

**Department of State  
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Sequence Number: 10-08-10  
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File Date: 10/07/2010

# Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

<b>Agency/Board/Commission:</b>	Tennessee Department of Human Services
<b>Division:</b>	Adult and Family Services
<b>Contact Person:</b>	Nicole Armstrong
<b>Address:</b>	Office of General Counsel Citizens Plaza Building, 15 <sup>th</sup> Floor 400 Deaderick Street Nashville, Tennessee 37243-1403
<b>Phone:</b>	615-313-4731
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

<b>ADA Contact:</b>	Jeffrey Blackshear
<b>Address:</b>	Office of General Counsel Citizens Plaza Building, 15 <sup>th</sup> Floor 400 Deaderick Street Nashville, Tennessee 37243-1403
<b>Phone:</b>	615-313-4731
<b>Email:</b>	<a href="mailto:Jeffrey.Blackshear@tn.gov">Jeffrey.Blackshear@tn.gov</a>

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	Tennessee Department of Human Services Conference Room		
Address 2:	103 E. Walnut Street		
City:	Johnson City		
Zip:	37601		
Hearing Date :	11/29/10		
Hearing Time:	7:30 PM	<input type="checkbox"/> CST	<input checked="" type="checkbox"/> EST

Address 1:	Conference Room A, 7th Floor		
Address 2:	531 Henley Street		
City:	Knoxville		
Zip:	37902		
Hearing Date :	11/30/10		
Hearing Time:	7:30 PM	<input type="checkbox"/> CST	<input checked="" type="checkbox"/> EST

Address 1:	1st Floor Auditorium		
Address 2:	540 McCallie Ave.		
City:	Chattanooga		

Zip:	37402		
Hearing Date :	12/01/10		
Hearing Time:	7:30 PM	<input type="checkbox"/> CST	<input checked="" type="checkbox"/> EST

Address 1:	Davidson County DHS Office Video Conference Room		
Address 2:	1000 2nd Avenue North		
City:	Nashville		
Zip:	37243		
Hearing Date :	12/03/10		
Hearing Time:	7:30 PM	<input checked="" type="checkbox"/> CST	<input type="checkbox"/> EST

Address 1:	Cookeville District Office Multi Purpose Room		
Address 2:	1000 England Drive, Suite B		
City:	Cookeville		
Zip:	38501		
Hearing Date :	12/06/10		
Hearing Time:	7:30 PM	<input checked="" type="checkbox"/> CST	<input type="checkbox"/> EST

Address 1:	Maury County Department of Human Services Office Conference Room		
Address 2:	1400 College Park Drive, Suite B		
City:	Columbia		
Zip:	38401		
Hearing Date :	12/08/10		
Hearing Time:	7:30 PM	<input checked="" type="checkbox"/> CST	<input type="checkbox"/> EST

Address 1:	Southwest Tennessee Community College Nabors Gym		
Address 2:	5983 Macon Cove		
City:	Memphis		
Zip:	38134		
Hearing Date :	12/09/10		
Hearing Time:	7:30 PM	<input checked="" type="checkbox"/> CST	<input type="checkbox"/> EST

Address 1:	2 <sup>nd</sup> Floor Conference Room B, Ste 210 Lowell Thomas State Office Building		
Address 2:	225 Martin Luther King, Jr. Drive		
City:	Jackson		
Zip:	38301		
Hearing Date :	12/10/10		
Hearing Time:	7:30 PM	<input checked="" type="checkbox"/> CST	<input type="checkbox"/> EST

**Additional Hearing Information:**

Although the official hearing for receiving public comment on the rules begins at 7:30 PM, we will also conduct an informational meeting that includes a PowerPoint presentation on the proposed rules prior to each hearing. The informational meeting will begin at 6:30 PM at each location.

**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to SS-7037 (October 2009) RDA 1693

accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

<b>Chapter Number</b>	<b>Chapter Title</b>
1240-04-01	Standards for Group Child Care Homes
<b>Rule Number</b>	<b>Rule Title</b>
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

<b>Chapter Number</b>	<b>Chapter Title</b>
1240-04-02	Licensure Rules for Drop-In Child Care Centers
<b>Rule Number</b>	<b>Rule Title</b>
1240-04-02-.01	Purpose, Scope of Services and General Licensing Requirements
1240-04-02-.02	Definitions
1240-04-02-.03	Application Procedures
1240-04-02-.04	Ownership, Organization and Administration
1240-04-02-.05	Staff Requirements
1240-04-02-.06	Equipment for Children
1240-04-02-.07	Program
1240-04-02-.08	Health and Safety
1240-04-02-.09	Physical Facilities
1240-04-02-.10	Care of Children with Special Needs

<b>Chapter Number</b>	<b>Chapter Title</b>
1240-04-03	Licensure Rules for Child Care Centers
<b>Rule Number</b>	<b>Rule Title</b>
1240-04-03-.01	Scope and Purpose
1240-04-03-.02	Definitions
1240-04-03-.03	Basis for Issuance of a License
1240-04-03-.04	Procedures for Obtaining a License
1240-04-03-.05	Ownership, Organization and Administration
1240-04-03-.06	Supervision
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-.11	Food
1240-04-03-.12	Physical Facilities
1240-04-03-.13	Transportation
1240-04-03-.14	Extended Care
1240-04-03-.15	Care of Children with Special Needs
1240-04-03-.16	Sick Child Care

<b>Chapter Number</b>	<b>Chapter Title</b>
1240-04-04	Standards for Family Child Care Homes
<b>Rule Number</b>	<b>Rule Title</b>
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

Substance of Proposed Rules

Chapter 1240-04-01  
Standards for Group Child Care Homes

Repeals

Chapter 1240-04-01 Standards for Group Child Care Homes is repealed in its entirety.

Authority: T.C.A. 4-5-201 et seq.; 71-3-501 et seq.

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

Repeals

Chapter 1240-04-02 Licensure Rules for Drop-In Child Care Centers is repealed in its entirety, and the title is amended by deleting the previous title of the chapter and substituting instead the word "Repealed."

Authority: T.C.A. 4-5-201 et seq.; 71-3-501 et seq.

Chapter 1240-04-03  
Licensure Rules for Child Care Centers

Repeals

Chapter 1240-04-03 Licensure Rules for Child Care Centers is repealed in its entirety, and the title is amended by deleting the previous title of the chapter and substituting instead the word "Repealed."

Authority: T.C.A. 4-5-201 et seq.; 71-3-501 et seq.

Chapter 1240-04-04  
Standards for Family Child Care Homes

Repeals

Chapter 1240-04-04 Standards for Family Child Care Homes is repealed in its entirety, and the title is amended by deleting the previous title of the chapter and substituting instead the word "Repealed."

Authority: T.C.A. 4-5-201 et seq.; 71-3-501 et seq.

Chapter 1240-04-01  
Licensure Rules for Child Care Agencies

New Rules

Table of Contents

1240-04-01-.01	Scope and Purpose
1240-04-01-.02	Definitions
1240-04-01-.03	Requirements for Licensure as a Child Care Agency
1240-04-01-.04	Procedures for Obtaining a License
1240-04-01-.05	Exemptions from Child Care Agency Licensing
1240-04-01-.06	Ownership, Organization and Administration
1240-04-01-.07	Staff
1240-04-01-.08	Criminal Background Check and State Registry/Records Review Procedures
1240-04-01-.09	Record Keeping
1240-04-01-.10	Incident Reporting
1240-04-01-.11	Duty to Report Child Abuse and Neglect
1240-04-01-.12	Supervision
1240-04-01-.13	Health and Safety
1240-04-01-.14	Food and Food Service
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1240-04-01-.22	Specific Requirements for Family Child Care Homes
1240-04-01-.23	Specific Requirements for Group Child Care Homes
1240-04-01-.24	Specific Requirements for Child Care Centers
1240-04-01-.25	Specific Requirements for Drop-In Child Care Centers

1240-04-01-.01 Scope and Purpose.

- (1) Scope of Rules. These rules are applicable to child care agencies subject to licensing by the Department of Human Services 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 these agencies or the rules and licensing and appeal procedures for these agencies shall be resolved by reference to these rules.
- (2) Applicable Requirements. These rules are organized as follows: The requirements set forth in 1240-04-01-.01 through 1240-04-01-.21 apply to all licensed categories of child care agencies unless otherwise noted within the rules. The requirements set forth in 1240-04-01-.22 through 1240-04-01-.25 apply to the specific class of care identified in each section.
- (3) The Department maintains a link on its website to current statutes, rules, policies, and guidelines that are prerequisites for licensure. Licensees are notified of changes that impact the licensure requirements at issuance and renewal of the annual license. [[http://tn.gov/humanserv/adfam/cc\\_licensing.html](http://tn.gov/humanserv/adfam/cc_licensing.html)]
- (4) Purpose of Licensing.

- (a) The primary purpose of licensing is the protection of children while under the care of agencies licensed by the Department of Human Services. The basic requirements in these rules seek to maintain the adequate health, safety, and supervision of children while in a licensed care setting.
- (b) The secondary purpose of licensing is to promote developmentally appropriate child care.

Authority: T.C.A. §§ 4-5-202; 71-1-105(5) and (12); 71-3-501 et seq. 71-3-502(a)(2).

1240-04-01-.02 Definitions.

- (1) Abuse. "Abuse" exists when a person under the age of eighteen (18) is suffering from, has sustained, or may be in immediate danger of suffering from or sustaining a wound, injury, disability or physical or mental condition caused by brutality, neglect or other actions or inactions of a parent, relative, guardian or caretaker. Abuse includes:
  - (a) physical abuse;
  - (b) drug exposed infant/child;
  - (c) sexual abuse;
  - (d) psychological harm; or
  - (e) child fatality/near fatality.
- (2) Administrative Hearing. A hearing that is held under the Uniform Administrative Procedures Act, Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated, rather than a court of law that is conducted by an administrative law judge from the Secretary of State's Office or by an administrative hearing officer of the Department of Human Services. The purpose of the hearing is to allow an agency the opportunity to challenge legal enforcement actions taken by the Department.
- (3) Age Appropriate. Describes materials and practices which are designed to provide safe experiences e in accordance with the biological needs and the developmental age and stage of the individual child.
- (4) 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 of the Department.
- (5) 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.
- (6) Auxiliary staff. Full and part-time employees of the agency who do not provide caregiving services, including but not limited to custodial, food service and maintenance staff.
- (7) Behavioral Intervention Technique. An intentional action designed to support positive behavior.
- (8) Breakfast. Includes the following three components:
  - (a) Fluid milk;

- (b) Fruit or vegetable or 100% fruit juice; and
  - (c) Bread or bread alternate.
- (9) 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.
  - (10) C.C.P. Certified Childcare Professional. A person who has earned a credential granted by the National Child Care Association. This credential is only recognized, for purposes of these rules, if issued by the above named organization.
  - (11) C.D.A. Child Development Associate. A person who has earned an early childhood educational credential granted by the National Council for Professional Recognition. This credential is only recognized, for purposes of these rules, if issued by the above named organization.
  - (12) 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 child care homes and child care centers in the system and shall, together with the primary caregiver/director, sign the application for a license. The central operator shall be the licensee.
  - (13) Chemical Restraint. The use of medication to subdue, inhibit, confine or control a child's behavior that is not a standard treatment or dosage for a child's condition.
  - (14) Child or Children. A person or persons under eighteen (18) years of age.
  - (15) Child Care. As defined by T.C.A. § 71-3-501, the provision of supervision, protection, and meeting, at a minimum, the basic needs of a child for less than twenty-four (24) hours a day.
  - (16) 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 child care center", as those terms are defined in this chapter; or
    - (b) A place or facility that provides child care for three (3) or more hours per day to five (5) or more children who are not related to the primary caregiver.
    - (c) The determination of whether a place or facility is operating a child care agency that requires a license is not solely dependent on either the amount of time that an individual child spends receiving child care or the number of children that are receiving care at one time.
  - (17) Child Care Agency Board of Review, Board of Review or Board. The entity established by TCA §§ 71-3-510 and 37-5-515 to hear the appeals of the denial, revocation, or the restriction or limitation, other than summary suspensions, of licenses for child care agencies issued by the Departments of Children's Services and Human Services, and which adjudicates civil penalties or safety plans proposed

to continue or continuing ninety (90) days or longer imposed by the Department of Human Services against a child care agency under its jurisdiction.

- (18) Child Care Center. 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.
  - (a) 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 1240-04-01-.23(1)(b)1.
  - (b) All children, related or unrelated, shall be counted in the adult-to-child supervision ratios and group sizes applicable to child care centers;
  - (c) If a 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;
- (19) Child Care Center Administrator. An individual(s), corporation, partnership, cooperative, or other public or private entity of any kind, or any combination thereof, that, either personally or through an authorized representative, assumes, or is legally required to assume, ultimate legal, financial and administrative responsibility for the management and control of a child care center.
- (20) Child Care Home Administrator. An individual(s), corporation, partnership, cooperative, or other private or public entity of any kind, or any combination thereof, that, either personally or through an authorized representative, assumes, or is legally required to assume, ultimate legal, financial and administrative responsibility for the management and control of any or all family or group child care homes.
- (21) Child Care Environment. The organization of space, interactions between staff and children and among children, the variety and type of activities offered by the child care agency, the schedule of activities for children, and opportunities provided for staff and parents relating to the areas of professional growth, parental involvement, intentional teaching, and social-emotional development.
- (22) Child Care System. Two (2) or more licensed child care agencies 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 a child care system must be individually licensed in accordance with T.C.A. §§ 71-3-501 et seq.
- (23) Child Care Vehicle. 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 a child 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.
- (24) Civil Penalty. A financial sanction imposed by the Department against a child care agency that has violated a licensing regulation.

- (25) Class of Care. "Class of care" refers to the categories of child care licensing: family child care home, group child care home, drop-in center, or child care center, as those terms are defined in this chapter.
- (26) Commissioner. The executive head of the Department of Human Services, appointed by the Governor.
- (27) Competency-Based Training. Training that develops knowledge, skills and attitudes that prepare a caregiver to work successfully in a child care setting.
- (28) Conventional Care. Child care services provided between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday.
- (29) Corporal Punishment. The infliction of bodily pain as a penalty for behavior of which the punisher disapproves.
- (30) Denial of License. The decision of the Department not to issue or renew a license.
- (31) Department (DHS). The Tennessee Department of Human Services and its authorized representatives.
- (32) Developmentally Appropriate Practice (DAP). A framework of research-based principles and guidelines for best practice in the care and education of children, which inform and promote each individual child's optimal learning and development.
- (33) Direct Contact. A status in which the person is engaged in care, supervision, instruction or transportation of the child as part of the person's employment or by contract or other paid or unpaid duties performed for or on behalf of the child care agency, or who has access to a child in the performance of employment, contract or other paid or unpaid duties or services performed for, or on behalf of, the child care agency.
- (34) Director. The on-site manager for a child care center who has overall responsibility for the daily oversight of all staff and direct child care services and overall operation of the center.
- (35) Drop-In Child Care Center.
  - (a) 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.).
  - (b) A drop-in center may provide 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 when the school of the affected child is closed.
  - (c) 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.
  - (d) 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/guardian 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.

- (36) Enrollment. The process of accepting children for care and meeting rules applicable to enrollment.
- (37) Exemption. A determination by the Department pursuant to the provisions of T.C.A. § 71-3-503 that a program or activity operating a child care agency is not required to be licensed by the Department of Human Services as a child care agency. See, 1240-04-01-.05.
- (38) 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.
- (39) Facility or Place. The physical location or locations that singly, or together, provide child care that constitutes the operation of a child care agency that must be licensed to operate legally.
- (40) Falsification of Information. Includes, but is not limited to, falsified or forged records, documents relating to the care of children by the child care agency, including documents related to the receipt of payments from the Department for the care of children by the agency, and/or concealment of services or children from monitoring by the Department.
- (41) Family Child Care Home. Any place or facility which 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.
  - (a) The maximum number of children present in the family child care home, including related children of the primary caregiver shall not exceed twelve (12).
  - (b) 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.
- (42) Field Trip. Any off-site activity which occurs away from the general premises of the child care agency's licensed facility and beyond reasonable walking distance.
- (43) Foster Home. A home approved by the Department of Children's Services or a licensed child-placing agency for the residential care of children.
- (44) Gross Neglect. The willful failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness, resulting in potential or actual harm. Gross neglect includes medical neglect and abandonment and any combination of the following:
  - (a) Environmental neglect;
  - (b) Nutritional neglect;

- (c) Educational neglect; or
  - (d) Lack of supervision.
- (45) Group. A specific number of children within a defined age range and assigned to specific staff in an assigned space that is divided from the space of other groups by a recognizable barrier to define limits and reduce distraction.
- (46) 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.
- (a) The maximum number of children present in a group child care home, including those related to the primary caregiver, shall not exceed twelve (12) pre-school ) children.
  - (b) 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.
  - (c) 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.
  - (d) 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.
- (47) High School Diploma.
- (a) 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 and includes passing a GED test, or equivalent as defined by Tennessee law or its equivalent.
  - (b) As used in this Chapter, a certificate or statement of attendance or similar document or correspondence or video courses do not qualify as being the equivalent of a high school diploma.
- (48) Home School. The provision of full-time educational services by parent(s) or legal guardian(s) to a child in the child's primary residence, as recognized by the Department of Education and pursuant to the requirements of T.C.A. § 49-6-3050, or educational services provided through a teacher appointed by a private, church-related school according to the provisions of T.C.A § 49-50-801.
- (49) Illegal Operator. An individual or entity who is operating a child care agency without a license pursuant to the provisions of T.C.A. §71-3-501 et seq. or these rules.
- (50) Infant. A child who is six (6) weeks through fifteen (15) months of age.

- (51) Law. Statutory or regulatory provisions affecting the operation of a child care agency including, but not limited to, the licensing law as contained in Title 71, Chapter 5, Part 3 of the Tennessee Code Annotated, Chapter 1240-04-05, and these rules.
- (52) Licensee. The owner, as defined by these rules, to whom a license to operate a child care agency is issued. In a family or group child care home which is not operated by a central operator, the primary caregiver is the licensee.
- (53) Licensed Capacity. The designated maximum number of children permitted in the care and supervision of a licensed child care agency as determined by the Department based upon available indoor space, age of children, adult: child ratios, and group size. Licensed capacity shall be designated on the license.
- (54) Meal. Includes the following four components:
  - (a) Meat or meat substitute;
  - (b) Two vegetables or one vegetable and one fruit;
  - (c) Bread or bread product; and
  - (d) Fluid milk.
- (55) Mechanical Restraint. The restriction of a child's mobility and/or ability to use his/her hands, arms, legs, feet, body or head freely, through the use of any manual method, physical or mechanical device, material, or equipment. When misused, confining equipment may be considered to be mechanical restraint.
- (56) Media Time. This includes the use of television, computers and videogames of all types. Alternately referred to as Screen Time.
- (57) 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.
- (58) Operator/owner. The individual(s), corporation, partnership, cooperative, or other private or public entity of any kind, or any combination thereof, who or which, either as entity, as an individual or through their authorized representatives, assumes, or is legally required to assume, ultimate legal and administrative responsibility for the management and control of a child care agency. The operator/owner shall be the licensee for the child care agency.
- (59) Parent/guardian. A biological, legal, foster or adoptive parent, including a guardian, legal or physical custodian or other caretaker of a child, who has primary responsibility for a child.
- (60) Physical Restraint. As used in these rules, a safe-hold method of temporarily restraining a child, who is at imminent risk of serious self-inflicted injury, or poses a serious threat to the safety of others, and which is performed by trained personnel only after all other methods of alleviating the danger have failed.
- (61) Pre-Service Orientation. For purposes of this rule, "pre-service" orientation shall mean that such orientation occurs prior to paid or unpaid staff having direct contact with children.
- (62) Premises. A house or a building, along with its grounds, including outdoor areas, playgrounds, parking lots and driveways.

- (63) **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 chapter as an “Infant” or a “Toddler”.
- (64) **Primary Caregiver.** The adult on site at a family or group child care home who is directly responsible for care and supervision of children in a child care home and for the daily operation of a child care home.
- (65) **Probation.** A legal enforcement action, imposed for 30 to 60 days, taken after an agency has been cited for a violation and failed to correct the violation after notice of an opportunity to correct.
- (66) **Related.** Children, step-children, grandchildren, step–grandchildren, siblings, of the whole or half-blood, step-siblings, nieces, nephews or foster children of the primary caregiver.
- (67) **Restricted License.** A license which, either at the time of issuance, or during the license’s existence, is reduced in its operational authority by the Department so that the child care agency’s ability to provide certain child care related services are limited because the Department has determined that one or more areas of the agency’s operations are not in compliance with child care laws or regulations or the agency’s operations are, or have posed, a risk to the health, safety or welfare of children in the agency’s care or the agency’s operations pose the potential of such risk.
- (68) **Revocation-**The permanent removal of an existing license.
- (69) **Safe-hold.** 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.
- (70) **Safety Plan.** A plan for the safety of children that is placed on a child care agency as the result of an investigation of the child care agency. A safety plan may require, but is not limited to, the exclusion or restriction of any individuals from access to children, the closure or restriction of any part of the agency, the modification or elimination of services at the agency, the reinspection of the agency, the training of agency management, staff or volunteers.
- (71) **School-age Child.** A child who is five (5) years of age and enrolled in kindergarten through seventeen (17) years of age. A four (4) year old child may be classified as a school-age child in the summer immediately preceding the child’s fall entry into kindergarten. “Summer”, for purposes of this definition shall begin on the first day following the end of the school year in the school district of the child’s residence.
- (72) **Sick Child Care.** The provision, for three (3) or more hours per day and less than twenty-four (24) hours per day, of 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.
- (73) **Significant Contact.** Same as definition for “Direct Contact,” above.
- (74) **Snack.** A fluid drink and two (2) of the components listed in (a) through (e) below. If the fluid drink is 100% vegetable or fruit juice or milk only one additional component from (a) through (c) is required.

