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Sequence Number: 01-15-24
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File Date: 1/23/2024

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Department of Human Services
Division:	Division of Child Care and Community Services
Contact Person:	Jude White, Assistant Commissioner
Address:	505 Deaderick Street, Nashville, TN 37243
Phone:	(615) 837-5092
Email:	Jude.White@tn.gov

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:

ADA Contact:	Jeffrey Blackshear
Address:	505 Deaderick Street, Nashville, TN 37243
Phone:	(615) 313-5711
Email:	Jeffrey.Blackshear@tn.gov

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

Address 1:	James K. Polk Building, Crockett Training Room		
Address 2:	505 Deaderick Street, 14th Floor		
City:	Nashville, TN		
Zip:	37243		
Hearing Date:	03/19/2024		
Hearing Time:	9 AM and 5 PM	<u> X </u> CST/CDT <u> </u> EST/EDT	

Address 1:	One Commerce Square Building		
Address 2:	40 S Main Street, Conference Room A		
City:	Memphis, TN		
Zip:	38103		
Hearing Date:	03/19/2024		
Hearing Time:	9 AM and 5 PM	<u> X </u> CST/CDT <u> </u> EST/EDT	

Address 1:	State Plaza Building, Supervisor's Conference Room		
Address 2:	2700 Middlebrook Pike		
City:	Knoxville, TN		
Zip:	37921		
Hearing Date:	03/19/2024		
Hearing Time:	9 AM and 5 PM	<u> </u> CST/CDT <u> X </u> EST/EDT	

Additional Hearing Information: Virtual Hearing Option via Microsoft Teams Meeting

March 19, 2024, 9 AM Central Teams Option

Join on your computer, mobile app or room device:

[Click here to join the meeting](#)

Meeting ID: 260 947 309 26 Passcode: Zt4cyi

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Join on the Web: <https://www.microsoft.com/microsoft-teams/join-a-meeting>

Meeting ID: 260 947 309 26

Passcode: Zt4cyi

Revision Type (check all that apply):

☒ Amendment

☐ New

☐ Repeal

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 Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below.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

Chapter Number	Chapter Title
1240-04-01	Licensure Rules for Child Care Agencies
Rule Number	Rule Title
1240-04-01-.02	Definitions
1240-04-01-.03	Requirements for Licensure as a Child Care Agency
1240-04-01-.05	Ownership, Organization, and Administration
1240-04-01-.06	Staff
1240-04-01-.07	Criminal Background Check and State Registry/Records Review Procedures
1240-04-01-.08	Record Keeping
1240-04-01-.09	Incident Reporting
1240-04-01-.11	Supervision
1240-04-01-.12	Health and Safety
1240-04-01-.13	Food and Food Service
1240-04-01-.15	Program, Language, and Literacy Development
1240-04-01-.18	Emergency Preparedness
1240-04-01-.21	Specific Requirements for Group Child Care Homes
1240-04-01-.22	Specific Requirements for Child Care Centers
1240-04-01-.23	Specific Requirements for Drop-In Child Care Centers

Chapter Number	Chapter Title
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1240-04-05	Procedures Affecting Licenses of Child Care Agencies
Rule Number	Rule Title
1240-04-05-.02	Definitions
1240-04-05-.03	Licensing Process
1240-04-05-.04	Violations of Licensing Regulations
1240-04-05-.05	Restricted Licenses for Child Care Agencies
1240-04-05-.06	Reapplication Periods

Chapter Number	Chapter Title
1240-04-07	Report Cards and Rated Licensing for Child Care Agencies
Rule Number	Rule Title
1240-04-07-.02	Definitions
1240-04-07-.03	Quality Rating Improvement System

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

Amendments

Rule 1240-04-01-.02 Definitions is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Active play. Activity that is appropriate for a child's age and abilities, involves moving the whole body and makes the heart beat faster, and includes any activity that involves moderate to vigorous bursts of high energy.
- (2) Administrative Closure. Closure of an incomplete application after notification of deficiencies.
- (3) 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 a child care agency the opportunity to challenge legal enforcement actions taken by the Department.
- (4) Ambulation. The ability to walk from place to place.
- (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) Armed security guard/officer. A security guard/officer who at any time wears, carries, possesses or has access to a firearm or any facsimile of any firearm that may leave the impression that the person is armed and who works in plainclothes or wears dress of a distinctive design or fashion or dress having any symbol, badge, emblem, insignia or device that identifies or tends to identify the wearer as a security guard/officer.
- (7) Auxiliary staff. Full- and part-time employees of the child care agency who do not provide caregiving services, including but not limited to custodial, food service and maintenance staff.
- (8) Child or Children. A person or persons under eighteen (18) years of age.
- (9) Child Care. As defined by T.C.A. § 71-3-501, the provision of supervision and protection, and meeting, at a minimum, the basic needs of a child for less than twenty-four (24) hours a day.
- (10) Child Care Agency or Agency. 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", 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 educator.
- (11) Child Care Agency Board of Review. A committee established to review actions initiated by the Department of Human Services and the Department of Children's Services to deny, revoke, or otherwise limit any license, except for summary suspension of, or probation involving, a license; any civil penalties imposed by the Department of Human Services; or any safety plan implemented by the Department of Human Services that will be, or has been, in effect ninety (90) days or more.
- (12) 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 educator.
- (13) Child Development Associate (CDA). 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.
- (14) Commissioner. The Commissioner of the Department of Human Services.

- (15) Communicable Disease. An illness due to an infectious agent which is transmitted directly or indirectly to a well person from an infected person.
- (16) Continuous License. A license issued to a child care agency following its provisional licensure period and after the agency has demonstrated its ability to attain and maintain compliance with all licensing laws and regulations.
- (17) Curriculum. A planned program of activities and experiences that promotes learning and social and emotional development and includes the content that children are to learn, the processes through which children achieve the identified curricular goals, what educators do to help children achieve these goals, and the context in which teaching and learning occur.
- (18) Department (DHS). The Tennessee Department of Human Services and its authorized representatives.
- (19) Developmentally Appropriate Practice (DAP). Principles and guidelines that are appropriate to each child's age and developmental status and responsive to the social and cultural context in which they live.
- (20) Director. The on-site child care center staff member who has responsibility for the overall operation of the center.
- (21) 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 educator, 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 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.
- (22) Educator. An adult individual, whether paid or unpaid, including the Primary Educator, 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. For the purposes of these rules the term educator is equivalent to caregiver as defined by T.C.A. § 71-3-501.
- (23) 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 educator.
- (24) Field Trip. Any off-site activity which occurs away from the general premises of the child care agency's licensed facility.
- (25) Five (5) Panel Test. A drug test for marijuana, cocaine, methamphetamine, amphetamine, and opiates that uses a specimen of the individual's urine.
- (26) 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 educator, but not more than twelve (12) children or fifteen (15) children if approved for three (3) additional school-agers.
- (27) High School Diploma. A document recognizing graduation from an accredited institution, public or private,

based on the issuing state's or country's required number of academic credits and includes passing a GED test or equivalent as defined by Tennessee law.

- (28) Inaccessible. Inaccessible means that the item is located in a place that is unable to be reached by children in that classroom. This location may vary, depending on what age the children are in the classroom where the item is located, such as being placed on a high shelf in an infant room or locked in a locked cabinet in a preschool room.
- (29) Infant. A child who is six (6) weeks through twelve (12) months of age or until ambulation.
- (30) Insurance Terms.
 - (a) General Liability Insurance. Provides coverage for legal liability of businesses arising out of business operations for bodily or personal injury and property damage.
 - (b) Auto Liability Insurance. Provides coverage if an insured is legally liable for bodily injury or property damage caused by an accident arising out of ownership or operation of an automobile.
 - (c) Medical Payment Insurance. Provides coverage for necessary medical expenses regardless of who has been assigned fault.
 - (d) Sexual Abuse and Molestation Insurance. Provides coverage against claims arising from alleged sexual misconduct or molestation by an employee or other representative of an insured.
- (31) Licensee. The owner, to whom a license to operate a child care agency is issued.
- (32) 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.
- (33) Non-traditional Hours. Child care services offered between the hours of 6:00 p.m. and 6:00 a.m. Monday through Friday, and weekend child care.
- (34) Owner. The individual or entity who has legal and administrative responsibility for the management and control of a child care agency.
- (35) Physical Restraint. The use of body contact by staff with a child/youth to restrict freedom of movement or normal access to his or her body.
- (36) Pre-school Child. A child who is at least thirty-one (31) months of age and who has not entered kindergarten.
- (37) Primary Educator. The adult on site at a family or group child care home who is directly responsible for care, education, and supervision of children in a child care home and for the daily operation of a child care home. For the purpose of these rules, the term primary educator is equivalent to primary caregiver as referenced in T.C.A. § 71-3-501.
- (38) Provisional license. A license issued to a child care agency for one hundred twenty (120) days for the purpose of allowing the child care agency to demonstrate their ability to attain and maintain compliance with all licensing laws and regulations. Such provisional license may continue in effect, unless suspended if the Department fails to issue a continuous license after the one hundred twenty (120) day period if the Department determines an extension is necessary to allow the child care agency to demonstrate ability to maintain compliance with licensing laws and regulations.
- (39) Related. Children, step-children, grandchildren, step-grandchildren, siblings of the whole or half-blood, step-siblings, nieces, nephews or foster children of the primary educator.
- (40) Restricted license. A license which, either at the time of issuance, or during the license's existence, is reduced in its operational authority 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 child care agency's operations are not in compliance with child care laws or regulations or the child care 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. A restricted license may also be imposed by the Child Care Agency Board of Review as part of its review of the licensing status of a child care agency in the same manner and for the same reasons as such a license is issued or imposed by the Department. A restricted license may be appealed to the Child Care Agency Board of Review.

- (41) **Safety Plan.** A mandatory plan applicable to a child care agency as a result of an investigation. 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 child care agency, the modification or elimination of services at the child care agency, the re-inspection of the child care agency, the training of child care agency management, staff or volunteers.
- (42) **School-Age Child.** A child who has entered kindergarten through seventeen (17) years of age. A child may be considered school-age during the summer immediately preceding their entry into kindergarten.
- (43) **Screen time.** Instances in which television, videos, video games, cell phones, computers, and other digital devices are used, excluding adult-directed presentations using screens (ex. Power Point, slideshow, Smart/Whiteboards) provided such media are educational and used interactively with children.
- (44) **Seclusion:** The confinement of a child/youth alone in a room or an area where the child/youth is physically prevented from leaving. Seclusion includes, but is not limited to, instances in which a child/youth is confined by a locked or closed door.
- (45) **Serious Incident.** Serious incident includes but is not limited to: any incident involving serious injuries; any reports made to the Department of Children's Services and/or law enforcement; anytime it is necessary to call 911; any incident that may result in staff exclusion from child care per 1240-04-01-.07; any transportation accidents and/or moving violations including traffic citations (such as a driver cited for speeding) that occur when children are in a child care agency operated vehicle; and any child or adult fatality at the child care agency; any incident of children leaving the premises without supervision, or children left unsupervised (in a classroom, on the playground or any other area of the facility, at a field trip location, or being left on a vehicle) that may result in imminent harm.
- (46) **Serious Injury.** An injury that requires treatment from an outside medical professional or facility such as an emergency medical technician, physician, health clinic, or hospital.
- (47) **Shift Care.** Care that is provided in a way that accommodates multiple shifts of children during traditional and non-traditional hours while maintaining adult: child ratio, group sizes, and licensed capacity during overlaps in drop-off/pick up times.
- (48) **Specialized Services.** Services provided to children with special needs by individuals having extensive training or expertise in a particular field such as speech/language therapy, physical therapy, play therapy, mental health counseling, or health care treatments, etc.
- (49) **Staff.** Full- and part-time paid educators and employees of the child care agency, including Directors and Assistant Directors.
- (50) **Substitute.** Paid or unpaid persons who are replacements for regular staff.
- (51) **Sugar sweetened beverages.** Beverages with added sweeteners (such as flavored milk, soft drinks, fruit drinks with added sugar, sports drinks, and energy drinks).
- (52) **Time Out.** A means of correcting undesirable behavior by removing the child from the environment, placing the child in a quiet place away from the group for a few minutes, and then talking about the problem.
- (53) **TDHS eLicensing System:** The system of record for all child care agencies licensed by the Department of Human Services as of the effective date of these rules.

- (54) TNPAL: Tennessee Professional Archive of Learning (TNPAL) is the central repository and system of record for all child care training and professional development.
- (55) Toddler. A child who is thirteen (13) months through thirty (30) months of age.
- (56) Unsupervised Contact with a Child. When a person who is not an approved staff person has access to a child and no other approved staff person is present with the child and supervising.
- (57) Volunteer. A person who provides services for a child care agency without payment and who is used to supplement the regular staff.

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-202; 71-1-105; 71-1-105(a)(5) and (a)(12); 71-3-501, et seq.; 71-3-502(a)(2); and 71-3-502(a)(4)(B); and Acts 2000, Ch. 981, §§ 3(a)(4) and 14.

Rule 1240-04-01-.03 Requirements for Licensure as a Child Care Agency is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Upon receipt of an application for a license and throughout 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.).
- (2) Scope of Licensed Operation.
 - (a) All programs shall operate within:
 - 1. Their licensed capacity;
 - 2. The approved hours of operation;
 - 3. The specific age ranges of children served;
 - 4. The services offered;
 - 5. At the address designated on the license;
 - 6. Any restrictions stated on the license;
 - 7. Their same ownership and legal business status as listed on the license; and
 - 8. Within the licensed and approved child care space.
- (3) Multiple Child Care Agencies Operated by a Licensee at the Same Location.
 - (a) If two (2) or more child care agencies are located on the same property, each child care agency shall independently meet the requirements for a license.
 - (b) A child care agency shall not operate on the same property as an unlicensed, unregulated, or exempt child care agency unless approved in advance by the Department.
 - (c) If more than one licensed child care agency occupies the same building, the programs shall not share space and children from each child care agency shall not intermingle.

Exception to shared space: The programs may share the same cafeteria, gym, or playground space as long as children from each program are not using the space at the same time.

- (4) All child care agencies subject to the licensure requirements of this chapter shall:

- (a) Register as a user through the provider portal, and
- (b) Utilize the provider portal to submit information needed to maintain the provider record and compliance with these requirements. Accommodations for submission of materials outside the provider portal will be made on a case-by-case basis upon request.

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-202; 71-1-105; 71-1-105(a)(5) and (a)(12); 71-3-501, et seq.; 71-3-502(a)(2) and (3); 71-3-503(a)(6), (8), and (9); and 71-3-508(c); Acts 2000, Ch. 981, §§ 8 and 14; Acts 2003, Ch. 412, § 2; and Acts 2016, Ch. 839.

Rule 1240-04-01-.05 Ownership, Organization, and Administration is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

(1) Child Care Agency Program Description.

- (a) An applicant shall submit a written program description to the Department that includes the following information:
 - 1. All services and types of care to be offered;
 - 2. Ages of children accepted;
 - 3. Hours of operation;
 - 4. Description of food service; and
 - 5. If applicable, plans for sharing outdoor equipment and space with children not enrolled in the child care agency.
- (b) Notification of changes to the program description shall be submitted to the Department at least ten (10) calendar days prior to making the change.

(2) Finances.

- (a) The applicant shall provide a proposed budget that demonstrates adequate funding for both preliminary and ongoing costs associated with staffing, equipment and safe operation.
- (b) Relevant financial records of the child care agency shall be immediately available to the Department upon request.

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

- (a) A child care 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 and make available immediately upon request of any auditing or licensing authority the following:
 - 1. Complete and accurate record of payments received;
 - 2. Children's attendance;
 - 3. A record of food served for each program in which the child care agency participates; and
 - 4. Any other records required by the Department or any other child care agency for reimbursement for the child's care and/or feeding.

(4) Insurance Coverage.

- (a) General liability, automobile liability, medical payment, and sexual abuse and molestation 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:
 - (i) Three Hundred Thousand Dollars (\$300,000) per occurrence; and
 - (ii) 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:
 - (i) Five Hundred Thousand Dollars (\$500,000) per occurrence; and
 - (ii) Five Hundred Thousand Dollars (\$500,000) general aggregate coverage.
 3. Medical payment coverage for injuries to children resulting from the operation of the child care agency shall be maintained in the minimum amount of Five Thousand Dollars (\$5,000).
 4. Automobile Coverage for Child Care Agencies that Transport Children:
 - (i) Automobile liability coverage.
 - (I) 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 for injuries to children being transported in vehicles owned, operated or leased by the child care agency shall be maintained in the minimum amount of five thousand dollars (\$5,000).
 5. Sexual abuse and molestation coverage for situations resulting from the operation of the child care agency shall be maintained in the minimum amount of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate. This coverage can be obtained as an individual policy or as part of broader coverage such as through a general liability or homeowner's policy.
- (b) A standard homeowner's policy is not sufficient to provide the coverage requirements for a child care facility outlined in this section.
- (c) The requirements of this paragraph shall not apply to a child care 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.
- (d) Unless subparagraph (c) is applicable, non-profit corporations that administer Head Start child care programs and are defined as government entities for the purposes of the governmental tort liability act (T.C.A. §§ 29-20-101 et seq.) shall have the insurance required by subparagraph (a) above.
- (e) Documentation that the necessary insurance is in effect, or that the administrative Department or other entity is self-insured, shall be maintained in the records of the child care agency and shall be available for review by the Department. Documentation shall include the declarations page of the insurance policy

and this documentation shall reflect, at a minimum, the requirements described above.

(5) Enrollment Restrictions.

- (a) Enrollment of children under six (6) weeks of age is prohibited.
- (b) Any child care agency licensed by the Department shall place the following children ahead of any civilian (non-military) parents or guardians on a waiting list, including: children who have a parent or legal guardian who is an active duty member of the armed forces; children who have a parent who was killed or died as a direct result of injuries received during a qualifying period of armed conflict; children who have a parent who has been reported as a prisoner of war or missing in action while serving honorably during a qualifying period of armed conflict; and children who have a parent who was a former prisoner of war or was formerly missing in action while serving honorably during a qualifying period of armed conflict.
- (c) Children shall not be in care for more than twelve (12) hours in a twenty-four (24) hour period except in special circumstances.
- (d) 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 educator/director and approved in advance by the Department. Plans shall be updated annually.
- (e) The child care agency shall not admit a child into care until the parent/guardian has supplied the child care 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. There is an exception after an initial eligibility determination for children who are homeless, children in state custody, and/or children admitted to the United States as a refugee or as an asylee under the Immigration and Nationality Act. Those children may receive care prior to providing all required documentation as determined by the Department. Care without such documentation of immunizations shall not exceed sixty (60) days.
- (f) The child care agency shall maintain written documentation that the parent/guardian performed an on-site visit to the child care agency prior to the child being enrolled into care and that the child care agency provided and reviewed parent engagement strategies recognized by the Department with the parent during the required preplacement visit. A pre-placement visit is not required for children of homeless families.

(6) Home Schooling.

- (a) Home schooling shall not take place during child care hours unless a qualified primary educator, 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 shall be conducted in a space separate from the designated child care space.

(7) Non-traditional Hours.

