) Unsafe equipment shall be repaired or removed from the day care home or play yard at once.

(c) Babies and toddlers shall have additional equipment for comfort and safety, such as cribs, high chairs, etc.

(d) School-aged children shall have educational materials such as puzzles, craft items, etc., and equipment suitable for their size, interests, and needs.

(2) Indoor Play Equipment.

(a) The day care home shall have play equipment for active and quiet play, suitable for the children's ages and interests and for children with special needs, and for all activities required in the Program Section. (See Chapter 1240-04-04-.05.)

(b) Play materials and equipment shall be in sufficient quantity to provide twice as many activities as there are children at a given time.

(c) Play materials and equipment shall be placed in such a way that children can get it and return it when needed, so that they can grow in independence.

(3) Outdoor Play Equipment.

(a) Enough play equipment shall be provided so that each child can take part in many kinds of play each day.

(b) Equipment shall be placed to avoid accidents, for example, swings placed out of traffic paths.

(c) If there are climbers or swings, they shall be placed on a resilient surface and not over concrete, asphalt, or a similar surface such as hard-packed dirt.

(d) Climbers, swings, and other large equipment shall be securely anchored.

(e) If used, retainer structures for loose material, such as sand or pea gravel, shall be placed at least six (6) feet from the perimeter of play structures.

Authority: *T.C.A. §§71-1-105(12) and 71-3-501 et seq.* ***Administrative History:*** *Original rule filed June 10, 1974. Repeal and new rule filed October 28, 1976; effective January 14, 1977. Repeal filed March 17, 1980; effective June 29, 1980. New rule filed December 6, 1983; effective January 5, 1984. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed April 30, 1996; effective July 14, 1996.*

(Rule 1240-04-04-.05, continued)

1240-04-04-.05 PROGRAM.

(1) Activities.

(a) A balanced daily program of developmentally appropriate activities shall be provided which includes some of the following: reading to and talking with children; art and music activities; building and manipulating toys; and dramatic play activities such as doll play, housekeeping, and role play. Children shall also be allowed to participate in age-appropriate home-type activities, such as cooking, cleaning, gardening, and washing clothes as a meaningful learning experience.

(b) There shall be a written and posted schedule of daily routine activities.

(c) Children shall be given opportunity to make their own choices in some activities. Other play activities shall be planned by the caregiver.

(d) Children shall not spend all day in one room, unless the room has at least 30 square feet of usable play space per child.

(e) Television, video tapes, and movies shall be limited to two hours per day and to programs designed for children's education and/or enjoyment. Programs/movies with violent or adult content (including "soap operas") shall not be permitted in children's presence. Other activities shall be available to children during television/movie viewing.

(f) Except when the weather is extremely bad, children of all ages (including infants and toddlers) shall have outdoor play each day.

(2) Discipline.

(a) Discipline techniques used shall be positive, appropriate to the age level and needs of children in care; designed to help children learn and maintain self-control and self-esteem; and shall not involve physical punishment, or deprivation of food, rest, or toileting. (Physical or corporal punishment is the infliction of bodily pain as a penalty for the child's behavior of which the punisher disapproves.)

(b) Praise and encouragement of good behavior shall be used instead of noticing only unacceptable behavior.

(c) Punishment which is shaming, humiliating, frightening, or injurious to children shall not be used.

(3) Physical Care And Naps.

(a) Preschool children shall have a reclining rest period according to their individual needs. School-aged children shall be allowed to nap if needed but not forced to do so.

(b) Each toddler who is able to walk and each preschooler shall have individual napping space, something soft and at least two inches thick to sleep on, and clean bedding. (Examples: couch with cover thick sleeping bag or foam pad, family bed with cover, or cot with cover.)

(c) Each child under 15 months of age and any child unable to walk shall have his/her own crib or playpen and bedding for napping.

(Rule 1240-04-04-.05, continued)

(d) Because of the risk of Sudden Infant Death Syndrome (SIDS), sleeping infants (under 13 months) shall be checked every 30 minutes by touching them. If a child appears not to be breathing, emergency medical assistance shall be sought immediately.

(e) Each child shall have his or her own clean sheet and coverlet.

(f) After a child has rested for a reasonable period, she/he shall be allowed to get up.

(4) Physical Care - Toilet Training.

(a) Toilet training shall never be started until a child has been in the day care home long enough to feel comfortable.

(b) Toilet training shall not be started until a child is able to understand, to do what is asked of them, and to let their need to use the bathroom be known.

(c) Children shall not be made to sit on the potty or toilet for more than five minutes.

(d) Children shall be diapered or cleaned when needed in a safe, sanitary manner.

(5) Personal Safety Curriculum.

(a) For ages three (3) through school-age, a curriculum shall be offered that shall include instruction, at least once a year, in personal safety.

(b) Personal Safety Curriculum Components and Guidelines.

1. The personal safety curriculum shall include a Department-recognized component for the prevention of child abuse, including, for children four (4) years of age and older, a child sexual abuse prevention component.

2. The curriculum shall be based upon curriculum guidelines provided by the Department to the child care provider in any suitable format. The child care provider may choose terminology and instructional methods for this curriculum with a goal of providing clear, effective and appropriate instruction to the children in personal safety, including the prevention of all forms of child abuse.

(c) Personal Safety Instruction Requirements for School-Age Children.

1. For school-age children, the curriculum shall include instruction for reporting physical, sexual or verbal abuse.

2. Children of school-age shall not be required to receive personal safety instruction from the child care agency if they annually receive personal safety instruction as required by this paragraph (5) in the curriculum of their local public education agency, or, if they receive such instruction in any other educational setting, as approved, in either circumstance, by the Department.

3. Documentation of Personal Safety Instruction in Educational Settings.

(i) Written documentation, in a form and manner approved by the Department, verifying that annual personal safety instruction as required by this paragraph (5) is being provided in a public educational setting to each child enrolled in the child care agency, shall be maintained on file with the Department.

(Rule 1240-04-04-.05, continued)

(ii) For children who do not attend public schools, the child care provider shall secure and maintain documentation, in a form and manner approved by the Department, verifying that each school-age child enrolled in the child care agency is receiving annual personal safety instruction as required by this paragraph (5).

(d) Beginning October 1, 2008, the personal safety curriculum used by a child care agency shall be made available by the child care agency to parents and legal guardians for review. The child care agency shall use a standard notification form developed by the Department that will be provided to the parents or legal guardians by the child care agency to confirm that the parents/guardians have been notified of the curriculum to be used and of their opportunity to review the personal safety curriculum.

(e) The record of each enrolled child shall include a copy of the signed notification form acknowledging that parents/legal guardians have been provided an opportunity to review the agency's personal safety curriculum, and have been notified of the sexual abuse/personal safety curriculum for their child.

(f) If parents/legal guardians have questions regarding the personal safety curriculum, a representative of the child care agency shall meet with the parents/legal guardians to discuss the curriculum.

Authority: *T.C.A. §§4-5-202; 4-5-209, 71-1-105(12) 71-3-501 et seq., 71-3-502, 71-3-502(l) and 2008 Tenn. Pub. Acts 1032.* ***Administrative History:*** *Original rule certified June 10, 1974. Repeal and new rule filed October 28, 1976; effective January 14, 1977. Repeal filed March 17, 1980; effective June 29, 1980. New rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Public necessity rule filed October 1, 2008; effective through March 15, 2009. Amendment filed December 29, 2008; effective March 14, 2009.*

1240-04-04-.06 HEALTH AND SAFETY.

(1) Children's Health Records.

(a) Before a preschool child older than eight weeks is accepted for care, he/she shall have proof of being age-appropriately immunized against the following diseases: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, Rubella, and Hemophilus Influenza Type "B" by having a certification form signed or stamped by a certified health care provider. (Children of six through eight weeks of age may be enrolled before immunizations are begun.)

(b) Records of children older than 18 months shall state whether immunizations required for care are complete, and if not complete, when future immunizations will be given. If immunizations are not continued on time by the parent, the child shall not remain in care. If a child has any known allergies, they shall be indicated in the child's health record. Foreign-born children shall also present evidence of Tuberculosis (TB) screening. (See Appendix B for information about TB screening.)

(c) A copy of each infant/toddler's or preschool child's immunization record shall be on file in the day care home and available to appropriate staff. (Children of six through eight weeks of age may be enrolled before Immunizations are begun.)

(d) Before a school-aged child is accepted for care, the caregiver shall have on file a statement from the parent (or school) that the child's immunizations are current and that their health record is on file at the specified school which the child attends.

(Rule 1240-04-04-.06, continued)

(e) If children with mental, physical or sensory impairment or with a medical disorder are enrolled, their health records shall include a physician's statement which identifies the disabling condition and which gives the physician's special instructions for the child's care.

(f) Before infants or toddlers aged 30 months and under are enrolled, they shall have proof of a physical examination within three months prior to admission, signed or stamped by a physician or health care agency. Each infant shall have on file an official health record of the first medical check-up at eight weeks of age.

(g) Exceptions to the above requirements in this section shall be made when:

1. The child's physician or the Department of Health provides a signed and dated statement, giving a medical reason why the child should not be given a specified immunization; or

2. The child's parent provides a written statement that such immunizations conflict with his/her religious tenets and practices.

[3. Care for children of homeless families and/or children in state custody is needed before documentation of immunizations can be confirmed. Care without documentation of immunizations shall not exceed thirty days.]

(h) Accidents and injuries to children shall be noted in their records (including date and time occurred) description of circumstances and action taken by caregivers.

(2) Children's Health Requirements.

(a) Children shall be checked upon arrival and observed for signs of communicable disease during the day. Every sign of illness or injury shall be reported to the parent as soon as possible but no later than the end of the day in which it occurred.

(b) Parents of every child enrolled shall be notified if one of the following communicable diseases has been introduced into the day care home: Hepatitis A, food borne outbreaks (food poisoning), Salmonella, Shigella, Measles, Mumps, Rubella, Pertussis, Polio, Hemophilus Influenza Type B, Meningococcal meningitis. Providers shall report the occurrence of the above diseases to local health department.