- (a) Vegetables or fruits in solid form.
  - (b) Bread or bread alternates.
  - (c) Meat, or meat alternates, which can consist of cooked dry peas or beans, peanut butter or nuts or seeds, cheese, eggs, and yogurt or other items approved by the United States Department of Agriculture.
  - (d) Fluid milk.
  - (e) One Hundred Percent (100%) vegetable or fruit juice.
- (75) Staff. Full and part-time caregivers, employees, or unpaid volunteers of the agency.
- (76) Substitute. Paid or unpaid persons who are replacements for regular staff.
- (77) Supervision.
- (a) For children six (6) weeks of age through nine (9) years of age:
    - 1. An adult caregiver shall be able to hear the child at all times, shall be able to see the child with a quick glance, and shall be able to physically respond immediately.
    - 2. Exception: An adult shall be in the direct sight and sound of the child, ages six (6) weeks through five (5) years, not in kindergarten, at all times while the child is eating.
  - (b) For children ten (10) years of age and older: An adult caregiver shall know the whereabouts and activities of the children at all times and shall be able to physically respond immediately.
- (78) Suspension. The temporary removal of a license for violation of licensing laws or regulations immediately affecting the health, safety, or welfare of children in a child care agency.
- (79) TECTA. Tennessee Early Childhood Training Alliance (TECTA) is a statewide system established to provide affordable professional development with academic degree credit possibilities for Tennessee's early child care professionals through an articulated statewide higher education structure.
- (80) Temporary License.
- (a) 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 works to attain full compliance with all other applicable regulations.
  - (b) The temporary license is valid, unless suspended, for one hundred twenty (120) days or until the application for an annual license is finally determined, and is issued upon application or reapplication by the applicant 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 and if the applicant and the personnel who will care for the children are capable in all substantial respects to care for the children and that the applicant has the ability and intent to comply with the licensing laws and regulations.

- (c) If, at the end of the one hundred twenty (120) day period, evidence is provided by the applicant that such child care agency is suitable and properly managed and that the agency is in compliance with the rules governing the applicable class of child care agency, the Department will issue an annual license to the child care agency unless the Department determines that a restricted license should be issued.
- (81) Time Out. A means of correcting behavior by placing a child over age three (3) in a supervised quiet place alone for a few minutes and then talking about the problem.
- (82) Toddler. A child who is twelve (12) months through thirty (30) months of age.
- (83) 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.
- (84) Youth. A person who is ten (10) years of age through seventeen (17) years of age.

Authority: T.C.A. §§ 4-5-202; 71-1-105(5) and (12); 71-3-501 et seq.; 71-3-502(a)(2).

1240-04-01-.03 Requirements for Licensure as a Child Care Agency.

- (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 and these rules.
  - (b) Issuance of a license is not an endorsement of child care methods or of an agency's operational philosophy.
- (2) Issuance of the license, or any determination as to the status of an existing license is based upon the following criteria, in addition to other licensing regulations of the Department and licensing laws:
  - (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 of the children;
  - (c) Evidence 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, during licensure, that the actual performance of any of the duties of 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;
  - (d) The quality of the methods of care and instruction provided for the children;
  - (e) The suitability of the facilities provided for the care of the children; and

- (f) 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.
- (3) The licensee must maintain compliance with the licensing criteria listed in paragraph (2) above, the child care licensing laws and these regulations throughout the licensing period.
  - (4) A license to operate a child care agency in a home in which a foster child or children may also reside will not be granted unless the Department determines that the applicant is able to simultaneously provide child care and meet the extraordinary needs of the foster child or children.
    - (a) The applicant must list the number and ages of the foster child/children who currently reside in the home on the license application. One of the references provided by the applicant shall be the state or private foster care agency. The applicant shall provide a signed release that authorizes the state or private foster care agency to discuss the application with the Department.
    - (b) If, after being licensed, a licensee accepts for foster care a child or children who will reside in the child care agency, the licensee shall notify the Department. Such notification shall be made in writing, and shall be submitted within ten (10) days of the foster child/children beginning to reside in the child care agency.
    - (c) If the Department determines that any of the requirements set forth in this Chapter have not been, or cannot be, satisfactorily met due to the special or extraordinary needs of a foster child/children, or that other circumstances warrant, it may deny, restrict, or revoke the license or take any regulatory or judicial action as may be required pursuant to the licensing laws and regulations that may be necessary to protect the children in the care of such agency.
  - (5) Licensing Procedures; Administrative and Judicial Actions Involving the License.
    - (a) The procedures for licensing, administrative and judicial actions, probation, civil penalties, suspension, denial and revocation and procedures for appeal are contained in Chapter 1240-04-05, Chapter 1240-05-13, this Chapter, T.C.A. §§ 71-3-501 et seq. and the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq.
    - (b) Any conflict between the definitions and procedures contained in Chapter 1240-04-05; 1240-05-13 and this Chapter shall be governed by the provisions of this chapter and the provisions of T.C.A. §§ 71-3-501 et seq. and the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq.
    - (c) Falsification of Information. Falsification of any information as defined in 1240-04-01-.02(40) that is related to the operation of the child care agency shall be grounds for suspension, denial, or revocation of a license.
  - (6) When an individual or group is giving consideration to opening a child care service/business, the individual or group shall contact the local licensing office of the Tennessee Department of Human Services. Contact information for the local licensing offices is on the Department's website.  
[[http://tn.gov/humanserv/adfam/cc\\_licensing.html](http://tn.gov/humanserv/adfam/cc_licensing.html)]

- (7) Pre-Application Training.
- (a) Prospective applicants for a new license shall attend at least one informational intake meeting provided by the Department that covers an overview of child care operation issues for consideration in determining whether to apply for a license. For child care centers and drop-in centers, this shall be the owner. For family child care homes and group child care homes, this shall be the primary caregiver and operator/owner, if different from the primary caregiver. This training shall include components on interviewing and evaluating caregivers for service in the agency.
- (b) In the case of a program that is governed by a board of directors or trustees, this meeting shall be attended by the agency's director. If the prospective applicant is not responsible for the day to day management of the program, this meeting shall be attended by both the prospective applicant and the director responsible for the day to day management of the child care agency.
- (8) In addition to the meeting required in subparagraph (7)(a) above, all new directors and primary caregivers shall attend, within six (6) months prior to issuance of the license, an orientation session provided by the Department which is at least four (4) hours in length and which covers, at a minimum, the laws and rules governing child care. In the case of a program that is governed by a board of directors or trustees, this training shall be attended by a director who is responsible for the day-to-day management of the program.
- (9) Issuance of a temporary license to new child care agencies shall require:
- (a) An Application and Payment of Licensing Fee.
1. A completed application form must be signed by the owner or the owner's authorized representative and all required application documentation as required by the Department as required in subparagraph (b) must accompany the application.
  2. In order to be considered complete, an application must be accompanied by the annual application fee for that class of child care. Current licensing/application fees are maintained on the Department's website. [[http://tn.gov/humanserv/adfam/cc\\_licensing.html](http://tn.gov/humanserv/adfam/cc_licensing.html)]
  3. Licensing fees must be submitted by certified check or money order. Exception: Government agencies may submit checks drawn on government accounts.
- (b) Business Organization and Organizational Structure Documentation.
1. The business organization and the organizational structure clearly defining the legal and administrative responsibility of every child care agency shall be such that legal and administrative responsibility for the agency is clearly defined.
  2. Documentation of the agency's business organization shall be made in the form and manner directed by the Department. The application shall include copies of the business organization filings with the Tennessee Secretary of State Division of Business Services, if applicable.

3. The failure to fully complete all application forms and to submit all required supporting documentation and application fees within thirty (30) days of receiving notification from the Department of an incomplete application status will result in the administrative closure of the application and will require the submission of a new application, documents and the required fee.

(c) Verifications.

Approval of a temporary license shall include verification that:

1. The administrative structure of the agency, as required by subchapter 1240-04-01-.06, appropriately identifies and provides structures and procedures for the full-time management of the agency;
2. The qualifications for management positions fully comply with the requirements in 1240-04-01-.07.
3. Three (3) satisfactory non-relative references for the applicant/primary caregiver have been checked for validity and that the reference responses are favorable and have been documented;
4. The physical facilities have received, within the previous sixty (60) days, as required by the state, municipal, and or county government, fire safety approval, and environmental approval, including statements of the agency's capacity.
5. The on-site director or primary caregiver, all persons working with the children enrolled in the child care agency as required by T.C.A. § 71-3-507, owner/operators, and employees who make regular onsite visits to an agency, have completed a criminal, juvenile and perpetrator disclosure form and fingerprint-based criminal and available juvenile records review, and a review of the state sex offender and vulnerable person registries and a review of abuse and neglect perpetrator records of the Departments of Children's Services and Human Services, and such reviews demonstrate that the primary caregiver/director and all other staff required by T.C.A. § 71-3-507 have no criminal, juvenile, registry or administrative records that would cause the person to be excluded from providing care to children as prohibited by T.C.A. § 71-3-507 and these rules;
6. The applicant and the personnel who will care for the children are capable in all substantial respects of caring for the children;
7. The applicant has the ability and intent to comply with the licensing law and regulations;
8. After appropriate on-site inspection by the Department, the site is suitable for child care activities and does not endanger the welfare or safety of children;
9. The applicant, owner, director, primary caregiver, 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, unless the

Department determines that a reasonable basis exists to conclude that such individual is otherwise qualified to provide child care; and

10. The criteria in paragraph (2) above support the issuance of a restricted or unrestricted license.

(10) Denial or Restriction of the Temporary License.

- (a) If the Department determines that any of the requirements set forth in this Chapter has not been, or cannot be met, 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 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 Chapters 1240-04-05 and 1240-05-13.

(11) Granting a Temporary License and Terms of the Temporary Licensure Period.

- (a) If granted, 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 one hundred and twenty (120) day temporary licensure period the licensee must attain and maintain compliance with all applicable licensing regulations; Failure to attain and maintain such compliance during this period may result in the denial of the application for an Annual License or restriction of the Annual License.
- (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.

(12) Evaluation Process for an 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 child care agency works to attain full compliance with all applicable licensing laws and regulations before the issuance of an annual license.
- (b) Department receipt of a complete application, including all necessary documentation, and the required fee for a child care agency license begins the evaluation process which is completed with the issuance or denial of an annual license. This process includes:
  1. A minimum of two (2) visits to the child care agency during the temporary licensing period, at least one (1) of which shall be unannounced;
  2. At least one (1) observation of the caregivers' interaction with children during the temporary licensing period;

3. Satisfactory review of agency, staff, and children's records;
  4. Satisfactory compliance with requests for information related to compliance with licensure requirements; and
  5. Satisfactory completion of an evaluation checklist, itemizing requirements and noting compliance or noncompliance, a copy of which is left with the applicant.
- (c) During the temporary licensing period, the applicant shall provide verification, including any required supporting documentation as directed by the Department, of compliance with all applicable licensing regulations and the applicant shall otherwise meet, and continue to meet, all the requirements set forth in paragraph (b), parts 1-5 above.
- (13) The Annual License Determination.
- (a) Within one hundred twenty (120) days of the issuance of the temporary license, the Department shall determine whether an annual or restricted annual license shall be issued to the applicant or be denied. If the annual license is not issued or not denied at the end of this period, the temporary license shall remain in effect, unless suspended or revoked, pending the Department's determination regarding issuance or denial of the annual license.
  - (b) 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;
    2. Has demonstrated the ability to maintain compliance with all licensing regulations during the annual license period; and
    3. Has a reasonable likelihood of maintaining the annual license by demonstration of the ability to continue to comply with all laws and regulations governing the specific classification of child care agency for which the application was made.
  - (c) If the Department determines that any of the requirements set forth in this Chapter has not been, or cannot be, satisfactorily met, it may deny the annual license.
  - (d) 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.
  - (e) Upon issuance of an annual license, the licensee must maintain compliance with all applicable licensing regulations throughout the licensing period.

(14) License Renewal Evaluation Process.

- (a) Agencies currently licensed by the Department must submit an application for renewal prior to the expiration of the existing license. Failure to submit a completed application, including the required annual licensing fee prior to the expiration of the current license shall result in the automatic termination of the

annual license upon the expiration date, and the child care agency shall cease operations immediately.

- (b) In addition to the evaluation requirements set forth above in this rule, applicants for renewal shall be evaluated and shall be issued a report card, as set forth in Chapter 1240-04-07.
  - (c) The Department shall issue a new annual license upon demonstration of compliance with all laws and regulations governing the specific classification of child care agency, and, if the applicant has demonstrated a reasonable probability, based on an evaluation of any violations cited or legal enforcement action taken against the agency during the entire licensing period, that the applicant will maintain compliance with all licensing regulations during the annual license period.
  - (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 renewal of the 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.
- (15) Upon receipt of an application for a license, and throughout the temporary licensing period and during the licensing period, immediate access during operating hours 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, the Department of Children's Services, etc.).
- (16) Posting of License.
- (a) The licensee shall post the license in a clearly visible location as determined by the department so that parents or other persons visiting the agency can readily view the license and all the information on the license.
  - (b) The license shall describe the ownership of the child care agency, the person who is charged with the day-to-day management of the child care agency, and, if the agency is owned by a person other than the director, or if the agency is under the ownership or direction or control of any person or entity who is not also the on-site director or manager of the agency, the license shall also state the corporate or other name of the controlling person or entity, its address and telephone number where the parents, guardians or custodians may have contact regarding the agency's operations.
  - (c) If the child care agency is operated by a public or private non-profit entity and is subject to the control or direction of a board of directors or other oversight authority, the license shall list the name, address and telephone number of the chair of the board or other executive head of such controlling body.
  - (d) Before and After School Services.

In order for a child care agency to offer before or after-school services under this part, the Department must issue a license bearing a notation that the agency is authorized to provide before or after-school care services. An agency may not offer such services unless its license bears such notation.

(17) Scope of Licensed Operation.

- (a) Licensed capacity shall be designated on the license. All programs shall operate within the licensed capacity, the hours of operation, the specific age ranges, services offered, and at the address designated on the license.
- (b) All programs shall operate within any restrictions stated on the license.
- (c) The agency shall notify the Department of all closures including holidays.

(18) Multiple Child Care Agencies Operated by a Licensee at the Same Location.

- (a) An operator/owner who wishes to operate two (2) or more child care agencies on the same property must meet the following requirements:
  - 1. The owner/operator must submit a separate application for each child care agency.
  - 2. Each agency must independently meet the requirements for a license, including:
    - (i) Fire and environmental inspections; and
    - (ii) Staffing ratios and group sizes.
  - 3. Each agency must function as a stand-alone child care agency, with separate staff.
  - 4. The director/primary caregiver of a child care center must be present at least one half ( $\frac{1}{2}$ ) of the time that the agency is open for operation. If the director/primary caregiver serves multiple sites they must be present at each child care agency at least one half ( $\frac{1}{2}$ ) of the time each agency is open for operation.
  - 5. The agency may not share facilities with the exception of outdoor equipment and play area, which shall be used by the children from one agency at a given time.
- (b) A child care agency shall only provide child care at the physical location or locations that have been licensed by the Department, with the exception of field trips.
- (c) A child may only receive child care at the agency at which he/she is enrolled, and may not be transferred, moved or shuffled to another child care agency operated at the same location
- (d) A child care agency shall not operate, at the same or contiguous physical location, as unlicensed, unregulated, or exempt child care unless approved by the Department.
- (e) A child care agency shall not provide care to children enrolled in the child care agency at any location that has not been approved by the Department as child care space under the child care agency's license, with the exception of field trips.

- (f) The provision of unlicensed or unregulated child care at the physical location, or on a contiguous or non-contiguous physical location by the licensee or the licensee's employees or agents, shall be deemed to be the provision of child care under the licensee's control.
  - (g) Actions to transfer children to physical locations that are not approved by the Department as child care space under the child care agency's license in an attempt to avoid any requirements for a license shall be deemed a violation of the child care licensing laws and regulations, and will subject the licensee to immediate legal action.
- (19) If, during any temporary or annual licensing period, the Department determines that one or more areas of operations of the child agency should be modified or discontinued, it may issue a restricted license limiting the child care agency's authority to operate.
- (20) Appeals of the denial or restriction of a temporary or annual license are governed by Chapters 1240-04-05 and 1240-05-13, T.C.A. §§ 71-3-509—510 and the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq.
- (21) Transfer of License.
- (a) A license is not transferable from one location to another or from one licensee/operator to another.
  - (b) Any sale, lease or transfer of control of the child care agency by any other arrangement to another person, entity, licensee or operator voids the existing license immediately and any pending appeal involving the status of the license, and the agency shall be required to close immediately.
  - (c) If the buyer, lessee or transferee has made application for, and has been granted a temporary license, the agency may continue in operation under the direction of the new licensee. The new licensee in such circumstances may not be the seller, lessor or transferor or any person or entity acting on behalf of the transferor.
  - (d) If the Department determines that any person or entity has transferred nominal control of an agency to any persons or entities who are determined by the Department to be acting on behalf of the purported seller, lessor or transferor in order to circumvent a history of violations of the licensing law or regulations or to otherwise attempt to circumvent the licensing law or regulations or any prior licensing actions instituted by the department, the Department may deny the issuance of any license to the applicant. The denial of the license may be appealed as provided in T.C.A. § 71-3-509.
  - (e) The license of any agency shall not be voided nor shall any pending appeal be voided pursuant to this subparagraph (c) solely for the reason that the agency is subject to judicial orders directing the transfer of control or management of a child care agency or its license to any receiver, trustee, administrator or executor of an estate, or any similarly situated person or entity.
  - (f) If the current licensee dies, and provided that no licensing violations require the suspension, denial or revocation of the agency's license, the Department may grant family members of the licensee, or administrators or executors of the licensee, a new temporary license to continue operation for a period of one

hundred twenty (120) days. At the end of such period, the Department shall determine whether an annual or extended license should be granted to a new licensee as otherwise provided in this chapter.

- (g) Nothing in this subparagraph (c) shall be construed to prevent the Department from taking any regulatory or judicial action as may be required pursuant to the licensing laws and regulations that may be necessary to protect the children in the care of such agency.

(22) Revocations and Suspensions of Licenses.

- (a) 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, and any operating authority granted by the license, may be suspended immediately.
- (b) The Department may accept the licensee's written agreement to voluntarily suspend or surrender the agency's license. The written agreement of the licensee to voluntarily surrender or suspend the license shall become effective immediately upon signature of the licensee or other agency staff person with apparent authority, and shall act as a waiver of any revocation or suspension hearings regarding the license.
- (c) The Department shall consider whether to take action to revoke, restrict, or deny the agency's license within thirty (30) days of the date of a voluntary suspension or surrender.

Authority: T.C.A. §§4-5-202; 71-1-105(5) and (12); 71-3-501 et seq.; 71-3-502(a)(2) and (3); 71-3-503(a)(6), (8), and (9).

1240-04-01-.04 Procedures for Obtaining a License.

(1) Licensing Procedures; Administrative and Judicial Actions Involving the License.

- (a) The procedures for licensing, administrative and judicial actions, probation, civil penalties, suspension, denial and revocation and procedures for appeal are contained in Chapter 1240-04-05, Chapter 1240-05-13, this Chapter, T.C.A. §§ 71-3-501 et seq. and the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq.
- (b) Any conflict between the definitions and procedures contained in Chapter 1240-04-05; 1240-05-13 and this Chapter shall be governed by the provisions of this chapter and the provisions of T.C.A. §§ 71-3-501 et seq. and the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq.

- (2) When an individual or group is giving consideration to opening a child care service/business, the individual or group shall contact the local licensing office of the Tennessee Department of Human Services.

(3) Pre-Application Training.

- (a) Prospective applicants for a new license shall attend at least one informational intake meeting provided by the Department that covers an overview of child care operation issues for consideration in determining whether to apply for a license. For child care centers and drop-in centers, this shall be the owner; for family child care homes and group child care homes, this shall be the primary

caregiver and operator/owner, if different from the primary caregiver. This training shall include components on interviewing and evaluating caregivers for service in the agency.

- (b) In the case of a program that is governed by a board of directors or trustees, this meeting shall be attended by the agency's director. If the prospective applicant is not responsible for the day to day management of the program, this meeting shall be attended by both the prospective applicant and the director responsible for the day to day management of the child care agency.
- (4) In addition to the meeting required in subparagraph (3)(a) above, all new directors and primary caregivers shall attend, within six (6) months prior to issuance of the license, an orientation session provided by the Department which is at least four (4) hours in length and which covers, at a minimum, the laws and rules governing child care. In the case of a program that is governed by a board of directors or trustees, this training shall be attended by a director who is responsible for the day-to-day management of the program.
- (5) Issuance of a temporary license to new child care agencies shall require:
- (a) An Application.
    - 1. A completed application form signed by the owner or the owner's authorized representative and all required application documentation as required by the Department.
    - 2. In order to be considered complete, an application must be accompanied by the annual application fee.
  - (b) Payment of Applicable Licensing Fees.
    - 1. Licensing fees must be submitted by certified check or money order. Exception: Government agencies may submit checks drawn on government accounts.
    - 2. Current licensing/application fees are maintained on the Department's website.
  - (c) Business Organization Documentation.
    - 1. The business organization of every child care agency shall be such that legal and administrative responsibility for the agency is clearly defined.
    - 2. Documentation of the agency's business organization shall be made in the form and manner directed by the Department. The application shall include copies of the business organization filings with the Tennessee Secretary of State Division of Business Services.
- (6) Organizational Structure.
- (a) The organization of every child care agency shall be such that legal and administrative responsibility is clearly defined in writing in the form and manner directed by the Department and must accompany the application for a license.

1. The application shall be submitted together with the required license fee and any supporting documentation as may be directed by the Department of Human Services.
2. The failure to fully complete all application forms and to submit all required supporting documentation and application fees within 30 days of receiving notification from the Department of an incomplete application status will result in the administrative closure of the application and will require the submission of a new application, documents and the required fee.
3. 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.

(b) Verifications.