- (a) Care services during non-traditional hours may be offered by a child care agency as an additional component to conventional care services, or the child care agency may exclusively provide care services during non-traditional hours.
- (b) In order for a child care agency to offer care during non-traditional hours, the Department shall issue a license bearing a notation that the child care agency is authorized to provide care during non-traditional hours.
- (c) A child care agency may not offer extended care during non-traditional hours without the Department's approval.

(8) Child Care Agency Drug Testing Policy.

- (a) Child care agencies shall establish a drug testing policy for all staff that have direct contact with children, as defined by the Department, with a child in the care of the child care agency.
- (b) The policy shall:
 - 1. Specify when and how testing should be completed;
 - 2. Provide for immediate and effective enforcement action in the event of a positive drug test; and
 - 3. 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 remuneration for the agency are engaged in the use of illegal drugs.
- (c) The child care agency shall provide the policy to all staff that have direct contact with children upon the individual's employment with the child care agency.
- (d) The child care agency shall maintain drug test results for all currently employed staff members who are subject to drug testing and for five (5) years after employment is terminated. All drug test results shall be immediately provided to the Department upon request.
- (e) Drug testing results are confidential and may be disclosed only for purposes of enforcing this part.
- (f) The Department may require the licensee or operator of a family child care home who has direct contact with children to submit to a drug test at the expense of the licensee or operator, when reasonable suspicion exists.
- (g) A child care agency that does not comply with this section is subject to the Department:
 - 1. Denying the application for a license or;
 - 2. Suspending or revoking a license issued.

(9) Parent Communication and Engagement.

- (a) The child care agency shall ensure that a copy of the child care agency's policies, procedures, and the Department's Summary of Licensing Requirements is supplied to the parents/guardians upon admission of the child.
- (b) The child care agency's policies shall include, at a minimum:
 - 1. Criteria for the disenrollment of children;
 - 2. Specific criteria concerning the release of children;
 - 3. Written parental permission for observation of children by non-child care agency staff;
 - 4. Behavior management techniques;
 - 5. Hours of operation;
 - 6. Late fees;
 - 7. Rates;
 - 8. Inclement weather;

9. Emergency policy;
 10. Whether the environment is smoke free;
 11. Meal service policy;
 12. Shaken baby syndrome/abusive head trauma/child maltreatment, to include:
 - (i) Recognizing potential signs and symptoms;
 - (ii) Creating strategies for coping with crying, fussing or distraught children; and
 - (iii) Understanding the development and vulnerabilities of the brain in infancy and early childhood; and
 13. Child care agency after-hours contact telephone phone number in case of an emergency.
- (c) Parents/guardians shall be permitted to see the professional credential(s) of staff upon request.
 - (d) The child care agency shall have ongoing communication with parents/guardians to include curriculum, changes in personnel, changes in policies and/or substantive licensing requirements, and any changes affecting children's routine care, and shall document such communication in writing.
 - (e) Child care agencies shall provide information about the benefits of immunizing children against influenza and other communicable diseases as requested by the Department each August or September to parents/guardians of all children enrolled in the child care agency and document such communication in writing.
 - (f) The child care agency shall use a developmental checklist recognized by the Department as a guide for conducting annual individual parent meetings to discuss the child's progress and development. Documentation of the meetings must be maintained in the child's record. This is not required for school-age children participating in afterschool programs.
 - (g) All child care agencies shall disseminate materials and information to parents/guardians, as required by the Department.
 - (h) Child care agencies shall obtain training relevant to the special needs of the children in care and shall consult with parents/guardians and appropriate service providers regarding techniques used in the home to ensure the children's safety. If children with special needs are enrolled, Section 504 of the federal Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) guidelines shall be consulted regarding the reasonable accommodations a child's disability may require and complied with.
 - (i) Specialized Services.
 1. The provision of specialized services shall be conducted only by individuals who hold the appropriate license or certification and with written permission by the parent/guardian and shall be documented in the child's record.
 2. Any information exchanged regarding specialized services that is shared with or received from third parties shall also be documented in each child's record.
 - (j) During operating hours, parents/guardians shall be permitted immediate access to their children, unless an Order of Protection or other legal document otherwise restricts or prohibits such access.
 - (k) Documented permission, including prior notification and consent for each field trip, shall be obtained from the parents/guardians prior to the child's removal from the premises for a field trip.
 - (l) Authorized Removal of Children.

1. An authorized investigator with the Department of Children's Services or law enforcement may take a child off the premises of the child care agency if he/she has obtained custody of the child as follows:
 - (i) Voluntary placement agreement with the parent/guardian;
 - (ii) Court order;
 - (iii) Emergency assumption of custody under T.C.A. § 37-1-113 without parent/guardian permission;
 - (iv) If the child's parent or legal guardian is present and approves; or
 - (v) In conjunction with investigative procedures under the child abuse laws.
2. The child care agency shall request visual confirmation of an investigator's identification.

(10) Notifying Parents/Guardians.

- (a) The child care agency shall post the following in a clearly visible location and obtain parents'/guardians' signatures indicating they have read the document:
 1. A formal notice of a critical licensing violation that put a child at imminent risk of harm or resulted in actual harm;
 - (i) Critical violations include but are not limited to the following:
 - (I) Transportation;
 - (II) Ratios;
 - (III) Supervision;
 - (IV) Failure to properly dispense or store medications;
 - (V) Background checks/Failure to complete or failure to exclude;
 - (VI) Failure to store hazardous items;
 - (VII) Failure to properly remove or secure firearms;
 - (VIII) Corporal punishment;
 - (IX) Failure to report suspected abuse or neglect;
 - (X) Falsification of documents required by the Department;
 - (XI) Failure to have CPR/first aid certification as required by the Department;
 - (XII) Six (6) or more minor violations of any type within a three (3) month period; or
 - (XIII) Three (3) or more minor violations of the same type within a three (3) month period.
 2. Any issuance of a legal enforcement order;
 3. Any decision rendered by the Child Care Agency Board of Review pursuant to Chapter 1240-04-05;

4. An Order affecting the child care agency's operations issued by any court of law; or
 5. Notice of probation.
- (11) Right to Privacy/Confidentiality. The licensee and child care agency staff shall not disclose or knowingly permit the use by other persons, any information concerning a child or family enrolled at the child care agency except as required by law.
- (12) Posting Required Documentation.
- (a) The following shall be posted near the main entrance where staff, parents, and others may view them:
 1. The child care agency license;
 2. Current child care agency quality rating improvement system score;
 3. The child care agency's operating hours;
 4. The Department's toll-free Child Care Complaint Hotline phone number and email address; and
 5. The Department of Children's Services' Central Intake Child Abuse Hotline number.
 - (b) "No Smoking" signs shall be posted in a conspicuous manner at each entrance to the facility.
 - (c) Required adult:child ratios and group size shall be posted in every classroom.
 - (d) Items that must be accessible in a place where staff, parents, and others may view:
 1. A link to the electronic location of applicable Department licensing rules and a hard copy on-site available for reference;
 2. Weekly menu;
 3. Daily schedule;
 4. Notice of requirements to report child abuse;
 5. Emergency procedures; and
 6. Record of fire and other emergency drills.
 - (e) Any other materials shall be posted as directed by the Department.
- (13) The child care agency shall have a written expulsion policy.
- (a) The policy shall be:
 1. Clearly articulated to staff and parents;
 2. Developmentally appropriate and consistent; and
 3. Non-discriminatory in practice and impact.
 - (b) Other options shall be considered prior to expulsion, such as but not limited to reducing the number of days or amount of time the child may attend, or if applicable, referrals to a behavioral health program or other appropriate supporting program.

- (c) Procedures shall be developed to allow for a planned transition of a child to another program if expulsion must occur.
- (d) Aggregate data that includes reasons for expulsions shall be maintained and reported to the Department on a Department-approved form when such expulsions take place and as requested.

(14) Data Reporting. Child care agencies shall submit data as requested by the Department:

- (a) Quarterly on topics such as but not limited to: active enrollment, homeless children, non-traditional hours, English as a Second Language/dual language learners, and children with disabilities; and
- (b) As it occurs: death/serious injuries, child abuse.

(15) Falsification of any information or documentation is prohibited.

Authority: 7 C.F.R. § 226.15(e); T.C.A. §§ 4-5-202; 4-5-209; 39-17-1803; 71-1-105(a)(5) and (a)(12); 71-3-501, et seq.; 71-3-502(l); 71-3-502, et seq.; and 71-3-512; and Acts 2008, Ch. 1032.

Rule 1240-04-01-.06 Staff is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

(1) Responsibility for Staff.

(a) Owners, directors, and primary educators shall be responsible for:

- 1. Selecting qualified and capable staff;
- 2. The supervision, training, and evaluation and performance management of the staff;
- 3. The efficient operation of the child care agency's program; and
- 4. Providing written policy to staff that includes job functions, qualifications, lines of authority, staff performance evaluations, and disciplinary process.

(b) Annual Evaluations.

- 1. Teaching staff, assistant directors, and directors shall be evaluated on the performance of their duties at least annually.
- 2. Records of performance evaluations shall be maintained in the educator's files and made available to the Department upon request.

(2) Organizational Management.

- (a) Family and group home child care agencies must notify parents in advance of person(s) in charge during the primary educator's absence.
- (b) The primary educator/director shall identify and notify staff of the person in authority in the event of his/her absence.
- (c) The child care agency shall be responsible for all volunteers and service providers/contractors providing services to the child care agency.

1. Service providers or contractors shall never be alone with children unless:

- (i) Written authorization is obtained from a parent/guardian for the child prior to receiving the service;

- (ii) Written authorization is obtained from a 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 provide identification prior to signing the child out or delivering the service and shall sign the child back in upon completion of service.
- (d) The Director shall be onsite for at least fifty percent (50%) of the agency's hours of operation.
- (3) General Child Care Agency Staff Qualifications.
 - (a) Staff involved in transporting children are subject to general qualifications in addition to the requirements and qualifications detailed in the transportation rules found in this chapter.
 - (b) Every staff person shall be capable of performing his/her duties satisfactorily.
 - (c) A staff member shall be designated to be in charge of the child care agency in the absence of the primary educator/director and the name of the person in authority shall be communicated to staff. Such person shall be familiar with child care agency policies and procedures.
 - (d) The primary educator/director or designee shall ensure that the staff person is physically, mentally, and emotionally capable of safely and appropriately providing care for children.
 - (e) Examinations to Determine Physical, Mental, and Emotional Status.
 - 1. A child care agency may, upon reasonable cause/suspicion require any persons having significant contact with children to obtain physical/mental health evaluations to determine their ability to satisfactorily perform their job duties.
 - (f) Prior to having contact with children, each new employee shall receive orientation in, and have a working knowledge of the following items:
 - 1. Program philosophy and policies;
 - 2. Job description;
 - 3. Emergency health and safety procedures;
 - 4. Behavior management procedures;
 - 5. Detection, reporting, and prevention of child abuse;
 - 6. Procedures for receiving and releasing children;
 - 7. Safe sleep procedures;
 - 8. Meal service and safe food preparation policies;
 - 9. Supervision during high risk activities such as eating and outdoor play;
 - 10. Food allergies;
 - 11. Expectations for communications with parent/guardian;
 - 12. Disease control and health promotion, including childhood obesity and the beneficial health impacts of physical activity;

13. An overview of licensing requirements; and
 14. Information on risks of Cytomegalovirus (CMV) to female employees of childbearing age.
- (g) Prior to having contact with children, each new employee shall complete training in the following areas:
1. Shaken baby syndrome/abusive head trauma/child maltreatment; and
 2. Pre-service training as recognized by the Department which shall include all federally required components.
- (h) Documentation of the requirements in subparagraphs (f) and (g) shall be maintained in the staff file.
- (4) Substitutes and Practicum Students.
- (a) Substitutes and Practicum Students providing services for more than thirty-six (36) hours in a calendar year shall:
1. Meet the background check requirements prior to beginning their duties;
 2. Meet the same requirements as regular staff for the physical examination required by these rules; and
 3. Have a minimum of four (4) hours of annual training if they acted as substitutes/educators for more than thirty-six (36) hours in the previous calendar year.
 4. Each agency is required to train employees on the agency policies and procedures regarding emergency preparedness plans, reporting of child abuse, neglect, and maltreatment, and safe sleep practices.
- (b) Substitutes that do not meet the requirements listed in subparagraphs (4)(a)1.-4. above shall never be left alone with children. Practicum students shall never be left alone with children. Documentation of direct supervision of substitutes without such background checks and practicum students shall be maintained in agency files.
- (c) Child care agencies shall document and report service hours of every substitute staff or practicum student as may be required by the Department.
- (5) Volunteers.
- (a) Volunteers may not be counted to meet the adult:child ratios and shall never be left alone with children except parents/guardians may be counted in the adult:child ratio at a field trip location.
- (6) Education/Training Requirements.
- (a) This chart provides the educational and training requirements that must be completed by staff prior to having contact with children:

Position	Minimum Age	Education	Training Requirements
Family and Group Homes Primary Educator	18	HS Diploma or equivalent	1. Child care agency orientation session during the pre-licensure period; 2. Small Business Academy;

			<p>3. Licensing Rules and Regulations Training;</p> <p>4. Shaken Baby/Abusive Head Trauma/Child Maltreatment Training prior to contact with children;</p> <p>5. Pre-Service Training (Before You Begin);</p> <p>6. Sudden Infant Death Syndrome Training prior to contact with children if caring for infants.</p>
Family/Group Educator Assistant	16	None	<p>1. Licensing Rules and Regulations Training;</p> <p>2. Shaken Baby/Abusive Head Trauma/Child Maltreatment Training prior to contact with children;</p> <p>3. Pre-Service Training (Before You Begin);</p> <p>4. Sudden Infant Death Syndrome Training prior to contact with children if caring for infants.</p>
Child Care Center Director	21	<p>Graduation from an accredited 4-year college or be a registered nurse with less than a 4-year degree and 1 year of full-time experience with children in a group setting; or</p> <p>36 hours of coursework at least 30 of which shall be in business management, child or youth development, early childhood education or a closely related field or a TN Early Childhood Administrator Credential; and 2 years of full-time experience with children in a group setting; or</p> <p>High School diploma (or equivalent as recognized by state law) and Tennessee Early Childhood Training Alliance Certificate for 30 clock hours of Administrator</p>	<p>1. Child care agency orientation session during the pre-licensure period;</p> <p>2. Small Business Academy training through Child Care Resource and Referral Agency;</p> <p>3. Licensing Rules and Regulations Training;</p> <p>4. Shaken Baby/Abusive Head Trauma/Child Maltreatment Training prior to contact with children;</p> <p>5. Pre-Service Training (Before You Begin);</p> <p>6. Sudden Infant Death Syndrome Training prior to contact with children if caring for infants.</p>

		<p>Orientation training or the equivalent as recognized by the Department and 4 years of full-time experience with children in a group; or</p> <p>Continuously employed as an on-site child care director or a child care agency owner as of the effective date of these rules.</p>	
Child Care Center Student Assistant	16	Current enrollment in technical child care educational program	<p>1. Licensing Rules and Regulations Training;</p> <p>2. Shaken Baby/Abusive Head Trauma/Child Maltreatment Training prior to contact with children;</p> <p>3. Pre-Service Training (Before You Begin);</p> <p>4. Sudden Infant Death Syndrome Training prior to contact with children if caring for infants.</p>
Child Care Center Assistant Director	18	HS Diploma/equivalent and 2 years of experience	<p>1. Child care agency orientation session during the pre-licensure period Licensing Rules and Regulations Training;</p> <p>2. Shaken Baby/Abusive Head Trauma/Child Maltreatment Training prior to contact with children;</p> <p>3. Pre-Service Training (Before You Begin);</p> <p>4. Sudden Infant Death Syndrome Training prior to contact with children if caring for infants.</p>
Child Care Center Educator	18	None or HS Diploma/equivalent if only educator for group or to meet group requirement	<p>1. Licensing Rules and Regulations Training;</p> <p>2. Shaken Baby/Abusive Head Trauma/Child Maltreatment Training prior to contact with children;</p> <p>3. Pre-Service Training (Before You Begin);</p>

			4. Sudden Infant Death Syndrome Training prior to contact with children if caring for infants.
Drop-in Child Care Center Director	21	HS Diploma/equivalent and 1 year of experience	1. Child care agency orientation session during the pre-licensure period; 2. Pre-Service Training (Before You Begin).
Drop-in Child Care Center Educator	18	HS Diploma/equivalent	1. Licensing Rules and Regulations Training; 2. Pre-Service Training (Before You Begin).

- (b) This chart provides the training requirements and expectations for educators, primary educators, assistant directors, and directors for each class of licensed care during the provisional licensure period. These training requirements also apply to new employees. Please note that all hours earned during the provisional licensure period count towards the first year hourly training requirements.

Position	Provisional Licensing Period (first 120 days) Training Requirements (These requirements are also applicable to new employees hired after the provisional licensure period, to be completed within the first four (4) months of employment).
Family and Group Homes Primary Educator	1. 3 hours on developmental learning standards (TN-ELDS); 2. New Director Training; 3. Transportation Training (if applicable at the agency) before providing transportation. Training will include anyone responsible for the transportation of children; 4. First Aid Training; 5. CPR Training; 6. Personal Safety Training (one representative from the agency); 7. Additional training hours as determined by the Department.
Family/Group Home Educator	1. 3 hours on developmental learning standards; 2. Transportation Training (if applicable at the agency) before providing transportation; 3. First Aid Training; 4. CPR Training; 5. Additional training as identified by the Department.
Child Care Center Director	1. 3 hours on developmental learning standards (TN-ELDS); 2. New Director Training; 3. Transportation Training (if applicable at the agency) before providing transportation. Training will include anyone responsible for the transportation of children;

	4. First Aid Training; 5. CPR Training; 6. Personal Safety Training (one representative from the agency); 7. Additional training hours as determined by the Department.
Child Care Center Student Assistants	Additional training hours as determined by the Department.
Child Care Center Assistant Director	1. 3 hours on developmental learning standards (TN-ELDS); 2. New Director Training; 3. Transportation Training (if applicable at the agency) before providing transportation. Training will include anyone responsible for the transportation of children; 4. First Aid Training; 5. CPR Training; 6. Personal Safety Training (one representative from the agency); 7. Additional training hours as determined by the Department.
Child Care Center Educator	1. 3 hours of applicable developmental learning standards (TN-ELDS). If an educator has a Bachelor's or Associate's degree in child development or a related field, or a CDA or CCP credential recognized by the Department, that educator shall instead comply with the training requirements for experienced educators during the 1st year. 2. Transportation Training (if applicable at the agency) before providing transportation. Training will include anyone responsible for the transportation of children; 3. First Aid Training; 4. CPR Training; 5. Personal Safety Training (one representative from the agency); 6. Additional training hours as determined by the Department
Drop-in Child Care Center Director	1. In the first 3 months, Department Rules Training and Pre-Service Training (Before You Begin); 2. First Aid Training; 3. CPR Training; 4. Additional training hours as determined by the Department.
Drop-in Child Care Center Educator	1. First Aid Training; 2. CPR Training; 3. Additional training hours as determined by the Department.

(c) This chart provides the first year and ongoing training requirements and expectations as defined by your role as educators, primary educators, assistant directors, substitutes, and directors for each class of

licensed care. During the first year, any hours earned during the provisional licensure period count towards the hourly requirements.