(c) Prescribed and nonprescribed, internal and external medication shall not be administered to a child except under the direction of a physician or with the parent's written authorization. Medications or drugs shall be labeled with the child's name and specific instructions for administering them. Administration of medications and noticeable side effects shall be charted and reported to parents. Medication shall not be handled by children and shall be stored so as to be inaccessible to children.

(d) Good hygiene shall be practiced, such as frequent handwashing; one-time use of tissues, napkins, and washcloths; proper storage and use of personal articles; and hygienic diapering techniques.

(3) Caregiver's Health Requirements.

(a) Before beginning to work, each caregiver shall have written evidence of a physical examination and statement that the caregiver's general physical and mental condition will permit the individual to direct and actively participate in the activities of a group of young children. The form or statement shall be signed or stamped by a physician.

(Rule 1240-04-04-.06, continued)

(b) An updated statement of each caregiver's physical health shall be obtained every third year or more often, if deemed necessary by the Department. A statement of a caregiver's mental or emotional health shall be obtained from a psychiatrist or clinical psychologist, when deemed necessary by the Department.

(c) Each caregiver (whether employed full-time or part-time), volunteers, and others who are in contact with the children 30 or more calendar days per year shall have on file evidence of a tuberculin skin test or chest X-ray with negative results, in accordance with Department of Health recommendations. (See guidelines in Appendix B.)

(d) Caregivers shall not smoke while physically interacting with the children. Parents shall be informed if anyone in the home smokes.

(e) For the protection of children and adults, caregivers and helpers shall wash their hands immediately after changing a child's diaper, or aiding in toileting, before changing or aiding another child.

(f) For the protection of children and adults, when blood is to be handled (e.g., resulting from injury to a child or adult, from nosebleed or from spillage), vinyl or latex gloves shall be used and properly disposed of following use with/by one individual.

(g) Following a diaper change or blood spillage, surfaces shall be cleaned and sanitized with a solution of 1/4 cup chlorine bleach to one gallon of water.

(4) Safety.

(a) The primary caregiver shall have evidence of completing, or being currently enrolled in, a pediatric First Aid course (a minimum of three hours) taught by a qualified instructor. (See Recommendations.)

(b) The primary caregiver shall have evidence of completing, or being currently enrolled in, a pediatric CPR course (a minimum of three hours) taught by a qualified instructor. (See Recommendations.)

(c) First aid information shall be posted, and caregivers and helpers shall be familiar with it.

(d) A First Aid kit shall be available to staff. The contents shall include a digital thermometer, bandages, and other items listed in "Appendix C".

(e) The home shall have a working telephone accessible to caregivers for incoming and outgoing calls.

(f) These telephone numbers shall be posted near the telephone: Fire Department, Law Enforcement, Hospital, Child Abuse Hotline, Civil Defense/Emergency Management, and numbers where parents may be reached. Rescue Squad, Ambulance and Poison Control Center numbers shall also be posted if available in the community.

(g) All homes shall annually present a child sexual abuse prevention program to children enrolled in and cared for by the home.

(h) Suspected abuse or neglect of a child shall be reported immediately to the local DHS office. Failure to do so is, by itself, grounds to deny or revoke the agency's license.

(Rule 1240-04-04-.06, continued)

(i) The primary caregiver shall be reasonably prepared to protect children in the event of a disaster by knowing who to contact and how to cooperate with the local Emergency Management Plan.

(j) Emergency transportation shall be planned for and shall be provided as needed.

(k) Firearms and other deadly weapons or tools on the premises shall be secured in such a way that they are inaccessible to children.

(l) Use of swimming pools shall comply with Environmental Sanitation Regulations in "Appendix E". Wading pools which have not been approved by the environmentalist shall not be used.

(m) Pets shall be vaccinated in accordance with a Veterinarian's recommendation. Unconfined pets and children shall not be together on a regular basis. An adult shall be present while pets are with children. Animals and birds shall not be allowed in areas of food storage preparation, or service.

Authority: *T.C.A. §§71-1-105(12), 71-3-501 et seq., and 37-1-603(b)(1)(A).* ***Administrative History:*** *Original rule certified June 10, 1974. Repeal and new rule filed October 28, 1976; effective January 14, 1977. Repeal filed March 17, 1980; effective June 29, 1980. New rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992.*

1240-04-04-.07 TRANSPORTATION.

(1) Management Responsibility, Loading\Unloading and Verification Procedures; Staff Qualifications.

(a) Management Responsibility.

1. Existing child care agencies, or those applying or re-applying for licenses, that provide transportation services, must provide a written statement to the Department describing:

(i) The type(s) of transportation that will be offered, e.g., from the child's home to the child care agency, from the child care agency to the child's school, etc.;

(ii) The types of vehicles that will be used for the transportation of children, e.g., a 1999 fifteen (15) passenger Ford van;

(iii) Any contracts, agreements or arrangements with any third parties for the provision of transportation services;

(iv) The provider's plan for maintaining compliance with the transportation time limits set forth in 1240-04-04-.07(6);

(v) The provider's policy and procedures for maintaining compliance with the transportation verification procedures set forth in 1240-04-04-.07(1)(b);

(vi) The provider's policy and procedures for attaining and maintaining compliance with child restraint procedures required by: these rules; Tennessee Code Annotated, Title 55, Chapter 9, Part 6; applicable Federal Motor Vehicle Safety Standards relative to child safety restraints, and; the

(Rule 1240-04-04-.07, continued)

child restraint and vehicle manufacturer's design requirements for the type of child restraints and vehicles used to transport children; and

(vii) The provider's policy and procedures for the emergency evacuation of the vehicle.

2. The child care home's management shall be fully responsible for the transportation of children between home and the child care home, to or from school, and/or on field trips on any vehicle which it operates, for which it contracts or which is otherwise under its direction or control.

3. Vehicles used to transport children and which are owned or operated by, contracted for or which are otherwise under the direction and control of the child care agency, shall carry automobile liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by Rule 1240-04-04-.02(7).

(b) Loading\Unloading and Verification Procedures.

1. The driver of the vehicle or any other designated staff person riding on the vehicle shall use a passenger log to record the name of each individual child received for transport as the child enters the vehicle. No child shall be accounted for by use of a single entry in the log that would include all, or part, of a group of other siblings or relatives with the same last name and with whom the child is being transported. For example, three (3) siblings with the same last name, e.g., "Doe", who are transported on the same vehicle shall not be recorded by the single entry "Doe" which only records the group's last name and is used by the child care home to signify that all three (3) "Doe" children are accounted for. Each child shall, instead, be separately listed by first and last name.

2. During transportation, the passenger log shall be used to take roll each time the vehicle makes a stop as each child is loaded or unloaded.

3. Whenever children being transported are released from the vehicle to their parent or other designated person, the passenger log shall immediately be updated to reflect which children have been released.

4. Immediately upon unloading the last child/children from the vehicle, and to ensure that all the children being transported have been unloaded, the driver and any other staff members riding on the vehicle shall immediately deliver the passenger log to the person designated by the child care home in part 5 and shall immediately:

(i) physically walk through the vehicle; and

(ii) inspect all seat surfaces, under all seats in all compartments or recesses in the vehicle's interior.

5. Additional caregiver/staff review and verification requirements.

(i) The child care home shall also designate a caregiver or management level staff person, other than the person responsible for the recording in the passenger log on the vehicle, who shall provide additional review and additional verification that the children have been unloaded from the vehicle and properly accounted for.

(Rule 1240-04-04-.07, continued)

(ii) When unloading children at the child care home or field trip destinations, or when, prior to being parked at the child care home or other location, and to ensure that all children have been unloaded, the person designated pursuant to subpart (i) of this part 5 shall also immediately request the passenger log from the person on the vehicle responsible for maintaining the log and shall immediately:

(I) reconcile the passenger log with the children's attendance records; and

(II) conduct the same inspection as required in subparts (1)(b)4(i) and (ii) above.

(iii) Verification of the passenger logs and attendance records required by this subparagraph (b) shall be made by having the printed name of the persons who complete the logs and records written or printed on the passenger log and attendance record accompanied by the handwritten initials of such persons. Passenger logs and attendance records shall be maintained for a period of one (1) year or until the next re-evaluation of the family child care home for an annual license, whichever is first.

6. The driver or any accompanying staff member shall assure that every child is received by a parent or other designated person.

7. When children are transported to school, they shall be released in accordance with the following procedures:

(i) the children shall be unloaded only at the location designated by the school;

(ii) the children are only allowed to unload from the family child care home's vehicle at the time the school is open to receive them;

(iii) the driver/caregiver shall watch the children who are unloaded from the vehicle walk through the entrance door designated by the school for the children; and

(iv) any additional procedures established by the school.

8. The provisions of this subparagraph (b) apply to child care agency staff and to personnel operating vehicles for any contracted transportation service for a licensed or approved child care agency or for any other transportation service that is under the direction or control of a child care agency, that provides such services for children enrolled in the child care agency.

(c) Transportation Staff Qualifications.

1. Driver License Requirements.

(i) All persons responsible, or who may in the course of their duties become responsible, at any time, for driving a vehicle that transports children enrolled in the child care agency, shall hold, at a minimum, a current Tennessee driver license with an "F" ("for hire") endorsement pursuant to T.C.A. § 55-50-102(20)(F) unless such persons already have an endorsement or hold a license which the Department of Safety recognizes as inclusive of the "F" endorsement requirements, or shall hold such other

(Rule 1240-04-04-.07, continued)

license or endorsement provided for by State law or regulation governing driver qualifications for the type or size of vehicle used, or which may otherwise govern driver qualifications, for transportation of children enrolled by licensed or approved child care agencies.