Approval of a temporary license shall include verification that:

1. The administrative structure of the agency, as required by subchapter 1240-04-01-.05, appropriately identifies and provides structures and procedures for the full-time management of the agency;
2. The qualifications for management positions fully comply with the requirements in Chapter 1240-04-01-.07 and part 9, below;
3. Three (3) satisfactory non-relative references for the applicant/primary caregiver have been checked for validity and that the reference responses are favorable and have been documented;
4. The physical facilities have received, within the previous 60 days, fire safety and environmental approval as required by the state, municipal, and or county government reflecting the capacity of the agency;
5. The on-site director or primary caregiver, all persons working with the children enrolled in the child care agency as required by T.C.A. § 71-3-507, owner/operators, and employees who make regular onsite visits to an agency, have completed a criminal, juvenile and perpetrator disclosure form and fingerprint-based criminal and available juvenile records review, and a review of the state sex offender and vulnerable person registries and a review of abuse and neglect perpetrator records of the Departments of Children's Services and Human Services, and such reviews demonstrate that the primary caregiver/director and all other staff required by T.C.A. § 71-3-507 have no criminal, juvenile, registry or administrative records that would cause the person to be excluded from providing care to children as prohibited by T.C.A. § 71-3-507 and these rules;
6. The applicant and the personnel who will care for the children are capable in all substantial respects of caring for the children;
7. The applicant has the ability and intent to comply with the licensing law and regulations;

8. After appropriate on-site inspection by the Department, the site is suitable for child care activities and does not endanger the welfare or safety of children;
  9. The applicant, owner, director, primary caregiver, 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, unless the Department determines that a reasonable basis exists to conclude that such individual is otherwise qualified to provide child care; and
  10. The criteria in section 1240-04-01.-03(3) support the issuance of a restricted or unrestricted license.
- (7) Denial or Restriction of the Temporary License.
- (a) If the Department determines that any of the requirements set forth in this Chapter has not been, or cannot be met, 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 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 Chapters 1240-04-05 and 1240-05-13.
- (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 one hundred and twenty (120) day temporary licensure period the licensee must attain and maintain compliance with all applicable licensing regulations; Failure to attain and maintain such compliance during this period may result in the denial of the application for an Annual License or restriction of the Annual License.
- (9) Evaluation Process for an 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 child care agency works to attain full compliance with all applicable licensing laws and regulations before the issuance of an annual license.
  - (b) Department receipt of a complete application, including all necessary documentation, and the required fee for a child care agency license begins the evaluation process which is completed with the issuance or denial of an annual license. This process includes:
    1. A minimum of two (2) visits to the child care agency during the temporary licensing period, at least one (1) of which shall be unannounced;

2. At least one (1) observation of the caregivers' interaction with children during the temporary licensing period;
  3. Satisfactory review of agency, staff, and children's records;
  4. Satisfactory compliance with requests for information related to compliance with licensure requirements; and
  5. Satisfactory completion of an evaluation checklist, itemizing requirements and noting compliance or noncompliance, a copy of which is left with the applicant.
- (c) During the temporary licensing period, the applicant shall provide verification, including any required supporting documentation as directed by the Department, of compliance with all applicable licensing regulations and the applicant shall otherwise meet, and continue to meet, all the requirements set forth in parts (b)1-5 above.
- (10) The Annual License Determination.
- (a) Within one hundred twenty (120) days of the issuance of the temporary license, the Department shall determine whether an annual or restricted annual license shall be issued to the applicant or be denied. If the annual license is not issued or not denied at the end of this period, the temporary license shall remain in effect, unless suspended or revoked, pending the Department's determination regarding issuance or denial of the annual license.
  - (b) 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;
    2. Has demonstrated the ability to maintain compliance with all licensing regulations during the annual license period; and
    3. Has a reasonable likelihood of maintaining the annual license by demonstration of the ability to continue to comply with all laws and regulations governing the specific classification of child care agency for which the application was made.
  - (c) If the Department determines that any of the requirements set forth in this Chapter has not been, or cannot be, satisfactorily met, it may deny the annual license.
  - (d) 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.
  - (e) Upon issuance of an annual license, the licensee must maintain compliance with all applicable licensing regulations throughout the licensing period.
- (11) Renewal Evaluation Process.

- (a) Agencies currently licensed by the Department must submit an application for renewal prior to the expiration of the existing license. Failure to submit a completed application, including the required annual licensing fee prior to the expiration of the current license shall result in the automatic termination of the annual license upon the expiration date, and the child care agency shall cease operations immediately.
  - (b) In addition to the evaluation requirements set forth in paragraphs (6) and (9), above, applicants for renewal shall be evaluated and shall be issued a report card, as set forth in Chapter 1240-04-07.
  - (c) The Department shall issue a new annual license upon demonstration of compliance with all laws and regulations governing the specific classification of child care agency, and, if the applicant has demonstrated a reasonable probability, based on an evaluation of any violations cited or legal enforcement action taken against the agency during the entire licensing period, that the applicant will maintain compliance with all licensing regulations during the annual license period.
  - (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 renewal of the 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.
- (12) Upon receipt of an application for a license, and throughout the temporary licensing period and during the licensing period, immediate access during operating hours 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, the Department of Children's Services, etc.).
- (13) In order to be considered complete, an application must be accompanied by the annual application fee.
- (14) Posting of License.
- (a) The licensee shall post the license in a clearly visible location as determined by the department so that parents or other persons visiting the agency can readily view the license and all the information on the license.
  - (b) The license shall describe the ownership of the child care agency, the person who is charged with the day-to-day management of the child care agency, and, if the agency is owned by a person other than the director, or if the agency is under the ownership or direction or control of any person or entity who is not also the on-site director or manager of the agency, the license shall also state the corporate or other name of the controlling person or entity, its address and telephone number where the parents, guardians or custodians may have contact regarding the agency's operations.
  - (c) If the child care agency is operated by a public or private non-profit entity and is subject to the control or direction of a board of directors or other oversight authority, the license shall list the name, address and telephone number of the chair of the board or other executive head of such controlling body.

(d) Before and After School Services.

In order for a child care agency to offer before or after-school services under this part, the department must issue a license bearing a notation that the agency is authorized to provide before or after-school care services. An agency may not offer such services unless its license bears such notation.

- (15) If, during any temporary or annual licensing period, the Department determines that one or more areas of operations of the child agency should be modified or discontinued, it may issue a restricted license limiting the child care agency's authority to operate.
- (16) Appeals of the denial or restriction of a temporary or annual license are governed by Chapters 1240-04-05 and 1240-05-13, T.C.A. §§ 71-3-509—510 and the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq.

Authority: T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2) and (d)(5), and 71-3-508(c).

1240-04-01-.05 Exemptions from Child Care Agency Licensing.

(1) Exemption from Licensing.

- (a) A program or activity claiming an exemption from licensing pursuant to T.C.A. § 71-3-503 may submit to the Department's licensing director, or designee, a notarized, 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 pursuant to T.C.A. § 71-3-503 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 licensing by the Department does not exempt the program or activity from compliance with any other local, state, or federal requirements applicable to its operation.
- (c) A program or activity that otherwise falls within the definition of a child care agency shall be exempt from the licensing if there is clear and convincing evidence that it meets one (1) of the following specific exemptions:
1. An entity or person licensed or otherwise regulated by other agencies of the state or federal government that provides health, psychiatric or psychological care or treatment or mental health care or counseling for children while the entity or person is engaged in such licensed or regulated activity;
  2. A pre-school or school age child care programs, a Title I program, a school-administered head start or an even start program, and all state-approved Montessori school programs, that are subject to regulation by the department of education or other departments of state government;
  3. Private or parochial kindergartens for five-year-old children if such kindergartens operate on the public school kindergarten schedule;
  4. A child care center operated by church-related schools, as defined by

T.C.A. § 49-50-801, which shall be subject to regulation by the Department of Education pursuant to title 49, chapter 1, part 11;

5. An educational program that meets the following criteria:
  - (i) The sole or primary purpose of the program is:
    - (I) To prepare children for advancement to the next educational level through a prescribed course of study or curriculum that is not typically available in a department-regulated child care setting;
    - (II) To provide specialized tutoring services to assist children with the passage of mandatory educational proficiency examinations; or
    - (III) To provide education-only services to children with special needs; and
  - (ii) Educational program activities are appropriate in content and time allotment for the age and developmental stages of children served;
6. A "Parents' Day Out" or similar programs carried on by churches or church organizations that provide custodial care and services for children of less than school age for not more than two (2) days in each calendar week for not more than six (6) hours each day;
7. A recreational program that meets the following criteria:
  - (i) The sole or primary purpose of the program or activity is to provide recreational services, e.g., organized sports or crafts activities;
  - (ii) The sole or primary purpose of the program or activity is dedicated to recreational activities for a substantial portion of the hours of operation;
  - (iii) The majority of program staff responsible for the direct delivery of services possesses specialized qualifications that are directly related to the recreational services being offered;
  - (iv) That at least seventy-five percent (75%) of any individual child's program time is spent engaging in the recreational activities that are reasonably age appropriate for the type of activity and the ages served;
  - (v) That the supervision or care of children, or other types of child care-related services, is incidental to its overall purpose; and
  - (vi) That no individual child could participate in the program or activity:
    - (I) For more than seven (7) hours per day; or
    - (II) If a child participates for more than seven (7) hours per day, that such child could not continue to participate for more than seven (7) consecutive weeks and for no more than one hundred twenty (120) days per calendar year;

8. A camp program that meets the following criteria:
  - (i) The primary purpose of the program or activity is to provide intensive recreational, religious, outdoor or other activities that are not routinely available in full-time child care;
  - (ii) The program or activity operates exclusively during the summer months and less than ninety (90) days in any calendar year; and
  - (iii) The enrollment periods for participation in the program or activity clearly define the duration of the program or activity and exclude drop-in child care;
  
9. A "casual care" operation consisting of places or facilities operated by any person or entity that provides 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.
  - (i) Casual care operations shall register with the department their intent to conduct casual care of children, and, as evidence of their exempt status, these operations shall maintain records that include, at a minimum, the children's names, ages, addresses, dates and times of attendance, the parents' or custodians' names, addresses, and intended whereabouts while the children are in care, and the telephone numbers of persons to contact in the event of an emergency. All records shall be made available at any time to any authorized representative of the department;
  - (ii) Failure to comply with the requirements of this part 9 shall subject the violator to a civil penalty by the Department not to exceed five hundred dollars (\$500) for the first violation and not to exceed one thousand dollars (\$1,000) for subsequent violations, and the Department may seek injunctive relief in the chancery or circuit court of the county where the place or facility is located to prevent further operation of the place or facility or to obtain entry to conduct any inspection of the operation;
  
10. Any program or facility operated by, or in affiliation with, any Boys and Girls Club that provides care for school-aged children and that holds membership in good standing with Boys and Girls Clubs of America and that is certified as being in compliance with the purposes, procedures, voluntary standards and mandatory requirements of Boys and Girls Clubs of America; or
  
11. Nurseries, babysitting services and other children's activities that are not ordinarily operated on a daily basis, but are associated with religious services or related activities of churches or other houses of worship. Such services or activities may include limited special events that shall not exceed fourteen (14) days in any calendar year.

(d) If a program or activity does not meet one of the specific exemptions in SS-7037 (October 2009)

subparagraph (c) above, the Department shall consider the following criteria to determine whether there is clear and convincing evidence demonstrating that the program or activity is clearly distinguishable from child care services typically regulated by the Department:

1. The sole or primary purpose of the program or activity is to provide specialized opportunities for the child's educational, social, cultural, religious or athletic development, or to provide the child with mental or physical health services;
  2. The time period in which the program or activity provides these opportunities is consistent with a reasonable time period for the completion of the program or activity, considering the age of each child served and the nature of the program;
  3. The primary purpose of the program or activity is not routinely available or could not be made routinely available in the typical child care settings regulated by the Department;
  4. Parents could reasonably be expected to choose the program or activity because of the unique nature of what it offers, rather than as a substitute for full-time, before or after school, holiday or weather-related child care; and
  5. If the program or activity is regulated by any other federal, state or local agency, it is required by such other agency to comply with standards that substantially meet or exceed department licensing regulations.
- (e) The Department shall not be required to grant exemptions to programs or activities that offer otherwise exempt opportunities or services as a mere component of a program or activity that the department determines primarily constitutes substitute child care.
- (f) No program or activity shall be exempt from licensing solely for the reason that the care and supervision of children that constitutes child care is offered only on a part-time or periodic basis.

Authority: T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., 71-3-503.

1240-04-01-.06                      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 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 parent/guardians/families;
  2. Ages of children to be served;
  3. Planned hours of operation;
  4. Food service plan, including the number and type of meals and snacks to be served, as applicable;

5. Admission requirements and enrollment procedures;
  6. Plans for the provision of emergency medical care; and
  7. If applicable, plans for sharing outdoor equipment and space with children not enrolled in the agency.
- (b) In order to change the scope or type of service offered, an agency shall submit an amended statement of purpose and receive written approval from the Department prior to implementation.
  - (c) If, after being licensed, a licensee wishes to change its class of care (example: change from a family child care home to a group child care home), it shall submit a new application and meet all of the requirements for the new category of license, including passing the fire and environmental inspections in 1240-04-01-.04 and completion of the criminal background check/state registry review in 1240-04-01-.07.
- (2) Organizational Structure.
- (a) The organization of every child care agency shall be such that legal and administrative responsibility is clearly defined in writing in the form and manner directed by the Department and must accompany the application for a license.
  - (b) Every agency shall identify an on-site person in charge
    1. For a child care center the on-site person in charge shall be a director.
    2. For a family or group home the on-site person in charge shall be a primary caregiver.
  - (c) An agency which employs more than two (2) individuals shall maintain a current organizational chart showing the chain of command.
  - (d) Staff policies shall be maintained and made available to all staff in the facility.
- (3) Finances.
- (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 an agency. The proposal must demonstrate adequate funding for both preliminary and ongoing costs associated with staffing, equipment and safe operation. Adequate financing of the agency's operation shall be maintained throughout the licensing year.
  - (b) Proposed budgets and other relevant financial records of the agency 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 or other legal documents applicable to that status.

(4) Records of Subsidized Child Care and Food Supplement Payments.

(a) An agency that receives any funding from the Department or its contractors to subsidize the cost of child care or the cost of providing meals or snacks shall maintain complete and accurate records of payments received, children's attendance and food served for each program in which the agency participates, and any other records required by the Department or any other agency for reimbursement for the child's care and/or feeding and shall make these available immediately upon request of any auditing or licensing authority.

(b) Separation of Records.

A child care agency receiving payments for the child care subsidy and food assistance program shall maintain the records of each child's attendance for the child care subsidy (certificate) program, and attendance at the agency, separate from any records for the food assistance program.

(c) Failure to comply with the requirements of subparagraph (a) and (b) and the requirements for receipt of subsidized child care payments or food assistance programs shall be a basis for enforcement action regarding the license of the agency, to include denial, suspension or revocation of the license.

(5) 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 as follows:

1. Family and Group Child Care Homes: 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.

2. Child Care Centers and Drop-In Child Care Centers: 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.

3. 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.

4. Automobile Coverage for Agencies that Transport Children:

(i) Automobile liability coverage

(l) Family and Group Homes: Automobile liability coverage shall be maintained in a minimum amount of Three Hundred

Thousand Dollars (\$300,000) combined single limit of liability.

- (II) Child Care Centers: 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) Unless subparagraph (b) is applicable, non-profit corporations that administer Head Start child care programs and are defined as government entities for the purposes of the government tort liability act (T.C.A. § 29-20-101 et seq) must have the insurance required by subparagraph (a) above.
  - (d) 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. Documentation must include the declarations page of the insurance policy and this documentation must reflect, at a minimum, the requirements described above.
- (6) 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 parent/guardians, 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 agency by exploring and documenting alternatives (i.e. part time care, care with a relative, etc). See rule 1240-04-01-.25 for drop-in center enrollment restrictions.
  - (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/guardian and primary caregiver/director and approved by the Department. Plans shall be updated annually. See rule 1240-04-01-.25 for drop-in center enrollment restrictions.
  - (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. The requirements of this subparagraph (6)(d) are not applicable to drop-in centers.
  - (e) 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. The requirements of this subparagraph (6)(e) are not applicable to drop-in centers.

(7) Home Schooling.

- (a) Home schooling shall not take place during child care hours unless a qualified primary caregiver, in addition to the home schooling parent/guardian, is available to supervise the child care agency and to care for the enrolled children.
- (b) Home schooling conducted during child care operating hours must be conducted in a space separate from the designated child care space.

(8) Requirements for Communication with Parents/ Guardians.

- (a) A copy of the agency's policies, procedures, and the Department's Summary of Licensing Requirements shall be supplied to the parent/guardian upon admission of the child. The agency's policies shall include, at a minimum: The requirements of this subparagraph (8)(a) are not applicable to drop-in centers.
  - 1. Criteria for the disenrollment of children;
  - 2. Specific criteria concerning the release of children to anyone whose behavior may place the children at immediate risk;
  - 3. Photography policy;
  - 4. Parental permission for academic or clinical observation of children;
  - 5. Visitor policy;
  - 6. Behavior management techniques;
  - 7. Hours of operation;
  - 8. Late fees;
  - 9. Rates;
  - 10. Inclement weather;
  - 11. Emergency policy; and
  - 12. Information about the agency's use of answering machines/voice mail, If applicable.
- (b) The agency shall require the parent/guardian to sign for receipt of the policies and the Summary of Licensing Requirements, and the signed receipt shall be maintained by the agency in the child's file. The requirements of this subparagraph (8)(b) are not applicable to drop-in Centers.
- (c) Parents/guardians shall be permitted to see the professional credential(s) of staff upon request.
- (d) Communications Plans with Parent/guardians.

1. The agency shall implement a plan for regular and ongoing communication with parent/guardians. 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. The requirements of this subparagraph (8)(d) are not applicable to drop-in centers.
  2. Child care agencies shall provide information about the benefits of immunizing children against influenza each August or September to parents/guardians of all children enrolled in the agency.
    - (i) Parents must sign the notification form to verify that they received the information.
    - (ii) Documentation of notification shall be available for review by the Department and maintained for one (1) year.
    - (iii) By law, these materials must be distributed during August or September, even if the agency distributes this information at other times throughout the year as well.
  3. All child care agencies shall disseminate materials and information to parent/guardians, as required by the Department or by law.
- (e) During operating hours, parents/guardians shall be permitted immediate access to their children, except as otherwise stated in this paragraph.
1. The agency shall grant access to noncustodial parents/legal guardians if:
    - (i) The noncustodial parent/guardian provides the agency with a valid court order granting the noncustodial parent/guardian access to the child during agency operating hours; and
    - (ii) An Order of Protection or other legal document does not otherwise restrict or prohibit such access.
  2. The custodial parent/guardian may not prohibit or restrict, or require the agency to prohibit or restrict, the noncustodial parent access to the child while in the care of the agency if the provisions of (e)1, above are applicable.
  3. The agency may place reasonable restrictions on access by any parent/guardian as needed to limit disruption of the children's routines, e.g., limiting the number of days each week the parent/guardian 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/guardian upon enrollment of the child.
- (f) Notification of Parents/Guardians of Off-Site Activities.

A parent/guardian shall be notified before the child leaves the premises, and 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 emergency circumstances. Off-site activities are prohibited in Drop-In Care.

(g) Authorized Removal of Children.

An authorized investigator with the Department of Children's Services or law enforcement may take a child off the premises of the agency if he/she has obtained custody of the child as follows:

1. Voluntary placement agreement with the parent/guardian;
2. Court order;
3. Emergency assumption of custody under T.C.A. §37-1-113 without parent/guardian permission;
4. If the child's parent or legal guardian is present and approves; or
5. In conjunction with investigative procedures under the child abuse laws.

(9) Drug Testing Policy for Staff and Contract Child Services Providers.

- (a) All persons or entities operating a child care agency, unless exempt as provided in T.C.A. § 71-3-503, shall establish a drug testing policy for employees, directors, licensees and operators of child care agencies and for other persons providing services under contract or for payment for the agency, who have direct contact, as defined by the Department, with a child in the care of the agency.
- (b) The policy shall specify how testing shall be completed by the child care agency.
- (c) The policy shall provide for immediate and effective enforcement action to protect children in the event of a positive drug test.
- (d) The policy shall be provided by the child care agency to persons currently employed or engaged for paid services to all such persons upon initial employment or initial engagement in paid contractor services for the agency.
- (e) Such policy shall require drug testing based upon reasonable suspicion that employees, directors, licensees, or operators of a child care agency, or other persons providing services under contract or for pay for the agency are engaged in the use of illegal drugs.
- (f) The policy established pursuant to this paragraph shall not supersede the requirements of T.C.A. § 71-3-502(d)(7)(C)(v) that all persons described therein satisfactorily complete a drug test prior to engaging in transportation services for children in a child care agency.
- (g) Such policy shall require persons employed or engaged for contract or paid services to have a drug test based upon reasonable suspicion that such persons are engaged in the use of illegal drugs. Events that may give rise to reasonable suspicion for purposes of requiring a drug test include, but are not limited to:
  1. Deterioration in job performance or changes in personal traits or characteristics;

2. Appearance in a specific incident or observation which indicates that an individual is under the present influence of drugs;
  3. Changes in personal behavior not attributable to other factors;
  4. Involvement in or contribution to an accident where the use of drugs is reasonably suspected, regardless of whether the accident involves actual injury; or
  5. Alleged violation of or conviction of criminal drug law statutes involving the use of illegal drugs or prescription drugs.
- (h) A child care agency shall, at no expense to the Department, maintain for five (5) years and immediately make available to the Department upon request a copy of drug testing results for an individual who is employed as a caregiver, director, licensee or operator at the child care agency, or for other persons providing services under contract or for pay for the agency, who have direct contact with children in the care of the agency.
- (i) It shall be the responsibility of the individual who is to be tested to pay the appropriate fees necessary to obtain a drug test pursuant to the policy established by a child care agency.
- (j) Drug testing results obtained under this section are confidential and may be disclosed only for purposes of enforcing the child care licensing laws.
- (k) Notwithstanding any other requirement of this paragraph, a licensee or operator of a family child care home or group child care home, as defined in this Chapter, who has direct contact with children in the care of such home, shall submit to a drug test at the expense of the licensee or operator, when the Department has reasonable suspicion to believe that such licensee or operator is engaged in the use of illegal drugs.
- (l) A child care agency that does not comply with this paragraph is subject to action by the Department to:
1. Deny the application for a license;
  2. Deny the application for a license renewal; or
  3. Suspend or revoke a license issued.
- (10) Notifying Parent/Guardians of Licensing Violations.
- (a) The agency shall require an agency to notify parents/guardians and funding sources, in a form approved by the Department, of the parts in 1 through 4 below. The notification shall consist of a letter prepared by the Department to be provided to each parent/guardian or posted in the agency with parent/guardians' signatures indicating they have seen the letter:
1. A formal notice of a licensing violation that put a child at imminent risk of harm or resulted in actual harm;
  2. Any type of legal enforcement order affecting the agency's operations;

3. Any decision rendered by the Child Care Agency Board of Review pursuant to Chapter 1240-04-05; or
  4. Any Order affecting the agency's operations issued by any court.
- (b) Upon being placed on probation, an agency shall immediately notify in writing the parents/guardians of each child in its care, in a form approved by the Department, of the agency's status, the basis for the probation and of the agency's right to an informal review of the probationary status.
- (11) 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 agency or his or her family.

(12) Posting of Report Card and Other Required Documentation.