Primary Educator – Family or Group Home	Training Hours/Notes
Annual Training	18 hours total
Health and Safety	At least 6 of the 18 total hours
Pre-Literacy and Literacy Skills and Education Implementation	At least 3 of the 18 total hours
Adverse Childhood Experiences	Every 5 years – length not specified
4 hours of the 18 total hours may be earned by conducting training. Hours earned during the pre-licensure and provisional licensure period may count towards these total hours.	
Educator – Family or Group Home	Training Hours/Notes
Annual Training	12 hours total
Health and Safety	At least 6 of the 12 total hours
Pre-Literacy and Literacy Skills and Education Implementation	At least 3 of the 12 total hours
Adverse Childhood Experiences	Every 5 years – length not specified
4 hours of the 12 total hours may be earned by conducting training. Hours earned during the pre-licensure and provisional licensure period may count towards these total hours.	
Director – Single-Site Center	Training Hours/Notes
Earn credit during the year in 1 academic course (in administration, child development, early childhood education, health/safety or related field) from accredited academic institution, or	
Annual Training	At least 24 total hours
Health and Safety	At least 6 of the 24 total hours
Pre-Literacy and Literacy Skills and Education Implementation	At least 3 of the 24 total hours
Adverse Childhood Experiences	Every 5 years – length not specified
4 hours of the 24 total hours may be earned by conducting training.	
Assistant Director – Center	Training Hours/Notes
Earn credit during the year in 1 academic course (in administration, child development, early childhood education, health/safety or related field) from accredited academic institution, or	
Annual Training	At least 18 total hours
Administration, Management or Supervisory training	At least 4 hours of the 18 total hours
Pre-Literacy and Literacy Skills and Education Implementation	At least 3 of the 18 total hours
Health and Safety	At least 6 of the 18 total hours
Adverse Childhood Experiences	Every 5 years – length not specified
4 hours of the 18 total hours may be earned by conducting training. Hours earned during the pre-licensure and provisional licensure period may count towards these total hours.	

Educator – Center	Training Hours/Notes
Annual Training	12 total hours
Pre-Literacy and Literacy Skills and Education Implementation	At least 3 of the 12 total hours
Health and Safety	At least 6 of the 12 total hours
Adverse Childhood Experiences	Every 5 years – length not specified
4 hours of the 12 total hours may be earned by conducting training. Educators who hold one of the following degrees/credentials as recognized by the Department shall instead comply with the training requirements for experienced educators after the first year: Bachelor's or Associate's degree in child development or a related field; CDA credential; Certified Child Care Professional (CCP) credential.	
Substitute – Center	Training Hours/Notes
Health and Safety	At least 4 total hours
Director – Drop-in Center	Training Hours/Notes
Annual Training	At least 6 total hours
Health and Safety	At least 3 of the 6 total hours
Administration, Management, or Supervisory	At least 3 of the 6 total hours
Adverse Childhood Experiences	Every 5 years – length not specified
2 hours of the 6 total hours may be earned by conducting training. Hours earned during the pre-licensure and provisional licensure period may count towards these total hours.	
Educator – Drop-in Center	Training Hours/Notes
Annual Training – Health and Safety	At least 3 total hours
Adverse Childhood Experiences	Every 5 years – length not specified
1 hour of the 3 total hours may be earned by conducting training. Hours earned during the pre-licensure and provisional licensure period may count towards these total hours.	
Clarifications:	
Child Care and Development Block Grant (CCDBG) Health and Safety Training Topics: Family, Group, and Center Staff cycle through the requisite topics every three years. Drop-in staff cycle through the topics every 4 years.	
Required topics: prevention and control of infectious diseases (including immunization); SIDS and use of safe sleep practices; administration of medication; prevention/response to food allergies; building and physical premises safety; prevention of shaken baby syndrome, abusive head trauma, and child maltreatment; emergency preparedness and response planning; storage of hazardous materials and biocontaminants; precautions in transporting children (if applicable); first aid and CPR; recognition and reporting of child abuse and neglect; child development, including the major domains (cognitive, social, emotional, physical development and approaches to learning).	

Authority: T.C.A. §§ 4-5-202; 37-1-603(b)(1)(A); 71-1-105(a)(5) and (a)(12); 71-3-501, et seq.; 71-3-502(a)(2); and 71-3-507.

Rule 1240-04-01-.07 Criminal Background Check and State Registry/Records Review Procedures is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

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

- (a) The following persons are required to have a background check no more than ninety (90) days before having access to any child care agency:
 - 1. Any person who owns or operates a child care agency;
 - 2. Any person who applies to work in a child care agency as an employee, director or manager;
 - 3. 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
 - 4. Any person who is fifteen (15) years of age or older who will reside in a child care agency.
 - (b) New background checks are required when the staff member has been separated from employment from a child care provider within the State for a period of more than 180 consecutive days.
 - (c) Background checks are required for all staff at least every five (5) years.
 - (d) Requirements for disclosure of criminal/juvenile and state register history and fingerprinting, are provided by T.C.A. § 71-3-507 and as required by the Child Care and Development Block Grant Act. Such requirements may include filling out additional forms as necessary for out-of-state registry and criminal background checks.
- (2) Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Children Prior to Completion of Criminal History Review.
- (a) The Department will pay for the costs of performing one background check per person per child care agency per year.
 - (b) The child care agency shall be responsible for costs associated with the background check if:
 - 1. The fingerprint sample is rejected and the fingerprint sample must be resubmitted;
 - 2. The child care agency submits a second fingerprint sample for an individual more than one (1) time within a thirty (30) day period; or
 - 3. The child care agency submits a fingerprint sample for a person who is not a resident or a person who has been selected by the child care agency, substitute pool, or staffing agency to fill a position as an employee, or substitute who will work directly with children.
 - (c) No person shall be employed with, be a licensee or operator of, provide substitute services to, or have unsupervised contact with children in a child care agency prior to the completion of the criminal history review, as documented by either:
 - 1. A Final Clearance Letter; or
 - 2. A Conditional Letter allowing the applicant to work under supervision of another fully clearly applicant, until all of the results from other state(s) have been issued.
- (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, be a licensee or operator, or provide substitute services, reside, or have any access to children in a child care agency if the criminal background check identifies an excludable criminal offense for which the person has:
 - 1. Been convicted of, or 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:

1. The physical, sexual or emotional abuse or 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.
5. The criminal offenses for which a person will be excluded from a child care agency include but are not limited to the following offenses as well as their lesser included offenses (and including convictions for equivalent offenses in other states or jurisdictions):
 - (i) Aggravated arson (T.C.A. § 39-14-302);
 - (ii) Aggravated assault (T.C.A. § 39-13-102);
 - (iii) Aggravated child abuse (T.C.A. § 39-15-402);
 - (iv) Aggravated child neglect (T.C.A. § 39-15-402);
 - (v) Aggravated cruelty to animals (T.C.A. § 39-14-212);
 - (vi) Aggravated kidnapping (T.C.A. § 39-13-304);
 - (vii) Aggravated rape (T.C.A. § 39-13-502);
 - (viii) Aggravated rape of a child (T.C.A. § 39-13-531);
 - (ix) Aggravated robbery (T.C.A. § 39-13-402);
 - (x) Aggravated sexual battery (T.C.A. § 39-13-504);
 - (xi) Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);
 - (xii) Aggravated vehicular homicide (T.C.A. § 39-13-218);
 - (xiii) Arson (T.C.A. § 39-14-301);
 - (xiv) Assault (T.C.A. § 39-13-101);
 - (xv) Carjacking (T.C.A. § 39-13-404);
 - (xvi) Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);
 - (xvii) Criminal attempt, under T.C.A. § 39-12-101, to commit any criminal offense that requires exclusion from child care;
 - (xviii) Criminal exposure to HIV (T.C.A. § 39-13-109);
 - (xix) Criminal homicide (T.C.A. § 39-13-201);

- (xx) Criminally negligent homicide (T.C.A. § 39-13-212);
- (xxi) Cruelty to animals (T.C.A. § 39-14-202);
- (xxii) Custodial interference (T.C.A. § 39-13-306);
- (xxiii) Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);
- (xxiv) Domestic assault (T.C.A. § 39-13-111);
- (xxv) Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);
- (xxvi) Especially aggravated burglary (T.C.A. § 39-14-404);
- (xxvii) Especially aggravated kidnapping (T.C.A. § 39-13-305);
- (xxviii) Especially aggravated robbery (T.C.A. § 39-13-403);
- (xxix) Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);
- (xxx) Exploitation of a minor by electronic means (T.C.A. § 39-13-529);
- (xxxi) False imprisonment (T.C.A. § 39-13-302);
- (xxxii) First degree murder (T.C.A. § 39-13-202);
- (xxxiii) Incest (T.C.A. § 39-13-302);
- (xxxiv) Indecent exposure (T.C.A. § 39-13-511);
- (xxxv) Involuntary labor servitude (T.C.A. § 39-13-307);
- (xxxvi) Kidnapping (T.C.A. § 39-13-105);
- (xxxvii) Rape (T.C.A. § 39-13-503);
- (xxxviii) Rape of a child (T.C.A. § 39-13-522);
- (xxxix) Reckless endangerment (T.C.A. § 39-13-103);
- (xl) Reckless homicide (T.C.A. § 39-13-215);
- (xli) Robbery (T.C.A. § 39-13-401);
- (xlii) Second degree murder (T.C.A. § 39-13-210);
- (xlili) Sexual battery (T.C.A. § 39-13-505);
- (xliv) Sexual battery by an authority figure (T.C.A. § 39-13-527);
- (xlv) Sexual exploitation of a minor (T.C.A. § 39-17-1003);
- (xlvi) Solicitation of a minor (T.C.A. § 39-13-528);
- (xlvii) Stalking (T.C.A. § 39-17-315);
- (xlviii) Statutory rape (T.C.A. § 39-13-506);

- (xlix) Statutory rape by an authority figure (T.C.A. § 39-13-532);
 - (l) Trafficking a person for sexual servitude (T.C.A. § 39-13-309);
 - (li) Vehicular assault (T.C.A. § 39-13-106);
 - (lii) Vehicular assault while intoxicated (T.C.A. § 39-13-106);
 - (liii) Vehicular homicide (T.C.A. § 39-13-213);
 - (liv) Voluntary manslaughter (T.C.A. § 39-13-211); and
 - (lv) Weapons offenses (unlawful possession, carrying, use, etc.).
- (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 to, within the last five (5) years any of the following criminal offenses:
 - (i) Vehicular homicide;
 - (ii) Accidents involving death or personal injury;
 - (iii) Accidents involving damage to a vehicle;
 - (iv) Driving under the influence of an intoxicant, drug or drug producing stimulant; or
 - (v) Any felony involving the use of a motor vehicle while under the use of any intoxicant.
- (4) Exclusion from access to child care based on a listing on a state registry.
- (a) No person shall be employed, be a licensee or operator, provide substitute services, reside, or have any access to children in a child care agency if the results of the state registry review identify the person as being:
- 1. Listed on the Vulnerable Persons Registry;
 - 2. Listed on the Sexual Offender Registry; or
 - 3. Substantiated in the records of the Department of Children's Services as a perpetrator of abuse or neglect of a child.
- (5) 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 Department's Director of Field Operations for Adult and Child Care Licensing.
- (a) 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.
- (b) Requests for waivers shall be reviewed by an advisory committee. 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 Department's Director of Child and Adult Care Licensing of whether to grant or deny the waiver request. The Director has full discretion over the final decision on whether to grant or deny the requested waiver.

- (c) Any person who is the subject of an exclusion who is dissatisfied with the decision of the Department's Director of Child and Adult Care Licensing regarding a waiver may appeal such decision in writing to the Department by filing a written request for an appeal with the Department's 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 of the Tennessee Code Annotated.
- (d) The following offenses are not waivable and persons with such a conviction may not seek a waiver:
 - 1. Appearing on a state sex offender registry or repository or the National Sex Offender Registry;
 - 2. Felony convictions of murder; child abuse or neglect; a crime against children, including child pornography; spousal abuse; a crime involving rape or sexual assault; kidnapping; arson; physical assault or battery;
 - 3. A drug-related offense committed during the preceding 5 years; or
 - 4. A violent misdemeanor committed as an adult against a child, including: child abuse, child endangerment, sexual assault, or a misdemeanor involving child pornography.

Authority: T.C.A. §§ 4-5-202; 55-50-102(11) and (20); 71-1-105(a)(5) and (a)(12); 71-3-501, et seq.; 71-3-502(a)(2); 71-3-507; and 71-3-508(c); Acts 2003, Ch. 412, §§ 1(c), 2, and 3; and 49 Code of Federal Regulations Part 571.

Rule 1240-04-01-.08 Record Keeping is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) General Record Requirements.
 - (a) All records required by this chapter shall be maintained in an organized manner on-site, in a centralized location, or available electronically, and made readily available upon Department request.
- (2) General Children's Records.
 - (a) The child care agency shall maintain a file for each child in a central location within the child care agency.
 - (b) A child's records shall be kept for one (1) year following the child's leaving the child care agency; however, the health record shall be returned to the parent/guardian upon request when the child leaves the child care agency.
 - (c) All children, including related children younger than age nine (9), shall have required records on file before care is provided. Exception: After an initial eligibility determination, children of homeless families and/or children in state custody may receive care prior to providing required documentation as determined by the Department.
 - (d) General Requirements - Children's Records shall include:
 - 1. A current information form, containing the following:
 - (i) The child's name and date of birth;
 - (ii) Name of parents/guardians;
 - (iii) Child's and parents'/guardians' home addresses and phone numbers;
 - (iv) Parents'/guardians' business addresses, phone numbers, and work hours (if applicable);
 - (v) Any diagnosed disabilities for children who have special needs, medical conditions (including

allergies) or relevant history of the child;

- (vi) For a child with life-threatening allergies, a written plan of action endorsed by the child's pediatrician or licensed medical provider;
 - (vii) Name, address, and telephone number of a physician to call in case of an emergency;
 - (viii) Written consent of parents/guardians regarding emergency medical care; and
 - (ix) The name and address (home and business or school) and current phone number of an emergency contact.
- 2. A written statement stating to whom the child shall be released.
 - 3. Written transportation agreement, if applicable, between parent/guardian and the child care agency regarding daily transportation between the home and the child care agency and the child care agency and the school.
 - 4. Daily attendance records that include the full name and time in and time out for each child shall be maintained on-site but not necessarily in the individual child's file.
 - 5. Daily attendance records shall be kept for one (1) year after the child has left the child care agency.
 - 6. An individual attendance list shall be maintained in each classroom.
 - 7. The child care agency shall obtain individual permission slips signed and dated by the parent/guardian for each field trip prior to the activity.
 - 8. A signed Personal Safety Curriculum Notification Form indicating the parent/guardian have been provided an opportunity to review the personal safety curriculum offered by the child care agency and have been notified of the child sexual abuse/personal safety curriculum.

(e) Immunization Record Requirements.

- 1. The child care agency shall have a Tennessee Department of Health Official Immunization Certificate before accepting any child age two (2) months or older into care. All required vaccinations must be completed by eighteen (18) months of age.
- 2. Exceptions to immunization record requirements may be made only if:
 - (i) The child's physician or a state or local health department provides a signed and dated statement giving a medical reason why the child should not be given a specified immunization;
 - (ii) The child's parent provides a signed written statement that such immunizations conflict with his/her religious tenets and practices; or
 - (iii) If care for children of homeless families and/or children in state custody is needed before documentation of immunizations can be confirmed. Care without documentation of immunizations shall not exceed sixty (60) days.
- 3. Before a school-age child is accepted for care, the center shall have on file a statement from the parent or school that the child's immunizations are current and that his or her health record is on file at the specified school which the child attends.

(f) Children's Record Requirements.

- 1. The following information shall be documented and shared with all educators of an infant, toddler

or non-verbal child during the day:

- (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 provide documentation, signed or stamped by a physician or licensed medical provider, that the child has completed a well-child examination unless the children are homeless and/or in state custody. If the children of homeless families and/or children in state custody are accepted for care, they may supply well-child documentation no more than sixty (60) days after enrollment. This record shall be kept on file at the child care agency for one (1) year.
 3. Each infant, toddler and pre-school child shall have a transition plan for moving from one age group to another.

(g) School-Age Children's Record Requirements.

1. The information form shall list the name, address, and phone number of the school the child attends.
2. The records of any child who is five (5) years old in a child care 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.

- (h) Record Requirements for Children with Special Needs. The child care agency will maintain a written activity record that consists of daily activities and behavior and information pertinent to the needs of the individual child.

(3) Staff Record Requirements.

- (a) The child care agency shall maintain a file for all staff in a central location within the child care agency.
- (b) Staff records shall be maintained for at least one (1) year following the separation of the staff from the child care agency.
- (c) Staff records shall include the following information for each staff member:
 1. The name, birth date, the social security number, address, and telephone number;
 2. An emergency contact name/phone number/address;
 3. Documentation of education and certificates of conferences and workshops attended in the preceding year, as recorded in the TNPAL system;
 4. 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, if the staff person is an educator,

owner, operator, director, manager, or will otherwise have unsupervised contact with children. The documentation shall be on file within ten (10) calendar days of employment or work start date;

5. Documentation that staff have been screened and/or tested for all communicable diseases as required by the Department of Health prior to having contact with children;
 6. Written employment history verified in a written statement that employment history has been checked prior to employment;
 7. Documentation of annual performance reviews including personnel and corrective actions;
 8. Date of employment and date of separation, as applicable, from the child care agency;
 9. Daily attendance (including time in/out);
 10. Signed and completed criminal history disclosure form; and
 11. Verification of criminal and juvenile background check results, the vulnerable person's and sex offender registries results, and the results of a review of the protective services records of the Departments of Children's and Human Services.
- (d) In addition, driver records shall contain the following information:
1. Copy of driver license showing proper endorsements;
 2. Verification of a valid driver license and driver history check;
 3. Annual physical exam;
 4. Verification of a clear drug screen prior to assuming driving duties; and
 5. Verification of Cardiopulmonary Resuscitation and First Aid Certification.
- (e) Substitute and Volunteer Records. Records of substitutes and volunteers shall include their names, addresses, telephone numbers and hours and dates of service.
- (f) Substitute Pool Records. All staff records shall be available on-site where the substitute is working either as print copies or web-accessible documents.

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

Rule 1240-04-01-.09 Incident Reporting is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Reports of Incidents, Illnesses, Accidents, Injuries, and Fatalities.
 - (a) Incidents, accidents, injuries, and signs of illness shall be reported to the parent/guardian no later than the child's release to the 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.
 - (c) The child care agency shall not delay seeking emergency treatment due to a delay in contacting the parent/guardian.
 - (d) Incidents, accidents, injuries, and signs of serious illness to children shall be documented immediately with the following information:

1. Child's name and date of birth;
 2. Name of the person writing the report;
 3. Date and time;
 4. Date and time of completion of incident report;
 5. Description of incident and circumstances; and
 6. Action(s) taken by the child care agency.
- (e) The documentation shall be provided to the parent/guardian the same day of the incident, and filed in the child's record.
- (f) The child care agency shall notify the Department of all serious incidents the same day of the incident, by emailing or calling the Complaint Hotline or making the submission through the provider portal. Serious incidents include but are not limited to the following:
1. Any injury that requires medical treatment beyond on-site first aid;
 2. Reports made to the Department of Children's Services, law enforcement, or anytime it is necessary to call 911;
 3. Any incident that may result in staff exclusion from child care as a result of an excludable offense (see background check requirements);
 4. Transportation accidents and moving violations that occur when children are in the vehicle;
 5. Any child or adult fatality at the child care agency; and
 6. Any incident of children leaving the premises without supervision, or children left unsupervised (in a classroom, on the playground or any other area of the facility, at a field trip location, or being left on a vehicle) that may result in imminent harm.
- (g) Serious injuries must be reported to the Department using the Department-provided form and must be submitted the same day the injury occurred.
- (h) Serious incidents involving suspected child abuse or neglect must be reported to the Department of Children's Services.