(ii) Effective January 1, 2004, all persons subject to this part 1 shall obtain a certification document from the Department of Safety to signify that they have passed additional written or skills tests required for persons who may, in the course of their duties drive a vehicle that transports children enrolled in a child care agency.

(iii) Effective January 1, 2004, all persons subject to this part 1 shall be required to obtain annual training that is utilized for school bus drivers offered by the Department of Safety or such other equivalent training as the Department of Safety may determine is appropriate.

(iv) Evidence of completion of the requirements in subparts (i)-(iii) for each person employed or otherwise utilized by the agency under any contract or any other arrangement shall be maintained in the records of the child care agency. Failure to obtain or timely exhibit completion of this additional certification when requested shall result in ineligibility of the person from any further driving duties for the child care agency until such requirements are fulfilled.

2. Health Examinations and Drug Screenings.

(i) Health Examinations.

All persons driving vehicles at any time for the transportation of children enrolled in the child care agency shall annually provide to the Department a health statement or statements, based upon an examination of the individual, that are signed by the examining licensed physician, licensed psychologist, licensed clinician, Nurse Practitioner, or Physician's Assistant, verifying that the individual is physically, mentally and emotionally capable in all respects of safely and appropriately providing transportation for children.

(ii) Drug Screenings.

(I) Any person, in accordance with procedures established by the Department, shall pass a drug screen:

I. Prior to such person being employed as a full or part-time employee with a licensed or approved child care agency for a position which has any duties involving driving any vehicle utilized by the child care agency to transport children enrolled in that child care agency; or

II. Prior to such person being employed, in any position which has any duties involving driving any vehicle utilized to transport children enrolled in any child care agency, as a full-time or part-time employee by a contractor of a licensed or approved child care agency, or by any other persons or entities, any of which transports, for any compensation, children enrolled in the care of the child care agency as part of the agency's

(Rule 1240-04-04-.07, continued)

transportation program or service for such children offered by such child care agency; or

III. Prior to the assumption, at anytime, of any driving duties by an existing full-time or part-time employee of the licensed or approved child care agency, or, of an existing full-time or part-time employee of a contractor or other person or entity providing transportation, for compensation, to the child care agency as part of such child care agency's transportation program or service.

(II) Effective January 1, 2004, all existing drivers who have been previously assigned by the child care agency or its contractors or by any other person or entity as a driver of any vehicle providing child care transportation for a licensed or approved child care agency, under any arrangement and who have not been tested as required by item (I), shall have a drug screen in accordance with procedures established by the Department.

(iii) The child care agency shall immediately review the results of the drug screen upon receipt, and upon receipt by the child care agency of a positive drug screen result for an employee of the child care agency, or upon receipt of notification of such result for a tested individual from a contractor or other person or entity providing transportation, for compensation, to the child care agency as part of such child care agency's transportation program or service, the child care agency shall immediately:

(I) Notify the Department and prohibit, or require its contractor or other entity providing transportation for compensation to the child care agency as part of the child care agency's transportation program to prohibit, the individual from any driving duties involving any transportation of children enrolled in the child care agency; and

(II) Enter into a safety plan approved by the Department that excludes the individual from driving for the child care agency until the individual passes a drug screen test and is otherwise approved, in writing, by the Department, to provide driving duties involving the transportation of children for the child care agency.

3. Prior to assuming their duties, all persons responsible, or who may in the course of their duties become responsible, at any time, for transporting children (including drivers and monitors) shall complete Department of Human Services-recognized pre-service transportation training in:

(i) The proper daily safety inspection of the vehicle set forth in subparagraph (2)(b) below;

(ii) The proper use of child safety restraints required by these rules, Tennessee Code Annotated, Title 55, Chapter 9, Part 6, applicable Federal Motor Vehicle Safety Standards relative to child safety restraints, and; the restraint and vehicle manufacturer's design requirements for the type of child restraints and vehicles used to transport children;

(iii) The proper use of the verification procedures set forth in subparagraph (1)(b) above;

(Rule 1240-04-04-.07, continued)

(iv) The proper use of a blood borne pathogen kit;

(v) The proper procedures for the evacuation of the vehicle based upon the type of vehicle and the ages of the children served; and

(vi) The developmentally appropriate practices applicable to the behavior management of children during transportation.

4. Following the completion of pre-service transportation training, all persons responsible at any time for the transportation of children (including drivers and monitors), shall complete Department of Human Services-recognized transportation training that includes the subject matter set forth in 1240-04-04-.07(1)(c)3, above, a minimum of every six (6) months.

5. Emergency Aid Training.

(i) All persons responsible, or who may in the course of their duties become responsible at any time, for the transportation of children shall hold current certification in Infant/Pediatric Cardiopulmonary Resuscitation (CPR) from the American Red Cross, the American Heart Association, or other certifying organization, as recognized by the Department.

(ii) Effective July 1, 2004, all persons responsible, or who may in the course of their duties become responsible at any time, for the transportation of children shall complete a first aid course sponsored or approved by the American Red Cross, or other first aid course, as recognized by the Department.

6. The provisions of this subparagraph (c) apply to child care agency staff and to personnel operating vehicles for any contracted transportation service for a licensed or approved child care agency or for any other transportation service under the direction or control of a child care agency.

7. The requirements of 1240-04-04-.07(1)(c) do not apply to individuals who provide transportation services exclusively for occasional field trips.

(2) Vehicle Inspections; Passenger Limitations; Vehicle Design Requirements; Child Seating Space Requirements; Emergency Equipment; Prohibition of Firearms or other Weapons on Vehicles.

(a) The requirements of this paragraph (2) include vehicles used at anytime for the regular child care vehicle(s) and those used as back-up vehicles. Exception: The requirements of this paragraph (2) do not apply to vehicles operated solely for the purpose of providing transportation for occasional field trips.

(b) The child care agency shall maintain, and shall require providers of transportation services for children under contract to the agency or under the agency's direction or control to maintain, documentation that designated child care, contractor, or other entity staff perform daily the following inspections, followed by any necessary repairs or other appropriate actions, before beginning transportation of children for the child care agency:

1. A visual inspection of the vehicle's tires for wear and adequate pressure;

2. A visual inspection for working headlights and taillights, signals, mirrors, wiper blades and dash gauges;

(Rule 1240-04-04-.07, continued)

3. An inspection for properly functioning child and driver restraints;

4. An inspection for properly functioning doors and windows;

5. An inspection for the presence of safety equipment required by these rules or any other provisions of law or regulations, and repair or replacement as necessary based upon visual evidence of the need do so;

6. A determination that the vehicle has adequate fuel; and

7. An inspection for, and cleaning of, debris from the vehicle's interior.

(c) The child care agency shall maintain, and shall require providers of transportation services for children under contract to the agency or under the agency's direction or control to maintain, documentation that the vehicles used to transport children receive regular inspections and maintenance by a certified mechanic in accordance with the maintenance schedule recommended by the vehicle manufacturer, and, in addition shall have the following vehicle equipment certified as inspected at least every four thousand (4,000) miles if not covered by, and/or serviced in accordance with the manufacturer's maintenance schedule:

1. Brakes;

2. Steering;

3. Oil levels, coolant, brake, windshield washer and transmission fluids;

4. Hoses and belts.

(d) Beginning January 1, 2004, the Department of Safety will conduct annual vehicle safety inspections on all vehicles used by the child care agency directly, under contract, or under the control or direction of the agency designed by the vehicle manufacturer to carry ten (10) or more passengers. Any necessary maintenance or repair to the vehicles disclosed by the inspections shall be the sole responsibility of the child care agency.

(e) All documentation of the child care agency or providers of transportation services for children under contract to the agency or under the agency's direction or control shall be made available upon request to Department staff.

(f) No vehicle which does not pass the inspections required in subparagraphs (b), (c) or (d) shall be used by the child care agency or by its contractors, or others subject to the agency's direction and control, to provide transportation services until necessary repairs, as determined by the Department, have been made.

(g) Passenger Restraints, Capacity Limitations and Cargo Requirements.

1. All children and adults riding in a vehicle used to transport a child to and from a child care agency, to and from school, or to and from field trips must be restrained by separate passenger restraint devices in the vehicle's seating area, at a minimum, as required by state or federal law or regulation, or, as otherwise required by these rules.

(Rule 1240-04-04-.07, continued)

2. The total number of adults and children in vehicles used for the transportation of children enrolled in a licensed or approved child care agency shall never exceed the manufacturer's rated passenger capacity.

3. In a vehicle being used for the transportation of children enrolled in a licensed or approved child care agency, all cargo, luggage or equipment of any type shall be adequately secured at all times in such manner as to protect the passengers in case of accident or emergency maneuvers.

4. The provisions of this subparagraph (g) also apply to vehicles operated by any contracted transportation service for a licensed or approved child care agency, or for any other transportation service under the direction or control of a child care agency.

(h) Requirements for Child Care Transportation Vehicles Effective January 1, 2007.

1. Effective January 1, 2007 all vehicles that the child care agency operates, for which it contracts, or which are otherwise under its direction or control, that are designed to carry ten (10) or more passengers must conform to all Federal Motor Vehicle Safety Standards (FMVSS) governing either "large" school buses or "small" school buses, as applicable, in accordance with the provisions of the FMVSS described in 49 Code of Federal Regulations Part 571, or as such Part may be amended.

2. Effective January 1, 2007, if buses in either the "large" or "small" classes of school buses under the FMVSS are used, they must have factory-installed passenger restraint anchorages and passenger restraints that are suitable for use in transporting children of any age who are to be transported on either a "large" or "small" school bus.

3. The requirements of this subparagraph (h) do not apply to vehicles used exclusively for the provision of occasional field trips.

(i) A minimum of ten (10) inches seat space per child is required in a vehicle transporting children.

(j) A vehicle used to transport children shall have fire extinguishers, emergency reflective triangles, a first aid kit and a blood-borne pathogenic clean-up kit, and an adult familiar with the use of this equipment on board. Emergency exiting procedures shall be practiced on a regular basis by all staff responsible for transporting children.