- (a) During the hours of operation, the agency Report Card shall be posted near the main entrance in a conspicuous location. The requirements of this subparagraph (12)(a) are not applicable to drop-in centers.
- (b) The Department's toll-free child care complaint number shall be posted in a conspicuous location.
- (c) 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.
- (d) All current applicable Department licensing rules shall be maintained in a central space and available to all staff and parents/guardians.
- (e) No smoking signs shall be posted in a conspicuous manner at each entrance to the facility.
- (f) The agency shall post any other materials as directed by the Department.

(13) Preparation for Emergencies.

- (a) The agency, in consultation with appropriate local authorities and local emergency management, shall develop a written plan to protect children in the event of emergency including, but not limited to, weather-related events, fire, earthquake, and chemical spills and shall train staff and inform parents/guardians of the plan.

1. The plan shall include, at a minimum:

- (i) Designated relocation sites and routes to those sites;
- (ii) Reunification plans for children and families; and
- (iii) Plans for accommodating child special needs in an emergency situation.

2. All staff shall be trained on the plan annually.
- (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. This rule is not applicable to drop-in centers.
1. At least one (1) fire drill shall be conducted monthly on each shift while children are present, including during extended care hours.
  2. At least one (1) drill other than fire shall be conducted every six (6) months.
  3. All drills shall be conducted in such a ways as to simulate, as closely as is practical, conditions of a real emergency: alarms shall be utilized, evacuations plans shall be practiced.
- (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. Department of Children’s Services Child Abuse Hotline;
  5. Local Emergency Management Agency;
  6. Ambulance or Rescue Squad;
  7. Poison Control Center; and
  8. Department of Human Services Child Care Complaint Hotline.
- (d) If a generic emergency number (such as, but not limited to, 911) is operable in the community, it shall be posted in addition to the above numbers.
- (e) All contact information for parents/guardians/emergency contacts shall be readily available to all staff, including work, home and cell phone numbers.

Authority: T.C.A. §§4-5-202; 39-17-1803, 71-1-105(5) and (12); 71-3-501 et seq., 71-3-512.

1240-04-01-.07 Staff.

(1) Responsibility for Staff.

- (a) The board, owner, applicant/licensee, or other designated agent of the child care agency shall be responsible for selecting qualified individuals of suitable character and ability to work with children, and are responsible for the performance of all staff, substitutes and volunteers.
- (b) The primary caregiver/director, with the guidance of the board or owner of the agency, shall be responsible for the supervision, training, and evaluation of the

staff, the program and the day-to-day operation of the agency. In a child care system, each site must have its own assigned primary caregiver/director.

- (c) In the absence of the director or primary caregiver all staff members shall be made aware of the identity of the person in charge.
  - (d) The onsite staff shall be responsible for the daily health and safety of children in care.
  - (e) Annual Evaluations.
    - 1. Employees shall be evaluated in the performance of their duties at least annually. Performance evaluations shall address caregiver/teacher knowledge about, and use of, developmentally appropriate practice.
    - 2. Records of performance evaluations shall be maintained in the caregiver's files and made available to the Department upon request.
  - (f) The agency shall be responsible for all volunteers and contractors providing services to the agency.
    - 1. Service providers or contractors shall never be alone with children unless:
      - (i) Written authorization is obtained from the parent or guardian for the child to receive the service, and
      - (ii) Written authorization is obtained from the parent/guardian naming the service provider or contractor as their authorized representative for the purposes of releasing the child to them, and
      - (iii) The service provider or contractor shall sign the child out prior to delivering the service.
- (2) General Staff Qualifications.
- (a) There are additional requirements/qualifications for staff involved in transporting children. See Transportation section 1240-04-01-.19.
  - (b) Every staff person, including auxiliary staff, substitutes, and all 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, and shall be of suitable character to work with young children.
  - (c) A staff member shall be designated to be in charge of the agency in the absence of the director/primary caregiver. Such person must:
    - 1. Met at least the caregiver requirements for that class of care:
      - (i) For family child care homes, in rule 1240-04-01-.22(2).
      - (ii) For group child care homes, in rule 1240-04-01-.23(2).
      - (iii) For child care centers, in rule 1240-04-01-.24(3).

- (iv) For drop-in centers, in rule 1240-04-01-.25(6).
  - 2. Be familiar with agency policies and procedures; and
  - 3. Have completed a thirty (30) hour TECTA Orientation training program.
- (d) The primary caregiver/director or her/his designee shall ensure that any person who has a physical, mental, or emotional condition or who exhibits any evidence suggestive of illegal or inappropriate drug use or possession of drugs, which is in any way potentially harmful to children, shall not be permitted to have any access to children. For purposes of this subparagraph, the term "drug" shall include alcohol and shall include prescription or over-the-counter drugs and medications.
- (e) Examinations to Determine Physical, Mental, Emotional and Drug Use Status.
- 1. To make the determinations necessary in subparagraph (b) above, the Department, upon reasonable cause to believe that either the person's physical, mental or emotional state or behavior evidences drug use or potential drug use such as to impair the person's ability to safely or appropriately provide care and supervision for children in the agency, or that such condition otherwise presents a threat of harm or danger to children enrolled in the agency, may require that any proposed or active caregiver, obtain physical, mental, emotional or drug status tests, examinations, screenings or evaluations that shall be provided to the Department by the caregiver or the licensee at their expense upon the Department's request.
  - 2. This requirement shall apply to all persons employed or associated in providing care, supervision or management of the agency when such persons have any significant contact with the children enrolled in the agency, as determined by the Department, including volunteers, substitutes, drivers and staff of contractors providing services to the agency.
  - 3. An individual directed 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 agency or to drive a vehicle transporting children for the agency until or unless evidence from such tests, examinations, screenings or evaluations is provided that is satisfactory, in the Department's determination, to demonstrate that the individual does not represent a risk of harm to the children in the agency's care.
- (f) Every staff person, both paid and unpaid, who is under the age of eighteen (18) years, must be supervised by a qualified adult caregiver while in the presence of children, and shall not be left alone with children.
- (g) At all times during child care operating hours, one (1) adult caregiver shall be on the premises and shall be able to read, write and speak English.
- (h) Prior to assuming duties, each new employee shall receive documented instruction in, and be able to explain:
- 1. Program philosophy and policies;
  - 2. Job description;

3. Emergency procedures;
  4. Rules regarding discipline of children including prohibition of corporal punishment;
  5. Child abuse reporting rules in 1240-04-01-.11;
  6. Rules for receiving and releasing children;
  7. Rules for safe sleep procedures as outlined in 1240-04-01-.12(6), if applicable; and
  8. Individual child characteristics, such as the presence of food or other allergies.
- (i) Within the first two (2) weeks on the job, each employee (including auxiliary staff, such as bus driver, cook, etc.) shall receive documented instruction in:
1. Detection, reporting, and prevention of child abuse;
  2. Parent/guardian-agency 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.
- (j) All training must be documented in the agency's records and be available for review by the Department staff at anytime.
- (k) The agency must maintain written documentation that each employee has read the licensure rules applicable to the type of class of care they provide. In addition, a copy of such rules shall be maintained in an area readily accessible to all staff and parents/guardians.
- (l) Training Requirements for each class of care are outlined in 1240-04-01-.22 through -.25:
- (3) Substitutes.
- (a) Substitutes shall comply with the same orientation requirements as all agency staff.
  - (b) 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.
  - (c) Substitutes providing services for more than thirty-six (36) hours in a calendar year shall:
    1. Meet the criminal, juvenile, and state registry background check requirements contained in rule 1240-04-01-.08; and

2. Meet the same requirements as regular staff for the physical examination required by these rules.
- (d) Practicum Students. Persons who are assigned to a child care agency as part of an educational course of study or other curriculum requirement, and who are to be used by the child care agency to meet child care standards for more than thirty-six (36) hours in a calendar year must undergo the criminal, juvenile and state registry background check prior to assuming any role at the agency involving access to children.
- (4) Volunteers.
    - (a) Volunteers may be used to provide services and supplement the required caregivers or substitutes without payment, and may be counted to meet the adult: child ratios.
    - (b) Volunteers who are ages sixteen (16) through seventeen (17) years of age may provide assistance to caregivers or may provide office or administrative services to the agency, but they shall not be counted in the adult: child ratio. Volunteers under eighteen (18) years of age shall not be in positions of supervision of staff or other volunteers, and under no circumstances shall they be left alone in a child care agency without at least one staff member, eighteen (18) years of age or older, being present.
    - (c) If the volunteer is counted in the adult: child ratio, and serves for thirty-six (36) hours or more in a calendar year, the volunteer shall:
      1. Meet the criminal, juvenile and state registry, and Department of Children's Services background check requirements contained in these rules; and
      2. Meet the same requirements as regular staff for the physical examination required by these rules.
    - (d) Management shall be responsible for and supervise the activities of volunteers to ensure the safety of the children.

Authority: T.C.A. §§ 4-5-202; 71-1-105(5) and (12); 71-3-501 et seq.; 71-3-502(a)(2); 71-3-507.

1240-04-01-.08 Criminal Background Check and State Registry/Records Review Procedures.

- (1) Criminal Background and Abuse Registry Disclosures and Reviews; Fingerprinting Requirements.
  - (a) The following persons are required to undergo a criminal, juvenile and state registry background check before having access to any child care agency:
    1. Any person who owns or operates a child care agency and is likely to have any significant contact as determined by the Department with children;
    2. Any person who applies to work in a child care agency as an employee, director or manager;

3. Any person who will volunteer in a child care agency for more than thirty-six (36) hours in a calendar year and who is counted in the adult:child ratio;
  4. 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
  5. Any person who is fifteen (15) years of age or older who will reside in a child care agency.
- (b) Background checks are required for staff when an agency moves from one class of care to another, such as when a family home becomes a group home.
- (c) Requirements for Disclosure of Criminal/Juvenile and State Register History and Fingerprinting.
1. The individuals identified in subparagraph (1)(a) above shall be required to:
    - (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 are 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; and
      - (VI) A search of the DCS registry of indicated perpetrators of abuse or neglect of children
  - (2) Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Children Prior to Completion of Criminal History Review.
    - (a) A child care agency shall be responsible for obtaining, and submitting the fingerprint sample of any person required by this rule in the form and manner directed by the Department. The person subject to the requirements of subparagraph (1)(c), and the entities with whom they will be, or are, associated, shall be required to provide any information necessary to process

the criminal history review required by this the paragraph prior to such person's assumption of any role described in subparagraph (1)(a).

- (b) A child care agency may not permit any person who is required to undergo a criminal, juvenile, and state registry background check and review to assume any role described in subparagraph (1)(a) above for which the criminal background check/state registry and Department of Children's Services review is required or to have access to children or adults unless each of the required histories/registries/records/ have been checked to verify that the person does not have a criminal history or is not listed on a state registry that would disqualify or otherwise exclude the person, and the agency has written verification from the Department that the person is cleared to work.
  - (c) Failure to Complete or Disclose Information on Criminal Disclosure Form.
    - 1. The failure to properly complete all sections of the Criminal/Administrative History Disclosure Form shall result in the individual being prohibited from assuming any position or status for which a background review is required by T.C.A. § 71-3-507 and subparagraph (1)(a) of this rule.
    - 2. The 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.
  - (d) 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 performing the first criminal background check by the Tennessee Bureau of Investigation.
  - (e) The child care agency shall be responsible for both the costs associated with obtaining the fingerprint sample and with performing the criminal background check by the Tennessee Bureau of Investigation if:
    - 1. The criminal background check cannot be performed because the fingerprint sample is rejected and the fingerprint sample must be resubmitted;
    - 2. The agency submits a second fingerprint sample for an individual when the criminal background check based on the first fingerprint sample has not been completed; or
    - 3. 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.

- (a) No person shall be employed with, be a licensee or operator of, provide substitute services to, reside in, or have any access whatsoever to children in a child care agency if the criminal background check identifies an excludable criminal offense for which the person has:
  - 1. Been convicted of, pled guilty or no contest to (or to a lesser included offense);
  - 2. 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
  - 3. Been named in a pending warrant, indictment, presentment, or petition.
- (b) An excludable criminal offense involves, generally:
  - 1. The physical, sexual or emotional abuse or gross neglect of a child;
  - 2. A crime of violence against a child, or any person;
  - 3. Any offense, including a lesser included offense, involving the manufacture, sale, distribution or possession of any drug; or
  - 4. Any offense that presents a threat to the health, safety or welfare of children.
- (c) No person may be employed as a driver or serve as a driver for a child care agency if the person:
  - 1. Is currently charged with; or
  - 2. Has been convicted of, or pled guilty, within the last five (5) years to one of the following criminal offenses:
    - (i) Vehicular homicide (T.C.A. §39-13-213);
    - (ii) Accidents involving death or personal injury (T.C.A. §55-10-101);
    - (iii) Accidents involving damage to a vehicle (T.C.A. §55-10-102);
    - (iv) Driving under the influence of an intoxicant, drug or drug producing stimulant (T.C.A. §55-10-401); or
    - (v) Any felony involving the use of a motor vehicle while under the use of any intoxicant.
- (4) Criminal offenses for which exclusion from access to child care is required includes, but is not limited to, the following:
  - (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. § 39-15-402);

- (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);
- (qq) Second degree murder (T.C.A. § 39-13-210);
- (rr) Sexual battery (T.C.A. § 39-13-505);
- (ss) Sexual battery by an authority figure (T.C.A. § 39-13-527);
- (tt) Sexual exploitation of a minor (T.C.A. § 39-17-1003);
- (uu) Solicitation of a minor (T.C.A. § 39-13-528);
- (vv) Stalking (T.C.A. § 39-17-315);
- (ww) Statutory rape (T.C.A. § 39-13-506);
- (xx) Statutory rape by an authority figure (T.C.A. § 39-13-532);
- (yy) Trafficking a person for sexual servitude (T.C.A. § 39-13-309);
- (zz) Vehicular assault (T.C.A. § 39-13-106);
- (aaa) Vehicular assault while intoxicated (T.C.A. § 39-13-106);
- (bbb) Voluntary manslaughter (T.C.A. § 39-13-211);
- (ccc) Weapons Offenses (felony or misdemeanor); and
- (ddd) Any other felony or misdemeanor offense that meets the criteria of subparagraphs (3)(b) or (c), whether in the state of Tennessee or in any other jurisdiction.

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

- (a) No person shall be employed with, be a licensee or operator of, provide substitute services to, reside in, or have any access whatsoever to children in a

child care agency if the results of the state registry review identify the person as being:

1. Listed on the Vulnerable Persons Registry;
  2. Listed on the Sexual Offender Registry; or
  3. Indicated in the records of the Department of Children's Services for a perpetrator of abuse or gross neglect of a child.
- (b) A person who is indicated in the records of the Department of Children's Services for neglect that is not classified as gross neglect, and who has not been criminally charged or convicted or pled guilty to or no-contest to a criminal charge involving the neglect of a child, shall be placed under a safety plan with specified supervision requirements/conditions.
- (6) Supplemental Background Checks Subsequent to Licensing, Employment or Residence in a Child Care Agency.
- (a) Pursuant to T.C.A. § 71-3-507(g)—(k), the Department may, at anytime, require the review of the criminal, available juvenile records or administrative records of any individual with access, as determined by the Department, to children in a child care agency using the processes described in this chapter, or in T.C.A. § 71-3-507, or by any other available means. All other provisions of this chapter and T.C.A. § 71-3-507 applicable to any pre-employment or post-employment, residential or access status of any individual shall apply to any background reviews conducted pursuant to this paragraph and the results of such review.
- (b) For an individual who was not subject to the background or records screening requirements required by this chapter prior to assuming a role described in subparagraph (1)(a), or prior to having access to children in any other capacity, such individual's existing status in such role shall be conditional upon the satisfactory outcome of any requested criminal/juvenile/administrative history disclosure, fingerprint record background check, and any Department of Health vulnerable person's or the sex offender registry check, or any review of indicated abuse or neglect perpetrator status with the Department's of Children's or Human Services that may be conducted pursuant to T.C.A. § 71-3-507 and this rule.
- (7) Appeal of exclusion from access to child care.
- (a) A person that has been excluded from access to child care due to a criminal offense or state registry listing has the right to appeal the exclusion. The appeal is limited to the consideration of:
1. Whether the person being excluded is in fact the person identified in the criminal history records, registry listing that was used to determine that the person must be excluded;
  2. Whether the crime or listing for which the exclusion occurred is one for which exclusion is required; or
  3. Whether the crime or listing which is the basis for the exclusion has been dismissed, resulted in an acquittal, or expunged, so that the person should not be excluded.

- (b) The person must make a written request for an appeal to the Department of Human Services Division of Appeals and Hearings within ten (10) days of the mailing date of the letter notifying him/her of the exclusion. If timely appealed, the Department shall provide an administrative hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.
- (8) Requests for a waiver from exclusion from access to child care.
- (a) A person who has been excluded from child care agency and/or adult day care center access due to a criminal offense or registry listing has the option of requesting a waiver from the exclusion. The request for a waiver shall be sent to the Director of Adult and Child Care Licensing.
  - (b) The request for a waiver shall state the basis for the request, including any extenuating or mitigating circumstances that would, in the individual's opinion, clearly warrant an exemption from the exclusion. Any documentary evidence may also be submitted with the request.
  - (c) Requests for waivers shall be reviewed by an advisory committee in accordance with the provisions of T.C.A. § 71-3-507. A waiver will be granted only if the person can show that extenuating circumstances exist that clearly justify granting a waiver. The committee shall make a recommendation to the Director of whether to grant or deny the waiver request. The Director shall make the final decision.
  - (d) Any person who is the subject of an exclusion who is dissatisfied with the decision of the Director of Licensing regarding a waiver may appeal such decision in writing to the Department by filing a written request for an appeal with the Department of Human Services Division of Appeals and Hearings within ten (10) days of the date of notice of the denial of the waiver to the individual, and may request an administrative hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.
- (9) Any person who is excluded from providing care or services or having access to children under any provisions of this chapter shall remain excluded pending the outcome of any appeals or exemption review or any determination that the basis for exclusion no longer exists.
- (10) An individual will also be excluded pursuant to T.C.A. § 71-3-507 if a criminal or juvenile proceeding, registry or administrative background review requiring exclusion under T.C.A. § 71-3-507 or any other provision of law is discovered and verified in any other manner other than through the procedures described in this rule. All procedures, rules, and appeal processes established pursuant to this chapter for the protection of children and the due process rights of excluded individuals shall also be applicable to such individuals.
- (11) Exclusion of persons who currently have access to child care.
- (a) An agency shall immediately notify the Department if it receives information, either through first-hand knowledge or via a third party, that a person who is operating, working in, volunteering at, providing substitute services to, residing in, or has any access whatsoever to the child care agency:
    - 1. Is currently charged with a criminal offense;

2. Has a criminal conviction; or
  3. Is listed on the state vulnerable persons registry, sexual offender registry, or Department of Children's Services indicated perpetrator registry.
- (b) Such notification shall be made by telephoning child care licensing or the complaint hotline immediately, but in no case, later than twenty-four (24) hours after receiving such information. This shall include all information received by the agency regarding the person's current background status and any information that was not included in the criminal background check/state registry/records review that was required to be conducted prior to the person assuming any role at the agency.
  - (c) The exclusion of such persons from access to child care shall be conducted pursuant to T.C.A. § 71-3-507 and this rule.
- (12) The failure of a child care agency to perform the required CBC/SRR before allowing a person access to child care or to immediately exclude individuals with a criminal background history or state registry review status that requires exclusion pursuant to T.C.A. § 71-3-507 and this chapter, as directed by the Department, 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.; 71-3-507.

1240-04-01-.09 Record Keeping.

- (1) General Record Requirements.
  - (a) All records required by this chapter shall be maintained in an organized manner on-site at the agency's licensed location 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. (Exception: The health record shall be returned to the parent/guardian 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) Daily attendance records shall be kept for one (1) year following the child's leaving the agency.
  - (e) No records shall be corrected or altered by obscuring or otherwise obliterating the names and dates of the children's attendance or other records of children or staff that the agency determines to be erroneous, but shall be corrected only by striking through the incorrect information in the record and writing the correct information at or near the incorrect information together with the date of correction and initials of the person who made the correction.
- (2) General Children's Records.
  - (a) All children, including related children younger than age nine (9), shall be counted in the ratio and group size and shall have required records on file before care is provided. Exception: Children related to the primary caregiver

nine (9) years and older if those children are provided a separate space from that occupied by the family or group child care home.

(b) 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)/ guardians;
  - (iii) Child's and parents'/guardians home addresses and phone numbers;
  - (iv) Parents'/guardians business address, phone numbers, work hours;
  - (v) Any special needs or relevant history of the child and the child's family, including child allergies; and
  - (vi) The name and address (home and business or school) and current phone number of a responsible person to contact in an emergency if parent/guardians 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/guardian regarding emergency medical care; and
4. A written plan stating to whom the child shall be released.
5. Written transportation agreement between parent/guardian and the agency regarding daily transportation between the home and the agency and the agency and the school. If someone other than the parent/guardians may transport the child, details of the arrangement shall be maintained in the child's file. The requirement in this part 5 is not applicable to drop-in centers.
6. A copy of the child's health history provided by the child's parent, guardian/custodian or other caretaker, which need not be signed or certified by a health care provider, shall be on file in the agency and shall be available to appropriate staff. The requirement in this part 6 is not applicable to drop-in centers.
7. For a child with life-threatening allergies, a written plan of action endorsed by the child's pediatrician or licensed medical provider. The requirement in this part 7 is not applicable to drop-in centers.
8. Daily attendance records that include the full name and time in and time out for each child must be maintained on site but not necessarily in the individual child's file;
9. Prior written, signed and dated permission of parent/guardian for each field trip and any off-site activity away from the premises;

10. A record of the signed notification form indicating the parents'/guardian's acknowledgment that they have been provided an opportunity to review the personal safety curriculum offered by the agency, and have been notified of the child sexual abuse/personal safety curriculum for their child as required by 1240-04-01-.16(8)(f). See rule 1240-04-01-.25 per requirements specific to drop-in centers.

(c) Immunization Record Requirements.

1. The agency shall maintain a Tennessee Department of Health Official Immunization Certificate in the child's file, as set forth in subparagraphs (c) and (d) below, verifying that the child has been immunized according to current Department of Health guidelines.
2. Exceptions to immunization record requirements may be made only if:
  - (i) The child's physician or the health department provides a signed and dated statement, stating the child should not be given a specified immunization for medical reasons; or
  - (ii) The child's parent/guardian provides a signed written statement that such immunizations conflict with his/her religious tenets and practices.
3. The requirement in this subparagraph (b) is not applicable to drop-in centers.