Authority: T.C.A. §§ 4-5-201, et seq.; 71-1-105(a)(5) and (a)(12); 71-3-501, et seq.; and 71-3-502(a)(2).

Rule 1240-04-01-.11 Supervision is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Supervision. When children are not within the direct sight and sound of an adult, the term "supervision" means:
- (a) For children six (6) weeks of age through nine (9) years of age, the adult must be able to hear the child at all times, must be able to see the child with a quick glance, and must be able to physically respond immediately.
 - (b) For children six (6) weeks of age through five (5) years of age during mealtime, an adult must be in the direct sight and sound of children while the children are eating.
 - (c) For children ten (10) years of age and older, the adult shall know the whereabouts and activities of the children at all times and must be able to physically respond immediately.

- (d) For children ages ten (10) years and above who are grouped with children under ten (10) years of age, the minimum supervision requirements for children ages six (6) weeks through nine (9) years, shall be followed.
- (e) Each child shall be greeted and received by the specific educator assigned who will have ultimate responsibility and accountability for their supervision, oversight and care upon the child's arrival.
- (f) Helper devices such as mirrors, electronic sound monitors, etc. may be used as appropriate to meet these requirements.

(2) Supervision Procedures.

- (a) To ensure the health and safety of all children enrolled, the management of the child care agency shall maintain a system that enables all children to receive a level of supervision that is appropriate to their age and their developmental, physical and mental status. The child care agency staff shall be within sight and sound of the children in their care at all times, be aware of their activities, and be able to intervene appropriately.
- (b) Staff shall conduct a visual inspection of all areas of the building and grounds immediately after closing the child care agency for the day in order to ensure that no children have been unintentionally left in any part of the child care agency's facilities.
- (c) If any child is left unattended at any time, the child care agency is subject to legal enforcement action. A child left unattended includes, but is not limited to a child:
 - 1. Walking out of a child care agency without the knowledge of staff;
 - 2. Being left in a classroom or any other area of the facility;
 - 3. Being left on the playground;
 - 4. Being left at a field trip location; or
 - 5. Being left on a vehicle.
- (d) Procedures for Release of Children from the Care of the Child Care Agency.
 - 1. Children shall be released to only the child's parent/guardian, or other person authorized by the parent/guardian in accordance with the child care agency's policies, unless otherwise directed by the Department of Children's Services or law enforcement authorities.
 - 2. The child care agency shall verify the identity of the parent/guardian or other authorized person and shall require presentation of a photo identification for comparison with the child's file if the educator does not recognize the individual.
 - 3. In the event an unauthorized person requests release of a child, authorization may be obtained by calling the parent/guardian.
 - (i) The child care agency shall document the date and time of the contact, to whom he/she spoke, and to whom the child was released.
 - (ii) The child care agency shall verify the identity of the unauthorized person by requiring presentation of a photo identification.
 - 4. The person to whom the child is released shall sign the child out of the child care agency as required in subparagraph (e) below.

5. The child care agency shall immediately call 911 or other local emergency services number if anyone whose behavior may place a child at imminent risk attempts to pick up a child.

(e) Sign-In/Sign-Out Procedures.

1. Child care agencies shall maintain a daily sign-in and sign-out sheet or electronic sign-in or sign-out record that includes:
 - (i) Each child's printed or typed full name;
 - (ii) Date;
 - (iii) Time of entry;
 - (iv) Time of departure; and
 - (v) Name of the individual who brought the child to the child care agency and the individual's name that picked up the child from the child care agency.
2. Child care agency staff shall only sign children in and out of the child care agency when transported to the child care agency by the child care agency's transportation service or local school transportation system and no parent/guardian or authorized representative is present or at the discretion of the Department.
3. These sign-in and sign-out sheets or electronic records shall be maintained for one (1) year and shall be kept on-site and immediately available.

(3) Meal and Snack Time Supervision.

- (a) During meal and snack time, staff shall maintain direct supervision of children between six (6) weeks and five (5) years of age and maintain supervision of children between six (6) and nine (9) years of age.
- (b) During meal and snack times, educators that are providing supervision are prohibited from engaging in any activities unrelated to mealtime while children are eating.
- (c) Child care agencies shall develop and follow a written mealtime supervision plan that addresses:
 1. Room arrangement that will allow staff to directly supervise each child at all times;
 2. Individual staff duties to ensure age-appropriate supervision can be given to each child at all times;
 3. Individual children's needs, including high risk behaviors; and
 4. Interruptions and emergencies.
- (d) Mealtime supervision plans shall be updated as needed.
- (e) The mealtime supervision plan shall be prominently posted in each area where food is served.

(4) Playground Supervision.

- (a) The same supervision requirements are applicable on the playground as in the classroom.
- (b) Child care agencies shall develop and follow a written playground supervision plan that includes:
 1. Arrival and departure procedures;
 2. Playground design and placement of equipment;

3. Individual staff duties to ensure age-appropriate supervision can be given to each child at all times;
4. Individual children's needs, including high risk behaviors;
5. Emergency procedures, including communication with other staff; and
6. Name-to-face roll call before leaving classroom and upon arrival at playground and prior to leaving playground and upon arrival in classroom.

(c) Playground supervision plans shall be updated as needed.

(5) Supervision during Transitions.

(a) Child care agencies shall develop and follow a written plan that includes the use of a name to face roll call when transitioning children to and from the classroom, including:

1. Restroom breaks;
2. Kitchen/cafeteria;
3. Gyms or other indoor play areas;
4. Transportation drop off/pick up sites; and
5. Any other location in the area that children are transitioned to or from the classroom.

(6) Supervision during Field Trips.

(a) Child care agencies shall provide direct supervision to each child at all times during field trips.

(b) The adult:child ratio shall be doubled during field trips. Exception: for family and group homes, the adult:child ratio during field trips shall be increased by one (1).

(c) The child care agency shall monitor attendance by checking attendance as follows:

1. Prior to leaving the child care agency;
2. Upon arrival at each destination;
3. At the beginning and end of each activity (such as lunch, breaks, etc.);
4. Upon departing each destination; and
5. Upon arrival at the child care agency.

(7) 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:

1. Swimming Ratio Chart

Age Group	Adult:Child Ratio
Six (6) weeks – Twelve (12) months	1:1
Thirteen (13) months – Thirty-five (35) months	1:2
Three (3) years	1:3

Four (4) years	1:4
Five (5) years	1:5
School-age (Kindergarten and above)	1:10

2. One (1) adult present shall have a current certificate in advanced aquatic lifesaving skills. This person shall supervise from above the level of the swimmers. This person may be the lifeguard provided by the facility.
3. The lifeguard, including those provided by a swimming facility, shall not be included in the required adult:child ratio while performing lifeguard duties.

(8) Safe Sleep Supervision Procedures.

- (a) To reduce the risk of Sudden Unexpected Infant Death (SUID), including Sudden Infant Death Syndrome (SIDS), suffocation and other sleep-related deaths, child care agencies shall follow safe sleep practices.
 1. Infants shall sleep in cribs or play yards with a firm sleep surface with a fitted sheet;
 2. No infant shall be allowed to sleep on a sofa, soft mattress, adult bed, in a car seat, in a swing, or in other restraining devices;
 3. Infants shall be positioned on their backs for sleeping;
 4. Bibs shall be removed prior to placing infants in a crib for sleeping;
 5. Soft bedding is prohibited and includes, but is not limited to, pillows, bumper pads, blankets, quilts, comforters, stuffed toys, and other soft items;
 6. Mobiles and other toys that attach to any part of the crib are prohibited;
 7. It is not necessary to reposition infants once they have demonstrated the ability to turn front to back and back to front independently;
 8. Any cribs or other sleeping equipment prohibited by federal product safety regulations shall not be permitted;
 9. Infants shall be touched by an educator every fifteen (15) minutes in order to check breathing, body temperature and position;
 10. If a child appears not to be breathing, the child care agency shall immediately begin CPR and immediately call for emergency medical assistance;
 11. The child care agency shall have a written policy describing safe sleep practices and provide a copy of that policy and training to all educators and volunteers assuming infant-caregiving duties;
 12. All infant educators shall follow safe sleep procedures;
 13. Infants that arrive asleep in car seats or fall asleep in any piece of equipment other than a crib must be immediately removed and placed on their back in a crib;
 14. Avoid letting the infant overheat and ensure infants are dressed appropriately for the environment (no greater than 1 layer more than an adult would wear in the same environment); and
 15. Any practice that is an exception to the above procedures shall not be used without written authorization from a physician.

(9) Naptime Supervision and Requirements for Naptime

- (a) At naptime, after the children have settled down, adult:child ratios for ages thirty-one (31) months and above may be reduced by fifty percent (50%) in each classroom as long as the children are adequately protected and all of the following requirements are met:
 - 1. At least one (1) adult educator shall be awake and supervising the children in each nap room/sleeping area;
 - 2. There are enough adults on the premises so that the adult:child ratio required for children when they are awake shall be met immediately; and
 - 3. Ratios for children six (6) weeks through thirty (30) months shall be maintained.
- (b) Maximum group size limits do not apply.

(10) Requirements for Nighttime Care.

- (a) If there is a sleeping or resting child during nighttime, there shall be at least one (1) adult educator awake and supervising.
 - 1. The educator 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. Helper devices such as mirrors, electronic sound monitors, etc. may be used as appropriate to meet these requirements.

- (11) Educators and other staff members may not use cell phones, headphones/air pods, smartwatches, or other electronic devices when supervising children, unless the use is directly related to agency activities.

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

Rule 1240-04-01-.12 Health and Safety is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) The on-site staff shall be responsible for the daily health and safety of children in care.
- (2) The child care agency shall ensure that the child care environment and practices support child health and safety.
- (3) The receiving educator shall observe each child upon arrival each day for signs of illness and injury.
- (4) Designated staff shall immediately contact a parent/guardian when a child shows sign of illness or infection.
- (5) The receiving educator shall document any obvious marks or injuries and shall note any comments from the parents pertaining to the marks or injuries.
- (6) A child showing signs of illness shall be cared for apart from other children to the extent that supervision can be maintained for all children, and the parent shall be contacted and arrangements made for pick up.
- (7) A child's temperature shall be taken using a non-invasive method unless otherwise prescribed by a physician.
- (8) Universal and standard precautions, as defined by the Centers for Disease Control, shall be followed when handling or cleaning bodily fluids.
- (9) 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) All staff shall obtain first aid training within one hundred twenty (120) days of employment. At least one staff member who has current certification in first aid from a certifying organization recognized by the Department shall be on-site at all times.

- 1. The certification shall be applicable to the ages present in the classroom:

- (i) Infant/Child first aid; and/or
 - (ii) Adult first aid if children over age twelve (12) are present.

- (c) Current and comprehensive first aid information shall be prominently posted in each area that children use.

- (d) Non-traditional Hour First Aid Requirements. One (1) staff person on duty at all times shall have current certification or the equivalent in first aid from a certifying organization recognized by the Department.

(10) Cardiopulmonary Resuscitation (CPR) Requirements.

- (a) All staff on duty shall receive training in Cardiopulmonary Resuscitation (CPR) as recognized by the Department within ninety (90) days of employment. At least one staff member who has certification in CPR from a certifying organization recognized by the Department shall be present on-site at all times.

- 1. The certification shall be applicable to the ages present in the classroom:

- (i) Infant/Child CPR; and/or
 - (ii) Adult CPR if children over age twelve (12) are present.

(11) Communicable Diseases.

- (a) A child diagnosed with a reportable communicable disease shall have proof of treatment prior to readmission if necessary.
- (b) Parents/guardians of every child enrolled shall be notified immediately if a diagnosed reportable communicable disease has been identified in the child care agency.
- (c) The child care agency shall report the occurrence of any reportable communicable disease to the local health department no later than the end of the day on which it is discovered.

(12) Medications.

- (a) Receiving Medications.

- 1. All medications shall be received from the parent/guardian by a designated staff person.

- 2. The designated staff person(s) shall:

- (i) Obtain the parent's/guardian's written authorization to administer each medication;
 - (ii) Document that the medicines or drugs are in the original container, are not expired, and are labeled with the child's name;
 - (iii) Document the specific dosage and times the medication is to be administered to the child; and
 - (iv) Document that the parent/guardian has provided the child care agency with instructions on

the means and method of administration.

(b) Administering Medications.

1. All medications shall be administered by a staff person or persons who have received training in medication administration. Online training is available through the American Academy of Pediatrics at no cost.
2. The following documentation shall be maintained in the child's file and a copy provided to the parent/guardian:
 - (i) Medication was administered according to parent/guardian or health care provider instruction, including times and amounts of medications administered;
 - (ii) Any side effects observed;
 - (iii) Name of staff person administering medication to child; and
 - (iv) Unused medication was returned to the parent/guardian.
3. Medication shall never be administered in bottles or infant feeders unless authorized by a physician. Educators shall ensure that medication administered in this way is not accessible to other children.

(c) Accessibility of Medications.

1. Medication shall not be accessible to children unless a physician's authorization for the current school year is on file that allows a school-age child to have self-administered medication.
2. All medication shall be stored in a child-proof compartment or container.
3. If medications requiring refrigeration are kept in a refrigerator used for food storage, the medicine shall be put in a leak-proof, child-proof container.
4. 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.

(d) Diaper cream, ointments, sunscreens and lotions shall be inaccessible to children.

(13) Prohibited Practices and Products.

(a) Smoking.

1. Smoking/vaping is not permitted in any indoor area or vehicle of the child care agency at any time.
2. Smoking/vaping is not permitted on the playground or in any outdoor area accessible to children during the time children are present.
3. Smoking/vaping is not permitted within fifty (50) feet of the child care agency entrance.
4. "No Smoking" signs shall be posted conspicuously at each child care entrance, as required by state law.

(b) Alcoholic Beverages.

1. The use of alcoholic beverages is not permitted in a child care agency during the hours of operation.

2. Alcoholic beverages stored in areas of the child care agency where care is provided shall not be accessible to children.
- (c) Illegal activities, inappropriate activities, or any activities that otherwise place children at risk that occur on the premises, property, or in a vehicle on the property of the child care agency.
- (d) Kitchen knives and other potentially dangerous utensils or tools shall be secured so that they are inaccessible to children.
- (e) All items labeled "keep out of reach of children" shall be stored so that they are inaccessible to children.
- (f) 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.

(14) Firearms and Weapons.

- (a) Firearms shall not be permitted on the premises of a child care agency, in any vehicle used to transport children for the child care agency, or in the presence of a child.
 1. In a private residence, deadly weapons and potentially hazardous items, such as power tools, are permitted on the premises, but shall be kept locked, out of sight, and inaccessible to children at all times. Firearms kept in a private residence shall be locked and unloaded with ammunition locked up separately.
 2. The provisions of this subparagraph (a) are not applicable to law enforcement officers or to armed security guards/officers meeting all registration and training requirements as set forth in Tennessee Code Annotated, Title 62, Chapter 35 for providing security or patrol services at or in a public school, public charter school, private school, or church-related school.

(15) Diapering.

- (a) Children shall be checked regularly throughout the day to determine if they are wet or soiled.
- (b) Children shall be diapered/changed and cleaned promptly when wet or soiled.
- (c) The diapering area and/or toileting area shall be located near a hand-washing station and shall be located in a separate area from the food preparation area.
- (d) Diapering surfaces shall be off the floor and nonporous.
- (e) Children shall never be left unattended on an off-the-floor diapering surface.
- (f) Educators shall provide rich social interchanges such as smiling, talking, touching, singing, calling child by name, and engaging in eye contact.
- (g) Educators shall utilize sanitary diapering procedures:
 1. Adults shall wash their hands, using soap and running water, following each diaper change;
 2. The child's hands shall be cleaned when soiled;
 3. Diapering surface shall be washed with soap and water and sanitized after diapering each child;
 4. Soiled diapers and wipes shall be disposed of in such a manner as to prevent access by children and to prevent cross-contamination;
 5. The required diapering procedure shall be used with children of all ages and abilities who require diapering;

6. Pre-school and 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;
7. Children who require diapering may be diapered on a nonporous, washable diapering surface that adequately protects the floor from contamination and is not located in the food preparation area; and
8. The floor beneath and surrounding the diapering surface shall be immediately cleaned and sanitized if the area has become contaminated after each diapering.

(h) Cleaning, Sanitizing and Disinfecting.

1. Child care agencies shall use U.S. Environmental Protection Agency (EPA)-registered products for cleaning, sanitizing and disinfecting. Environmentally friendly products may be used if they have been certified by Green Seal, UL/EcoLogic, and/or EPA's Safer Choice.
2. Cleaning, sanitizing and disinfecting products should not be used in close proximity to children, and adequate ventilation should be maintained when the products are in use.
3. Bleach and Water solution:
 - (i) Agencies should refer to current Department of Health guidelines on making an appropriate bleach solution.
 - (ii) After cleaning the area with soap and water solution, spray or wipe the surfaces with disinfectant/bleach and water. Make sure to allow surfaces to fully air dry.

(16) Staff Health.

- (a) Staff members with signs of a communicable disease shall not be present, and the child care agency shall take prompt steps to prevent further spread of the illness.

Authority: T.C.A. §§ 4-5-201, et seq.; 71-1-105(a)(5); 39-17-1803; 71-3-501, et seq.; 71-3-502(a)(2)-(3); and 71-3-508.

Rule 1240-04-01-.13 Food and Food Service is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

(1) Meal and Snack Time Procedures.

- (a) Staff shall wash their hands with soap and water before and after preparing and serving meals and snacks. Children shall wash their hands with soap and water before and after meals, snacks, and bottle feeding.
- (b) An educator shall be present near the table or high chair where a child is eating. Educators shall not be engaged in any activities unrelated to mealtime while children are eating.
- (c) Children shall be seated at appropriately sized tables and chairs while eating.
- (d) Educators shall engage children in developmentally appropriate conversation to include nutrition and healthy eating choices.
- (e) Child care agencies shall work to teach children appropriate portion sizes by serving meals and snacks using plates, bowls, and cups that are developmentally suited to their nutritional needs.
- (f) An infant shall be held while drinking from a bottle if the infant is too young to use a high chair.

