



**STATE OF TENNESSEE  
DEPARTMENT OF HUMAN SERVICES**

CITIZENS PLAZA BUILDING  
400 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243-1403

TELEPHONE: 615-313-4700 FAX: 615-741-4165  
TTY: 1-800-270-1349  
[www.state.tn.us/humanserv/](http://www.state.tn.us/humanserv/)

**PHIL BREDESEN**  
GOVERNOR

**VIRGINIA T. LODGE**  
COMMISSIONER

**MEMORANDUM**

TO: Licensed Child Care Providers  
FROM: Lois Barrett Luke, Director of Child and Adult Care Licensing  
CC: Child and Adult Care Licensing Staff  
Barbara West Wall, Director of Child Care Services  
DATE: April 28, 2009  
RE: Food Service Safety and Supervision Rules

The purpose of this memo is to clarify some vital points related to the monitoring and enforcement of food safety and supervision rules and to clarify some of the reasons why the Child Care Licensing and Assessment Units and all of our partners have been working so hard to raise awareness among providers statewide about the importance of supervision during meal and snack times.

Of primary note is the fact that there have been no changes to the Child Care Licensing Rules in the area of food safety or meal supervision. Likewise, there have been no changes in Department Policy regarding what should and should not be cited in this regard. Attached, please find a policy statement that clarifies the interpretation of various rules related to food safety and supervision.

In December 2008, a 23 month old child choked to death at a high quality center in our State. In the aftermath of this tragedy, our staff members have worked closely with our partners to explore ways in which we can work together to help providers prevent child deaths such as this one. We understand that it is impossible to prevent every tragedy, but we feel responsible for sharing what we have learned from events such as this to assist providers, to the extent possible, in reinforcing their own systems and practices from a preventive perspective.

It has been in the Center Rules for many years that an adult must be seated at the table with children while eating. It has also been Licensing practice for many years to cite instances when it is found that children are not adequately supervised during food service or at any time.

When a Licensing Program Evaluator notes inadequate food service safety or supervision, he or she documents this on their Monitoring Check Sheet. If a lapse in supervision is noted to occur during an assessment, the Assessment Program Evaluator will advise the director before leaving the site and will also advise Licensing upon return to their office.

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When the violation is in a high-risk area, such as in the areas of food safety or supervision, the Program Evaluator will ask the provider to supply a Plan of Corrective Action, which addresses how the agency will plan and organize policies, practices, staffing, routines, etc. to prevent such safety issues in the future. The Program Evaluator will then follow up with a "Put on Notice" letter to the provider to document the Program Evaluator's observations and to formally notify the agency of the violation and its potential consequences. The "Put on Notice" letter allows a provider a reasonable opportunity to demonstrate compliance with the regulatory requirements to maintain the license. As long as the agency corrects the violation and maintains compliance, no further action is necessary in this area. None of the above outlined actions are considered legal enforcement actions.

Placing an agency on probation, issuing civil penalties, or suspending, denying or revoking an agency's license are legal enforcement actions. These actions are pursued when an agency has shown an inability or unwillingness to comply with rules to the extent that it threatens the health, safety or well-being of children in the care of that agency. Enforcement actions resulting from a single violation may occur only when a child is placed in imminent risk of harm or if specified by rule that such an action may occur. Legal enforcement actions are typically a last resort measure, taken after violation citations, plans of corrective action and technical assistance options have been exhausted unsuccessfully. When the Department takes a legal enforcement action, the agency is afforded due process to appeal the action.

A Program Evaluator would be remiss to fail to issue a "Put on Notice" letter or to require a Plan of Corrective Action following a violation in a high-risk area, as this is precisely the responsibility of the Licensing Unit of the Department. To overlook or fail to cite rules violations in high-risk areas would be to fail providers, families and children alike, who all count on the Department to promulgate and enforce rules designed to protect children. Since the recent child death, some of our Program Evaluators, out of concern for child safety and in an effort to prevent future tragedies, have supplied food safety and supervision guidelines to providers which, in some cases, have been misinterpreted as enforcement criteria. Once again, please rest assured that neither DHS Rules nor DHS policy have changed in this area. I sincerely apologize for any misunderstandings that have occurred in recent weeks surrounding this critical area.

The Department will continue to work with both providers and partners to address specific guidelines for food safety and supervision. Please contact your Licensing Field Supervisor, Program Supervisor or my office if you have questions or concerns regarding how food safety and supervision rules are being monitored or enforced in your program. Your feedback is critical to improving our processes and we appreciate hearing from you, as we continue to partner in the protection of Tennessee's children.

**Attachment: CCL Bulletin 09-004: Food Service Supervision Monitoring and Enforcement**