(d) Preschool Children's Record Requirements.

1. Whenever an infant, toddler or non-verbal child has had more than one caregiver during the day this information shall be shared in a written format. This information shall include:
  - (i) Time and amount of feeding;
  - (ii) Any incidence of excessive spitting up;
  - (iii) Toileting;
  - (iv) Times of diaper changes;
  - (v) Sleep patterns; and
  - (vi) Developmental progress.
2. Before a child under the age of sixty (60) months of age is accepted for care, the parent/guardian shall have proof that the child has completed, at a minimum, the most recent required well-child check examination according to the Early and Periodic Screening, Diagnosis and Treatment Guidelines prior to admission. Proof of the examination shall be signed or stamped by a physician or licensed medical provider. This record must be kept on file at the agency for one (1) year.
3. Before being accepted for care, a copy of the Tennessee Department of Health Official Immunization Certificate, signed or stamped by a licensed

medical provider for each preschool age child, age two (2) months and older, shall be on file and shall be available to the appropriate staff.

4. The requirement in this subparagraph (c) is not applicable to drop-in centers.

(e) 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 agency shall have on file a statement from the parent/guardian (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 parent or guardian 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 or guardian and maintained in the child's file.
4. The requirement in this subparagraph (d) is not applicable to drop-in centers.

- (3) Record Requirements for Children with Special Needs. The agency will maintain an activity record that consists of a daily accounting of the activities and behavior of a child with special needs and information pertinent to the needs of the individual child. The requirement in this paragraph (3) is not applicable to drop-in centers.

(4) Staff Record Requirements.

Staff records shall include:

- (a) The name, birth date, the social security number used by the employer for federal/state tax purposes, address, and telephone number of all staff members;
- (b) An emergency contact name/phone number/address for each staff member
- (c) Documentation of educational background and educational experiences, including diplomas showing dates, places, schools; transcripts of courses; and certificates of conferences and workshops, attended in the preceding year. Proof of education is not applicable for drop-in centers;
- (d) Documentation, signed by the examining licensed physician, 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 work start date;
- (e) 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;

- (f) At least three (3) written, non-relative, references, with documented verification of each reference, on each new staff member prior to employment;
- (g) Complete written record of employment history and documented verification of same;
- (h) Documentation of annual performance reviews;
- (i) Date of employment and date of separation, as applicable, from the agency;
- (j) Daily attendance (including time in/out) of staff;
- (k) Signed and completed criminal history disclosure form;
- (l) Verification of criminal and juvenile background check results;
- (m) Verification of the vulnerable person's and sex offender registries results and the results of a review of the protective service records of the Departments of Children's and Human Services; and
- (n) In addition, driver records shall contain the information required by rule 1240-04-01-.19:
  1. Copy of driver's license showing proper endorsements;
  2. Verification of a drug screen showing no basis for exclusion prior to assuming driving duties;
  3. Verification of Cardio Pulmonary Resuscitation and First Aid Certification; and
  4. Annual physical exam.
- (o) Substitute and Volunteer Records. Records of substitutes and volunteers shall be maintained on-site at the agency and must include the names, addresses, telephone numbers and hours and dates of service.

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

1240-04-01-.10 Incident Reporting.

- (1) Reports of Incidents, Illnesses, Accidents, Injuries, and Fatalities.
  - (a) Incidents, accidents, injuries, and signs of illness shall be reported to the parent or guardian as soon as possible, but no later than the child's release to parent/guardian or authorized representative on the date of occurrence.
  - (b) Serious injuries or signs of serious illness shall be reported to the parent/guardian immediately in an effort to coordinate emergency treatment.
  - (c) In no event shall the agency delay seeking emergency treatment due to a delay in making contact with the parent/guardian.
  - (d) Incidents, accidents injuries, and signs of serious illness to children shall be documented immediately with the following information:

1. Childs' name and date of birth;
  2. Name of the person who wrote the report;
  3. Date and time of occurrence;
  4. Date and time of completion of incident report;
  5. Description of incident and circumstances; and
  6. Action(s) taken by the agency.
- (e) Documentation of incidents, accidents, injuries, and signs of serious illness to children shall be filed in the child's record no later than one (1) business day immediately following the occurrence.
- (f) The agency shall notify the Department of all serious incidents, including any illness or injury that requires medical treatment beyond on-site first aid, issues of a sensitive nature, transportation accidents that occur when children are on the vehicle and any child or adult fatality at the agency immediately, but no later than one (1) calendar day following the incident. Notification shall be made by contacting the child care hotline – 1-800-462-8261.

Authority: T.C.A. §§4-5-201 et seq., 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2).

1240-04-01-.11 Duty to Report Child Abuse and Neglect.

(1) Duty to Report Child Abuse and Neglect.

(a) Duty to Report.

1. Every operator, owner, licensee, director, primary caregiver 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 either the Department of Children's Services and/or 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 the existence of 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. No suggestions as to the validity of the child's statements shall be made to the child during this time.

- (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 the law. 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 their own investigations.
  - 3. Each agency shall develop written procedures, approved by the Department of Human Services in conformity with DCS policy, for staff to follow to report suspected abuse and neglect that is alleged or is suspected to have occurred at the agency.
  - 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 and its website address, and either 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 or by agency computers.
- (c) Prohibited Procedures for Reporting Suspected Child Abuse or Neglect/Penalties.
1. Failure to Report Properly Is Grounds for Suspension, Denial or Revocation of an Agency’s License.
    - (i) Failure to report suspected abuse or neglect as required by subparagraph (a) above or taking any of the actions described in part (a)2 above instead of reporting as required by subparagraph (a) above are, by themselves, grounds for the suspension, denial or revocation of an 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 agency took any of the actions described in part (a)2 above, these circumstances shall create a rebuttable presumption in any licensing action against the child care agency that the duty to report child abuse or neglect has not been fulfilled.
  2. An agency shall not develop or implement any 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. An agency 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.
  3. A report required by subparagraph (a) above 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 complying with, subparagraph (a) above.

4. A person required to report by subparagraph (a) above shall not suggest, advise or direct a parent/guardian or caretaker of a child enrolled in the child care agency to make a report of suspected child abuse or neglect regarding that parent/guardian's or caretaker's own child who is enrolled in the child care agency as an alternative to, or substitute for complying with subparagraph (a) above.
  5. 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.
- (d) Agency Duties during Investigations of Child Abuse and Neglect; Custodial Authority of Children.
1. Every operator, owner, licensee, primary caregiver, 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 to the Departments of Children's and Human Services and to law enforcement agencies.
  3. The agency shall allow appropriate investigators to interview children and staff.
  4. The agency shall not interfere with an abuse or neglect investigation.
  5. The agency shall protect the child by reviewing 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 individual who is an agency staff member or resident of a family or group child care home, the licensee 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 auxiliary staff, shall receive training every six (6) months regarding proper procedures to report child abuse and neglect.

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.

1240-04-01-.12 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 to 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.
  - (b) Children six (6) weeks of age through nine (9) years of age:
    1. An adult caregiver (at least 18 years of age) shall be present and 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 while eating: An adult caregiver must be in the direct sight and sound of the child while the child is eating.
  - (c) Children ten (10) years of age and older.
    1. For children ten (10) years or age and older, an adult caregiver 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. This requirement is not applicable to drop-in centers.
    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. This requirement is not applicable to drop-in centers.
  - (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, walkie-talkies, 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 developmental needs and privacy needs of the child.
  - (g) The agency shall maintain a plan approved by the Department that outlines the procedure for a caregiver to obtain the aid of a second adult in the event of an emergency, while maintaining maximum supervision of children.

- (h) 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 in developing a plan to meet an individual child's needs.
- (i) Procedures for Release of Children from the Care of the Agency.
  - 1. Children shall only be released to the child's parent or guardian, or other person authorized by the parent or guardian, unless directed by the Department, the Department of Children's Services or health, safety or law enforcement authorities.
  - 2. Authorization of the parent/guardian for another person to receive the child shall be on file. The agency shall verify the identity of the authorized person by requiring presentation of a photo identification. In the event an unauthorized person requests release of a child, authorization may be obtained by calling the parent/guardian. The person to whom the child is released must sign the child out of the agency as required in subparagraph (j) below.
  - 3. In the event an unauthorized person requests release of a child, authorization may be obtained by calling the parent/guardian.
  - 4. 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 and seek the assistance of law enforcement authorities to protect the child's safety.
- (j) Sign-In/Sign-Out Procedures.
  - 1. Every child shall be signed in and out of the agency by the parent/guardian or other individual authorized by the parent/guardian if no parent or guardian is present.
  - 2. The child's full printed name shall be used. It is unacceptable to use only the child's initials or only reference the last name of the child.
  - 3. Agency staff shall sign children in and out of the agency only when transported to the agency by the agency's transportation service or local school transportation system and no parent/guardian is present, and agency staff shall sign to verify the child's status in this situation. This requirement is not applicable to drop-in centers.
  - 4. The sign-in and sign-out log in parts 1—3 must contain the date, time of entry, time of departure and the signatures of the parties who signed the child in and out.
  - 5. For multiple children in a family each child shall be signed in and out individually using each child's first and last name.
  - 6. The agency shall not allow a child to sign him/herself in or out of the agency.

7. Electronic sign-in and sign-out procedures are permissible as approved by the Department, provided all information required above is included.
8. The sign in and out log shall be maintained by the agency for one (1) year, and shall be kept on-site and immediately available to auditing and licensing authorities upon their request.
9. The agency shall maintain responsibility for each child until signed out by an authorized individual, therefore, any care or transportation provided for a child prior to release to an authorized individual shall be in compliance with all licensure rules regardless of the hours.

(2) Meal and Snack Time Supervision

- (a) A child shall never be left without adult supervision while eating.
- (b) During meal and snack times, supervising adults are prohibited from performing other classroom duties unrelated to food service because focus must be on the child while he or she eats.
- (c) Agencies shall plan ahead to ensure the safety and proper supervision of a child while eating, and shall develop and follow a written supervision plan that includes, at a minimum, the following components:
  1. Anticipate potential interruptions or obstacles that could interfere with supervision, including emergencies, and contain appropriate plans of action to ensure supervision during this high risk activity;
  2. Consider room arrangement, individual child needs, scheduled activities, staffing patterns, and supervision assignments of staff;
  3. Prominently note any child allergies and the accommodations and precautions in place to address food allergies;
  4. Outline agency procedures that reduce cross-contamination of allergic foods and other inadvertent exposure to allergens for any child with food allergies; [and](#)
  5. Note individual child needs and high risk behaviors related to eating, as well as any resulting special caregiver responsibilities.
  6. The requirements of this subparagraph (c) are not applicable to drop-in centers.
- (d) Each caregiver and any others assisting with the service or preparation of food or supervision whenever a child is eating, including substitutes, shall be trained on the supervision plan.
- (e) Whenever there is a change in room arrangement, individual child needs, including the addition of a new child, the activities schedule, staffing patterns or the introduction of a new caregiver or cook the agency shall:
  1. Update the plan; and

2. Review the revised plan with all caregivers and all individuals who prepare or serve food for children.
  - (f) The current plan of supervision shall be kept in an accessible location wherever food is prepared or served.
- (3) Playground supervision.
- (a) The same adult: child ratios are applicable for the playground as are applicable indoors.
  - (b) A written playground supervision plan shall be implemented which includes:
    1. Arrival and departure procedures;
    2. Supervision duties of staff to assure that all area of the playground can be seen so that all children can remain within sight or sound of the caregiver(s);
    3. Provisions to ensure accommodation of individual child's needs, i.e. toileting, minor injury, etc.;
    4. Emergency plans specific to a variety of instances, such as child injury, weather evacuation, etc.; and
    5. A communication link among playground supervisors and a designated staff person, if available, inside the agency.
- (4) Supervision during Off-Site Activities.
- (a) The number of adults, required per child must be doubled during off-site activities.
  - (b) A minimum of two (2) caregivers are required for off-site activities.
  - (c) The agency must utilize a system that employs an off-site attendance roll to track the whereabouts of each child while off the agency premises.
  - (d) The requirements in this paragraph (4) are not applicable to drop-in centers because drop-in centers cannot conduct off-site activities.
- (5) Supervision in and Near Water.
- (a) When children are engaged in activities in or near a body of water, the following requirements shall be met:

Swimming Ratio Chart

Age Group	Ratio
Infants(6wks-12months)	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

1. 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.
  2. The lifeguard shall not be included in the required adult: child ratio while performing lifeguard duties.
- (b) The rule in this paragraph (5) is not applicable to drop-in centers because swimming is prohibited in drop-in centers. Change to appropriate language.
- (6) Safe Sleep Supervision Procedures.
- (a) Because of the possibility of Sudden Infant Death Syndrome (SIDS) and to prevent suffocation deaths in infants:
1. Infants shall be positioned on their backs for sleeping.
  2. It is not necessary to reposition infants once they have demonstrated the ability to turn front to back and back to front independently and repeatedly, over a period of time.
  3. The use of positioning devices shall not be used without written authorization from a physician.
  4. In order to reduce the risk of suffocation, soft bedding and bumper pads for infants are prohibited. Soft bedding that is prohibited includes, but is not limited to, pillows, bumper pads, quilts, comforters, stuffed toys, laundry and other soft materials.
  5. Alternative types of cribs, including nesting beds and stacking cribs are prohibited unless specifically authorized by the Department. Any cribs or other sleeping equipment prohibited by federal product safety regulations shall not be permitted.
  6. Infants shall not be wrapped tightly or swaddled in blankets for sleeping.
  7. Infants shall be touched by a caregiver every fifteen (15) minutes in order to check breathing, body temperature and position.
  8. If a child appears not to be breathing, the agency must immediately begin CPR and call for emergency medical assistance.
  9. No infant shall be allowed to sleep on a sofa, soft mattress, adult bed, or in a car seat swing or other restraining devices.
  10. Before any caregiver can assume caregiving duties of any type for infants, the caregiver shall receive documented orientation in the foregoing safe sleep procedures and all infant caregivers will be familiar with safe sleep procedures as required above.
  11. Any practice that is an exception to the above procedures shall not be used without written authorization from a physician.

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

- (1) The agency shall ensure that the child care environment and practices within the agency support child health and safety.
- (2) The receiving caregiver shall observe each child upon arrival each day for signs of communicable disease.
- (3) The receiving caregiver shall document any obvious marks or injuries and shall note any comments from the parents pertaining to marks or injuries.
- (4) The contents of the child's personal belongings such as backpacks and diaper bags shall be checked before they are accessible to children.
- (5) All products labeled "keep out of reach of children" shall be inaccessible to children at all times.
- (6) A child's temperature must be taken using a non-invasive method unless otherwise prescribed by a physician.
- (7) A child showing sign of illness shall be cared for apart from other children to the extent that supervision can be maintained for all children.
- (8) An agency shall promptly contact a parent/guardian when a child shows sign of illness.
- (9) Universal and standard precautions, as defined by the Centers for Disease Control, shall be followed when handling or cleaning bodily fluids.
- (10) First Aid.
  - (a) A standard first aid kit, as defined by the current National Health and Safety Performance Standards: Guidelines for Out-of-Home Child Care, shall be accessible 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.
  - (c) Current and comprehensive first aid information shall be available to all staff that interacts with children.
  - (d) Extended Care First Aid Requirements.
    1. All staff shall have certification or equivalent in first aid from a certifying organization recognized by the Department.
    2. The requirement in this subparagraph (d) is not applicable to drop-in centers.
- (11) Cardiopulmonary Resuscitation (CPR) Requirements.
  - (a) At least one staff member on duty shall hold current certification in Infant/Child Cardiopulmonary Resuscitation (CPR) or equivalent from the American Red Cross, the American Heart Association, or other certifying organization, as recognized by the Department.

- (b) When school-age children over age of twelve 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 (10)(b) and (11)(a) above, in Adult First Aid and CPR.
  - (c) Extended Care CPR Requirements.
    - 1. All staff shall be certified in Infant/Child Cardiopulmonary Resuscitation (CPR) or equivalent from a certifying organization recognized by the Department.
    - 2. The requirement in this subparagraph (c) is not applicable to drop-in centers.
- (12) Contagious Conditions.
- (a) Impetigo and diagnosed strep shall be treated for twenty-four (24) hours prior to readmission to the child care agency, according to a licensed medical professional's instructions.
  - (b) A child diagnosed with scabies or lice shall have a release from a licensed medical professional that the child is safe for a congregate care setting 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 medical professional.
  - (d) Parents/guardians 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 illness (food poisoning);
    - 3. Salmonella;
    - 4. Shigella;
    - 5. Measles, mumps, and/or rubella;
    - 6. Pertussis;
    - 7. Polio;
    - 8. Haemophilus influenza type B;
    - 9. Meningococcal meningitis;
    - 10. Chicken Pox; and
    - 11. Any other illness so 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 is discovered.

(13) Medications.

- (a) All medications, prescribed and non-prescribed, and all preventative products such as over the counter diaper cream, sunscreen and insect repellent, shall be received from the parent/guardian 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/guardian's written authorization to administer each medication;
  - 2. That the medicines or drugs are in the original prescription container, are not expired, 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/guardian has provided the agency with instructions on the means and method of administration.
- (d) The following documentation of administration shall be maintained in the child's file and a copy provided to the parent/guardian:
  - 1. Times and amounts of medications administered;
  - 2. Approved methods of administration;
  - 2. Any side-effects observed; and
  - 3. Name of staff person administering medication to child.
- (e) The parent/guardian shall sign documentation verifying that:
  - 1. The administration information required by subparagraph (d) above was received, and
  - 2. Unused medication was returned to the parent/guardian.
- (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. Caregivers shall ensure that medication administered in this way is not accessible to other children.
- (h) Accessibility of Medications.

1. All medication, prescriptions and non-prescription, whether requiring refrigeration or not, shall be stored in a locked compartment or container.
  2. Over-the-counter diaper creams, ointments, sunscreens and lotions are not required to be locked, but shall be kept inaccessible to children.
  3. If medications requiring refrigeration are kept in a refrigerator used for food storage, the medicine shall be put in a leak-proof locked container.
  4. Keys for these compartments/containers shall be inaccessible to children.
  5. Exception for Emergency Administration: Medication requiring emergency administration, as prescribed by a licensed medical professional, e.g. an "Epi-Pen" or asthma inhaler may be kept in an unlocked container that is inaccessible to children.
- (i) Unused medications shall be returned to the parent/guardian at the end of the medication cycle.
- (14) Prohibited Practices and Products.
- (a) Smoking.
1. Smoking is not permitted in any indoor area of the child care agency during the hours of operation.
  2. Smoking is not permitted on the playground or in any outdoor area accessible to children during the time children are present.
  3. "No Smoking" signs must be posted conspicuously at each child care entrance, as required by state law.
  4. Cigarette or cigar or pipe ashes or butts are prohibited in child care spaces, play spaces, or food preparation areas.
  5. Written notification shall be given to parents upon enrollment if the agency allows smoking at any time in the facility.
- (b) Alcoholic Beverages.
1. The use of alcoholic beverages is not permitted in an agency during the hours of operation.
  2. Alcoholic beverages stored in areas of the agency where care is provided shall not be accessible to children.
- (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 agency, or any activity that otherwise places children at risk are prohibited.
- (d) Firearms shall not be permitted 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 are permitted on

the premises, but shall be kept locked and out of sight and, at all times, inaccessible to children.

- (e) Kitchen knives and other potentially dangerous utensils or tools shall be secured so that they are inaccessible to children.
- (f) All items labeled "keep out of reach of children" shall be stored so that they are inaccessible to children.
- (g) Personal belongings of residents and staff (such as, but not limited to, contents of purses, backpacks, coat pockets, diaper bags, etc.) shall be inaccessible to children at all times.

(15) Diapering.

- (a) Children shall be checked regularly to determine if they are wet or soiled.
- (b) Children shall be diapered/changed and cleaned promptly when wet or soiled.
- (c) Caregivers shall utilize sanitary diapering procedures:
  - 1. Adult and child hands shall be washed, using soap and running water, following diapering;
  - 2. Diapering surface shall be washed with soap and water and sanitized after diapering each child; and
  - 3. Soiled diapers and wipes shall be disposed of in such a manner as to prevent access by children and to prevent cross contamination.
- (d) The diapering area and/or toilet learning area shall be located near a hand washing station and shall be located in a separate area from the food preparation area.
- (e) Diapering surfaces shall be off the floor and nonporous.
- (f) Sanitizing Solutions:
  - 1. For general cleaning and sanitation purposes other than food preparation areas, 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.
- (g) Children with Special Needs.
  - 1. The required diapering procedure shall be used with children of all ages and abilities who require diapering.
  - 2. School-age children requiring assistance with toileting needs shall receive assistance in a location designated for that purpose which provides privacy from other children and adults.

3. School-age children who require diapering 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 hand-washing lavatory. This area shall be in a separate location from the food preparation area.

(16) Tuberculosis Screening.

- (a) The agency shall ensure that any staff member or volunteer who meets one or more of the following criteria is screened, and medically cleared for tuberculosis (TB) prior to on-going contact with children in the child care agency:
  1. Born in a country other than the United States, Canada, Western Europe, Australia, New Zealand, and Japan; or
  2. Has a weakened immune system due to one or more of the following medical conditions: diabetes, cancer of the head and neck or lung, silicosis, HIV infection or AIDS, leukemia, lymphoma, end-stage kidney disease, intestinal bypass surgery or gastrectomy, or chronic malabsorption syndrome; or
  3. Has been recently exposed to a case of active tuberculosis.
- (b) The agency shall require that any staff member, volunteer, or child who has had an unexplained cough for three (3) weeks or longer is evaluated promptly by a physician and medically cleared prior to having contact with children at the agency.

(17) Staff Health.

The director or primary caregiver shall, upon arrival and throughout the day observe each staff member for signs of communicable disease and shall take prompt steps to prevent further spread of the illness.

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); 39-17-1803; 71-3-501 et seq.; 71-3-502(a)(2); 71-3-508.

1240-04-01-.14 Food and Food Service.

(1) Meal and Snack Time Procedures.

- (a) An adult shall be present, near any table or high chair where a child is eating as required in supervision procedure outlined in 1240-04-01-.12.
- (b) An adult shall routinely sit with a child while the child is eating.
- (c) Children shall be seated at tables and chairs of appropriate size while eating.