- (g) Educators shall ensure that infants have completed feeding and swallowed all milk/formula before being laid down for a nap.
- (h) Children shall be restrained using the manufacturer's safety restraint while sitting in a high chair or similar seating device.
- (i) Bottles may be served from the refrigerator without warming.
- (j) If desired, bottles may be warmed:
 - 1. Under running warm tap water; or
 - 2. In a container of warm water no warmer than one hundred twenty degrees Fahrenheit (120°F) for no more than five minutes.
- (k) Bottles shall not be propped, and a child shall not be given a bottle while lying flat.
- (l) Children shall not be permitted to carry a bottle with them throughout the day.
- (m) Children shall not have food or drink while in beds, cots, cribs or on mats.
- (n) Prevention of Injuries by Bottle Warmers, Crock Pots and Microwaves:
 - 1. Crock pots are prohibited for use as bottle warmers;
 - 2. Crock pots shall be kept in the kitchen area for cooking meals and shall be inaccessible to children;
 - 3. Microwave ovens and their immediate surrounding area, including cords, shall not be accessible to infants, toddlers, or pre-school children;
 - 4. To prevent scalding, liquid and solid foods heated in a microwave shall be stirred and carefully checked for "hot spots" prior to serving;
 - 5. School-age children shall use microwaves only under direct supervision;
 - 6. Breast milk and formula shall not be heated in a microwave oven; and
 - 7. All heated bottles shall be checked for safe temperatures before serving.

(2) Choking Prevention.

- (a) Solid foods (including cereal) shall not be given to children with normal eating abilities in bottles or infant feeders unless written authorization from a physician is on file.
- (b) It is the responsibility of the supervising educator to ensure that food is not accessible or served until it has been chopped, diced, cut or mashed and is appropriate for each child's age, and individual eating, chewing and swallowing ability.
- (c) Food shall not be given to a child until the supervising educator is able to provide focused attention to the child.
- (d) Educators shall check that no food is left in the mouth of an infant/toddler before putting the infant/toddler down to sleep.
- (e) The supervising educator is prohibited from performing other classroom duties unrelated to food service during mealtime.

- (f) Children shall not be permitted to wear teething necklaces, pacifiers, or any item around their neck or attached to their clothing that are potentially hazardous and associated with choking.

(3) Food Preparation.

- (a) Powdered milk shall not be substituted for fluid milk, formula, or breast milk.
- (b) Formulas shall be used as directed on the container or as directed in writing by a physician.
- (c) Once milk, formula, or breast milk has been warmed, it shall not be re-warmed or returned to the refrigerator.
- (d) Breast milk and formula remaining in bottles after a feeding shall be disposed of in accordance with the timeframes recommended by the Centers for Disease Control and Prevention.
- (e) Frozen breast milk shall be labeled with the date it was expressed and the name of the child.
- (f) Food, formula, milk, or breast milk brought from home shall be:
 - 1. Labeled with the child's name;
 - 2. Labeled with the date the item(s) were received; and
 - 3. Shall be refrigerated immediately, if applicable.
- (g) Previously opened baby food jars shall not be accepted in the child care agency.
- (h) If food is fed directly from the jar by the educator, the jar shall be used for only one feeding and discarded.

(4) Nutrition.

- (a) If the child care agency provides food, it shall be in accordance with the USDA's Child and Adult Care Food Program (CACFP) nutritional guidelines.
- (b) No sugar sweetened beverages shall be served to children at any time by the child care agency.
- (c) Whether provided by the parent or the child care agency, the following meals/snacks shall at a minimum be offered to children based on their hours of attendance:
 - 1. Breakfast or morning snack;
 - 2. Lunch;
 - 3. Afternoon snack;
 - 4. A child in care for ten (10) hours or more shall be offered an additional snack or meal;
 - 5. Breakfast shall be provided to children who arrive before 7:00 a.m. and have not had breakfast at home unless they are school-age children at the facility for before care; and
 - 6. Care during non-traditional hours: 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.

(5) Food Service.

- (a) A child shall not be forced to eat.
- (b) Food shall not be withheld from a child.

- (c) Children shall be given adequate time to eat.
- (d) Food shall not be used as a reward. This does not prohibit special events such as a holiday celebration or a birthday party.
- (e) Food Allergies.
 - 1. Information about individual children's 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 educator has immediate access.
 - 3. Any child's food allergies and the accommodations and precautions in place to address food allergies shall be prominently noted.
 - 4. Outline child care agency procedures that reduce cross-contamination of allergenic foods and other inadvertent exposure to allergens for any child with food allergies.
- (f) A weekly menu that includes all snacks and foods served shall be posted and followed.
- (g) Meal and snack substitutions shall be noted on the menu in advance.
- (h) The feeding schedule for an infant shall be in accordance with the child's need.
- (i) When caring for nursing children, the child care agency shall make accommodations that support and facilitate a family's decision to continue breast feeding.
- (6) 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) Floors under tables and high chairs on which food is served shall be swept and/or vacuumed after each meal and cleaned as needed.
- (7) Dishes and Utensils.
 - (a) Napkins and individual break-resistant utensils, glasses/cups and appropriate dishware shall be provided for children who eat independently.
- (8) Food Storage.
 - (a) Foods requiring refrigeration or cold storage shall be maintained at forty degrees Fahrenheit (40°F) or below.
 - (b) Foods 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 refrigerators, freezers and all other cold storage equipment.
 - (e) No poisonous or toxic materials, except those required for sanitization purposes, may be used or stored

in a food-service area of a facility.

(9) Food Sanitation.

- (a) All food shall be protected from contamination during storage, preparation, transportation, and serving.
- (b) The child care agency shall not serve home-preserved food or raw milk to children in care.
- (c) Raw fruits and vegetables prepared on-site shall be washed before use.
- (d) 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.
- (e) All re-useable utensils, cups, and dishware shall be made from nontoxic materials.
- (f) All re-useable utensils, cups, and dishware shall be thoroughly cleaned and sanitized after each use.
- (g) Single-service articles shall be made from nontoxic materials and shall be stored, handled, and dispensed in a sanitary manner.
- (h) All utensils and food-contact surfaces or equipment used in the preparation, transportation, service, display, or storage of food shall be thoroughly cleaned and sanitized prior to and after each use.

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

Rule 1240-04-01-.15 Program, Language, and Literacy Development is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

(1) Schedule and Routines.

- (a) Each child shall be provided an opportunity to participate in the program activities.
- (b) The environment shall support the development of each child's independence and self-help skills.
- (c) Routines such as snacks, meals, and rest shall occur at approximately the same time each day.
- (d) There shall be a balance between child's choice and educator-directed activities.
- (e) There shall be a balance between vigorous activity and quiet play or rest throughout the day.
- (f) The child care agency shall plan for and provide distinctive arrival and departure routines that will support children in their transitions.
- (g) The educator(s) shall give individual attention to each child throughout the day to include the following activities:
 - 1. For infants/toddlers:
 - (i) The educator shall hold and comfort children that are upset;
 - (ii) The educator shall provide rich social interchanges such as smiling, talking, touching, rocking, singing, and reading;
 - (iii) The educator shall respond to the child's sound;
 - (iv) The educator shall engage in interactive play that includes activities such as movement, dance, musical games, pretend play and finger play;

- (v) The educator shall be attuned to child's needs and respond;
 - (vi) Children that lack mobility shall have an opportunity to experience their environment by engaging in the following activities daily:
 - (I) Being read to individually or in small groups;
 - (II) Carrying them around in order to explore the classroom;
 - (III) Allowing them to touch a variety of objects; and
 - (IV) Naming and identifying objects.
 - (vii) A variety of culturally diverse books shall be available for children to explore including board, cloth, and soft vinyl books; and
 - (viii) For infants less than (6) months of age, each infant shall have direct supervised tummy time every day when they are awake and alert. Engage with infants on the ground each day to optimize adult-infant interactions. Infants should be placed on a firm, safe surface such as a non-plush carpet, mat, or rug for tummy time, with no soft materials placed under or around the infant during tummy time. If the infant falls asleep during tummy time, educators shall immediately place the infant in a crib on their back and follow all safe sleep procedures.
2. For pre-school children:
- (i) The educator shall engage in pretend play;
 - (ii) The educator shall provide age-appropriate puzzles and blocks;
 - (iii) The educator shall encourage children to talk with each other;
 - (iv) The educator shall provide opportunities for problem-solving activities;
 - (v) The educator shall provide opportunities for writing;
 - (vi) The educator shall provide opportunities for creative activities;
 - (vii) A variety of culturally diverse books shall be available for children to handle including board, cloth, and soft vinyl books;
 - (viii) The educator shall read to individually or in a group daily;
 - (ix) The educator shall provide sorting and identifying activities; and
 - (x) The educator shall provide opportunities for helping with daily classroom and self-care routines.
3. For school-age children:
- (i) The educator shall provide opportunities for group activities and cooperative play;
 - (ii) The educator shall provide activities that foster gaining a sense of competence and developing pride in their accomplishments;
 - (iii) The educator shall provide activities that promote learning to make decisions with others;
 - (iv) The educator shall provide opportunities for learning to share and take turns;

- (v) The educator shall provide activities that foster coordination of large and small muscles; and
 - (vi) The educator shall provide opportunities for increasing problem-solving skills and for conflict resolution.
- (h) Upon arrival, infants and toddlers shall be removed from car seats immediately.
 - (i) Children shall never be left unattended in any restraining device, including swings and high chairs.
 - (j) Children shall not be kept in restraining devices such as swings and high chairs, or similar seating devices for longer than fifteen (15) minutes. Exception: Children may remain in high chairs while eating.
 - (k) The educator shall plan and provide developmentally appropriate opportunities for children to interact with one another.
 - (l) The educator shall provide opportunities for children to play alone or do homework, if they choose, in a small, quiet area away from other activities while maintaining supervision requirements in 1240-04-01-.11.
 - (m) School-age children shall be encouraged to participate in planning their own schedules and activities.
 - (n) Care during non-traditional hours. Children shall be given the same opportunities for developmentally appropriate activities during non-traditional care hours as during conventional care hours.
- (2) Electronic Media and Devices.
- (a) If electronic media, including but not limited to television, videos/DVDs, or video/computer games, or personal electronic devices are used, they shall be limited as follows:
 - 1. For children less than two (2) years of age, use of electronic media and other electronic devices is prohibited.
 - 2. Television and video/DVD viewing shall be limited to one (1) hour per day and for educational or physical activities only. Exception: Viewing time may exceed one (1) hour per day for special activities such as movie time as long as the total average time per week does not exceed one hour per day.
 - 3. Computer and personal electronic device time is limited to one (1) hour per day.
 - 4. Television and video/DVD viewing is not allowed during meal or snack time.
 - 5. Exceptions:
 - (i) Use of electronic media for personal recorded messages from relatives serving abroad in the military is not limited.
 - (ii) Use of electronic media during transition times when there is a single educator such as during preparation of a meal is limited to the duration of the transition.
 - (iii) School-age children may use computers for completion of homework with no time limitations.
 - (iv) All children may participate in activities that utilize computers and electronic devices for educational programs.
 - (b) If used, computers which allow internet access by children shall be equipped with monitoring or filtering software, or other type of software protection that limits children's access to inappropriate websites, e-mail, and instant messages.

- (c) Videos, movies, and video/computer games shall be previewed by staff for content.
- (d) Programs, movies, computer games, and music with violent or adult content shall not be permitted in children's presence.
- (e) Programs, movies, computer games, and music shall be developmentally appropriate for the viewers.
- (f) Child care agencies shall inform parents in writing of any scheduled media program viewing.
- (g) Other activity choices shall be available to children who do not wish to participate in media time.

(3) Outdoor Play and Playground Routines.

- (a) Children of all ages, including infants, who are in care more than three (3) daylight hours, shall have a daily 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 it is not raining. Exception: Child care agencies where outdoor play is prohibitive or dangerous, as determined in the discretion of the Department, may substitute unoccupied indoor space providing fifty (50) square feet per child, subject to approval by the Department.

- (b) Agencies shall develop written policies promoting physical activity and shall strive to remove any potential barriers for children to participating in physical activity.

- (c) Outdoor play and moderate to vigorous indoor or outdoor physical activity shall be available as follows:

1. Weather permitting, infants shall be taken outside two to three times per day.
2. Toddlers and preschoolers shall have sixty (60) to ninety (90) minutes of outdoor play per day for full-time programs. Exception: Indoor activity can be increased if adverse weather does not permit outdoor play.
3. Toddlers shall have sixty (60) to ninety (90) minutes of moderate to vigorous physical activity per eight (8) hour day for full-time programs.
4. Preschoolers shall have ninety (90) to one hundred and twenty (120) minutes of moderate to vigorous physical activity per eight (8) hour day for full-time programs.
5. Physical Activity Requirements for Part-Time Providers:

Number of Hours in Operation	2 hours	3 hours	4 hours	5 hours	6 hours	7 hours
Approximate Minutes Required	15	25	30	40	45	50

- (d) Children shall be properly dressed, and the length of time outside adjusted according to the weather conditions and the age of the children.
- (e) Educators shall be alert for any signs of weather-related distress, including dehydration, heat stroke and frostbite.
- (f) Each child care agency shall develop simple playground rules that use positive language. Staff shall verbally communicate these rules to children prior to outdoor play.
- (g) Staff shall plan and implement activities that engage all children in developmentally appropriate active, physical play such as skipping, running, and jumping.

(4) Reclining Rest Period.

- (a) All children in care for six (6) hours or more shall have an opportunity for a reclining rest period. This is

not required for school-age children attending only before and after care or if the children attending the center are on a lengthy field trip.

- (b) Children who are fatigued shall be offered an opportunity to 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) No child shall be forced to lie down or nap or be forced to stay on a cot or on a mat for an extended period of time.

- 1. Children shall be allowed to participate in a quiet activity if not asleep within a reasonable time or if they wake up prior to the end of the rest period.

(f) Nap Room Environment.

- 1. Areas where a child sleeps shall have adequate lighting which allows the educator to see each child with a quick glance and respond appropriately to each child's physical and emotional needs.
 - 2. If music is played in areas where children sleep, the music shall be soothing and soft enough so children can be heard.

(5) 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, injurious discipline methods, and/or techniques that isolate the child are prohibited.
- (d) Discipline shall not be related to food, rest, or toileting. Food shall not be used or withheld as a form of discipline. Active play opportunities shall not be withheld from children who have misbehaved.
- (e) Spanking and all types of corporal punishment are prohibited.
- (f) Mechanical and chemical restraints are prohibited.
- (g) Educators shall focus upon positive behavior and on the individual child's strengths.
- (h) The educator shall address each incident of unacceptable behavior by using methods of positive guidance and discipline to help the child manage his/her behavior.
- (i) Each time a child is engaging in unacceptable behavior the educator shall first redirect the child's attention and substitute a desirable activity prior to disciplining the child.
- (j) Less restrictive, positive behavior management techniques shall be employed before using time-out.
- (k) 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 educator redirection or guidance.
 - 1. Time-out shall be reasonable and developmentally appropriate and shall not include restraint or seclusion.
 - 2. The length of each time-out session shall be based on the age of the child and shall not exceed

one (1) minute per each year of age of the child; provided, however, that no child under thirty-six (36) months shall be placed in time out.

3. Time-out shall take place in an appropriate location within sight of the educator.
4. Restraining devices such as high chairs, cribs, or car seats shall not be used for time-out.
5. Redirection or a similar approach shall be used for children younger than thirty-six (36) months of age.

(I) Physical Restraint and Seclusion. The following is not considered physical restraint and is considered acceptable:

1. Physical touch associated with prompting, comforting, or assisting that does not prevent the service recipient's freedom of movement or normal access to his or her body.
2. Physical restraint and seclusion are emergency safety interventions, not therapeutic techniques, and are implemented in a manner designed to protect the child/youth's safety, dignity, and emotional well-being.
3. The use of physical restraint is allowed only in the case of an emergency when the child/youth is at imminent danger of self-harm or of harming others and no other option exists to protect the safety of the child/youth and staff members.
4. Clothing may not be removed from a child/youth in conjunction with the use of physical restraint or seclusion, other than that which has been determined to place the child/youth or others at risk.

(6) 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 and assisted as needed in a safe, sanitary manner.

(7) Educational Activities.

- (a) Activities shall be intentionally planned based upon the developmental age of the child.
- (b) A daily program shall provide developmentally appropriate opportunities for learning math, literature, science, and health, as well as opportunities for self-expression through a variety of creative and multi-cultural activities such as art, music, movement, and dramatic play.
- (c) Indoor physical activities, requiring children to use both large and small muscles, shall be provided for children of each age group.
- (d) For infants and toddlers, a portion of the day shall include floor time to optimize adult-infant interactions, including direct supervised tummy time for infants less than six (6) months of age, for activities that develop physical, social, language and cognitive skills. The floor shall be clean and safe. Infants should be placed on a firm, safe surface such as a non-plush carpet, mat, or rug for tummy time, with no soft materials placed under or around the infant during tummy time. If the infant falls asleep during tummy time, educators shall immediately place the infant in a crib on their back and follow all safe sleep procedures.

- (e) Educators shall listen to and respond verbally to infants and toddlers throughout the day.
 - (f) The director or primary educator shall observe and document the use of the applicable developmental learning standards.
- (8) Personal Safety Curriculum Components and Guidelines.
- (a) For ages three (3) years through school age, a personal safety curriculum shall be provided at least once a year.
 - (b) The personal safety curriculum shall include a Department-recognized component for the prevention of child abuse.
 - (c) For children four (4) years of age and older, a child sexual abuse prevention component shall be included.
 - (d) The child care agency may choose terminology and instructional methods for this curriculum that provides clear, effective and appropriate instruction to the children in personal safety, including the prevention of all forms of child abuse.
 - (e) 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. School-age children shall not be required to receive personal safety instruction from the child care agency if they annually receive the personal safety instruction required under this paragraph (8) from their school or other educational setting, as approved by the Department.
 - 3. Documentation of Personal Safety Instruction in Educational Settings.
 - (i) Written documentation 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 agency shall maintain documentation that each school-age child enrolled in the child care agency is receiving annual personal safety instruction as required by this subparagraph (e).
 - (f) The personal safety curriculum used shall be made available to parents/guardians for review. The child care agency shall use a notification form developed by the Department to document that the parents/guardians have been notified of the curriculum and of their opportunity to review.
 - (g) The record of each enrolled child shall include a copy of the signed notification form.
 - (h) If requested, child care agency staff shall meet with the parents/guardians to discuss the curriculum.
 - (i) Specific requirements for drop-in centers are described in 1240-04-01-.23.
- (9) Care during non-traditional hours. Child 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, children shall receive individual attention from educators 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 tooth brushing, bath time, and bedtime rituals.

- (10) The parents/guardians shall be consulted in developing a plan to meet the individual needs of a child with special needs.

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

Rule 1240-04-01-.18 Emergency Preparedness is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) All persons or entities operating a child care agency as defined in this chapter, excluding drop-in child care centers and those programs and facilities exempt from licensing as provided in T.C.A. § 71-3-503, shall, in consultation with appropriate local authorities and local emergency management, develop a written multi-hazard plan to protect children in the event of emergencies, including, but not limited to, fires, tornados, earthquakes, chemical spills, and floods. Such plans must address the following components: evacuation, relocation, shelter-in-place and lock down, staff and volunteer emergency preparedness training and practice drills, communication and reunification with families, continuity of operations, and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions.
- (2) All child care agencies shall also inform parents and guardians of children attending the child care agency of the plan. The child care agency shall comply with all other requirements related to emergency preparedness provided under T.C.A. § 71-3-517.
- (3) The Department may temporarily waive certain provisions of child care licensing and Quality Rating Improvement System rules when a state of emergency is declared by the Governor or the Governor's designee, or by activation of the Tennessee Emergency Management Plan ("TEMP") pursuant to T.C.A. § 71-3-517.
- (4) The Department may also waive, on a temporary basis, certain provisions of the child care licensing and Quality Rating Improvement System rules as they pertain to a particular child care agency as needed on an individual basis in case of a single incident such as a fire or other type of disaster.
- (5) All child care agency staff persons shall be trained on the plan annually.