(k) The carrying, possession or storage of firearms or other weapons is prohibited in vehicles used to transport children.

(3) Vehicle Signage Requirements; Exceptions.

(a) The requirements of this paragraph (3) are effective March 1, 2003, and are applicable to all vehicles used for the transportation of children enrolled in a child care agency licensed or approved by the Department, including vehicles operated by a contractor of the agency or vehicles operated by any other provider of services under the direction or control of the child care agency, unless specifically exempted by the provisions of subparagraph (e) below.

(b) All vehicles used for the transportation of children enrolled in the child care agency must, as determined by the Department, clearly and readily identify to the driving public that the vehicle is used for the transportation of children who are in child care.

(Rule 1240-04-04-.07, continued)

1. On each side of the vehicle the following information shall be displayed:

   (i) The full name of the child care agency and emergency contact number for the agency in any font or color, including the agency's current logo and lettering scheme; provided that the lettering is not less than one and one-half inches (1½") in height and is clearly readable at a distance of fifty feet (50') on a stationary vehicle in daylight conditions; and

   (ii) The words "Child Care Transportation Complaints" followed by the Department of Human Services' toll-free Child Care Transportation Complaint phone number in black lettering in a block font, not less than one and one-half inches (1½") in height. This text shall appear on a clearly contrasting background that is clearly readable at a distance of fifty feet (50') on a stationary vehicle in daylight conditions.

2. On the rear of the vehicle the following information shall be displayed:

   (i) The full name of the child care agency and the words "Child Care Transportation Complaints" followed by the Department of Human Services toll-free Child Care Transportation Complaint phone number in black letters in a block font not less than one inch (1") in height on a clearly contrasting background that is clearly readable at a distance of forty feet (40') on a stationary vehicle in daylight conditions.

   (ii) The provisions of this part (2) shall not apply to passenger automobiles (excluding minivans) used for transportation by the child care agency with a manufacturer's rated seating capacity of six (6) or fewer passengers.

(c) The information required in subparagraph (b) must be applied to the vehicle in one of the following formats:

1. Painted directly on the vehicle in accordance with the paint manufacturer's instructions using paint recommended by the paint manufacturer as appropriate for use on a vehicle; or

2. A weather-resistant sign securely fastened to the vehicle. The term "securely fastened" includes magnetic signs and signs bolted to the vehicle. The term does not include adhesives such as tape or glue unless recommended by the adhesive manufacturer as being appropriate for outdoor use on a vehicle.

(d) Special Requirements for Centralized Transportation.

1. Central operators or any other entity that may own or operate more than one child care agency and which may provide centralized transportation services for its child care agencies; and/or

2. Contractors, or other transportation service providers under the direction or control of the child care agency, which may provide centralized transportation services to more than one child care agency may substitute for the name and phone number of the child care agency required by parts 1240-04-04-.07(3)(b)1 and 2 above the full name and emergency contact number of the central operator, contractor or other transportation service providers under the direction or control of the child care agency. If the name on the vehicle does not clearly designate the agency or entity as one providing child care transportation, words such as "Child Care Transportation Vehicle" or "Child Care Transportation

(Rule 1240-04-04-.07, continued)

Services", or similar language approved by the Department, must be displayed on the vehicle in a manner that demonstrates, as determined by the Department, that the vehicle is providing child care transportation.

(e) Exceptions to Vehicle Identification Requirements.

1. Vehicles used exclusively for the provision of occasional field trips; and

2. Vehicles used exclusively for the limited provision of emergency transportation, e.g., as a result of the mechanical breakdown of the regular child care vehicle.

3. The Department may, in its discretion, determine if exceptions to the requirements of this paragraph (3) may be made for child care agencies owned, operated, or under the direction or control of a public agency. For purposes of this subparagraph (e), a "public agency" is any entity controlled, owned or operated by a state, county or local entity, or a political subdivision of the State of Tennessee.

4. The Department may, in its discretion, determine if certain child care agencies may be exempted from any or all of the requirements of this paragraph (3) due to facts which may clearly warrant such exemptions.

(4) Child Safety Restraints.

(a) The provisions of this paragraph (4) shall apply to any vehicle used to transport children as of the effective date of these rules, unless stated otherwise by the rule. Any vehicle whether:

1. A passenger car;

2. A stock or custom van or sport utility vehicle;

3. A school bus classified as a "small" or "large" bus as required in FMVSS contained in 49 Code of Federal Regulations Part 571; or

4. Any other vehicle must be properly equipped with the child passenger restraints required by subparagraphs (c)—(f) below and must comply with all other provisions of this paragraph (4).

(b) Children under four (4) years of age shall never be placed in the front seat of the vehicle.

(c) Children who weigh less than twenty pounds (20 lbs.) shall be placed to face the rear of the vehicle. Children who weigh twenty pounds (20 lbs.) or more shall be placed to face the front of the vehicle unless the special needs of a disabled child otherwise require the child to face the rear of the vehicle.

(d) Children who weigh less than forty pounds (40 lbs.) shall be restrained in a Federally-approved child restraint device in accordance with the child restraint device manufacturer's instructions. The child restraint device shall be secured to the vehicle in accordance with the child restraint device manufacturer's instructions.

(e) Children Between Forty Pounds (40 lbs.) and Eighty Pounds (80lbs.).

1. Children who weigh between forty pounds (40 lbs.) and eighty pounds (80 lbs.) may be restrained in a belt-positioning booster seat (BPBS) that has been

(Rule 1240-04-04-.07, continued)

secured in accordance with the vehicle and restraint manufacturers' instructions. BPBS devices shall always be secured to the vehicle in accordance with the vehicle and the restraint device manufacturer's instructions. If, however, a BPBS restraint device is not used, the child shall be restrained in both a lap belt and a shoulder belt if available in the vehicle. If a lap and shoulder belt restraint system is not available in the vehicle, the child shall be restrained by a lap belt.

2. Effective January 1, 2007, children who weigh between forty pounds (40 lbs.) and eighty pounds (80 lbs.) shall be restrained in a belt-positioning booster seat (BPBS) in accordance with the BPBS manufacturer's instructions. BPBS devices shall always be secured to the vehicle in accordance with the vehicle and the restraint device manufacturer's instructions.

(f) Children Weighing More Than Eighty (80 lbs.) or Who are Taller Than Four Feet Nine Inches (4'9").

1. Children who weigh more than eighty pounds (80 lbs.) or who are taller than four feet nine inches (4'9") may be restrained in an adult lap belt and shoulder belt that has been secured in accordance with the vehicle manufacturer's instructions. If, however, an adult lap belt and shoulder belt is not used, the child shall be restrained by a lap belt.

2. Effective January 1, 2007, children who weigh more than eighty pounds (80 lbs.) or who are taller than four feet nine inches (4'9") shall be restrained in an adult lap belt and shoulder belt in accordance with the vehicle manufacturer's instructions.

(g) Passenger air bags shall remain turned off unless an adult or a child fifteen (15) years of age or older is riding in the front passenger seat of the vehicle.

(h) No child shall ride on the floor of a vehicle and no child shall be placed with another child in the same restraint device.

(i) Notwithstanding the provisions of this paragraph (4), until January 1, 2007, children of school-age (in kindergarten or any grade level above) shall not be required to use child restraints when being transported in school buses classified in the "large" category under FMVSS.

(5) Supervision of Children During Transportation.

(a) An adult must be in the vehicle whenever a child is in the vehicle.

(b) Adult Monitor Requirements for Child Care Transportation.

1. An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more children ages six (6) weeks through five (5) years of age, who are not in kindergarten, if the entire vehicle route exceeds forty-five (45) minutes.

2. An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more non-ambulatory children (permanent or temporary) of any age.

3. On field trips off premises, the number of adults at the destination shall be double the requirements on the adult:child ratio charts in paragraph (2) of subchapter 1240-04-04-.03, Caregiver to Child Ratios and Supervision; provided, however,

(Rule 1240-04-04-.07, continued)

the adult monitor referenced in parts 1 and 2 of this subparagraph (b) may be used for purposes of this requirement.

(6) Limits on Time Children Are Transported/Transportation Waivers.

(a) Children shall not spend more than forty-five (45) minutes traveling one way; provided, however, this provision is not applicable for occasional field trips.

(b) If extended transportation beyond the limits in subparagraph (a) is necessary in special circumstances, or as may be required by geographic factors, an individualized plan shall be established and signed by the parent(s) and the child care agency and approved by the Department prior to providing such transportation.

(7) Except as otherwise exempted, the provisions of paragraphs (4)-(6) shall apply to all vehicles used for the transportation of children enrolled in a child care agency licensed or approved by the Department, including vehicles provided by a contractor of the agency or vehicles operated by any other provider of services under the direction or control of the child care agency.

Authority: *T.C.A. §§4-5-202, 4-5-209, 55-50-102(11) and (20), 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), 71-3-508(c), Acts of 2003, Public Chapter 412, §§1(c), 2, and 3, and 49 Code of Federal Regulations Part 571.* ***Administrative History:*** *Original rule certified June 10, 1974. Repeal and new rule filed October 28, 1976; effective January 14, 1977. Repeal filed March 17, 1980; effective June 29, 1980. New rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed November 21, 2002; effective February 4, 2003. Amendment by Acts of 2003, Public Chapter 412, §§1(c) and 3 filed June 25, 2003; effective July 1, 2003. Amendment filed September 29, 2003; effective December 13, 2003. Amendment filed October 18, 2004; effective January 1, 2005.*

1240-04-04-.08 FOOD.

(1) Nutritional Needs.

(a) For children in the home at least four hours, one snack (defined as two of these four choices: fluid milk; meat or meat alternate; fruit, vegetable or full-strength juice; or whole grain or enriched bread) shall be provided, unless the four-hour period covers a normal meal hour, in which case a meal shall be provided.