- (d) Children shall wash their hands with soap and water before meals and snacks. Once all children have finished eating, children and caregivers shall wash their hands again with soap and water. Using hand wipes is an acceptable interim measure for cleaning children's hands and faces.
- (e) An infant shall be held while drinking from a bottle if the infant is too young to use a high chair.
- (f) Bottles shall not be propped, and a child shall not be given a bottle while lying flat.
- (g) Children shall not be given any food or drink while in beds, cribs or on mats.
- (h) To reduce the risk of serious injury or death, a child shall be restrained using the manufacturer's safety restraint while sitting in a high chair. Children who are too small or too large to be restrained using the manufacturer's restraint device shall not use a high chair.
- (i) Prevention of Injuries by Microwaves, Bottle Warmers, and Crock Pots.
  1. In order to prevent scald and splash burns, crock pots are prohibited for use as bottle warmers, and crock pots used for cooking food and their cords shall be kept in the kitchen area and shall be inaccessible to children.
  2. Microwave ovens, and bottle warming devices, including cords, shall not be accessible to infants or preschool children.
  3. School-age children shall use microwaves only under direct supervision.
  4. The "splash zone" immediately surrounding microwaves, crock pots and warming devices shall be kept inaccessible to children at all times.
  5. All bottle warmers and other warming devices shall be maintained at the device's lowest available temperature setting.
  6. Bottle warming devices shall be placed or 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 stirred and carefully checked for "hot spots" prior to serving.
- (j) All individuals with responsibility for food preparation/service shall be trained on the rules related to food service/preparation prior to assuming their duties.
- (2) Supervision of children during meals and snacks shall comply with Meal and Snack Time Supervision requirements in section 1240-04-01-.12.
- (3) Choking Prevention.
  - (a) 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 authorizations to provide infant care under its license.

- (b) Food shall not be accessible or served until it has been chopped, diced, cut or mashed according to the child's age, and individual eating, chewing and swallowing ability.
  - (c) Supervising adults are prohibited from performing other classroom duties unrelated to food service. Food shall not be given to a child until the supervising caregiver is able to give focused attention to the child while eating.
  - (d) Regardless of where food is prepared, it is the responsibility of the supervising caregiver to ensure that food is appropriate in content, consistency, and form for the age and developmental abilities of the child.
- (4) Food Preparation.
- (a) Powdered milk shall be used only in a cooked food product.
  - (b) Formulas shall be used as directed on the container.
  - (c) Once milk, formula or breast milk has been warmed, it shall not be re-warmed or returned to the refrigerator and shall be discarded.
  - (d) Frozen breast milk shall be labeled with the date it was expressed and the name of the child.
  - (e) Food, formula, milk or breast milk brought from home shall be labeled with the child's name and current date and refrigerated immediately.
  - (f) All contents remaining in bottles after feeding shall be discarded.
  - (g) Previously opened baby food jars shall not be accepted in the agency. If food is fed directly from the jar by the caregiver, the jar shall be used for only one feeding and discarded.
- (5) Nutritional Needs.
- (a) If the agency provides food, the agency shall provide developmentally appropriate meals, snacks, and drinks for each child that are of sufficient proportions and nutritional values to meet each child's health needs in accordance with the following minimum requirements:
    - 1. For a child 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. A child in care for 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. A child in care seven (7) to ten (10) hours shall be provided one (1) meal and one (1) or two (2) snacks.

4. A child in care longer than ten (10) hours shall be provided two (2) complete meals and one (1) or two (2) snacks.
  5. Breakfast shall be offered to children who arrive before 7:00 a.m. and have not had breakfast at home.
  6. Extended Care: For a child who is in care for extended or nighttime hours, meals and snacks will be offered in accordance with the child's hunger and the hours of attendance.
- (b) The rule in this paragraph (5) rule is not applicable to drop-in centers. See, Nutritional requirements for drop-in centers in section 1240-04-01-.25.
- (6) Food Service.
- (a) Food Allergies.
    1. Information about individual child food allergies shall be posted prominently, both where food is prepared and where food is served.
    2. For a child with life-threatening allergies, a written plan of action endorsed by the child's pediatrician or licensed medical provider shall be posted where the caregiver has immediate access.
  - (b) In order for parents/guardians to be aware of the food their children are receiving, a weekly menu that includes all snacks and foods served shall be posted and followed. The rule in this subparagraph (b) is not applicable to drop-in centers. Change to appropriate language.
  - (c) Menu substitutions shall be noted in advance of the meal. This subparagraph (c) is not applicable to drop-in centers. Change to appropriate language.
  - (d) A child shall not be forced to eat nor shall food be withheld from a child.
  - (e) Foods served shall not be used as a reward; nor shall food be used or withheld as a form of discipline.
  - (f) The feeding schedule for an infant shall be in accordance with the child's need rather than according to the hour.
  - (g) When caring for nursing children, the agency shall make accommodations that support and facilitate a family's decision to continue breast feeding. This subparagraph (g) is not applicable to drop-in centers. Change to appropriate language.
- (7) High Chairs and Tables.
- (a) 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 shall be allowed to eat with fingers or a spoon.
  - (b) High chairs and tables on which food is prepared and served shall be washed with soap and water and sanitized directly prior to and after snacks and meals.

- (c) The sanitizing solution required in 1240-04-01-.13(15)(f) above is not appropriate for items associated with food preparation or for items that children frequently place in their mouths. Local health departments must be consulted to determine appropriate concentration of sanitizing solutions for food preparation areas.
  - (d) Floors under tables and high chairs on which food is served shall be swept and/or vacuumed after each meal and cleaned as needed.
- (8) Dishes and Utensils.
- (a) Napkins and individual utensils shall be provided for children who eat independently.
  - (b) Individual dishes, as necessary for the type of feeding, shall be provided.
  - (c) Routine food service dishes, utensils, and bottles shall be break-resistant.
- (9) Food Storage.
- (a) Potentially hazardous foods requiring cold storage shall be maintained at forty degrees Fahrenheit (40°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 one hundred forty degrees Fahrenheit (140°F) or above.
  - (c) Frozen foods shall be maintained at a temperature of zero degrees Fahrenheit (0°F) or below.
  - (d) Thermometers shall be placed in all freezers and all other cold storage equipment.
  - (e) All food shall be protected from contamination during storage, preparation, transportation, and serving.
  - (f) No poisonous or toxic materials except those required for sanitization purposes may be used or stored in a food-service area of a facility.
- (10) Food Sanitation.
- (a) The agency shall not serve home-preserved food or raw milk to children in care.
  - (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(12); 71-3-501 et seq.

1240-04-01-.15 Equipment for Children.

(1) General.

- (a) The manufacturer's safety instructions shall be followed for assembling, installing, securing, and using all indoor and outdoor equipment, appliances, and furnishings. Such instructions shall be retained and communicated to all appropriate staff.
- (b) All indoor and outdoor equipment, appliances, and furnishings shall be well made and safe. There shall be no dangerous angles, sharp edges, splinters, protruding nails, nuts or bolts, heavy or hard swing seats, head entrapment spaces, open S-hooks or pinch points, or similar hazards within the reach of children.
- (c) All indoor and outdoor equipment, appliances, and furnishings, including large or heavy pieces of furniture, such as television sets or computers, monitors, bookcases, cubbies, dressers, shelves and appliances shall be secured or supported so that they can not fall or tip over.
- (d) Electrical cords shall be inaccessible to children.
- (e) Cords on window blinds shall be inaccessible to children.
- (f) Damaged, unsteady or non-useable equipment shall be repaired or removed from the room or playground immediately.
- (g) Equipment shall be kept clean by washing frequently with soap and water.
- (h) There shall be developmentally-appropriate equipment and furnishings for each age group enrolled.
- (i) Equipment and furnishings shall be appropriate for the height and weight of children served.
- (j) Equipment and space on the floor shall be provided for infants and toddlers for climbing, crawling, pulling up and exploring without the use of confining equipment.

(2) Indoor Equipment.

- (a) 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 may choose from a number of play options.

3. Adequately provide for all the activities required in rule 1240-04-01-.16 of these rules. The requirement in this part 3 is not applicable to drop-in centers.
  - (b) Toys, educational materials, and play materials shall be organized and displayed within children's reach so that each child can select and return items independently.
  - (c) Toys and teaching materials which are small or which have small parts that can be inhaled or swallowed shall be inaccessible to infants and toddlers.
- (3) Outdoor Play Equipment.
  - (a) Trampolines are prohibited.
  - (b) Developmentally appropriate outdoor play equipment shall be available to children who are in care more than three (3) daylight hours. The rule in the subparagraph (b) is not applicable to drop-in centers.
  - (c) All outdoor play equipment and materials shall be sufficient in amount and variety so that children have an opportunity to participate in a variety of activities using either stationary equipment or portable play materials. The rule in this subparagraph (c) is not applicable to drop-in centers.
  - (d) 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. The fall zone around swings shall extend twice the distance of the length of the swing chain.
    3. Agencies with a playground continually licensed since prior to January 1, 2002, shall meet the fall zone requirements of part (d)1 above by March 1, 2012; provided, however, that any expansion or addition shall comply with the fall zone requirements in part 1, above.
  - (e) Anchorage of Equipment.
    1. Climbers, swings, and other heavy equipment that could cause injury, if toppled, shall be securely anchored to the ground.
    2. Portable equipment which exceeds the height and weight of the smallest child using it, shall be securely anchored.
  - (f) The agency shall ensure that the protective surface of the outdoor play area beneath and in the fall zones of climbing equipment, slides, swings, and similar outdoor play equipment is of a resilient material which is shock absorbing and is in compliance with the current Consumer Product Safety Commission guidelines.
    1. An agency licensed before the effective date of these rules that has outdoor play equipment at its agency as of the effective date of these rules will have until March 1, 2012, to comply with the Consumer

Product Safety Commission's guidelines for resilient surfacing. The agency shall maintain the standards for resilient surfaces required by the March 2009 licensure rules that were applicable to their classification on January 1, 2011, until complying with the Consumer Product Safety Commission's guidelines for resilient surfacing, no later than March 1, 2012.

2. An agency licensed before the effective date of these rules that does not have outdoor play equipment at its agency as of the effective date of these rules must comply with the Consumer Product Safety Commission's guidelines for resilient surface after the effective date of these rules.
  3. An agency licensed on or after the effective date of these rules must comply with the Consumer Product Safety Commission's guidelines for resilient surfacing.
- (g) Manufactured unitary surfaces shall be installed according to the safety specifications of the manufacturer, and shall conform to ASTM F1292 standards.
- (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. The requirement in this subparagraph (a) is not applicable to drop-in centers.
  - (b) A quiet rest area and cots or mats shall be available for all children who want to rest or nap. However, 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.
    1. Children older than thirty (30) months shall be allowed off their mats to participate in a quiet activity, if not asleep in thirty (30) minutes.
    2. Infants and toddlers not asleep in fifteen (15) minutes shall be allowed off their mats or out of cribs to participate in a quiet activity.
  - (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, playpens, cribs, 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/or play yard at least twenty-two inches (22") x thirty-six inches (36") with an open top. Stackable cribs are prohibited. Nesting beds are prohibited, unless specifically authorized by the Department. Any cribs or sleeping equipment that are prohibited by federal product safety regulations shall not be permitted.

4. Original manufacturer's mattresses and sleep surfaces shall be used in each crib and play yard. Modified mattresses or sleep surfaces are prohibited.
5. Adjacent, uniformly spaced crib parts such as slats, spindles, corner posts and rods shall not be more than two and three-eighths inches (2 3/8") apart at any point.
6. Mattresses and foam pads shall be upholstered with a safe, waterproof material.
7. Mattresses and foam pads must fit the crib without any gaps or spaces in order to prevent suffocation.
8. A clean sheet or towel shall be used to cover each child's sleeping surface.
9. A blanket or covering shall be available to each child.
10. Soiled sheets and blankets shall be promptly replaced.
11. Each crib, cot, bed or mat shall be labeled with the child's name or a corresponding code to ensure that each child sleeps on his or her own bedding. The part 11 is not applicable to drop-in centers.
  - (i) If a cot or mat is used by more than one child at different times, it must be properly labeled and sanitized using a solution appropriate for general cleaning between uses.

Authority: TCA §§ 4-5-201 et seq.; 71-1-105(12); 71-3-501 et seq.

1240-04-01-.16 Program.

- (1) Schedule and Routines.
  - (a) Routines such as snacks, meals, and rest shall occur at approximately the same time each day. This requirement is not applicable to drop-in centers.
  - (b) There shall be a balance between child's choice and adult-directed activities. This requirement is not applicable to drop-in centers.
  - (c) There shall be alternating periods of vigorous activity and quiet play or rest throughout the day. This requirement is not applicable to drop-in centers.
  - (d) The agency shall provide early morning and late afternoon activities that will support children in their transitions to and from the child care setting. This requirement is not applicable to drop-in centers.
  - (e) The caregiver(s) shall give individual attention to each child, in addition to time devoted to diapering and feeding. This requirement is not applicable to drop-in centers.
  - (f) Children shall not be left in restraining devices such as swings, car seats, or high chairs for longer than thirty (30) minutes). Stimulation shall be provided to children in those settings

1. Supervision shall be maintained at all times, to include periods of time a child is in a restraining device.
  2. Children shall not be left unattended in any restraining device, including swings, car seats, and high chairs.
  3. Each infant shall be allowed supervised tummy time every day when they are awake. This requirement is not applicable to drop-in centers.
- (g) Developmentally appropriate opportunities shall be provided for children to interact with one another.
- (h) 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 in accordance with the supervision requirements in 1240-04-01-.12. This requirement is not applicable to drop-in centers.
- (i) Children ten (10) years and older shall be encouraged to participate in planning their own schedules and activities.
- (j) Extended Care. Children shall be given the same opportunities for developmentally appropriate activities during extended care hours as during conventional care hours.
- (2) Access to Television, Radio, Videos, and Computers.
- (a) Programs, movies, computer games, and music with violent or adult content shall not be permitted in children's presence.
  - (b) Programs/movies/computer games shall be developmentally appropriate for the viewers.
  - (c) Parents/guardians 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.
- (3) Media Time (Screen Time) Limits.
- (a) If television, video tapes/DVDs, video/computer games, and/or movies are used, they shall be limited as follows:
    1. No media time for children less than two (2) years of age.
    2. Media time for children two (2) years of age and older limited to thirty (30) minutes per week.
    3. Computer time is limited to fifteen (15) minute increments
    4. Exception: School-age children may use computers for completion of homework with no time limitations.
    5. This requirement is not applicable to drop-in centers.
  - (b) All programs shall be designed for children's education and/or enjoyment.

- (c) If used, television, video games, tapes, dvds, games and computers shall be closely monitored for content by a caregiver at all times.
  - (d) Computers which allow internet access by children shall be equipped with monitoring or filtering software, or other type of software protection, which limits children's access to inappropriate web sites, e-mail, and instant messages.
  - (e) Other activity choices shall be available to children during television/movie viewing or computer use.
- (4) Outdoor Play and Playground Routines.

An opportunity for outdoor play shall routinely be extended to children of all ages, including infants, who are in care more than three (3) daylight hours. Exception: Agencies where outdoor play is not available or dangerous, as determined by the Department, may substitute unoccupied indoor space providing fifty (50) square feet per child is acceptable.

- (a) 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 degrees and ninety-five degrees Fahrenheit (32°F and 95°F) and not raining.
  - (b) 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 any signs of weather-related distress, including dehydration, heat stroke and frostbite.
  - (d) Each agency shall develop simple playground rules that use positive language. Rules shall be posted near the play area.
  - (e) The requirements in subparagraphs (a) and (b) above are not applicable to drop-in centers.
- (5) Reclining Rest Period.

- (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. (See 1240-04-01-.16(10)).
- (b) Children who are fatigued shall be offered an opportunity for rest in addition to scheduled rest periods.
- (c) Each child shall be allowed to form his or her own patterns of sleep.
- (d) When awake, a child shall not be left in a crib/bed, or on a cot or mat for any length of time that is unreasonable for the developmental age of the child.
- (e) Nap Room Environment

- 1. Areas where a child sleeps shall be lit in a manner which allows the child to be seen with a quick glance, verify that the child's head is uncovered,

that the child is breathing, and otherwise visually verify the child's condition.

2. If music is played in areas where children sleep the music must be soothing and soft enough so children can be heard.

(f) The requirements in subparagraphs (a) and (c) above are not applicable to drop-in centers.

(6) Behavior Management and Guidance.

(a) Behavioral interventions shall be developmentally appropriate, with consideration given to the attention spans and skills of individual children.

(b) Discipline shall be reasonable, appropriate, and in terms the child can understand.

(c) Potentially shaming, humiliating, frightening, verbally abusive, or injurious discipline methods are prohibited.

(d) Discipline shall not be related to food, rest, or toileting.

(e) Spanking and all types of corporal punishment are prohibited.

(f) Mechanical and chemical restraints are prohibited.

(g) Caregivers shall focus upon positive behavior and an individual child's strengths.

(h) Praise and encouragement of good behavior shall be used.

(i) The caregiver shall address each Incident of problematic behavior by using methods of positive guidance and discipline to help the child manage his/her behavior.

(j) Each time a child is engaging in unacceptable behavior the caregiver shall first redirect the child's attention and substitute a desirable activity prior to disciplining the child.

(k) Less restrictive, positive behavior management techniques shall be employed before using time out.

(l) Time-out may be used to intervene with a child whose behavior is disruptive to the group or hurtful to other children and who does not respond to caregiver redirection or guidance.

1. Time-out shall be reasonable and developmentally appropriate and shall not include restraint or seclusion.

2. Time-out shall take place in an appropriate location within sight of the caregiver.

3. Restraining devices such as high chairs, cribs, or car seats shall not be used for time-out.

4. 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 no child under thirty-six (36) months shall be placed in time out.
  5. Teacher/caregivers are required to have documented training in all appropriate behavior management techniques prior to use.
- (7) Physical Care -Toileting.
- (a) Toilet learning shall be done in cooperation with the parents, and communication with parents shall be maintained throughout the process.
  - (b) Toilet learning shall not be started until a child is able to understand, to demonstrate some degree of bodily control, 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 at a time.
  - (d) Children who are toilet learning shall be cleaned or assisted as needed in a safe, sanitary manner.
  - (e) The rule in subparagraph (b) shall not be applicable to drop-in centers.
- (8) Educational Activities.
- (a) Activities shall be intentionally based upon 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, math, literature, dramatic play, science, and health.
  - (c) Staff shall plan ahead for developmentally appropriate activities.
  - (d) Indoor physical activities, requiring children to use both large and small muscles, shall be provided for children of each age group, including floor time that incorporates tummy time for infants.
  - (e) For infants and toddlers, a portion of the day shall include floor time for activities that develop physical, social, language and cognitive skills.
  - (f) In order to foster receptive and expressive language skills, caregivers shall listen to and respond verbally to infants and toddlers throughout the day.
  - (g) The requirements in this paragraph (7) are not applicable to drop-in centers.
- (9) Personal Safety Curriculum Components and Guidelines.
- (a) For ages three (3) years through school-age, a curriculum shall be offered that shall include instruction, at least once a year, in personal safety.

- (b) 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.
- (c) 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.
- (d) 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 (8) 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 (8) 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 (d).
- (e) 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 shall 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.
- (f) 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.
- (g) 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.
- (h) Specific requirements for drop-in centers are described in rule 1240-04-01-.25.

- (10) Extended Care. Agencies providing nighttime care shall meet the following additional requirements:
- (a) Quiet, calming activities shall be provided preceding bedtime, such as reading or 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/guardians for maintaining children's routines such as toothbrushing, bath time, and bedtime rituals. The requirement in this subparagraph (b) is not applicable to drop-in centers.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-1-105(5); 71-3-501 et seq.; 71-3-502(a)(2).

1240-04-01-.17 Physical Facilities.

- (1) Inspections and Compliance with Fire, Health and Safety Standards.
  - (a) All facilities in which a child care agency operates shall annually pass an inspection verifying compliance with all applicable state and local fire and environmental requirements.
  - (b) In addition to meeting the requirements set forth in subparagraph (a) above, each child care agency shall pass inspection by the State Fire Marshal's Division of the Tennessee Department of Commerce and Insurance and the Food and General Sanitation Division of the Tennessee Department of Health. These inspection requirements shall apply to:
    - 1. Facilities that are currently applying for a license;
    - 2. Facilities that have not previously been approved by the State Fire Marshal;
    - 3. Facilities that have relocated; and/or
    - 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) 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.

- (5) 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 rule 1240-04-01-.16(4).

- (6) Telephones and Other Communication Devices.

At least one (1) working, corded land-line telephone shall be available at the agency.

- (7) 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 any one time.

- (b) Agencies Initially Licensed After January 1, 2002: The outdoor play area must be enclosed by a fence or barrier 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 barrier poses no apparent or potential risk to children.

- (c) The areas where children play or are cared for shall be properly maintained:

1. A pre-play/care inspection of the outdoor play area shall be completed by the agency each time, before the children play outdoors.
2. The play/care areas shall be free of hazardous items or materials unless those items/materials are stored adequately to protect children and the items/materials are inaccessible to children.
3. These play/care areas shall otherwise present no conditions which may be hazardous to children.
4. All such play/care areas shall be free of all animal wastes.

- (8) Equipment Hazards.

- (a) Cords on window blinds shall be inaccessible to children.

- (b) Electrical cords on equipment shall be inaccessible to the 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.

- (9) 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 available to all children upon request throughout the day.
- (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 Division of Ground Water Protection – Department of Environment and Conservation 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 plumbing that is in disrepair.
  2. All outside doors and windows of the licensed space shall be screened and operable.
  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 sixty-eight degrees to seventy-eight degrees Fahrenheit (68°F to 78°F) by means of heating, cooling or ventilation sources approved for use.
  5. Stoves, hot radiators, steam and hot water pipes, fans, or other potentially hazardous items shall be adequately protected by screens, guards, insulation, or other suitable measures that will prevent children from coming in contact with them.
  6. The use of unvented fuel burning heaters is prohibited.
  7. The use of portable heaters must be approved by the local fire authority or the State Fire Marshal's office.
  8. The building and grounds shall be kept free of broken glass, trash and debris.
  9. Building and grounds shall be kept free of unprotected ponds, wells, cisterns, unused refrigerators and similar hazards.
  10. Swimming pools shall be fenced to prevent entry of children without adult supervision. Swimming is prohibited in Drop-In Care.
  11. Swimming pools and/or wading pools shall not be used without prior approval by the local health department. Swimming is prohibited in Drop-In Care.