Authority: T.C.A. §§ 4-5-201, et seq.; 71-1-105(a)(5); and 71-3-517.

Rule 1240-04-01-.21 Specific Requirements for Group Child Care Homes is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Required Adult:Child Ratios.
 - (a) Adult:child ratios shall be maintained at all times while the children are on the premises, including outdoors or on the playground.
 1. 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.
 2. The maximum number of children present in a group child care home shall not exceed twelve (12).
 - (i) Exception:
 - (I) If the group child care home is in the occupied residence of the primary educator, children nine (9) years of age or older and related to the primary educator are not counted if those children are provided a separate space from that occupied by the group child care home; and
 - (II) Up to three (3) additional school-age children, related or unrelated to the primary educator, may be in care before and after school, on school holidays, on school snow

days and during summer vacation.

3. Children related to the primary educator 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 and supervision is not compromised.
4. Adult:child ratios and group sizes in group child care homes may exceed requirements by up to ten percent (10%), rounded to the nearest whole number, no more frequently than three (3) days per week.
 - (i) At no time shall the licensed capacity be exceeded.
 - (ii) Infant and toddler groups may never exceed the required ratios and group sizes.
 - (iii) The Department may terminate this variance in individual cases under provisions for issuance of a restricted license pursuant to T.C.A. § 71-3-502.
 - (iv) Group Child Care Home child care agencies who use the variance may, at the Department's discretion, be required to obtain fire approval prior to enrolling additional children.

(b) Group Home Ratio Chart:

Maximum Number of Children and Ages (including children "related" to the primary educator under nine (9) years of age)	Educators Required
Seven (7) or fewer children; and no more than four (4) under two (2) years	1
Seven (7) or fewer children; and five (5) or more under two (2) years	2
More than seven (7) or fewer children; and no more than four (4) under two (2) years	2
More than seven (7) children; and five (5) or more under two (2) years	3

- (c) If school-age children are enrolled, a school-age program shall be provided.
- (d) If four (4) or more infants/toddlers attend a group child care home, they shall have a separate and distinct space and their own educator.
 1. The space shall provide thirty (30) square feet per child.
 2. Barriers shall be sufficient to provide separation without isolating children.
- (e) If attendance drops to seven (7) or fewer children, family child care home ratios apply.
- (f) 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 educator awake and supervising the child.
 - (i) The educator 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 Educator Qualifications for Group Child Care Homes.

- (a) Primary educators shall have a high school diploma or equivalent educational credential as recognized by state law.
- (b) The primary educator shall complete a Department-sponsored child-care informational intake meeting and an orientation session that is at least four (4) hours in length no later than six (6) months prior to a license being issued.
- (c) The primary educator shall complete at least three (3) hours of training on the applicable developmental learning standards within the first three (3) months.
- (d) The primary educator in a group child care home shall have, in addition to other required training in specific subject areas, evidence of receiving annual training as follows in Department-recognized workshops/training, or one-on-one consulting sessions:

1. Effective July 1, 2018, at least eighteen (18) clock hours.

- (i) At least six (6) hours must be health and safety such as but not limited to:
 - (I) Prevention and control of infectious diseases (including immunization);
 - (II) Prevention of sudden infant death syndrome and use of safe sleeping practices;
 - (III) Administration of medication, consistent with standards for parental consent;
 - (IV) Prevention of and response to emergencies due to food and allergic reactions;
 - (V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
 - (VI) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;
 - (VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);
 - (VIII) Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;
 - (IX) Precautions in transporting children (if applicable);
 - (X) First aid and cardiopulmonary resuscitation (CPR);
 - (XI) Poison prevention;
 - (XII) Nutrition and physical activity;
 - (XIII) Child development; or
 - (XIV) Caring for and inclusion of children with special needs.
- (ii) At least three (3) hours of training on pre-literacy and literacy skills and education implementation.

- (iii) 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.
 - (iv) Training in first aid and CPR may be counted as necessary to maintain current certification as required by 1240-04-01-.12.
 - 2. The primary educator shall have evidence of completing training in Adverse Childhood Experiences every five (5) years.
 - (d) Owners who are employed elsewhere shall ensure that a primary educator is always on-site.
 - (e) The primary educator shall not be employed at any other job during the hours of operation unless the Department has approved the primary educator's employment in an official capacity in a program sponsored or recognized by the Department.
 - (f) An educator shall be on-site any time that the primary educator is not on-site during child care operating hours.
- (3) Educator Qualifications for Group Child Care Homes.
- (a) Educators/Assistants sixteen (16) through seventeen (17) years of age may assist a primary educator and be counted in the ratio if the individual is:
 - 1. Never left alone with children; and
 - 2. Always under the direct supervision of a primary educator.
 - (b) An educator in a group child care home shall have, in addition to other required training in specific subject areas, evidence of receiving annual training as follows in Department-recognized workshops/training, or one-on-one consulting sessions:
 - 1. Effective July 1, 2018, at least twelve (12) clock hours.
 - (i) At least six (6) hours must be health and safety such as but not limited to:
 - (I) Prevention and control of infectious diseases (including immunization);
 - (II) Prevention of sudden infant death syndrome and use of safe sleeping practices;
 - (III) Administration of medication, consistent with standards for parental consent;
 - (IV) Prevention of and response to emergencies due to food and allergic reactions;
 - (V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
 - (VI) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;
 - (VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);
 - (VIII) Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;

- (IX) Precautions in transporting children (if applicable);
 - (X) First aid and cardiopulmonary resuscitation;
 - (XI) Poison prevention;
 - (XII) Nutrition and physical activity;
 - (XIII) Child development; or
 - (XIV) Caring for and inclusion of children with special needs.
- (ii) At least three (3) hours of training on the applicable developmental learning standards within the first three months.
 - (iii) At least three (3) hours of training on pre-literacy and literacy skills and education implementation.
- (c) 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.
 - (d) Training in first aid and CPR may be counted as necessary to maintain current certification as required by 1240-04-01-.12.
 - (e) Educators shall have evidence of completing training in Adverse Childhood Experiences every five (5) years.
- (4) All staff responsible for food service, preparation, or supervision shall be trained on the mealtime supervision plan as described in 1240-04-01-.11(2)(c).
- (5) Licensed Capacity of Physical Space.
 - (a) A minimum of thirty (30) square feet of usable indoor play space shall be provided for each child.
 - (b) The maximum number of children who may be present inside a physical space shall be determined in accordance with the minimum square footage requirements.
 - (c) The Department may restrict the child care agency's licensed capacity below the maximum.
 - (d) The following shall not be counted toward to the square footage requirements:
 - 1. Restrooms;
 - 2. Hallways;
 - 3. Kitchen;
 - 4. Office space; and
 - 5. Any space used by cribs or large pieces of furniture.
 - (e) Adequate Plumbing Facilities. The child care agency shall have the minimum number of functional toilets and hand-washing stations 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.; and 71-3-502(a)(2).

Rule 1240-04-01-.22 Specific Requirements for Child Care Centers is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

(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) At no time shall the licensed capacity be exceeded.

(ii) Infant and toddler groups may never exceed the required ratios and group sizes.

(iii) The Department may terminate this variance in individual cases under provisions for issuance of a restricted license pursuant to T.C.A. § 71-3-502.

(iv) Child care centers that use the variance may, at the Department's discretion, be required to obtain fire approval prior to enrolling additional children.

2. When more than twelve (12) children are present on the premises, a second adult shall be physically available on the premises.

(c) Child Care Ratio and Group Size Charts.

1. Chart 1 - Age Grouping.

Age of Children	Adult:Child Ratio	Maximum Group Size
Six (6) weeks – Fifteen (15) months	1:4	8
Twelve (12) – Thirty-six (36) months	1:6	12
Twenty-four (24) – Thirty-five (35) months	1:7	14
Three (3) years	1:9	18
Four (4) years	1:13	20
Five (5) years	1:16	20

2. Chart 2 - Age Grouping.

Age of Children	Adult:Child Ratio	Maximum Group Size
Six (6) weeks – Fifteen (15) months	1:4	8
Twelve (12) months – Thirty-Six (36) months	1:6	12
Two (2) – Four (4) years	1:8	16
Two and one-half (2½) – Three (3) years (Thirty (30) – Forty-seven (47) months)	1:9	18
Two and one-half (2½) – Five (5) years	1:11	20
Two and one-half (2½) – Twelve (12) years	1:10	10
Three (3) – Five (5) years	1:13	22

Four (4) – Five (5) years	1:16	24
Kindergarten through Fifth Grade	1:20	No Max
Sixth Grade through Eighth Grade	1:20	No Max
Ninth Grade through Twelfth Grade	1:20	No Max

3. Chart 3 - Allowable Combined Grouping and Adult:Child Ratio Chart for first/last hour and one-half (½) of each day only:

Age of Children	Adult:Child Ratio	Maximum Group Size
Two and one-half (2½) – Five (5) years	1:10	10
Three (3) – Twelve (12) years	1:15	15
Four (4) – Twelve (12) years	1:20	20
Thirteen (13) – Seventeen (17) years	1:20	20

(d) Assignment of Children to Groups.

- Each child shall be on roll in a defined group and assigned to that group with a specific educator(s).
- Maximum group size requirements, as established in subparagraph (c) above, 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.
- Infants shall have a separate space and shall never be grouped with children older than thirty (30) months of age.
- Care during non-traditional hours. Children age thirteen (13) months and older may be grouped together while sleeping in overnight care.
- Children shall be kept with the same group throughout the day.
- Children shall not be promoted to a new group until required based upon the age and developmental needs of the child.
- 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.
- Pre-school and school-age groups may be combined for up to one and one-half (1½) hours at the beginning of the day and for up to one and one-half (1½) hours at the end of the day as set forth in Adult:Child Ratio Chart 3 in 1240-04-01-.22(1)(c)3.
- Groups of children may never be mixed as part of the regular routine or operation. Exception: Pre-school and school-age groups may be mixed based upon emergencies, holidays or low attendance days.
- Child care agencies shall define grouping for each classroom.

(e) Each group shall have a designated classroom 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 educator, a separate group, a separate space, and a separate program shall be provided for them.

(2) Licensed Capacity of Physical Space.

- (a) The maximum number of children who may be present inside a physical space, i.e., the child care agency's "licensed capacity", shall be determined in accordance with the minimum square footages set

forth in this subparagraph.

- (b) The Department may, in its discretion, and as determined to be reasonably necessary to maintain the health and safety of the children in care, restrict the child care agency's licensed capacity below the maximum set forth in these rules.
- (c) A minimum of thirty (30) square feet of usable indoor play space shall be provided for each child in each classroom.
- (d) Each nap room shall contain a minimum of thirty (30) square feet of floor space per child.
- (e) Locations providing teen parenting, occupational/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. The designated separate space may be located in the same room and divided by movable barriers less than four (4) feet in height.
- (f) The following are not counted toward required square footage:
 - 1. Restrooms;
 - 2. Halls;
 - 3. Kitchen;
 - 4. Office space; or
 - 5. Any space used by cribs or large pieces of furniture.
- (g) Rooms with sufficient floor space may be divided by a barrier at least four (4) feet in height for use by more than one (1) group if 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 child care agency shall have the minimum number of functional toilets and hand-washing stations 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.
- (3) Meals and Snacks. Any person responsible for preparing meals or snacks shall not be included in the adult:child ratio while preparing meals/snacks or doing related tasks, such as washing dishes.
- (4) Schedules and Routines. In an infant or toddler room with more than one (1) educator, each educator 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.
- (5) Interim Director. Following the issuance of a 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.

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

Rule 1240-04-01-.23 Specific Requirements for Drop-In Child Care Centers is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (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) 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) An individual child may not exceed seven (7) hours of care per day or fourteen (14) hours of care per week during regular working hours (Monday - Friday, 6:00 a.m. to 6:00 p.m.).
 - (c) 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 of care per week, exclusive of snow days when the school of the affected child is closed.
 - (d) 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 child care 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"; and
 2. "Personal Safety Curriculum Notification Form for Drop-In Child Care Centers."
 - (b) The child care agency shall provide parents of children ages three (3) and over with a copy of the above forms.
 - (c) The child care agency shall maintain a copy of the Personal Safety Curriculum Notification Form signed by the parent/guardian on file at the child care 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 the license specifically authorizes the licensee to provide such care.
 - (b) The number of school-age children that a drop-in center may accept at any given time shall be determined by the Department based upon the amount of floor space.
 - (c) No child thirteen (13) years of age or older may be cared for by a drop-in center on a snow day.
 - (d) The center shall annually provide the Department with an updated list of trained educators and staff available for emergency call duty.
- (5) Transportation. Transportation 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. Exception: A drop-in child care center may operate without an on-site director no more than sixty (60) days total within the licensing year.

(7) 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 educator supervision as established in parts 2.-4. below.
2. Age Grouping.

Age of Children	Adult:Child Ratio
Six (6) weeks – Fifteen (15) months	1:4
Twelve (12) months – Thirty (30) months	1:7
Two (2) years	1:9
Three (3) years	1:12
Four (4) years	1:15
Five (5) years (not in Kindergarten)	1:18
School-age (Kindergarten and 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, 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.
- (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 of Children Present	One Infant	Two Infants
Twelve (12) months – Thirty (30) months	1:7	1:6
Two (2) years	1:9	1:6
Three (3) years	1:8	1:7
Four (4) years	1:10	1:9
Five (5) years (not in Kindergarten)	1:18	1:13
School-age (Kindergarten and above)	1:22	1:15

4. When more than fourteen (14) children are present, children under two (2) years of age shall have

their own designated area.

(8) 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) Care during non-traditional hours: 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.
- (c) If the child care agency provides food, it shall be in accordance with the USDA's Child and Adult Care Food Program (CACFP) nutritional guidelines.

(9) Licensed Capacity of Physical Space.

- (a) The maximum number of children who may be present inside a physical space shall be determined in accordance with the minimum square footage. The Department may, in its discretion, restrict the child care 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 shall be provided for each child.
- (c) Each nap room shall contain a minimum of thirty (30) square feet of floor space per child.
- (d) For the purposes of calculating square footage requirements, the following shall not be counted:
 - 1. Restrooms;
 - 2. Hallways;
 - 3. Kitchen;
 - 4. Office space; or
 - 5. Any space used by cribs or large pieces of furniture.
- (e) Rooms with sufficient floor space, as defined by the requirements set forth in these rules, may be divided by a barrier at least four (4) feet in height and used for more than one (1) group.
- (f) Adequate Plumbing Facilities. The child care agency shall have the minimum number of functional toilets and hand-washing stations 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.

(10) Staff shall have documentation of all children's allergies and how to deal with any allergic reaction.

(11) Staff shall review emergency preparedness and fire procedures and shall physically walk through the evacuation process every quarter.

(12) Prohibited Activities and Rules Not Applicable to Drop-In Child Care Centers:

- (a) Prohibited Activities:

1. Swimming;
2. Transportation;
3. Provision of specialized services.

(b) Rules Not Applicable to Drop-In Child Care Centers:

1. Completed child application, immunization certificates (for children over two (2) months of age), and health history prior to admission;
2. Written documentation of parent/guardian pre-enrollment visit;
3. License notation to provide care during non-traditional hours;
4. Parent/guardian signed receipt of policies and summary of licensing requirements;
5. Ongoing parent/guardian communication regarding curriculum, personnel changes, and changes in child's routine care;
6. Posting a report card;
7. Emergency procedure practice drills for the children;
8. Written action plan for each child with life-threatening allergies;
9. Immunization requirement exceptions;
10. Documentation of specific infant, toddler, or non-verbal child activities under children's records;
11. Documentation of well-child exam prior to care (child under sixty (60) months);
12. Parent/guardian signed kindergarten status acknowledgement;
13. Daily written activity record for children with special needs;
14. Records regarding proof of staff education;
15. Staff sign-in of children during transportation;
16. First aid certification for all staff during non-traditional hours;
17. Accommodations that support and facilitate a family's decision to continue breast feeding;
18. Sufficient indoor equipment, materials, and toys based upon the activities in 1240-04-01-.14;
19. Outdoor play or equipment;
20. Napping or sleeping equipment for each child six (6) weeks to five (5) years in care for six (6) or more hours;
21. Bedding labeled with each child's name or corresponding code;
22. Time limitation on the use of television, radio, video, computers, and personal electronic devices;
23. A reclining rest period for children in care six (6) or more hours;

24. Individual educator attention to each child described in 1240-04-01-.15;
25. Educational activities described in 1240-04-01-.15(7);
26. Plans for bedtime rituals/routines;
27. Developmental checklist of developmental milestones upon disenrollment; and
28. Requirement regarding when toilet learning is started.

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

Chapter 1240-04-05
Procedures Affecting Licenses of Child Care Agencies

Amendments

Rule 1240-04-05-.02 Definitions is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Applicant. The owner or owner's representative who is required, pursuant to the provisions of these rules, to sign the application for a license.
- (2) Application. The form for, and the process of, applying for a license from the Department of Human Services.
- (3) Child care agency. 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", 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 educator.
- (4) Child Care Agency Board of Review, Board of Review or Board. A committee established to review actions initiated by the Department of Human Services and the Department of Children's Services to deny, revoke, or otherwise limit any license, except for summary suspension of, or probation involving, a license; any civil penalties imposed by the Department of Human Services; or any safety plan implemented by the Department of Human Services that will be, or has been, in effect ninety (90) days or more.
- (5) Civil Penalty. A financial sanction imposed by the Department against a child care agency that has violated a licensing regulation.
- (6) Commissioner. The Commissioner of the Department of Human Services.
- (7) Denial. The decision of the Department not to issue a provisional or continuous license.
- (8) Department (DHS). The Tennessee Department of Human Services and its authorized representatives.
- (9) Hearing Official. The administrative judge assigned to conduct summary suspension hearings or for Child Care Agency Board of Review hearings as may be permitted by law.
- (10) Law. The statutory or regulatory provisions affecting the operation of a child care agency.
- (11) License. A 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 regulations of the Department of Human Services. Issuance of a license is not an endorsement of child care methods or of an agency's operational philosophy.
- (12) Licensee. The person, agency, group, or entity to whom or to which a license to operate a child care agency is issued by the Department of Human Services.
- (13) Provisional license. A license issued to a child care agency for one hundred twenty (120) days for the purpose of allowing the child care agency to demonstrate their ability to attain and maintain compliance with all licensing laws and regulations. Such provisional license may continue in effect, unless suspended if the Department fails to issue a continuous license after the one hundred twenty (120) day period if the Department determines an extension is necessary to allow the child care agency to demonstrate ability to maintain compliance with licensing laws and regulations.
- (14) Reapplication. Application for a new license following denial or revocation of a license.
- (15) 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. A restricted license may also be imposed by the Child Care Agency Board of Review as part of its review of the licensing status of a child care agency in the same manner and for the same reasons as such a license is issued or imposed by the Department. A restricted license may be appealed to the Child Care Agency Board of Review.