(b) Snacks provided shall be nourishing and planned as a part of the day's food allowances. Carbonated drinks, fruit-flavored drinks, imitation milk drinks, and candy shall not be served as snack foods. Powdered milks shall be used only in a cooked food product. (Real juice will be labeled "100% juice" or "full-strength juice". Powdered milk does not meet the requirement.) (See Appendix D for suggested food pattern for snacks.)

(c) For children in the home five to 10 hours, one meal (defined as meat or meat alternate, vegetable and/or fruit, bread or bread product, and milk) and one or two snacks shall be provided, two snacks if the period is as much as seven hours. (See Appendix D for suggested meal patterns.)

(d) For those in the home longer than 10 hours, two meals and two snacks shall be furnished.

(e) Breakfast (defined as fruit, vegetable or full-strength juice; cereal or bread product; and milk) shall be offered to children who arrive before 7:00 a.m. and who have not had breakfast at home.

(Rule 1240-04-04-.08, continued)

(f) Diets of infants and other special diets shall be prepared as prescribed by a physician.

(g) The week's menus shall be planned and posted by the First day of each week and remain posted until the following week, so that parents can be aware of the food their children are receiving. These menus shall be followed, although reasonable substitutions are permissible if the substituted food contains the same nutrients. The change shall be documented in advance of the meal. (information on menu planning is available upon request.)

(2) Meal Service.

(a) Caregivers and children shall wash their hands before eating or prior to any preparation of food.

(b) High chairs and tables on which food is served shall be washed with soap and water prior to and after snacks and meals.

(c) Napkins and forks and/or spoons shall be provided for children who feed themselves.

(d) All formulas and food brought from home shall be labeled with the child's name. Milk shall be placed immediately in the refrigerator. Previously opened baby food jars shall not be accepted by caregivers. All formulas remaining in bottles after feeding shall be discarded.

(e) When children are capable of using a high chair, they shall be allowed to do so and to experiment with food, with feeding themselves, and to eat with fingers or spoon.

(f) Bottles shall not be propped or given to children who are lying flat.

(g) Solid foods shall not be given in a bottle, or with infant feeders, to children of normal eating abilities.

(h) All infant's feeding schedule shall be made and adapted to child's need rather than on the hour.

(i) Weaning shall not be started immediately after enrollment, but after parents and caregivers have communicated to establish consistency in the weaning process and after a child has become familiar with a cup or glass.

(j) Introduction of new foods to infants and toddlers shall be gradual, one at a time, over a five to seven-day period with parents' approval.

(k) The size of servings shall be adequate to meet children's needs. (Portion size depends on child's age. See Appendix D for chart of age/portion size.)

(l) Food, including dessert, shall not be forced on or withheld from a child.

(m) Floors under tables and high chairs on which food has been served shall be swept and/or vacuumed after each meal and mopped as needed.

Authority: *T.C.A. §§71-1-105(12) and 71-3-501 et seq.* ***Administrative History:*** *Original rule certified June 10, 1974. Repeal and new rule filed October 28, 1976; effective January 14, 1977. Repeal filed March 17, 1980; effective June 29, 1980. New rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992;*

(Rule 1240-04-04-.08, continued)
effective June 6, 1992. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-04-.07).

1240-04-04-.09 PHYSICAL FACILITIES.

(1) Family day care homes shall be inspected and approved annually for Fire Safety and Environmental Health by the Licensing Counselor. Requirements in Appendices E and F shall be met before a license can be issued.

(2) Physical facilities shall continue to meet all standards in Appendices E and F and any updated fire prevention and environmental standards which are applicable.

(3) The home shall have at least two exits directly to the outside.

(4) The home shall not be located in a building used for other purposes, which would be hazardous or would limit outdoor play.

(5) If the number of children (including "related") exceeds seven at one time, the living area of the home shall provide 30 square feet per child of usable play space.

(6) The areas where children play or are cared for shall be properly maintained. These areas shall be free of hazardous items or materials unless adequately protected by storage, inaccessibility, proper supervision, or other safety procedures. These areas shall present no conditions which are hazardous to children. All such areas shall be free of all animal wastes.

(7) When infants are in care, the diapering area shall be located as close to a handwashing lavatory as possible but not in the kitchen.

Authority: *T.C.A. §§71-1-105(12) and 71-3-501 et seq.* ***Administrative History:*** *Original rule certified June 10, 1974. Repeal and new rule filed October 28, 1976; effective January 14, 1977. Repeal filed March 17, 1980; effective June 29, 1980. New rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-04-.08).*

1240-04-04-.10 CARE OF CHILDREN WITH DISABILITIES.

(1) When children with disabilities are enrolled the home shall provide those children equal opportunity to participate in the same program activities as their peers.

(2) Adaptations to the environment shall be directed toward normalizing the lifestyle of the child with a disability by helping him/her become independent and develop self-help skills.

(3) Any efforts to provide specialized services (e.g., speech/hearing therapy, physical therapy, psychological evaluation, or services for mentally retarded), either directly or by referral, shall be conducted only with written permission by parent and documented in the child's record. Any informational exchange regarding these services shall also be documented.

(4) The home shall have a written individualized evacuation plan, which has been approved by the Licensing Counselor and is practiced in every monthly fire drill, for every child enrolled who requires more assistance to evacuate the facility than other children of the same age or in the same group.

Authority: *T.C.A. §§71-1-105(12), and 71-3-501 et seq.* ***Administrative History:*** *Original rule certified June 10, 1974. Repeal and new rule filed October 28, 1976; effective January 14, 1977. Repeal filed*

(Rule 1240-04-04-.10, continued)
March 17, 1980; effective June 29, 1980. New rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-04-.09).

1240-04-04-.11 APPENDICES.

(1) The following Appendices referenced in the foregoing rules are incorporated in these rules by reference:

(a) Appendix A - I. Summary of Applicable Laws
II. Questions and Answers About Day Care Licensing

(b) Appendix B - Guidelines for TB Screening

(c) Appendix C - Contents of First Aid Kit

(d) Appendix D - Meal/Snack Patterns and Portion Sizes

(e) Appendix E - Environmental Standards for Family Child Care Homes

(f) Appendix F - Fire Safety Inspection Report

(2) Any conflict between summaries of the language of statutes or regulations in the Appendices and official statutes and regulations will be resolved by reference to the language of the official statutes or regulations.

Authority: *T.C.A. §§4-5-202, 55-50-102(11) and (20), 71-1-105(5), 71-3-502(a)(2), and 49 Code of Federal Regulations Part 571.* ***Administrative History:*** *Original rule filed November 21, 2002; effective February 4, 2003.*

APPENDIX A

I. Summary Of Applicable Laws.

A. *Child Welfare Agencies (TCA §71-3-501 et seq.) (A complete copy of the licensing law is available upon request.).*

1. Specifies the types of agencies that DHS has a mandate to license. Licensing of day care (less than 24-hour care) begins with five children. (Care for one to four children is exempt.)

2. Provides for development of standards, based on certain criteria by a 16 member "Standards Committee" appointed by the Commissioner. Standards are to be reviewed (and revised, if needed) every five years.

3. Requires DHS to provide applicants or licensees with assistance in meeting standards.

4. Requires annual application for a license and an application processing fee.

5. Upon receiving fire safety and environmental sanitation approval, provides that DHS will issue a 90-day conditional license if no apparent hazards to the children in care are present.

6. Provides for denial, suspension, or revocation of license and a waiting period ranging from 60 days to one year prior to reapplication.

7. Provides for appeals and hearings before the Board of Review, which includes representatives from the Departments of Health, Education, of the "Advisory Board" of DHS, from the appropriate Standards Committee, and three at-large members selected by the others. Appeals from the Board's decision may be made to Chancery Court.

8. Imposes a misdemeanor penalty of imprisonment for six months and a fine of $500 or both for each offense (day) of operating without a license.

9. Requires public agencies to meet the same standards as other child welfare agencies and a method of reporting to the public any uncorrected deficiencies.

10. Requires DHS to regularly inspect agencies without prior notice and grants the Department access to facilities and records in order to make an evaluation of the "kind and quality of work done" and to make recommendations regarding licensure.

11. Requires DHS to investigate reports of noncompliance.

12. Allows DHS to impose civil penalty ($25 - $150) for substantial noncompliance and probation for continued noncompliance.

13. Contains specified and defined exemptions for Parents' Day Out programs, Kindergartens, and "Drop-in" programs. Also provides a waiver of adult to child ratios and group size requirements for certain Montessori schools.

14. Requires screening for criminal violations of persons applying to work with children through the registry maintained by the Tennessee Bureau of Investigation (TBI).

15. Allows DHS to investigate all reports of abuse, neglect, or sexual abuse (even in exempt agencies) and enables DHS to revoke the license of a licensed agency and to enjoin an unlicensed person or agency from continuing to provide child care where abuse of children occurs.

B. *Access to Public Records (TCA §10-7-503 and 10-7-504).*

Requires public bodies to provide any citizen of Tennessee access to public records except for specified confidential records (e.g., medical records, TBI investigative records, students' records). DHS' records on child welfare agencies are public records except as they may contain information obtained in the course of child abuse or neglect investigations.

C. *Child Protective Services (TCA §§37-1-401 et seq. and 37-1-601 et seq.).*

1. Requires any individual or organization (such as Day care agency, Hospital, or School) having knowledge of suspected child abuse or neglect to report it to a juvenile judge, the Department of Human Services, or a Law Enforcement Official. (Look in your telephone book under "Child Abuse" or call the county DHS office or local law enforcement.)

2. Requires the identity of a reporting person to be kept confidential, subject to disclosure only by consent of the person or by judicial process. Provides immunity from civil or criminal liability if reports are made in good faith.

3. Gives DHS authority and responsibility to investigate reports of abuse or neglect.

4. Requires that all written records and information regarding investigations be confidential. Release of information is permissible to certain specified persons and to

(Rule 1240-04-04-.11, Appendix A, continued)

those having responsibility for administration of the law. Persons found not guilty of severe child abuse or child sexual abuse shall have their names expunged from the TBI's abuse registry.