12. Grounds, tire swings and containers shall have adequate drainage to prevent standing water that can breed mosquitoes and other insects.
13. Animals shall be kept away from all food storage and preparation or service area.
14. Reptiles and amphibians shall not be kept as pets due to the risk of Salmonella.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-1-105(12); 71-3-501 et seq.

1240-04-01-.18 Care of Children with Special Needs.

- (1) When children with special needs 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/guardians or other appropriate individuals identified by the parent/guardian 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) Specialized services
  - (a) The agency shall inform parents/guardians 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/guardian of such services.
  - (b) The provision of specialized services, such as speech/hearing therapy, physical therapy, psychological evaluation, or services for the intellectually or developmentally disabled, either directly or by referral, shall be conducted only by individuals who hold the appropriate license or certification and with written permission by the parent/guardian 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 in child's record.
  - (c) The requirements in this paragraph (5) are not applicable to drop-in centers.
- (6) Emergency Plans.
  - (a) The agency shall have written individualized emergency plans for each child with special needs, who requires more assistance in emergencies than other children of the same age or in the same group.
  - (b) The agency shall maintain documentation that the Emergency Plan is practiced monthly.

- (7) 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 shared with the parents/guardians daily, and shall be documented whenever a child has had more than one caregiver in a day. The requirements in this paragraph (7) are not applicable to drop-in centers.
- (8) Diapering of School-age Children with special needs shall be completed as required by 1240-04-01-.13(15).
- (9) Physical Restraint. In order to avoid an extremely high risk of physical injury or death for children subject to this rule 1240-04-01-.18, the child care agency shall not use physical restraint, as defined by rule 1240-04-01-.02(60), 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;
  3. Physically removing the child to another 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/guardian after physical restraint is administered; and
  6. Policies and procedures for insuring compliance with all other requirements contained within this paragraph (9).

- (c) The agency shall maintain in the child's health record required by 1240-04-03-.09 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/guardian, that the possible use of physical restraint has been discussed and explained in detail with the parent/guardian at the time their child is enrolled in the agency.
- (e) Physical restraint shall only be administered by staff members who have completed training recognized by the Department on the appropriate use 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 1240-04-01-.09.
- (f) In order to ensure 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 (2<sup>nd</sup>) trained staff member is available on the premises to assist.
  - 1. The second (2<sup>nd</sup>) trained staff member shall be called immediately upon the determination being made that physical restraint will be necessary.
  - 2. Untrained staff are prohibited from assisting in any manner whatsoever in the administration of the physical restraint.
  - 3. Untrained staff shall monitor a restrained child for any warning sign of distress.
  - 4. At any sign of distress, the restraint shall be immediately discontinued.
- (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) The agency shall notify a parent/guardian promptly following every use of restraint, and in no case shall this notification be later than the end of the day the restraint occurred.
- (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/guardian 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 members who interacted with the child in any manner whatsoever during this time period and the nature of their interaction.
- (j) The agency shall ensure that, in the event a child requires physical restraint three times or more within a two week period, that the Department is notified and that the behavior plan in place for the child is promptly reviewed by agency management.
- (k) Group-wide use of physical restraint is prohibited.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-1-105(5); 71-3-501 et seq.; 71-3-502(a)(2).

1240-04-01-.19 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 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, "2011 small white school bus";
  3. Describing any contracts, agreements or arrangements with any third (3<sup>rd</sup>) 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 performs 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 agency's policy, procedures and staff training plans for the emergency evacuation of the vehicle.

- (b) Agencies shall not transport children until or unless the agency's transportation plan has been approved in writing by the Department.
- (c) Unless specifically noted otherwise within the context of the rule, the agency is fully responsible for compliance with all transportation provisions of this chapter, regardless of whether the agency provides transportation directly, through a third party by contract or otherwise.
- (d) 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 on field trips on any vehicle which it operates, for which it contracts or which is otherwise under its direction or control.
- (e) The agency shall maintain responsibility for all children until the children are signed out by the authorized individual. Thus, any care or transportation provided for children prior to their being released to the parent/guardian shall be in compliance with all licensure rules regardless of the hours.
- (f) Any transportation that is provided by child care staff of children to or from the agency for the purpose of child care shall be defined as transportation for the purpose of this rule.
- (g) Exception to (e) and (f) for field trips.
  1. Agencies that are not licensed to transport on a regular basis may provide transportation for up to four (4) field trips per calendar year.
  2. Drivers for these four (4) field trips shall comply with driving regulations that apply to all drivers in Tennessee:
    - (i) Proof of at least a valid Class D drivers license;
    - (ii) Proof of insurance required by Tennessee law;
    - (iii) Vehicle must have, and use, age appropriate restraints for all adults and children being transported; and
    - (iv) Be at least eighteen (18) years old.
  3. All rules regarding monitoring of children apply, except for the requirement of the vehicle to have a monitoring device.
  4. Vehicle capacity and cargo rules shall be followed during these four (4) field trips.
  5. Vehicles utilized for these four (4) field trips, which are designed to carry ten (10) or more passengers but which do not conform to all Federal Motor Vehicle Safety Standards (FMVSS) governing either "large" school buses or "small" school buses are prohibited.
  6. Vehicles utilized for these four (4) field trips are not required to have signage required by 1240-04-01-.19(7).
  7. Hazardous Temperatures.

- (i) Staff shall consider the special needs of individual children when determining if children can be transported safely during extreme temperatures.
    - (ii) Agency staff shall monitor the interior temperature of a vehicle when transporting children during extreme weather conditions, to ensure child safety.
  - (h) 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 1240-04-01-.06(5).
- (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 twenty (20) or more children ages five (5) years of age and older.
    - 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 (permanent or temporary) 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 that, to the maximum extent possible, allows with minimal repositioning:
      - (i) Each child to be seen;
      - (ii) Each child to be heard;
      - (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, as, 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.
  4. Passenger logs shall be maintained for one (1) year.
- (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/guardian or other authorized person will also initial 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 log shall be updated by the designated staff member by:
    - (i) Recording the time the child was released; and
    - (ii) Initialing the individual's name next to the time of release.
  2. When the child is released to a parent/guardian 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 after Each Trip
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 final reviewer if no monitor is required.
  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 final reviewer as set forth below.
3. Final Reviewer Responsibilities:
- (i) Agency management shall designate an additional person who did not ride on the vehicle, as a final reviewer to conduct an inspection once the vehicle has been unloaded.
  - (ii) The final 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 the agency;
    - (IV) Sign the passenger log with the final reviewer's full name; and
    - (V) Immediately notify the director or other individual designated in charge of any discrepancies between the passenger log and the attendance roll.
4. Additional Responsibilities for a family or group home with a single caregiver:
- (i) The caregiver shall designate an additional adult, the final reviewer, who did not ride on the vehicle, to conduct an inspection once the vehicle has been unloaded.
  - (ii) The final reviewer shall:
    - (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; and
    - (III) Reconcile the passenger log with the agency's attendance roll to verify that each child is off the vehicle and present. 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 caregiver 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 officially open with staff present to receive them;
  - (iii) When possible, 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) Follow 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.
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 rule.
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;
  - (ii) Ensures 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 agency for the final I review that confirms every child is off the vehicle, the agency 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/guardian.

(4) Transportation Staff Qualifications.

(a) Driver Qualification and Exceptions.

1. Except as provided in part 2, 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 chapter.

2. Drivers providing transportation for up to four (4) field trips per year are only subject to the qualifications in (1)(g)2 above.
- (b) Documentation of all transportation staff qualifications shall be kept on file at the agency and be 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 possess a current, valid Tennessee driver license with an "F" ("For Hire") endorsement, or an equivalent license and endorsement from the state of residence (if not Tennessee) and recognized by the Department of Safety as meeting the minimum qualifications for transportation of children enrolled in the child care agency in the applicable type of vehicle in which the children are being transported.
  - (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 (4) 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, if, for compensation, they will:
    - (i) Be employed, or, if currently employed, will be assigned at any time, by the agency in a full or part-time capacity to provide transportation services for children enrolled in the agency; or
    - (ii) Provide transportation services in a full or part-time capacity on behalf of the agency under contract as an individual or through another entity, or who provide or may provide transportation services for compensation under any other arrangement,
  2. The drug screening test shall be completed no later than ten (10) days prior to the date an individual in part 1 begins providing transportation services for children enrolled in the agency.
  3. The drug test shall screen for at a minimum the standard panel.

4. The child care agency management shall immediately review the results of the drug screen upon receipt.
  5. Upon receipt of a positive drug screen result for the individual being considered for, or assigned driving duties, or upon receipt of notification of a positive drug screen result 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 any 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.
  6. 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.
  7. If, based upon reasonable cause, the Department determines that an individual engaged in driving duties for the agency that involve transportation of children is suspected of illegal or improper drug use, it may require that individual to have a drug screening test if necessary to determine the individual's capacity to safely perform any driving duties. If the results are positive for illegal drug use, such person shall be subject to a safety plan that excludes the individual from driving duties 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.
- (g) Required Transportation Training.

Prior to assuming their duties, and no less often than every six months thereafter, all persons responsible, or who may in the course of their duties become responsible at any time for transporting children (including drivers, monitors and final reviewers) shall complete Department-recognized training in:

1. All Department transportation rules;
2. The proper daily safety inspection of the vehicle as required by these rules;
3. The proper use of child safety restraints required by these rules and state law;
4. The proper loading, unloading, and tracking of children as required by these rules;
5. The proper use of a blood borne pathogen kit, first aid kit, and other required vehicle emergency equipment as required by these rules;

6. The proper verification procedures for the evacuation of the vehicle based upon the type of vehicle and the ages of the children served; and
  7. The developmentally appropriate practices applicable to the behavior management of children during transportation.
- (h) Emergency Aid Training. All persons responsible (including all drivers and monitors), or who in the course of their duties become responsible at any time, for the transportation of children shall hold current certification in:
1. Infant/Child Cardiopulmonary Resuscitation (CPR) or equivalent 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.
- (i) The training requirements set forth in this paragraph do not apply to volunteers who provide transportation services exclusively for no more than four (4) occasional field trips per year. The agency shall ensure that volunteers meet the requirements described in (1)(g)2 above, and that any individuals who do not appear to be capable of driving for any reason, including, but not limited to, the use of alcohol or drugs, are not permitted to provide transportation for field trips.
- (4) Driver Safety.
- (a) Drivers shall obey all traffic laws and rules.
  - (b) Drivers shall not use cell phones or texting devices while driving. Should such communication become necessary, the driver shall first park the vehicle off the road in a safe location.
  - (c) The driver shall remain on the vehicle whenever there is a child on the vehicle.
- (5) 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 – a pressurized UL approved dry chemical extinguisher with a minimum rating of 2A:10BC, equipped with a pressure gauge which indicates that the extinguisher is sufficiently charged;
    2. Emergency reflective triangles;
    3. First aid kit;
    4. Seat-belt cutter or similar device manufactured and designed to immediately release the vehicle's child restraint system(s) in an emergency;

5. Blood-borne pathogenic clean-up kit; and
  6. Working flashlight.
- (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 drills shall be conducted quarterly.
- (e) The carrying, possession or storage of firearms or other weapons in vehicles used for the transportation of children is prohibited.
- (f) The child care agency shall maintain documentation that the following daily inspections have been performed and any necessary repairs 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 tail lights (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 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 of the vehicle used for the transportation of children has been performed:
1. The vehicle has received regular inspections and maintenance by a certified mechanic in accordance with the maintenance schedule recommended by the vehicle manufacturer, and
  2. That the following vehicle equipment is verified by a certified mechanic as having been 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.
- (h) Vehicle Safety Standards.
  - 1. All Vehicles utilized by a child care agency which are designed to carry ten (10) or more passengers shall conform to all Federal Motor Vehicle Safety Standards (FMVSS) governing either "large" school buses or "small" school buses.
  - 2. Custom/conversion vans that are built on the same chassis/frame as the twelve (12) and fifteen (15) passenger vans are prohibited, even if the conversion company configured the vehicles to carry less than ten (10) passengers.
- (i) Department of Safety Inspections.
  - 1. All child care vehicles that are designed by the vehicle manufacturer to carry ten (10) or more passengers must be inspected annually by the Department of Safety.
  - 2. Any necessary maintenance or repair to the vehicles noted by the Department of Safety inspections shall be the sole responsibility of the child care agency.
- (j) Vehicles that do not pass the inspections required in this subparagraph (h) or (i) shall not 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.
- (k) Capacity Limitations and Cargo Requirements.
  - 1. 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.
  - 2. 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.
- (6) Passenger Safety Restraints.
  - (a) The provisions of this paragraph (6) 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 that has been factory-installed or professionally retrofitted.
    - 1. The rear seat must have factory-installed or professionally retrofitted passenger restraint anchorages and passenger restraints as required by the provisions of this paragraph (6) for the age and size of the driver/passengers being transported and the type of vehicle being used.
    - 2. 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 (6), a "rear seat" in any vehicle which is categorized as a "school bus" shall mean any passenger seat located behind the bus driver or behind the bus entrance which is directly to the right of the bus driver that has been factory-installed or professionally retrofitted.
- (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 (6) applicable to any vehicles manufactured before September 1, 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 (6) 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 T.C.A. §§ 55-9-601—55-9-603 and any applicable federal law or regulation.

(j) Adult Restraint Requirements.

1. All vehicles shall be equipped with seat restraints that conform to state and federal law and are installed according to manufacturer's instructions.

(7) 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 name of the child care agency and emergency contact phone number for the agency; and
2. The words "Child Care Transportation Complaints" followed by the Department's toll-free Child Care Complaint phone number.

(c) On the rear of the vehicle the following information shall be displayed:

1. The 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.
2. Exception: Display of the Complaint number is not required on passenger automobiles (excluding minivans & SUV's) used for transportation by the child care agency with a manufacturer's rated seating capacity of six (6) or fewer passengers.

(d) 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, language 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 the allowed four (4) occasional field trips as defined in (1)(g)1, above.
  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 (7) if circumstances clearly warrant such an exemption.
- (8) Limits on Time Children Are Transported/Transportation Waivers.
- (a) No individual child shall spend more than forty-five (45) minutes traveling one way; 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 shall be established and signed by the parent/guardian and the child care agency and approved by the Department prior to providing such transportation.
- (9) Hazardous Temperatures
- (a) Staff shall consider the special needs of individual children when determining if children can be transported safely during extreme temperatures.
  - (b) Agency staff shall monitor the interior temperature of a vehicle when transporting children during extreme weather conditions, to ensure child safety.
- (10) Transportation of children by drop-in centers is prohibited, and, therefore, the requirements in this rule 1240-04-01-.19 are not applicable to those agencies.

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.

1240-04-01-.20 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.
  - (a) In order for a child care agency to offer extended care services, the Department must issue a license bearing a notation that the agency is authorized to provide extended care services.
  - (b) An agency may not offer extended care services until its license bears such notation.
- (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 1240-04-01-.02(38);

- (b) Fire drill requirements contained in rule 1240-04-01-.06, Ownership, Organization, and Administration, part (13)(b)1;
  - (c) Adult Child Ratios;
    - 1. Specific Requirements for Family Child Care Homes 1240-04-01-.23(2);
    - 2. Specific Requirements for Group Child Care Homes 1240-04-01-.24(2);
    - 3. Specific Requirements for Child Care Centers 1240-04-01-.25(2);
  - (d) Program 1240-04-01-.16;
    - 1. Developmentally Appropriate Activities, paragraph (1);
    - 2. Reclining Rest Period, paragraph (4); and
    - 3. Extended Care, paragraph (10);
  - (e) Health and Safety, 1240-04-01-.13;
    - 1. First Aid, paragraph (10);
    - 2. CPR, paragraph (11); and
  - (f) Food, 1240-04-01-.14.
- (3) The requirements in this rule 1240-04-01-.20 are not applicable to drop-in centers because the license for a drop-in center does not require a notation in order to provide care during extended care hours.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-1-105(5); 71-3-501 et seq.; 71-3-502(a)(2).

1240-04-01-.21 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 rule 1240-04-01-.21. Any conflict between the provisions of rule 1240-04-01-.21 and rules 1240-04-01-.01 through 1240-04-01-.20, inclusive, shall be resolved by reference to the requirements contained in this rule 1240-04-01-.21.
- (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 parent/guardians/family;

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 1240-04-01-.06;
  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/guardian 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 and approved 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.
  - (c) The consulting physician or nurse must 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 one hundred one to one hundred two degrees Fahrenheit (101°F—102°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 one hundred three degrees Fahrenheit (103°F) and unresponsive to medication;
  2. Neck pain or stiffness;
  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 A, 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/guardian and shall be verified by the parent/guardian'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 parent/guardians, child's and parent/guardians' home addresses, parent/guardians' business addresses, home and work phone numbers, work hours, medical history, and the name and address for the home and business or school, of a responsible person to contact in an emergency if parent/guardian cannot be located promptly. This information shall be updated annually, or as changes occur;
2. Name, address, and telephone number of a physician to call in case of an emergency;
3. Written consent of parent/guardian 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. Tennessee Department of Health Official Immunization Certificate; 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(2) 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 infant/child CPR or equivalent 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 hand washing, 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;
  - 4. Recognition and documentation of illness signs and symptoms;
  - 5. Proper temperature monitoring methods;
  - 6. Nutrition for ill children;
  - 7. Communication with parent/guardians 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 1240-04-01-.11.
  - 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 safe sleep requirements set forth in 1240-04-01-.12.
- (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 safe sleep requirements set forth in 1240-04-01-.12.

(7) Grouping of Adults and Children.

- (a) If allowable by licensed capacity, the adult:child ratios and maximum group sizes shall never exceed those contained in the following charts and shall be maintained at all times.

Chart 1: Children six (6) weeks 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

- (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.
  - (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 agency shall remain there throughout the day and shall not be permitted to return to any other part of the child care agency or to any other child care agency.
  - (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 hand washing 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 hand washing 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 with a sanitizing solution appropriate for general cleaning daily and as needed.
  - (b) Separate rest equipment shall be available to each child in attendance.
- (9) Program.
- (a) The licensee 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.
- (b) Outdoor play is prohibited.
- (c) Transportation 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 Epi-Pens, may be kept in an unlocked location which is inaccessible to children.
- (10) Infection Control.
- (a) For children in sick care only disposable diapers shall be used for children using diapers.
  - (b) Diapering practices outlined in 1240-04-01-.13(15) 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, and 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 and shall be returned to the parent/guardian at the end of each day.

(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. Staff and children may enter and exit the sick care facility through the non-sick care facility, but shall not enter or exit through a designated contagious room.
- (c) Rooms shall be separated by a floor to ceiling wall or separate structure.
- (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 hand washing facilities, separate toys and equipment, and a separate ventilation/air system.

- (12) Drop-in centers are prohibited from providing sick child care as defined 1240-04-03-.02(72) and, therefore, the requirements of this rule 1240-04-03-.21 are not applicable to drop-in centers.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-1-105(5); 71-3-501 et seq.; 71-3-502(a)(2).

1240-04-01-.22 Specific Requirements for Family Child Care Homes.

(1) Required Adult: Child Ratios.

(a) Adult: child ratios in this subparagraph shall be maintained by the child care agency while the children are on the premises of the child care agency, including outdoors or on the playground. Under no circumstance may a child care family home exceed licensed capacity.

(b) Adult: Child Ratio Requirements for Family Child Care Homes.

1. No more than seven (7) children who are not related to the primary caregiver may be under the care of the family child care home at any one time; 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. Children related to the primary caregiver nine (9) years of age or older may interact with children in the licensed family child care home provided that the required level of care is not compromised.
2. One caregiver in a family child care home may provide care for no more than seven (7) children, including any children under the age of nine (9) who are related to the primary caregiver.
3. The total number of children present, including children under the age of nine (9) years of age who are related to the primary caregiver shall not exceed twelve (12) and shall require two (2) or more caregivers.
4. The number of caregivers in a family child care home required to supervise children enrolled in the home shall comply with one of the options listed on the chart below.
5. If any child's physical, mental or developmental needs require 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).

(c) Family Child Care Home Ratios and Group Size Chart:

If there is/are:	But no more than:	And the number of children who are under the age of two (2) is:	Then, the number of required caregivers is:
One (1) child unrelated to the primary caregiver	Seven (7) children total, including children under age nine (9) related to the primary caregiver	No more than four (4)	One (1)
One (1) child	Seven (7) children	More than four (4)	Two (2)

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unrelated to the primary caregiver	total, including children under age nine (9) related to the primary caregiver		
Seven (7) children, including children related to the primary caregiver who are under age nine (9)	Twelve (12) children, no more than five (5) of whom may be related to the primary caregiver who are under age nine (9)	No more than four (4)	Two (2)
Seven (7) children, including children related to the primary caregiver who are under age nine (9)	Twelve (12) children, no more than five (5) of whom may be related to the primary caregiver who are under age nine (9)	More than four (4)	Three (3)

(d) Naptime Supervision and Requirements for Naptime and Nighttime Care.

1. If there is a sleeping or resting child, there shall be at least one (1) adult awake and supervising a child.
  - (i) The caregiver shall be able to hear the child at all times, shall be able to see the child with a quick glance, and shall be able to physically respond immediately.
  - (ii) Helper devices such as mirrors, electronic sound monitors, etc. may be used as appropriate to meet these requirements.
2. Adult:child ratios shall be maintained.

(2) Primary Caregiver Qualifications for Family Child Care Homes.

- (a) Prior to issuance of a license, the primary caregiver in a single-site home and all primary caregivers in a system shall be eighteen (18) years of age or older.
- (b) Primary caregivers employed by a family child care home which receives an initial license on or after the effective date of these rules shall be required to have earned a high school diploma or equivalent educational credential as recognized by state law.
- (c) The primary caregiver shall complete a Department-sponsored child-care informational intake meeting and an orientation session that is at least four (4) hours in length as specified in 1240-04-01-.03 within six (6) months prior to a license being issued.
- (d) A primary caregiver shall annually complete training in child care or a related field which is recognized by the Department:
  1. Family Child Care Home. A primary caregiver in a family child care home shall annually complete at least eight (8) hours of workshops or other training in child care or a related field.