- (16) Revocation. The permanent removal of an existing license.
- (17) Summary Suspension. The emergency suspension of a license for violation(s) of licensing laws or regulations needed to adequately protect the health, safety, or welfare of children in a child care agency. Summary suspension may be ordered in circumstances that have resulted in death, injury, or harm to a child or that have posed or threatened to pose a serious and immediate threat of harm or injury to a child based upon the intentional or negligent failure to comply with licensing laws or regulations.

Authority: T.C.A. §§ 4-5-201, et seq.; 71-1-105; 71-3-501, et seq.; 71-3-509(e); and Acts 2000, ch. 981, §§ 1-3, 10, and 14.

Rule 1240-04-05-.03 Licensing Process is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Licensing Criteria.
 - (a) A license for the operation of a child care agency is issued and its continued approval is based upon the following general criteria:
 - 1. The safety, welfare and best interests of the children in the care of the agency;
 - 2. The capability, training and character of the persons providing or supervising the care to the children;
 - 3. The quality of the methods of care and instruction provided for the children;
 - 4. The suitability of the facilities provided for the care of the children; and
 - 5. 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.
 - (b) Failure to attain or maintain the criteria in subparagraph (a) either alone, or in conjunction with failure to attain or maintain compliance with any other regulations governing the specific class of child care agency, may be the basis for refusal to grant a license, or for placing the child care agency on probation, or for suspension, denial or revocation of the agency's license.
- (2) The Department shall assist applicants or licensees in meeting the child care standards of the Department unless the circumstances demonstrate that further assistance is not compatible with the continued safety, health or welfare of the children in the agency's care and that regulatory action affecting the agency's license is warranted. It is the responsibility of the applicant/licensee to comply with all regulations of the Department of Human Services and those regulations of any other federal, state or local regulatory agency which are necessary for the proper operation of a child care business and to demonstrate to the Department a good faith commitment to attaining and maintaining compliance with all applicable licensing standards. All costs and expenses arising from or related to meeting the child care standards of the Department shall be borne entirely by the applicant or licensee; provided, however, the Department may, in its discretion, provide from available funds technical assistance to child care agencies, and for the training of child caregivers and directors.
- (3) If a licensee is denied, or if a license is revoked or suspended, or if any applicant for a license cannot meet the standards, then the Department shall offer reasonable assistance to the parent, guardian or custodian of the child in planning for the placement of such children in licensed child care agencies or other suitable care.

- (4) Application for an Initial License.
 - (a) Application for an initial license to operate a child care agency shall be made in writing to the Department in such manner as the Department determines and shall be accompanied by the appropriate fee set forth in the fee schedule in paragraph (15).
- (5) Provisional License.
 - (a) If the Department determines that the applicant for an initial license has presented satisfactory evidence that the facility which is proposed for the care of children has received fire safety and environmental safety approval, that 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 law and regulations, the Department may issue a provisional license to the applicant. No provisional license will be issued until, at a minimum, fire safety and environmental safety inspections have been conducted and the applicant has received approval from the appropriate agencies.
 - (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 provisional license which limits the agency's authority in one or more areas of operation.
 - (c) The purpose of the provisional license is to permit the license applicant to begin the operation of a child care agency after meeting certain minimum requirements and to demonstrate during the provisional licensing period that it has the ability to attain and maintain compliance with all licensing laws and regulations.
 - (d) Within one hundred twenty (120) days of the issuance of the provisional license, the Department shall determine if the applicant has demonstrated that it meets all of the requirements for the issuance of a license for the classification of child care agency for which the application was made.
- (6) Continuous License.
 - (a) If the Department determines that the applicant for any license has complied with all licensing regulations for the classification of child care agency for which application was made, the Department may issue a license, or shall, if appropriate issue a restricted license as provided in subparagraph (b).
 - (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 which limits the agency's authority in one or more areas of operation.
- (7) License Information.
 - (a) Based upon information provided in the license application or as may be requested by the Department, 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.
 - (b) 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 chairman of the board or other executive head of such controlling body.
- (8) Posting of License. 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.

- (9) Before and After School Services.
- (a) In order for a child care agency to offer before or after school services, the Department will issue a license bearing a notation that the agency is authorized to provide such services.
 - (b) An agency is not authorized to offer such services unless the license bears such a notation.
- (10) In granting a license, the Department may limit the total number of children who may be enrolled at the agency regardless of the agency's physical capacity or the size of its staff.
- (11) License Status Following Application or Appeal.
- (a) If the Department fails to issue or deny a license within one hundred twenty (120) days of the granting of the provisional license, the provisional license shall continue in effect, unless suspended as provided in 1240-04-05-.04(5), until such determination is made.
 - (b) If a license is denied following the issuance of a provisional license, and if a timely appeal is made of the denial of the license, the provisional license shall remain in effect, unless suspended as provided in 1240-04-05-.04(5), until the Child Care Agency Board of Review renders a decision regarding the denial of the license.
- (12) If a provisional or license is denied, or a continuous license is restricted, the applicant may file an appeal as provided in T.C.A. § 71-3-509 and other applicable laws and rules governing the Child Care Agency Board of Review.
- (13) Transfers of Licenses.
- (a) Except as provided in this chapter, no license for a child care agency shall be transferable from one location to another or from one licensee/operator to another, and the transfer by sale or lease, or in any other manner, of the operation of the child care agency to any other person or entity shall void the existing license immediately and any pending appeal involving the status of the license, and the child care agency shall be required to close; provided that if the transferee has made application for, and is granted, a provisional license, the child care agency may continue operation under the direction of the new licensee. The new licensee in such circumstances may not be the transferor or any person or entity acting on behalf of the transferor.
 - (b) Notice of Termination to Buyer/Lessee/Transferee.
 - 1. Except for transfers subject to the provisions of subparagraph (d), at least thirty (30) days before the sale, lease, or transfer by any other means, of a child care agency, the licensee/owner/management of the child care agency shall notify in writing the buyer, lessee or other prospective transferee of the child care agency that the license of the child care agency is not transferable and that upon the effective date of the transfer, the license of the child care agency will automatically terminate and of the need to seek a provisional license from the Department for continued operation of the child care agency.
 - 2. The licensee/owner/management of the child care agency shall notify in writing the Department at the same time the notice required by part 1 is sent and shall clearly identify the date of the transfer and the identity of the prospective buyer/lessee/transferee.
 - (c) If the Department determines that any person or entity has transferred nominal control of a child care agency to any persons or entities who are determined by the Department to be acting on behalf of the purported 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 and other applicable laws and rules governing the Child Care Agency Board of Review.

- (d) The license of any child care agency shall not be voided nor shall any pending appeal be voided pursuant to this paragraph solely for the reason that the child care 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.
- (e) If the current licensee dies or is incapacitated, and provided that no licensing violations require the suspension, denial or revocation of the child care agency's license, the Department may grant family members of the licensee, or administrators or executors of the licensee, a new provisional license to continue operation for a period of one hundred and twenty (120) days. At the end of such period, the Department shall determine whether a license should be granted to a new licensee as otherwise provided in this chapter.
- (f) Nothing in this paragraph (13) 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 child care agency.

(14) Application Fees.

The following application fees shall apply to applications for provisional licenses for child care agencies licensed by the Department:

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|--|----------|
| (a) Family child care homes: | \$100.00 |
| (b) Group child care homes: | \$125.00 |
| (c) Child care centers (Less than 100 children): | \$200.00 |
| (d) Child care centers (More than 100 children): | \$400.00 |
| (e) Child care centers (More than 250 children): | \$500.00 |
| (f) Drop-in centers: | \$200.00 |

Authority: T.C.A. §§ 4-5-201, et seq.; 71-1-105; 71-3-501, et seq.; 71-3-502; and Acts 2000, ch. 981, §§ 3 and 14.

Rule 1240-04-05-.04 Violations of Licensing Regulations is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

(1) Right of Inspection.

- (a) It is the duty of the Department, through its duly authorized agents, to inspect at regular intervals, without previous notice, all child care agencies or suspected child care agencies, as defined in T.C.A. § 71-3-501.
- (b) The Department is given the right of entrance, privilege of inspection, access to accounts, records, and information regarding the whereabouts of children under care for the purpose of determining the kind and quality of the care provided to the children and to obtain a proper basis for its decisions and recommendations.
- (c) If refused entrance for inspection of a licensed, approved or suspected child care agency, the chancery or circuit court of the county where the licensed, approved or suspected child care agency may be located may issue an immediate ex parte order permitting the Department's inspection upon a showing of probable cause, and the court may direct any law enforcement officer to aid the Department in executing such order and inspection. Refusal to obey the inspection order may be punished as contempt.
- (d) Except where court orders prohibit or otherwise limit access, parents or other caretakers of children in the care of a child care agency licensed pursuant to T.C.A. § 71-3-501 et seq. shall be permitted to visit

and inspect the facilities and observe the methods for the care of their children at any time during which the children are in the care of the agency and, except those records of other children in the care of the agency and their parents or caretakers, shall further be permitted to inspect any records of the agency which are not privileged, or are not otherwise confidential, as provided by law or regulation, and the parents' or caretakers' access for these purposes shall not be purposely denied by the agency.

(e) Any violation of the rights given in this paragraph is a Class A misdemeanor.

(2) Probation.

- (a) If, during the licensing period, the Department determines that a child care agency is not in compliance with the laws or regulations governing its operation, and, if after reasonable written notice to the child care agency of the non-compliance, the Department determines that the violation or related violations remain uncorrected, the Department may place the licensed child care agency on probation for a definite period of not less than thirty (30) days nor more than sixty (60) days as determined by the Department. The Department shall provide the child care agency a written notice describing the violation of the licensing rules that support the basis for the probationary status.
- (b) If placed on probation, the agency shall immediately post a copy of the probation notice, together with a list provided by the Department of the violations which were the basis for the probation, in a conspicuous place as directed by the Department and with the agency's license, and the agency shall immediately notify in writing the custodians of each of the children in its care of the agency's status, the basis for the probation and of the agency's right to an informal review of the probationary status.
- (c) If the child care agency requests an informal review within two (2) business days of the imposition of probation, either verbally or in writing, an informal review of the probationary status shall be conducted by Department licensing personnel who were not involved in the decision to impose the probation. The child care agency may submit any written or oral statements as argument to the licensing supervisor or designee within five (5) business days of the imposition of the probation. Written and oral statements may be received by any available electronic means. The licensing supervisor or designee shall render a decision in writing upholding, modifying or lifting the probationary status within seven (7) business days of the imposition of the probation.
- (d) If the licensing supervisor or designee did not lift the probation under subparagraph (c), the agency may also appeal such action in writing to the Commissioner within five (5) business days of the receipt of the notice of the licensing supervisor or designee's decision regarding the agency's probationary status as determined in subparagraph (c). If timely appealed, the Department shall conduct an administrative hearing pursuant to the contested case provisions of T.C.A. §§ 4-5-301 et seq. concerning the Department's action within fifteen (15) business days of receipt of the appeal and shall render a decision in writing within seven (7) business days following conclusion of the hearing. The hearing officer may uphold, modify or lift the probation.
- (e) The imposition of probation pursuant to the provisions of this paragraph (2) shall be discretionary with the Department, and shall not be a prerequisite to any licensing action, to impose a civil penalty or to suspend, deny or revoke a license of a child care agency.

(3) Civil Penalties.

(a) General Provisions.

- 1. If the Department determines that there exists any violation with respect to any person or entity required to be licensed pursuant to T.C.A. §§ 71-3-501 et seq., the Department may assess a civil penalty against such person or entity for each separate violation of a statute, rule or order pertaining to such person or entity in an amount ranging from Fifty Dollars (\$50.00) for minor violations up to a maximum of One Thousand Dollars (\$1,000.00) for major violations or violations resulting in death or injury to a child. Each day of continued violation constitutes a separate violation.
- 2. Any recommendation made by licensing staff for a civil penalty shall be reviewed and approved by

the Department's state office management and the Department's legal staff before being imposed.

(b) Civil Penalties Schedule.

1. Major Violations.

- (i) For any violation of any licensing laws or regulations that, due to negligence or intentional disregard of licensing law or regulations, results in serious injury to, or death of, a child, the Department may assess a civil penalty in a range from Seven Hundred Fifty Dollars (\$750.00) up to One Thousand Dollars (\$1,000.00). The Department shall determine the amount of the penalty based upon the extent of the injury to the child and whether the injury or death of the child was the result of negligence or intentional disregard of the licensing regulations. Consideration of the licensee's history of prior violations shall also be a factor in the determination of the amount of the civil penalty.
- (ii) For any violation of any licensing laws or regulations that, due to negligence or intentional disregard of licensing law or regulations, results in an injury to a child, the Department may assess a civil penalty in a range from Five Hundred Dollars (\$500.00) up to Seven Hundred Dollars (\$700.00). The Department shall determine the amount of the penalty based upon the extent of the injury and whether the injury to the child was the result of negligence or intentional disregard of the licensing regulations. Consideration of the licensee's history of prior violations shall also be a factor in the determination of the amount of the civil penalty.
- (iii) For any violation of any licensing laws or regulations that, due to negligence or intentional disregard of licensing law or regulations, results in children leaving the child care agency premises without supervision, or children left unsupervised that may result in imminent harm, the Department may assess a civil penalty in a range from Seven Hundred Fifty Dollars (\$750.00) up to One Thousand Dollars (\$1,000.00). The Department shall determine the amount of the penalty based upon the extent of the potential harm to the child and whether the potential harm to the child was a result of negligence or intentional disregard of the licensing regulations. Consideration of the licensee's history of prior violations shall also be a factor in the determination of the amount of the civil penalty.
- (iv) For violations of the following categories of regulations the Department may impose a civil penalty of Two Hundred Dollars (\$200.00) for the first violation, Three Hundred Dollars (\$300.00) for the second violation, and Four Hundred Dollars (\$400.00) for the third and any subsequent such violation:
 - (I) Failure to follow any rule related to the proper transportation of children by employees, substitutes, volunteers, agents or contractors of the child care agency;
 - (II) Violation of adult:child ratio requirements;
 - (III) Failure to complete required background checks on staff;
 - (IV) Use of corporal punishment/inappropriate discipline;
 - (V) Lack of Insurance;
 - (VI) Failure to report suspicion of abuse or neglect;
 - (VII) Falsification of documents required by the Department;
 - (VIII) Failure to have CPR/first aid certification as required by the Department;
 - (IX) Lack of proper supervision of children;
 - (X) Failure to properly dispense or store medications;

- (XI) Failure to remove persons from access to children following notification of a prohibited criminal background or pending criminal charge or following notification of the person's validated status as a perpetrator of child abuse;
 - (XII) Failure to properly store hazardous items such as, but not limited to, cleaning products, pesticides, hazardous chemicals, or other poisonous items; and
 - (XIII) Failure to properly remove or secure firearms within the child care agency area which are under the ownership or control of the child care agency or its staff, substitutes, or other persons permitted access to the children; or failure to prevent exposure of children in the child care agency's care to firearms which are under the control of the child care agency or its staff, substitutes, or other persons who have been permitted by the child care agency to have access to the children.
- (v) The existence of six (6) or more minor violations of any type in any period of three (3) or more months shall constitute a major violation and may be subject to a civil penalty imposed by the Department of Two Hundred Dollars (\$200.00) in addition to the penalty for each minor violation. Three (3) or more minor violations of the same regulation in any period of three (3) or more months shall constitute a major violation and may be subject to a civil penalty imposed by the Department of Two Hundred Dollars (\$200.00) in addition to the penalty for each minor violation.

2. Minor Violations.

- (i) A minor violation shall be any rule violation not described as a major violation in part 1.
 - (ii) Each minor violation may subject the licensee to a civil penalty of Fifty Dollars (\$50.00).
- (c) The Department shall assess any civil penalty that it imposes in an order that states the reasons for the assessment of the civil penalty and the amount of the penalty.
- (d) The order may be served on the licensee personally by an authorized agent of the Department who shall complete an affidavit of service, or the order may be served by certified mail, return receipt requested.
- (e) The licensee may appeal the penalty to the Child Care Agency Board of Review by filing a request for an appeal in writing with the Commissioner within ten (10) days of the personal service of the order or mailing date of the order. The hearing on the appeal shall be heard within ninety (90) days unless continued for good cause shown.
- (f) Civil penalties assessed pursuant to this subsection shall become final ten (10) days after the date an order of assessment is served if not timely appealed, or, if timely appealed, within seven (7) days following entry of the Board's order unless the Board's order is stayed.
- (g) Remedies for Failure to Pay Civil Penalty.
- 1. If the violator fails to pay an assessment when it becomes final, the Department may apply to the Chancery Court of Davidson County, Tennessee for a judgment and seek execution of such judgment.
 - 2. No application for a new license will be accepted by the Department until a civil penalty that has become final has been paid in full. Failure to pay in full a civil penalty which has become final is grounds for denial of a pending application for a provisional or continuous license, and, further, is grounds for revocation of an existing license.
- (h) The determination to impose a civil penalty shall be discretionary with the Department and shall not be a prerequisite to any other licensing action to suspend, deny or revoke a child care agency's license. Civil penalties may also be used in conjunction with the probation, suspension, denial or revocation of a

license.

(4) Denial and Revocation of Licenses.

- (a) If the Department determines that any applicant for a provisional license or an existing licensee has failed to maintain compliance with licensing laws or regulations after reasonable notice, consistent with the safety of the children in the care of the child care agency, of such failure and a reasonable opportunity to demonstrate compliance with licensing laws or regulations, the Department may deny the application for the provisional license or may revoke the existing license; provided, however, the Department at any time may deny a provisional license if the applicant fails to meet the initial requirements for its issuance; and, provided, further, if the Department determines that repeated or serious violations of licensing laws or regulations warrant the denial or revocation of the license, then, notwithstanding any provisions of T.C.A. § 4-5-320 or this paragraph to the contrary, the Department may seek denial or revocation of the license regardless of the licensee's demonstration of compliance either before or after the notice of denial of the application or before or after notice of the revocation of the license.
- (b) Notwithstanding the provisions of T.C.A. § 4-5-320, the notice of denial or revocation may be served personally by an authorized representative of the Department who shall verify service of the notice by affidavit, or the notice may be served by certified mail, return receipt requested.
- (c) If application for the provisional or initial license is denied or if an existing license is revoked, the applicant may appeal the denial or revocation by requesting in writing to the Department a hearing before the Child Care Agency Board of Review within ten (10) days of the personal delivery or mailing date of the notice of denial or revocation. Failure to timely appeal shall result in the expiration of any existing license immediately upon the expiration of the time for appeal.
- (d) The hearing shall be held in accordance with the hearing procedures before the Child Care Agency Board of Review pursuant to the licensing law.
- (e) If timely appeal of the denial or revocation is made, then, pending the hearing upon the denial or revocation, the child care agency may continue to operate pending the decision of the Child Care Agency Board of Review unless the license is summarily suspended as provided in paragraph (5).

(5) Summary Suspension of Licenses.