5. Charges DHS with the responsibility of conducting a continuing publicity and education program to encourage reporting and to strengthen and improve child sexual abuse detection, prevention, and treatment efforts.

D. *Federal Funding.*

Section 504 of the Rehabilitation Act of 1973 and Title VI of the Civil Rights Act of 1964 require agencies receiving federal funding to employ nondiscriminatory policies and practices. Persons receiving federal funding such as reimbursement from the USDA Child/Adult Care Food Program, DHS vendor or Transitional Child Care payments, Social Services Block Grants (SSBG), Dependent Care Grant funds for school-age child care, etc.; and persons receiving federal support in the form of space, staff, services, equipment, etc., are required to comply with the following:

1. Title VI of the Civil Rights Act of 1964 by ensuring that no person (child, parent, or employee) in your agency "shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance"; and by employing nondiscriminatory policies and practices and advertising such.

2. Section 504 of the Rehabilitation Act of 1973 by ensuring that no otherwise qualified handicapped person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any program activity solely on the basis of a handicap (applies to children, parents, and employees); and by making reasonable accommodations to serve or hire an otherwise qualified individual with a handicapping condition.

E. *Child Passenger Protection and Safety Belt Use (Transportation) (TCA §55-9-601 et seq.).*

1. Requires any person transporting a child under the age of four years in a motor vehicle to provide for children's protection by providing and properly using a federally approved child restraint system (manufactured after January 1, 1981). Violation is subject to a $50 fine or 30 days in jail or both.

2. Specifies that no one is to operate a motor vehicle unless all persons four and older in the front seat are properly restrained by a safety belt.

3. Imposes a fine of $50 or 30 days in jail or both for each violation after the first; however, the violator can be cited or arrested only after being cited or arrested for another violation of law.

4. *TCA §§55-50-102(11)* and *55-50-102(12)(B)* requires the driver of a vehicle designed to carry 15 or more passengers (including the driver) to have a commercial driver's license.

F. *Administrative Rules and Procedures (TCA §4-5-301 et seq. and Chapter 1240-5-11 et seq.).*

1. Provides for an administrative hearing of any contested cases (i.e., on denial or revocation of licenses or on notice of intent to put an agency on probation) after proper notice which includes references to particular statutes and rules involved.

(Rule 1240-04-04-.11, Appendix A, continued)

2. Requires that hearings before the members of the Board of Review to be conducted by the administrative judge or a hearing officer, who rules on admissibility of evidence and other matters and otherwise ensures that proceedings are properly carried out.

3. Allows the contesting licensee to be represented (at licensee's own expense) by counsel.

4. Allows the judge or hearing officer at his/her discretion or upon request of licensee or the Department of Human Services to schedule a prehearing conference in order to simplify or expedite the disposition of the appeal action.

5. Requires that the hearing be open to the public.

6. Requires the final order be entered by the Board of Review. The final order shall include conclusions of law, factual findings, prescribed remedy, and procedures and time limits for seeking judicial review.

7. Provides that while an application for a license is pending, an existing license does not expire until disposition of the application has been finally determined, unless the license must be summarily suspended pending completion of the proceedings because the Department determines that "public health, safety, or welfare imperatively requires" emergency action, and notifies licensee of that finding "pending proceedings for revocation or other action".

II. Questions And Answers About Day Care Licensing.

A. *How does a person get information about opening a child care agency?*

The local county office of the Tennessee Department of Human Services will furnish information; a licensing representative will provide assistance free of charge to an individual or a group that is planning to provide child care.

B. *How many children am I allowed to care for?*

In Tennessee, a person without a license may care for no more than four children. To care for five to seven children, in addition to "related" children, you must be licensed as a "family child care home" operator. To have eight - 12 children in care, you must be licensed as a "group child care home" operator. (Under certain conditions, a group day care home may have up to 15 children.)

C. *How is a license obtained?*

1. After a completed application and the required fee are received, arrangements will be made for a representative to visit your facility and evaluate the day care operation and/or facility in accordance with the required standards in this booklet.

2. Before a day care home can be licensed, it must pass fire safety and environmental sanitation inspections. The licensing representative will explain the procedure for getting inspected.

D. *What types of licenses are issued?*

1. An "annual license" is granted when compliance with licensure requirements is confirmed by the Department.

(Rule 1240-04-04-.11, Appendix A, continued)

2. A "conditional license" is granted to a new agency for 90 days when it does not meet all the required standards, but there is evidence that an effort is being made to comply with the requirements and it has first met fire safety and environmental sanitation approval.

E. *Who determines whether a license is issued?*

The Commissioner has ultimate responsibility for issuance or denial, based upon an evaluation and recommendation by a licensing representative of the Department.

F. *Is the license permanent?*

No, it is issued for up to one year. Prior to its expiration, an evaluation is made to determine whether compliance with requirements is being maintained and reissuance should be recommended.

G. Is there a fee?

Yes, the fee is payable upon application and is nonrefundable. The fee for day care homes is $5 for a family day care home and $10 for a group day care home.

H. *Where is the license kept?*

It must be posted in a conspicuous place in the day care home during business hours.

I. *Are licenses transferable?*

No. The license applies only to the agency, organization, and person(s) to whom it is issued. It also applies only to the building approved.

J. *Does the same license for "day care" cover (1) nighttime care, (2) "drop-in" children, and (3) sick children?*

1. Yes. An agency that provides less than 24-hour care to children during nighttime hours receives the same license as a child care agency operating during daytime hours, and one license covers both programs in the same agency. An agency cannot provide continuous 24-hour care for two or more children without a residential license. If not licensed for day care, a residential license is needed for more than one child. Ask a licensing counselor about the procedure for obtaining a residential license.

2. "Drop-in" children are counted in the ratio and group and can be cared for only if required records are on file before they are cared for.

3. The day care home license also includes care of mildly ill children. Only mildly ill children (i.e., not "contagious") should be cared for in a day care home and only then if staffing is adequate. Mild illnesses are generally those in a recuperative stage (e.g., getting over Mumps or Influenza).

K. *Who enforces licensure requirements for a child care system?*

If homes are approved as an extension of a child welfare agency's license, the central operator (the licensee) is responsible for monitoring compliance. The Department of Human Services monitors the agency's compliance as well as licensed homes within a system.

L. *What is the procedure when a license is revoked, denied, or suspended?*

The Department may deny, suspend, or revoke a license at any time by giving the owner, operator, or board a written notice by listing the specific reason or reasons for the action. Specified time periods are provided in the law. Any conduct or condition which might immediately jeopardize the safety of children, shall be cause for immediate suspension of the license, pending the outcome of revocation procedures.

M. *How can an operator or applicant appeal such action?*

The licensing law provides for a board of review. If a license is denied or revoked by the Department, a request may be made for a hearing before the review board. An appeal of the decision from the review board may be judicially reviewed. The periods of time allowed for the appeals are set out in the law.

N. *Where do I call to file a complaint or get a license?*

1. If you have a question about these standards, or if you want to report an unlicensed facility or a facility that is violating licensing requirements, call the DHS county office. It is listed in the telephone directory under Tennessee State Government - Human Services Department. Someone there will refer you to the licensing unit in your area.

   If you want to open a child care facility, call that office before you do anything. You cannot care for a group of five or more children without a license.

2. If you have a question or concern about these standards or the licensing procedure, call or write:

   Day Care Licensing Coordinator
   Tennessee Department of Human Services
   Citizens Plaza Building
   400 Deaderick Street
   Nashville, TN 37248-9800
   Phone: (615) 313-4778

APPENDIX B

RECOMMENDATIONS FOR TUBERCULOSIS SCREENING OF PROGRAMS UNDER THE SUPERVISION OF THE DEPARTMENT OF HUMAN SERVICES[1]

Programs that provide care for periods less than 24 hours per day.

A. Employees.

Employees should be screened for tuberculosis within 90 days prior to but no later than two weeks after employment. The screening examination should include a Tuberculin test[2] and if it is positive, a chest X-ray and, if necessary, other specific tests. Prospective or current employees who are known to have a positive tuberculin reaction or who refuse to have a Tuberculin skin test shall receive a chest X-ray to rule out infectious Tuberculosis. If infectious Tuberculosis is ruled out, no further screening is necessary during their employment unless persistent pulmonary symptoms develop or there is contact with Tuberculosis.

B. Children.

(Rule 1240-04-04-.Appendix B, continued)

1. *Foreign-born.*

   All foreign-born children should present evidence of a Tuberculin skin test[3] performed in the United States. This test performed in the United States may have been done at any time after 12 months of age. Any child with a positive Tuberculin skin test should be referred to a physician for evaluation. After the initial evaluation, future periodic screening is not required unless the child develops persistent pulmonary symptoms or there is contact with Tuberculosis.

2. *Native-born.*

   Special screening of children born in the United States is not required unless there is history of contact to Tuberculosis or there are symptoms and/or physical findings suggestive of Tuberculosis.

   If the Tuberculin test is negative, no future screening is required unless persistent pulmonary symptoms develop or there is contact with Tuberculosis. If the Tuberculin skin test is positive, the child should be referred to a physician for evaluation.

---

[1] Tuberculosis screening is not recommended for programs providing care for less than two weeks.
[2] The preferred method is the Mantoux technique using 5 TU PPD.
[3] Ibid.

(Rule 1240-04-04-.Appendix B, continued)

APPENDIX C

INVENTORY FOR THE FIRST AID KIT

Every child care setting should have a first aid kit stocked with items on the list below. You can buy the supplies for the first aid kit at drug stores or at hospital or medical supply stores.

Each first aid kit should be large enough to hold all the necessary supplies for first aid in the child care setting. Use a container that will close tightly. It should be stored where adults can reach it easily, but it must be stored out of reach of children. You should arrange the contents so you can reach items easily without emptying the kit. You should be sure that the contents are wrapped tightly and are sanitary. You should restock the kit after each use.