- (i) After the first year, 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, etc.
  - (ii) Training in First Aid and CPR may be counted as necessary to maintain current certification as required by 1240-04-01-.13.
- 2. Credit for TECTA Orientation Training. Completion of a thirty (30) hour orientation class through the TECTA program shall satisfy the Primary Caregiver's minimum annual training requirements for two (2) years.
- (e) Owners who are employed elsewhere must ensure that a qualified primary caregiver is always on site.
- (f) Because the primary caregiver has the daily responsibility for the care of children and for oversight of the program, he/she shall not be employed outside the child care home during hours of operation, except in an official capacity in a program sponsored or recognized by the Department.
- (g) A qualified substitute, as determined by the Department, shall be on-site in the child care home at any time that the primary caregiver is not on-site during child care operating hours.
- (3) Caregiver Qualifications for Family Child Care Homes.
  - (a) All caregivers responsible for a group of children shall be at least eighteen (18) years of age.
  - (b) An individual who is sixteen (16) or seventeen (17) years old may assist a caregiver and be counted as an adult in the adult:child ratio if the individual is:
    - 1. Never left alone with children; and
    - 2. Always under the direct supervision of an adult caregiver.
  - (c) All caregivers shall have a minimum of two (2) hours pre-service training as recognized by the Department, in addition to other required training in specific subject areas.
    - 1. A caregiver is required to have six (6) hours training annually as recognized by the Department.
    - 2. After the first year, 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, etc.
      - (i) Training in First Aid and CPR may be counted as necessary to maintain current certification as required by 1240-04-01-.13.
- (4) All staff responsible for food service, preparation, or supervision shall be trained on the food service plan as described in 1240-04-01-.14(6).
- (5) Naptime Sleeping Procedures.

In order to avoid the spread of airborne diseases children shall be positioned on mats in a face to feet alternating pattern, unless they are separated by an appropriate solid barrier.

(6) 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 footage requirements set forth in this paragraph; provided, however, that the Department may, in its discretion, restrict the agency's licensed capacity below the maximum set forth in these rules.
- (b) If the number of children (including "related" children) exceeds seven (7) at one time or the care is confined to one room of the home, the living area of the home shall provide thirty (30) square feet per child of usable play space.
- (c) 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 in determining the agency's licensed capacity.
- (d) Adequate Plumbing Facilities. The agency shall have the minimum number of functional toilets and hand washing sinks 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.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-1-105(5); 71-3-501 et seq.; 71-3-502(a)(2).

1240-04-01-.23 Specific Requirements for Group Child Care Homes.

(1) Required Adult: Child Ratios.

- (a) Adult: child ratios in this subparagraph shall be maintained by the group child care home while the children are on the premises of the group child care home, including outdoors or on the playground.
- (b) Adult: Child Ratio Requirements for Group Child Care Homes.
  - 1. 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. Children related to the primary caregiver who are nine (9) years of age or older may interact with the children in the licensed group child care home provided that the required level of

care is not compromised.

2. Adult: child ratios and group sizes in group child care homes may exceed the limits set by Department rules by the addition of one (1) child over the age of three (3) no more frequently than three (3) days per week.
  - (i) Infant and toddler groups may never exceed the required ratios and group sizes.
  - (ii) The Department may terminate the variance in individual cases under provisions for issuance of a restricted license pursuant to T. C A. § 71-3-502.
  - (iii) Group Child Care Home providers who use the variance may be required to obtain fire approval for additional children.
  - (iv) Regardless of the variances permitted under this part 2, under no circumstance may a family group home exceed its licensed capacity.
3. The number of caregivers required in a group child care home is dependent upon the number and ages of the children in attendance, and shall comply with one of the options listed on the Chart below.
4. If any child's physical, mental or developmental needs require 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).
5. All children, including related children younger than age nine (9), shall be counted in the ratio and group size and shall have required records on file before care is provided. Exception: Children related to the primary caregiver nine (9) years and older if those children are provided a separate space from that occupied by the group child care home.
6. If enrollment drops to seven (7) or fewer children, family day care home ratios shall be met.

(c) Group Home Ratio and Group Size Chart:

If there is:	But no more than:	And the number of children who are under the age of three (3) is:	And the number of children who are under the age of two (2) is:	Then the number of required caregivers is:
One (1) child unrelated to the primary caregiver	Fifteen (15) children total	Zero (0)	Zero (0)	One (1)
One (1) child unrelated to the primary caregiver	Fifteen (15) children total	One (1) child, but no more than nine (9)	No More than four (4)	Two (2)
One (1) child unrelated to the primary caregiver	Fifteen (15) children total	Ten (10 or more, or	More than four (4)	Three (3)

1. An additional caregiver is required under the following circumstances:
    - (i) When any child's physical, mental or developmental needs require special care;
    - (ii) If the number of children under nine (9) years of age living in the home increases the group size; or
    - (iii) When a field trip is taken off the premises.
  2. If more than twelve (12) children are enrolled, the additional children shall be of school age and a school age program shall be provided.
  3. If four (4) or more infants/toddlers attend a group child care home, then the toddler/infant group shall have a separate and distinct space and their own caregiver for their safety and security and for infection control.
  4. Groups of children may be mixed on occasion for special programs, activities, or events. Groups of children may not be mixed as part of the regular routine or operation.
  5. Barriers shall be sufficient to provide separation without isolating children.
- (d) Naptime Supervision and Requirements for Naptime and Nighttime Care.
1. If there is a sleeping or resting child, there shall be at least one (1) adult awake and supervising a child.
    - (i) The caregiver shall be able to hear the child at all times, shall be able to see the child with a quick glance, and shall be able to physically respond immediately.
    - (ii) Helper devices such as mirrors, electronic sound monitors, etc. may be used as appropriate to meet these requirements.
  2. Adult: child ratios shall be maintained.
- (2) Primary Caregiver Qualifications for Group Child Care Homes.
- (a) Prior to issuance of a license, the primary caregiver in a single-site home and all primary caregivers in a system shall be eighteen (18) years of age or older.
  - (b) Primary caregivers employed by a group child care home shall be required to have earned a high school diploma or equivalent educational credential as recognized by state law.
  - (c) The primary caregiver shall complete a Department-sponsored child-care informational intake meeting and an orientation session that is at least four (4) hours in length as specified in 1240-04-01-.03 within six (6) months prior to a license being issued.
  - (d) A primary caregiver shall annually complete training in child care or a related field which is recognized by the Department:

1. Group Child Care Home. A primary caregiver in a group child care home shall annually complete at least ten (10) hours of workshops or other training in child care or a related field.
  - (i) After the first year, 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, etc.
  - (ii) Training in First Aid and CPR may be counted as necessary to maintain current certification as required by 1240-04-01-.13.
2. Credit for TECTA Orientation Training. Completion of a thirty (30) hour orientation class through the TECTA program shall satisfy the Primary Caregiver's minimum annual training requirements for two (2) years.
  - (e) Owners who are employed elsewhere must ensure that a qualified primary caregiver is always on site.
  - (f) Because the primary caregiver has the daily responsibility for the care of children and for oversight of the program, he/she shall not be employed outside the child care home during hours of operation, except in an official capacity in a program sponsored or recognized by the Department.
  - (g) A qualified substitute, as determined by the Department, shall be on-site in the child care home at any time that the primary caregiver is not on-site during child care operating hours.
- (3) Caregiver Qualifications for Group Child Care Homes.
  - (a) All caregivers responsible for a group of children shall be at least eighteen (18) years of age.
  - (b) An individual who is sixteen (16) or seventeen (17) years old may assist a caregiver and be counted in the ratio if the individual is:
    1. Never left alone with children; and
    2. Always under the direct supervision of an adult caregiver.
  - (c) All caregivers shall have a minimum of two (2) hours pre-service training as recognized by the Department, in addition to other required training in specific subject areas.
    1. A caregiver is required to have six (6) hours training annually as recognized by the Department.
    2. After the first year, 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, etc.
    3. Training in First Aid and CPR may be counted as necessary to maintain current certification as required by 1240-04-01-.13.
- (4) All staff responsible for food service, preparation, or supervision shall be trained on the food service plan as described in 1240-04-01-.14(6).

(5) Naptime Sleeping Procedures.

In order to avoid the spread of airborne diseases children shall be positioned on mats in a face to feet alternating pattern, unless they are separated by an appropriate solid barrier.

(6) 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, that 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 set forth in these rules.
- (b) A minimum of thirty (30) square feet of usable indoor play space must be provided for each child.
- (c) 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.
- (d) Adequate Plumbing Facilities. The agency shall have the minimum number of functional toilets and hand washing sinks 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.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-1-105(5); 71-3-501 et seq.; 71-3-502(a)(2).

1240-04-01-.24 Specific Requirements for Child Care Centers.

(1) Required Adult: Child Ratios.

- (a) Adult: child ratios in this paragraph shall be maintained by the child care agency while the children are on the premises of the child care agency, including outdoors or on the playground.
- (b) Adult: Child Ratio Requirements for Child Care Centers.
  - 1. Adult: child ratios and group sizes in child care centers may exceed requirements set by the rule of the Department of Human Services by up to ten percent (10%), rounded to the nearest whole number, no more frequently than three (3) days per week.
    - (i) Infant and toddler groups may never exceed the required ratios and group sizes.
    - (ii) The Department may terminate the variance in individual cases under provisions for issuance of a restricted license pursuant to T. C A. § 71-3-502.

(iii) Regardless of the variances permitted under this subparagraph (b), under no circumstance may a child care center exceed its licensed capacity.

(c) Child Care Ratio and Group Size Charts.

1. Chart 1 – Single Age Grouping.

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 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						
Three (3)–Five (5) years (includes Three (3)–Four (4) years)					1:13		
Four (4)–Five (5) years						1:16	

3. Chart 3 – Allowable Combined Grouping and 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	

(d) Assignment of Children to Groups.

1. Each child must be on roll in a defined group and assigned to that group with a specific caregiver(s).
  2. Maximum group size requirements as established in subparagraph (c) 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.
  3. When infants are cared for in an agency 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.
  4. Extended Care. Children age thirteen (13) months and older may be grouped together while sleeping in overnight care.
  5. In order to ensure 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:
    - (i) 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 sixty (60) minutes duration per day as long as adult: child ratios are met.
    - (ii) 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 (1)(c)3 above.
    - (iii) Groups may occasionally be mixed based upon a Department approved plan on holidays or low attendance days, excluding infant and toddler groups.
    - (v) Groups of children may never be mixed as part of the regular routine or operation.
- (e) Each group must have a "home base" with enough space for the entire group.
- (f) Child care centers shall provide written lesson plans for each group of children.
- (g) 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.
- (h) Naptime Supervision and Requirements for Naptime and Nighttime Care.
1. 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:
    - (i) At least one (1) adult shall be awake and supervising the children in each nap room/sleeping area;

- (ii) Infant/toddler ratios shall be maintained; and
    - (iii) 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.
  - 2. Maximum group size limits do not apply as long as the appropriate adult: child ratio is met at the fifty percent (50%) level.
- (2) Multi-Site Personnel Qualifications For Child Care Centers.
- (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. The on-site director under a multi-site coordinator shall have earned at least 18 credit hours of college course work, or shall have earned a Department-recognized credential and one (1) year of full-time (paid or unpaid) documented work experience with children in a group setting; or
    - 2. A high school diploma or equivalent educational credential recognized by state law, in addition to at least two (2) years of full-time (paid or unpaid) documented work experience with children in a group setting.
- (3) 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 with children in a group setting. If an RN, one (1) year of full-time (paid or unpaid) experience in a nursing home setting.
Thirty-six (36) credit hours of college coursework, with at least thirty (30) hours of which shall be in business or management, child or youth development, early childhood education or closely related field.	Two (2) years of full-time (paid or unpaid) experience with children in a group setting.
High School Diploma (or equivalent as recognized by state law ), and Tennessee Early Childhood Training Alliance (TECTA) certificate for completing thirty (30) clock hours of the Administrator Orientation training, or the equivalent as recognized by the Department.	Four (4) years of full-time (paid or unpaid) experience with children in a group setting.
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. Within six (6) months 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 informational intake meeting 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 the position;
  - (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 (1<sup>st</sup>) 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.
  - (II) Four (4) hours of the required eighteen (18) hours may be earned by conducting training.
  - (III) This training shall be in addition to other required training in specific subject areas such as Child and Adult Care Food Program (CACFP) and personal safety.
  - (IV) Training in First Aid and CPR may be counted as necessary to maintain current certification as required by 1240-04-01-.13.
- (4) Assistant Director Qualifications for Child Care Centers.
- (a) The on-site assistant director shall have completed at least 18 credit hours of college course work or shall have earned a Department-recognized credential and one (1) year of full-time (paid or unpaid) documented work experience with children in a group setting; or
  - (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 with children in a group setting.
  - (c) Initial Training
    - 1. During the first three (3) months of employment a new assistant director shall:
      - (i) Complete an orientation course sponsored by the Department within three (3) months of assuming the position; provided, however, that this course shall not be required if the assistant director has:
      - (ii) Received specific training meeting the requirements of this part within three (3) years prior to assuming the assistant director position, or
      - (iii) Earned a bachelor's degree, an associate's degree in child development or early childhood education, a CDA credential, or a CCP credential.
    - 2. During the first year of employment a new assistant director shall:
      - (i) Have evidence of receiving at least twenty-eight (28) clock hours of Department-recognized, competency-based training, at least six (6) hours of which must be in administration, management or supervisory training; or
      - (ii) Earn credit for the year in one (1) academic course (three (3) credit hours) in administration, child development, early childhood education, health/safety or other related field.
    - 3. After the first (1<sup>st</sup>) year of employment, the assistant director shall:

- (i) Earn credit during the year in one (1) academic course (three (3) credit hours) in administration, child development, early childhood education, health/safety or other related field; or
  - (ii) Have evidence of receiving at least sixteen (16) clock hours annually in Department-recognized workshops, competency-based training, or one-to-one consulting sessions:
    - (I) Four (4) hours of training shall be in administration, management or supervisory training.
    - (II) Two (2) hours of the required sixteen (16) hours may be earned by conducting training.
    - (III) This training shall be in addition to other required training in specific subject areas such as Child and Adult Care Food Program (CACFP) and personal safety training.
4. Training in First Aid and CPR may be counted as necessary to maintain current certification as required by 1240-04-01-.13
- (5) Caregiver Qualifications for Child Care Centers.
- (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 career and technical child care educational 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 (1<sup>st</sup>) Year of Employment.
    - 1. New caregivers shall complete two (2) clock hours of pre-service orientation training offered or recognized by the Department.
    - 2. New caregivers shall additionally complete sixteen (16) clock hours of Department-recognized, competency-based training within the first (1<sup>st</sup>) 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 six (6) clock hours of training within the first (1<sup>st</sup>) 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 (1<sup>st</sup>) 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) clock hours training credit annually may be credited for Child and Adult Care Food Program (CACFP) training.
  3. At least six (6) clock hours of the required training must be non-agency based, e.g., obtained from sources other than training resources developed within the center itself. Multi-location programs may conduct conference-like or pre-service events that meet the required training needs.
  4. Up to four (4) clock 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) clock hour orientation class through the TECTA program shall satisfy the caregiver's minimum annual training requirements for two (2) years.
  6. Beginning March 1, 2012:
    - (i) At least fifty percent (50%) of required training hours completed must be a "live" presentation format in a classroom, one-on-one or group Technical Assistance (TA) session, or similar "in person" setting;
    - (ii) The additional fifty percent (50%) of required total training hours can come from competency-based online, CD/DVD-ROM, video, self-study (including correspondence), in-house/director led training or any combination thereof. In-house training is defined as training provided by other agency staff, management, its larger agency or corporation, church or whatever governing body or ownership/management under which the agency operates; and
    - (iii) One hundred percent (100%) of the total training hours can come from Department-recognized college courses taken online.
  7. In order to give credit for hours completed, the training course must be recognized by the Department.
  8. After the first year, this training shall be in addition to other required training in specific subject areas such as Child and Adult Care Food Program (CACFP) and personal safety training,
  9. Training in First Aid and CPR may be counted as necessary to maintain current certification as required by 1240-04-01-.13
- (6) All staff responsible for food service, preparation, or supervision shall be trained on the food service plan as described in 1240-04-01-.14(6).
- (7) First Aid and CPR Infant/Toddler Classrooms.

- (a) In classrooms serving infants/toddlers, at least one caregiver who has current certification or equivalent in first aid from a certifying organization recognized by the Department shall be on duty at all times.
  - (b) In classrooms serving infants/toddlers, at least one caregiver on duty shall hold current certification in Infant/Child Cardiopulmonary Resuscitation (CPR) or equivalent from the American Red Cross, the American Heart Association, or other certifying organization, as recognized by the Department.
- (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, that 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 set forth in these rules.
  - (b) A minimum of thirty (30) square feet of usable indoor play space must be provided for each child.
  - (c) Each naproom must contain a minimum of thirty (30) square feet of floor space per child.
  - (d) Teen parenting career and technical education 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/career and technical education 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 functional toilets and hand washing sinks 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) Equipment for Children.

- (a) Individual lockers or cubbies, separate hooks and shelves or other containers, placed so that children may reach them, shall be provided for each child's belongings.
  - (b) Naptime Sleeping Procedures.
    - 1. Positioning of cots, cribs and sleeping mats.
      - (i) In order to avoid the spread of airborne diseases children shall be positioned on mats in a face to feet alternating pattern, unless they are separated by an appropriate solid barrier.
      - (ii) Cots, cribs, and mats shall be positioned at least eighteen inches (18") apart to allow an adult to walk between them.
- (10) 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.

(11) Meals and Snacks.

Any person responsible for preparing meals or snacks shall not be included in the adult: child ratio while preparing these meals or snacks or doing associated tasks such as washing dishes, etc.

(12) Schedules and Routines.

In instances where there is more than one caregiver, each caregiver shall be responsible for providing consistent care for specific infants and toddlers. 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.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-1-105(5); 71-3-501 et seq.; 71-3-502(a)(2).

1240-04-01-.25 Specific Requirements for Drop-In Child Care Centers.

- (1) Record Keeping. The following records shall be maintained in an organized manner at the drop-in center and made available to the Department upon request:
  - (a) A signed statement from the parent/guardian verifying that the child or children are in good health and current with immunizations; and

- (b) Written consent of the parent/guardian regarding emergency medical care including verification of any food or other allergies from the parent/guardian.
- (2) Admission of Children and Communication with Parents.
- (a) In addition to the record requirements of rule 1240-04-01-.09, before accepting a child for care, the parent/guardian shall provide a statement regarding the estimated amount of time that the parent/guardian anticipates that the child will be in attendance at the drop-in center.
  - (b) No child shall be accepted into child care in excess of the maximum allowable hours as set forth in T.C.A. § 71-3-501(8) and rule 1240-04-01-.02(35). Care for an individual child may not exceed seven (7) hours per day or fourteen (14) hours per week during regular working hours. Care may be provided during evenings and weekends so long as the drop-in center provides no more than a total of twenty (20) hours of care for an individual child per week, exclusive of snow days when the school of the affected child is closed
  - (c) 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.
- (3) Personal Safety Curriculum
- (a) The agency shall familiarize staff with the following required personal safety materials and be prepared to discuss them with parents:
    - 1. "Personal Safety Tips for Children and Their Parents"
    - 2. "Personal Safety Curriculum Notification Form for Drop In Child Care Providers"
  - (b) The agency shall provide parents of children ages three (3) and over with a copy of the above forms.
  - (c) The agency shall maintain a copy of the notification form signed by the parent or guardian on file at the agency.
- (4) Care of School-Age Children on Snow Days.
- (a) A drop-in center may not accept any school-age child for care on snow days 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 drop-in 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.

(5) Transportation.

Transportation that is under the direction or control of the drop-in center, including contracted transportation services, is prohibited.

(6) Staff Qualifications

(a) Director of a Drop-in Child Care Center.

1. The drop-in center shall have an on-site director, with the exception that 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.
2. The director shall have earned a high school diploma or its equivalent and one (1) year of full time documented work experience with children in a group setting.
3. 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.
4. 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.
5. 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.

(b) Caregivers.

1. Each caregiver who is used to meet the minimum required adult: child ratio must be at least eighteen (18) years of age.
2. At least one (1) caregiver who is present in the agency shall be able to read and write English.
3. Caregivers shall have evidence of receiving at least three (3) clock hours annually in Department-recognized training on basic health and safety precautions and the detection and reporting of child abuse and neglect.

4. New caregivers shall complete two (2) clock hours of pre-service orientation training offered or recognized by the Department.
- (7) Swimming. Swimming is prohibited.
- (8) Supervision and Grouping of Children.
  - (a) Age Categories and Adult: Child Ratios.
    1. Children shall be placed in age-appropriate groups and with adequate adult supervision as established in parts 2-4, below.
    2. Single-age Grouping.

Age	Adult: Child Ratio
Infant (6 weeks to 15 months)	1:4
Toddler (12 months to 30 months)	1:8
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:
    - (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 b. and c. 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 infants is as follows:

Majority Age	One Infant
Toddlers (12 to 30 months)	1:6
2 Years	1:8
3 Years	1:10
4 Years	1:15
5 Years (not in Kindergarten)	1:17
K and Above	1:19

4. When more than fourteen (14) children are present, children under two (2) years of age must have their own designated area.
- (9) Nutritional Needs.
- (a) A meal or a snack shall be available every three (3) hours according to a normal pattern as follows:
    1. Three (3) to five (5) hours: One (1) meal or snack; and
    2. Five (5) to six (6) hours: Two (2) meals or snacks.
  - (b) Extended Care: A child who is in care for extended or nighttime hours, meals and snacks will be offered in accordance with the child's hunger and the hours of attendance.
  - (c) Healthy, nutritional foods shall be provided. Foods that are high in sugar or fat and which have low nutritional value shall be avoided.
- (10) Naptime Sleeping Procedures.
- (a) In order to avoid the spread of airborne diseases children shall be positioned on mats in a face to feet alternating pattern, unless they are separated by an appropriate solid barrier.
  - (b) Cots, cribs, and mats shall be positioned at least eighteen inches (18) apart to allow an adult to walk between them.
- (11) Staff shall be aware of all child allergies and how to deal with any allergic reaction.
- (12) Staff shall review emergency preparedness procedures quarterly and physically walk through the evacuation procedures every six (6) months.

Authority: T.C.A. §§4-5-202, 71-3-501 et seq., and 71-3-502(a)(2).

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.



Date: 10-7-10

Signature: Nicole Armstrong

Name of Officer: Nicole Armstrong

Assistant General Counsel

Title of Officer: Tennessee Department of Human Services

Subscribed and sworn to before me on: October 7, 2010

Notary Public Signature: Regina D. Mitchell

My commission expires on: May 8, 2012

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Filed with the Department of State on: 10/7/10

Tre Hargett by Wm. Hart, Jr.

Tre Hargett  
Secretary of State

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