A first aid kit should contain the following items:

- Π First aid cards*
- Π Adhesive strip bandages (1/2", 3/4", 1" strips)
- Π Gauze bandages (4"x4", nonstick, sterile)
- Π Rolled flexible or stretch gauze
- Π Bandage tape
- Π Nonstick, sterile pads (different sizes)
- Π Triangular bandages
- Π Small splints
- Π Eye dressing or pad
- Π Scissors
- Π Tweezers
- Π Safety pins
- Π Thermometer
- Π Flashlight with fresh batteries
- Π Disposable latex gloves
- Π Three-ounce rubber bulb syringe (to rinse out eyes, wounds, etc.)
- Π Commercial cold pack or plastic bag for ice cubes
- Π Clean cloth
- Π Soap
- Π Small plastic cup
- Π Sealed packages of cleansing wipes
- Π Syrup of ipecac (1-ounce bottle)
- Π Special items for children with specific health problems (such as bee sting kit or an inhaler for a child with asthma)
- Π Emergency Telephone Guide
- Π Emergency contact information (phone numbers of the children's parents)
- Π Change for pay phone
- Π Pen or pencil and note pad

* Can be purchased from American Red Cross; give first aid instructions.

This page may be duplicated by individuals and entities for noncommercial purposes.

"Appendix C"
American Red Cross Child Care Course
Infant and Child First Aid

APPENDIX D

MEAL PATTERN/PORTION SIZE REQUIREMENTS

If needed, the caregiver should ask for help in planning meals from a nutritionist or dietitian. For homes on the Child and Adult Care Food Program (CACFP), the DHS staff nutritionist is available. The Department of Health, local colleges, and hospitals are also possible resources.

The minimum amounts of food components to be served are as follows:

BREAKFAST

Food Components	Age 1 and 2	Age 3-5	Age 6-12[1]
Milk milk, fluid	1/2 cup[2]	3/4 cup	1 cup
Vegetables and Fruits Vegetable(s) and/or fruit(s) or full-strength vegetable or fruit juice or an equivalent quantity or any combination of vegetable(s), fruit(s) and juice	1/4 cup 1/4 cup	1/2 cup 1/2 cup	1/2 cup 1/2 cup
Bread and Bread Alternates[3] bread or cornbread, biscuits, rolls, muffins, etc. or cold dry cereal[4] or cooked cereal or cooked pasta or noodle products or an equivalent quantity of any combination of bread/bread alternate	1/2 slice 1/2 serving 1/4 cup or 1/3 oz. 1/4 cup 1/4 cup	1/2 slice 1/2 serving 1/3 cup or 1/2 oz. 1/4 cup 1/4 cup	1 slice 1 serving 3/4 cup or 1 oz. 1/2 cup 1/2 cup

---

[1] Children age 12 and up may be served adult-sized portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities for children age 6 to 12.

[2] A cup means a standard 8 ounce measuring cup.

[3] Bread. pasta or noodle products, and cereal grains shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain or enriched or fortified.

[4] Either volume (cup) or weight (oz.), whichever is less.

(Rule 1240-04-04-Appendix D, continued)

LUNCH OR SUPPER

Food Components	Age 1 and 2	Age 3-5	Age 6-12
Milk milk, fluid	1/2 cup	3/4 cup	1 cup
Vegetables and Fruits Vegetable(s) and/or fruit(s)[1]	1/4 cup total	1/2 cup total	3/4 cup total
Bread and Bread Alternates bread or cornbread, biscuits, rolls, muffins, etc. or cooked pasta or noodle products or cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate	1/2 slice 1/2 serving 1/4 cup 1/4 cup	1/2 slice 1/2 serving 1/4 cup 1/4 cup	1 slice 1 serving 1/2 cup 1/2 cup
Meat and Meat Alternates lean meat or poultry or fish[2] or cheese or eggs or cooked dry beans or peas or peanut butter, or other nut or seed butters or peanuts or soy nuts[3] or an equivalent quantity of any combination of meat/meat alternate	1 oz. 1 oz. 1 egg 1/4 cup 2 Tbsp. ½ oz. = 50%	1-1/2 oz. 1-1/2 oz. 1 egg 3/8 cup 3 Tbsp. 3/4 oz. = 50%	2 oz. 2 oz. 1 egg 1/2 cup 4 Tbsp. 1 oz = 50%

(See footnotes from breakfast pattern.)

[1] Serve 2 or more kinds of vegetable(s) and/or fruit(s). Full strength vegetable or fruit juice may be counted to meet not more than 1/2 of this requirement.

[2] Edible portion as served.

[3] No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purposes of determining combinations, (1) ounce of nuts or seeds is equal to (1) ounce of cooked lean meat, poultry, or fish.

(Rule 1240-04-04-Appendix D, continued)

SUPPLEMENTAL FOOD (SNACKS)

Select two of the following four components. Juice may not be served when milk is served as the only other component. Milk and yogurt are too similar in nutritional value to be used together in the same supplement.

Food Components	Age 1 and 2	Age 3-5	Age 6-12[1]
Milk milk, fluid	1/2 cup	1/2 cup	1 cup
Vegetables and Fruits Vegetable(s) and/or fruit(s) or full strength vegetable or fruit juice or an equivalent quantity or any combination of vegetable(s), fruit(s) and juice	1/2 cup 1/2 cup	1/2 cup 1/2 cup	3/4 cup 3/4 cup
Bread and Bread Alternates bread or cornbread, biscuits, rolls, muffins, etc. or cold dry cereal or cooked cereal or cooked pasta or noodle products or an equivalent quantity of any combination of bread/bread alternate	1/2 slice 1/2 serving 1/4 cup or 1/3 oz. 1/4 cup 1/4 cup	1/2 slice 1/2 serving 1/3 cup or 1/2 oz. 1/4 cup 1/4 cup	1 slice 1 serving 3/4 cup or 1 oz. 1/2 cup 1/2 cup
Meat and Meat Alternates lean meat or poultry or fish or cheese or eggs or cooked dry beans or peas or peanut butter, or other nut or seed butters or peanuts or soy nuts or yogurt, plain, or sweetened and flavored[1] or an equivalent quantity of any combination of meat/meat alternate	1/2 oz. 1/2 oz. 1/2 egg 1/8 cup 1 Tbsp. 1/2 oz. 2 oz. or 1/4 cup	1/2 oz. 1/2 oz. 1/2 egg 1/8 cup 1 Tbsp. 1/2 oz. 2 oz. or 1/4 cup	1 oz. 1 oz. 1/2 egg 1/4 cup 1 Tbsp. 1 oz. 4 oz. or 1/2 cup

(See footnotes from breakfast and lunch patterns.)

[1] Yogurt means commercially coagulated milk products obtained by fermentation that meet milk fat or milk solid requirements to which flavoring foods or ingredients may be added. These products are covered by the FDA's standard of identity for yogurt, lowfat yogurt, and nonfat yogurt.

APPENDIX E

ENVIRONMENTAL STANDARDS FOR FAMILY CHILD CARE HOMES

I. *Building.*

The building foundation, roof, and walls shall be free of visible cracks and unsealed openings. Gutters and downspouts shall be kept in good repair. Visible cracks in walls and around window frames and doors shall be sealed. Buildings shall be painted inside and outside when necessary.

All doors and windows shall be kept clean and in good repair (this includes screens when used). Window space shall be equal to at least 10 percent of the floor area except in rooms which are air-conditioned and which have artificial light amounting to at least 25 foot candles. Windows shall be openable unless the room is air-conditioned. All outside doors and windows shall be screened unless building is air-conditioned.

II. *Lighting.*

Lighting shall be adequate for normal activities that would be expected to be conducted in a Family Child Care Home. Fixtures and window blinds shall be clean, operative and properly adjusted.

III. *Heating and Ventilation.*

A temperature at child height not lower than 68° nor higher than 75° shall be maintained. Stoves, fireplaces, hot radiators, steam and hot water pipes or other objects and electrical outlets in rooms used by the children shall be adequately protected by screens, guards, insulation, or suitable measures that will protect children from coming in contact with them. All heating, ventilation, and air conditioner units shall be kept clean.

IV. *Toilets.*

There shall be at least one flush toilet and one handwashing lavatory. Such facilities shall be approved and in good repair, clean and conveniently located. Toilet tissue shall be provided at each commode.

A tightly covered container with plastic liner shall be used for diaper disposal and stored inaccessible to children. This container shall be emptied by closing the liner and disposing of it into an outside garbage receptacle.

V. *Handwashing.*

Soap and individual sanitary towels shall be available wherever a handwashing lavatory is provided. Proper adult supervision shall be exercised for use of toilet and handwashing facilities.

There shall be sufficient hot water to supply the needs of a Family Child Care Home.

Personnel shall exercise good handwashing practices following diaper changes, the assistance of children in toilet use, and personal toileting.

VI. *Bedding.*

Where provisions are made for staying overnight, each occupant shall be provided an individual bed with acceptable mattress and waterproof cover, springs, clean linen, and clean cover. Where children are kept at least six hours but not overnight, individual cots or other approved bedding

(Rule 1240-04-04-Appendix E, continued)

shall be provided and kept clean and in good repair. Spacing shall be adequate to promote freedom of movement, approximately two feet between cots and mats.

VII. *Sewage Disposal.*

Connection to a public sewage disposal system shall be made where possible. The use of a private sewage disposal system shall have the approval of the local health department and it shall be operating satisfactorily.

Plumbing shall be installed and maintained in such a manner as to prevent the possibility of cross-connection or back siphonage. There shall be no sewage leaks.

VIII. *Water Supply.*

The water supply shall be adequate, of a safe, sanitary quality, and from an approved public or private water-supply system which is constructed, protected, operated, and maintained in conformance with applicable State and local laws, ordinances, and regulations. Water from a public supply shall be utilized where possible.

IX. *Drinking Facilities.*

An approved drinking fountain or individual paper cups shall be provided in rooms or adjacent to rooms regularly occupied by the children. Fountains shall be clean and in good repair.

X. *Garbage and Refuse.*

All garbage and rubbish shall be kept in leakproof, nonabsorbent containers which shall be kept covered with tight fitting lids. Refuse shall be picked up at least twice a week and disposed of in such a manner as to prevent a nuisance. All garbage containers and the immediate area shall be kept clean. Containers shall be kept in good repair. Garbage shall be removed from the building daily.

XI. *Insect and Rodent Control.*

All parts of the building shall be reasonably free from flies and other insects. Approved screens in good repair shall be provided for all doors and windows unless the building is air-conditioned and then such doors and windows shall be kept closed during fly seasons. The facility shall be free of rodents. Proper supervision and caution shall be exercised according to label instructions when applying approved insecticides and rodenticides.

XII. *Safety.*

Only such poisonous and toxic materials as are required to maintain sanitary conditions and for sanitation purposes shall be used and stored in an approved manner. All insecticides, medicines, polishes, disinfectants, and cleaning compounds shall be stored in an area separate from food and paper storage and shall be inaccessible to children.

Sturdy safety rails shall be provided for both sides of all steps or ramps. When bathtubs are used by children, safety strips or mats shall be provided. There shall be no broken mirrors, windows or other glass objects in any part of the building. All furniture and the building shall be of durable construction, free of sharp projecting corners or surfaces and kept clean and in good repair. Glass in hazardous locations shall be suitably shielded or safety glass used in these sections.

Grounds shall be free of excessive growth of grass or weeds and hazards that are likely to cause falls. There shall be no unprotected, abandoned well, cistern, refrigerator box, or similar hazards.

(Rule 1240-04-04-Appendix E, continued)

Fencing or other acceptable barriers shall be provided for hazardous drainage ditches, cliffs, traffic, or like hazards. The grounds shall have adequate drainage.

Swimming pools shall comply with state law and regulations for public pools. There shall be adequate supervision by an adult who can swim. Pools shall be enclosed by a fence four feet in height.

XIII. *Food.*

Facilities located in counties or municipalities which have an adopted food service code, ordinance, or regulation shall comply with such code, ordinance, or regulation, where applicable; otherwise the following standards shall be met for food sanitation:

1. All food shall be from sources approved or considered satisfactory. The use of hermetically sealed containers (home canned food) is prohibited.

2. All milk including dry milk powder shall be from a Grade A pasteurized source.

3. Raw fruits and vegetables shall be washed before use.

4. Stuffing, poultry, and pork products shall be thoroughly cooked before being served.

5. Milk and food used in family style feeding shall not be placed on eating table longer than 15 minutes prior to beginning of meal. All food left over from the table in family-style feeding shall be discarded.

6. Potentially hazardous foods requiring cold storage shall be maintained at 45°F or below, and accurate thermometers shall be kept in the refrigerators. Potentially hazardous food requiring hot storage shall be at an internal temperature of 140'F or above. Frozen foods shall be maintained at a temperature of O°F or below. Thermometers shall be placed in all freezers.

7. Milk and other potentially hazardous foods shall be kept in the proper temperature ranges and be protected properly, except during the time of preparation.

8. All dry food supplies shall be stored in closed containers. These foods shall be stored in a manner to prevent possible contamination and to allow for proper cleaning of the storage area.

9. All food shall be protected from contamination during storage, preparation, transportation, and serving.

10. No poisonous or toxic materials except those required to maintain sanitary conditions and for sanitization purposes may be used or stored in a food-service area of a facility.

11. Poisonous and toxic materials shall be identified, stored, and used only in such a manner and under such conditions as will not contaminate food or constitute a hazard to the population of a facility.

12. All equipment and utensils shall be so designed and constructed of such material and workmanship as to be smooth, easily cleanable, and durable, and shall be in good repair.

13. The food-contact surfaces or equipment and utensils shall be easily accessible for cleaning, nontoxic, corrosion resistant, and relatively nonabsorbent; exceptions may be made to the above materials requirements for equipment such as cutting boards, blocks, and bakers' tables.

(Rule 1240-04-04-Appendix E, continued)

14. All equipment shall be installed and maintained to facilitate the cleaning thereof and of all adjacent areas.

15. Equipment in use at the time of adoption of this standard that does not meet fully the above requirements may be continued in use if it is in good repair, capable of being maintained in a sanitary condition, and the food-contact surfaces are nontoxic.

16. All eating and drinking utensils shall be thoroughly cleaned and sanitized after each use with the exception of single-service utensils which shall be discarded following use.

17. Single-service articles shall be made from nontoxic materials and shall be stored, handled, and dispensed in a sanitary manner.

18. All utensils and food-contact surfaces or equipment used in the preparation, transportation, service, display, or storage of potentially hazardous food shall be thoroughly cleaned and sanitized prior to such use.

19. Cooking surfaces of equipment shall be cleaned at least once a day.

20. All kitchenware and food-contact surfaces of equipment, exclusive of cooking surfaces of equipment, used in the preparation or serving of food or drink, and all food-storage utensils, shall be thoroughly cleaned after each use.

21. Nonfood contact surfaces of equipment shall be cleaned at such intervals as to keep them in a clean and sanitary condition.

22. After cleaning and until use, all food-contact surfaces of equipment and utensils shall be stored and handled as to be protected from contamination.

23. In facilities defined by the Department of Human Services as existing, a two-compartment sink can be used for washing and rinsing utensils, provided an additional container or sink is used for sanitation of the utensils.

    Domestic type dishwashing machines are acceptable provided the temperature at the utensil surface is 160°F after the end of one complete cycle. If 160° is not obtained at the end of one complete cycle, an additional sanitizing rinse for utensils shall be provided in a separate container or sink.

    Facilities which do not have adequate and effective facilities for cleaning and sanitizing utensils shall use single-service articles.

XIV. *Housekeeping.*

All portions of the building shall be maintained in a clean condition. All rooms shall be maintained in an orderly manner. Grounds shall be kept clean.

APPENDIX F

TENNESSEE DEPARTMENT OF HUMAN SERVICES
FIRE SAFETY INSPECTION REPORT

FAMILY CHILD CARE HOMES INSPECTED BY THE DEPARTMENT OF HUMAN SERVICES

Name of facility: _____

Street address: _____ Telephone number: _____

City: _____ State: _____ Zip code: _____

Age range of children: _____

If this facility does not meet the State Building Code Requirements for a new building, all of the following questions must be answered "Yes".

(01) Is wood frame construction restricted to two stories in height? ... ☐ Yes ☐ No (01)

(02) Are children housed only on the first floor level?..... ☐ Yes ☐ No (02)

(03) Does each room used for child care purposes have access to two outside exits? (One exit shall be through a window unless the room has a door directly to the outside)..... ☐ Yes ☐ No (03)

(04) Is every closet door latch such that children can open the door from the inside?..... ☐ Yes ☐ No (04)

(05) If this building is used for purposes not under the control of the operator, are all rooms and spaces used for child care purposes separated from the rest of the rooms by one-hour fire-rated walls and solid core doors?..... ☐ Yes ☐ No (05)

(06) Does this facility have at least one unannounced fire drill monthly?..... ☐ Yes ☐ No (06)

(07) Are all employees informed of their duties during a fire drill? ..... ☐ Yes ☐ No (07)

(08) Does the facility have one UL smoke detector for each room occupied by children? ..... ☐ Yes ☐ No (08)

(09) Does the facility have an approved A-B-C rated extinguisher near the kitchen? (at least 2-1/2 lb. rated) ..... ☐ Yes ☐ No (09)

(10) Do electrical outlets within children's reach have protective coverings?..... ☐ Yes ☐ No (10)

(11) Are all approaches to exists kept continuously free of all obstructions?..... ☐ Yes ☐ No (11)

(12) Is the building free of all unvented fuel-burning heaters? ..... ☐ Yes ☐ No (12)

(13) Are all fuel-burning heaters, fireplaces, wall heaters, and portable space heaters provided with a protective screen

(Rule 1240-04-04-Appendix F, continued)

	attached securely to substantial supports?	☐ Yes	☐ No	(13)
(14)	Are all stairways, hallways, and other means of exit kept adequately lighted at all times when the building is occupied?	☐ Yes	☐ No	(14)
(15)	Does the space used for child care purposes have at least one window in each room which will raise up or swing out for emergency exit?	☐ Yes	☐ No	(15)
(16)	If space is partially below grade on all four sides, is there an exit with a maximum of three steps or less leading directly to the outside?	☐ Yes	☐ No	(16)
(17)	Does the hot water heater have a safety relief valve installed?	☐ Yes	☐ No	(17)
(18)	Are combustible materials, gasoline, or flammable liquids (paint, thinner, oil, other chemicals, etc.) properly stored outside of the building occupied by children?	☐ Yes	☐ No	(18)
(19)	Does visual inspection reveal the absence of electrical hazards (overloaded electrical panel/master junction box), excessive extension cords or frayed wiring?	☐ Yes	☐ No	(19)
(20)	Does every bathroom door lock permit opening of the locked door from the outside?	☐ Yes	☐ No	(20)
	On this date, I found this facility to be reasonably fire safe. (Check No if Item 1, 12, or 16 above is checked No.)	☐ Yes	☐ No	
	Referred to local inspector	☐ Yes	☐ No	

_____ _____

Date Counselor

Received by: _____ Date: _____

NOTE: In areas where the local Fire Department or Human Services official has responsibility for fire safety inspections, the appropriate person shall complete this form. (Human Services officials inspecting only those facilities that have seven children or less shall use this form.)

This form applies only to one- and two-family houses, garden apartments, or condominiums when each unit has access directly to the outside. Family Child Care Homes located in other types of dwelling shall meet the additional requirements listed in Family Child Care Home Standards.