- (a) Subject to the following provisions of this section, if the Department determines at anytime that the health, safety or welfare of the children in care of the child care agency imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of the license may be ordered by the Department pending any further proceedings for revocation, denial or other action. Summary suspension may be ordered in circumstances that have resulted in death, injury or harm to a child or which have posed or threatened to pose a serious and immediate threat of harm or injury to a child based upon the intentional or negligent failure to comply with licensing laws or regulations.
- (b) Contents of the Order of Summary Suspension.
 - 1. The licensee shall be provided written notice of the issuance of the order of summary suspension and shall be notified that the licensee has the opportunity for an informal hearing before an administrative law judge or before a hearing officer who is not an employee of the Department (except as provided in part (e)3.) within three (3) business days of the issuance of the order of summary suspension.
 - 2. The Department shall set forth with specificity in its order the legal and factual basis for its decision, stating therein the specific laws or regulations which were violated by the agency, and shall state with specificity in the order the reasons that the issuance of the order of summary suspension is necessary to adequately protect the health, safety or welfare of children in the care of the child care agency.
 - 3. The order shall state the time, date and location of a show cause hearing to determine if the

suspension is appropriate, shall state the issues involved as described in subparagraph (f) and shall notify the licensee of the right to be represented by counsel.

- (c) The notice may be personally delivered by any authorized representative of the Department to any person in charge of or reasonably believed to be in charge or who may be supervising the agency at the time of delivery. If such person is not the licensee, the order shall also be sent to the licensee by certified mail, return receipt requested, but the effect of the order shall not be delayed by mail delivery. The order shall contain a certificate of service or shall have attached to it a certificate verifying its service by personal delivery, and, if required, by certified mail service.
- (d) The order shall be effective upon entry by the Commissioner, or the Commissioner's designee, at such time as directed by the order. Upon receipt of the order by any person to whom the order is delivered at the child care agency, the agency shall cease or limit its operations at such time and in such manner as the order directs.
- (e) Hearing Official and Authority.
 - 1. Hearings on summary suspension orders shall be heard by an administrative law judge from the Administrative Procedures Division of the Secretary of State's Office, if the administrative law judge is available within the time frames for a summary suspension hearing.
 - 2. If the Administrative Procedures Division of the Secretary of State's Office informs the Department that an administrative law judge is unavailable, the Department may obtain an administrative law judge or hearing officer who is not an employee of the Department except as provided herein. The substitute administrative law judge or hearing officer may be obtained by the Department by contract with a private attorney or by contract or agreement with another state agency. If the Administrative Procedures Division of the Office of the Secretary of State informs the Department that the Division's contested case docket prevents the scheduling of a hearing on the issuance of a summary suspension order within the initial timeframes set forth in this subparagraph and if the Department is unable to obtain a private or state agency administrative law judge or hearing officer to hear the show cause hearing on the summary suspension order within the timeframes set forth in this part, the Department may utilize a hearing officer from the Department's Division of Appeals and Hearings.
 - 3. The administrative law judge or hearing officer shall have authority, as otherwise permitted in this section and subject to the provisions of subparagraph (h), to enter orders binding on the Department resulting from show cause hearings involving summary suspension orders.
- (f) Hearing Procedures.
 - 1. The informal hearing described by this subdivision shall not be required to be held under the contested case provisions of T.C.A. §§ 4-5-301 et seq.
 - 2. The hearing is intended to provide an informal, reasonable opportunity for the licensee to present to the hearing official the licensee's version of the circumstances leading to the suspension order and any measures taken to correct the violations leading to the suspension.
 - 3. The only issues to be considered are whether the public health, safety or welfare imperatively required emergency action by the Department and what, if any, corrective measures have been taken by the child care agency following the violation of the licensing laws or regulations cited by the Department and prior to the issuance of the order of summary suspension, that would eliminate the danger to the health, safety or welfare of the children in the care of the agency.
- (g) Hearing Order.
 - 1. Upon conclusion of the hearing, the administrative law judge or hearing officer shall render a decision immediately regarding the status of the agency's license and shall state the basis for the decision.

2. The administrative law judge or hearing officer may lift, modify, or continue the suspension based upon the evidence presented and the stipulations and agreements of the parties.
 3. The hearing order containing findings of fact and conclusions of law to support the decision shall be reduced to writing within fifteen (15) days after the hearing and shall be sent to the parties and their counsel.
- (h) Revocation, Denial of the License Following Suspension or Modification of the Order of Summary Suspension by the Department.
1. Subsequent to the hearing on the summary suspension, the Department may proceed with revocation or denial of the license or other action as authorized by this part, regardless of the decision concerning summary suspension of the license, or the Commissioner, upon satisfactory proof that the conditions warrant, may by further order, lift or reduce the restrictions contained in the order of summary suspension without further order by the administrative law judge or hearing officer, or, may, upon agreement of the licensee, further modify the order by imposing new, additional or different restrictions or conditions upon the licensee or the licensee's operations. A summary suspension order entered by the Department may be lifted or modified by the Department following its entry by the Department as provided in this part, before, or after, a case is docketed with the Child Care Agency Board of Review, without further approval of the Board or a Board panel.
 2. If the Department determines that revocation or denial of the license is warranted following suspension, those proceedings shall be promptly instituted and determined as authorized by the licensing law.
 3. Unless extended by agreement of the licensee, the order of summary suspension shall be dissolved upon motion of the licensee unless the Department has issued a notice of denial or revocation of the license within thirty calendar (30) days of the summary suspension order's entry.

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-301, et seq.; 71-1-105; 71-3-501, et seq.; 71-3-509; and Acts 2000, ch. 981, §§ 10 and 14.

Rule 1240-04-05-.05 Restricted Licenses for Child Care Agencies is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

(1) Limitation of Authority

- (a) In determining whether to deny, revoke or summarily suspend a license, the Department may choose to deny, revoke or suspend only certain authority of the licensee to operate and may permit the licensee to continue operation, but may restrict or modify the licensee's authority to provide certain services or perform certain functions, including, but not limited to: transportation or food service, enrollment of children at the agency, the agency's hours of operation, the agency's use of certain parts of the agency's physical facilities or any other function of the child care agency which the Department determines should be restricted or modified to protect the health, safety or welfare of the children.
- (b) The restrictions shall be contained in the notice of denial or revocation or in the order of summary suspension entered by the Department and shall state the basis for the restriction and the specific areas of operation which are to be limited.
- (c) The restrictions shall remain on the license until the next license issuance anniversary date unless modified or removed pursuant to (4) below. If the Department determines that the restrictions on the license should continue, the child care agency may appeal to the Child Care Agency Board of Review.

- (2) The actions by the Department authorized by this section may be appealed to the Child Care Agency Board of Review as otherwise provided by the licensing law for any denial or revocation, or as provided in this chapter

for summary suspensions of licenses.

(3) Appeal and Status of Restricted License.

(a) If the licensee does not appeal the issuance of a restricted license or the summary suspension of authority to operate, it may petition the Department to request that the restrictions be removed or altered.

(b) If timely appeal is made, then, pending the hearing upon the restricted license, the child care agency may continue to operate pending the decision of the Child Care Agency Board of Review unless the license is summarily suspended as provided in Section .04(5).

(4) The Department may, at any time, modify or remove the restrictions on the license upon order of the Commissioner, or the Commissioner's designee.

Authority: T.C.A. §§ 4-5-201, et seq.; 71-1-105; 71-3-501, et seq.; and Act 2000, ch. 981, §§ 10(f) and 14.

Rule 1240-04-05-.06 Reapplication Periods is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

(1) When an application for a license has been denied, or a license has been revoked, on one (1) occasion, the child care agency may not reapply for a license for a period of one (1) year from the effective date of the denial or revocation order if not appealed, or, if appealed, from the effective date of the Child Care Agency Board of Review's or reviewing court's order.

(2) If application for a license has been denied, or a license has been revoked, on two (2) occasions, the child care agency may not reapply for a license for a period of two (2) years from the effective date of the denial or revocation if not appealed or, if appealed, from the effective date of the Child Care Agency Board of Review's or reviewing court's order.

(3) If an application for a license has been denied, or a license has been revoked on three (3) occasions, the agency shall not receive another license for the care of children.

(4) No person who served as full or part owner or as director or as a member of the management of a child care agency shall receive a license to operate a child care agency if that person participated in such capacity in a child care agency which has been denied a license, or which had a license revoked, on three (3) occasions.

(5) Waivers

(a) The time restrictions in paragraphs (1) and (2) may be waived by the Child Care Agency Board of Review in the hearing in which the denial or revocation is sustained, or, if requested by the former licensee in writing to the Commissioner, in a separate subsequent hearing before the Child Care Agency Board of Review or, in the discretion of the Commissioner, upon review by the Commissioner. No waiver may be granted for any permanent restriction imposed pursuant to paragraph (3).

(b) The agency must show to the Child Care Agency Board of Review's or the Commissioner's satisfaction, by a preponderance of the evidence, that the agency has corrected the deficiencies which led to the denial or revocation, and that the child care agency can demonstrate that it has the present and future ability, and is willing, to maintain compliance with licensing laws or regulations.

(c) The decision of the Child Care Agency Board of Review or the Commissioner shall be reduced to an order, which shall be a final order pursuant to Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated, and may be appealed pursuant to T.C.A. § 4-5-322.

(7) For purposes of this section, unless otherwise specified in the order, the "effective date of the board's or court's order" shall mean the date the order is entered by the Chair of the Child Care Agency Board of Review or panel chair or vice-Chair of the Child Care Agency Board of Review.

Authority: T.C.A. §§ 4-5-201, et seq.; 71-1-105; 71-3-501, et seq.; and Acts 2000, ch. 981, §§ 10(g) and 14.

Chapter 1240-04-07
Report Cards and Rated Licensing for Child Care Agencies

Amendments

Chapter 1240-04-07 Report Cards and Rated Licensing for Child Care Agencies is amended by renaming this chapter “Quality Rating and Improvement System for Child Care Agencies”.

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-202; and 71-3-502(a)(2) and (j).

Rule 1240-04-07-.02 Definitions is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) **Bonus Payment.** An amount paid through the Child Care Certificate Program that is above and beyond the basic subsidy rate and is based upon the score achieved by a child care agency.
- (2) **Certificate Payment.** Payments made through Child Care Certificate Program to a participating agency, either at the basic subsidy rate or at the higher rate paid to an eligible child care agency based upon the agency's quality rating improvement system score.
- (3) **Child Care Agency.** 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”, 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 educator.
- (4) **Child Care Certificate Program.** A Tennessee Department of Human Services program that provides financial assistance to eligible families to help cover the cost of child care.
- (5) **Child Care Environment.** The organization of space, interactions of children with each other and with staff, 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.
- (6) **Child Care Resource & Referral (CCR&R).** A statewide network of regionally located agencies that assist parents, child care professionals, and the community by offering information on child care and by providing technical assistance, consultation, resource materials, and training to child care agencies.
- (7) **Civil Penalty.** A financial sanction imposed by the Tennessee Department of Human Services against a child care agency that has violated a licensing regulation.
- (8) **Compliance History.** A record of an agency's history with respect to attaining and maintaining compliance with applicable licensing laws and regulations.
- (9) **Department.** The Department of Human Services.
- (10) **Director.** The on-site child care center staff member manager for a child care agency who has overall responsibility for the daily oversight of all staff, direct child care services, and overall operation of the center.
- (11) **Educator.** An individual, whether paid or unpaid, including the Primary Educator, 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. For the purposes of these rules the term educator is equivalent to caregiver as defined by T.C.A. § 71-3-501.
- (12) **Early Care and Education.** A system that includes pre-kindergarten, Head Start, and licensed center-based, group, and home child care programs, dedicated to the care, education, protection, supervision or guidance of children beginning at birth.

- (13) License. A permit issued by the Department to a child care agency authorizing the agency (the licensee) to provide child care in accordance with the provisions of the license, the law, and the regulations of the Tennessee Department of Human Services.
- (14) Primary Educator. The adult on site at a family or group child care home who is directly responsible for care, education and supervision of children. For the purpose of these rules, the term primary educator is equivalent to primary caregiver as referenced in T.C.A. § 71-3-501.
- (15) Quality Rating Improvement System. The system by which all childcare agencies will be evaluated. This system incorporates four (4) evaluations over the course of a year of all childcare agencies.

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-202; and 71-3-502(a)(2) and (j).

Rule 1240-04-07-.03, currently titled Quality Rating Improvement System, is amended so that the title of the rule shall now be Quality Rating and Improvement System. Additionally, Rule 1240-04-07-.03 is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

1240-04-07-.03 Quality Rating and Improvement System.

- (1) The license monitoring process shall include an evaluation of the child care agency for a quality rating improvement system scorecard in accordance with the provisions set forth in this chapter.
- (2) A child care agency shall receive an annual quality rating improvement system score that sets forth the agency's overall score based upon applicable criteria contained within each component area.
- (3) The component areas, as determined by the Department, measure certain key indicators of performance set forth in T.C.A. § 71-3-502(j), as indicated below:
 - (a) Health and Safety; and
 - (b) Teacher/Child Interactions.
- (4) Monitoring Visits.
 - (a) For the purpose of generating an annual quality rating improvement system score, monitoring visits shall consist of four (4) quarterly visits each year, except for programs that are closed during the summer. These agencies will have three (3) quarterly visits and one (1) quarterly visit prior to or just after the three (3) month closure.
 - (b) Each visit will be conducted at a different time of the day to get a look at the entire program throughout the year.
 - (c) During each quarterly monitoring visit, twenty-five percent (25%) of the Health and Safety section categories and one hundred percent (100%) of Teacher/Child Interactions will be scored.
 - (d) An agency must complete four (4) monitoring visits in a calendar year in order to receive a QRIS score.
- (5) In addition to critical health and safety items, during each quarterly monitoring visit, one of four (4) categories from the Health and Safety section will be scored with a total value of 60 points. The four (4) categories are listed below:
 - (a) Supervision Practices/Facilities/Equipment;
 - (b) Record Keeping;
 - (c) Healthy Weight and Disease Prevention; and

(d) Organizational Structure.

(6) Assignment of Scores.

- (a) The score for each component area of the Health and Safety section indicates the agency's compliance with departmental licensing regulations.
- (b) Each element indicator on the classroom observation tool is scored based on "required evidence." Therefore, in order to achieve a score of "met" on an item, all of the required evidence must be either visually observed or documented during the teacher interview when the classroom observation tool is administered during each quarterly visit.
- (c) The total combined score possible for the Teacher/Child Interactions and Health and Safety sections is 100.
- (d) Upon completion of the quarterly visit, prior to departure, the Licensing Consultant (LC) will review the scoresheet with the agency director or primary educator and discuss areas of high performance and strategies for areas that may have been deficient. If time or schedule does not allow for the director and/or educator to meet on this day the LC will schedule a time either in person, video chat, or through a telephone conversation within five (5) business days to review.

(7) The agency's official quality rating improvement system scorecard and license shall be posted together in a conspicuous area at the child care agency, as may be directed by the Department.

(8) Violations.

- (a) Agencies found to be in violation of licensing requirements during a live monitoring visit will have points deducted from the item from where the violation was found.
- (b) Agencies found to be in violation of critical health and safety items and/or teacher/child interactions items between monitoring visits will have points deducted from the item where the violation was found on the next monitoring visit.

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-202; and 71-3-502(a)(2) and (j).

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: January 23, 2024

Signature: Jude White

Name of Officer: Jude White

Title of Officer: Assistant Commissioner for Child Care & Community Services

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Tre Hargett
Secretary of State

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**HUMAN SERVICES
STANDARDS FOR REGULATED INSTITUTIONS**

**CHAPTER 1240-04-01
LICENSURE RULES FOR CHILD CARE AGENCIES**

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1240-04-01-.02 DEFINITIONS.

- (1) Active play. Activity that is appropriate for a child's age and abilities, involves moving the whole body and makes the heart beat faster, and includes any activity that involves moderate to vigorous bursts of high energy.
- (2) Administrative Closure. Closure of an incomplete application after notification of deficiencies.
- (3) 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 a child care agency the opportunity to challenge legal enforcement actions taken by the Department.
- (4) Ambulation. The ability to walk from place to place.
- (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) Armed security guard/officer. A security guard/officer who at any time wears, carries, possesses or has access to a firearm or any facsimile of any firearm that may leave the impression that the person is armed and who works in plainclothes or wears dress of a distinctive design or fashion or dress having any symbol, badge, emblem, insignia or device that identifies or tends to identify the wearer as a security guard/officer.
- ~~(6)~~^[7] Auxiliary staff. Full- and part-time employees of the child care agency who do not provide caregiving services, including but not limited to custodial, food service and maintenance staff.
- ~~(7)~~^[8] Child or Children. A person or persons under eighteen (18) years of age.
- ~~(8)~~^[9] Child Care. As defined by T.C.A. § 71-3-501, the provision of supervision and protection, and meeting, at a minimum, the basic needs of a child for less than twenty-four (24) hours a day.
- ~~(9)~~^[10] Child Care Agency or Agency. 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", 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 educator.
- ~~(40)~~^[11] Child Care Agency Board of Review. A committee established to review actions initiated by the Department of Human Services and the Department of Children's Services to deny, revoke, or otherwise limit any license, except for summary suspension of, or probation involving, a license; any civil penalties imposed by the Department of Human Services; or any safety plan implemented by the Department of Human Services that will be, or has been, in effect ninety (90) days or more.
- ~~(44)~~^[12] 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 educator.
- ~~(42)~~^[13] Child Development Associate (CDA). 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.

- (~~43~~¹⁴) Commissioner. The Commissioner of the Department of Human Services.
- (~~44~~¹⁵) Communicable Disease. An illness due to an infectious agent which is transmitted directly or indirectly to a well person from an infected person.
- (~~45~~¹⁶) Continuous License. A license issued to a child care agency following its provisional licensure period and after the agency has demonstrated its ability to attain and maintain compliance with all licensing laws and regulations.
- (~~46~~¹⁷) Curriculum. A planned program of activities and experiences that promotes learning and social and emotional development and includes the content that children are to learn, the processes through which children achieve the identified curricular goals, what educators do to help children achieve these goals, and the context in which teaching and learning occur.
- (~~47~~¹⁸) Department (DHS). The Tennessee Department of Human Services and its authorized representatives.
- (~~48~~¹⁹) Developmentally Appropriate Practice (DAP). Principles and guidelines that are appropriate to each child's age and developmental status and responsive to the social and cultural context in which they live.
- (~~49~~²⁰) Director. The on-site child care center staff member who has responsibility for the overall operation of the center.
- (~~20~~²¹) 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 educator, 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 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.
- (~~24~~²²) Educator. An adult individual, whether paid or unpaid, including the Primary Educator, 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. For the purposes of these rules the term educator is equivalent to caregiver as defined by T.C.A. § 71-3-501.
- ~~(22) Extended Care. Child care services offered between the hours of 6:00 p.m. and 6:00 a.m. Monday through Friday, and weekend child care.~~

- (23) Family Child Care Home. Any place or facility 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 educator.
- (24) Field Trip. Any off-site activity which occurs away from the general premises of the child care agency's licensed facility.
- (25) Five (5) Panel Test. A drug test for marijuana, cocaine, methamphetamine, amphetamine, and opiates that uses a specimen of the individual's urine.
- (26) 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 educator, but not more than twelve (12) children or fifteen (15) children if approved for three (3) additional school-agers.
- (27) High School Diploma. A document recognizing graduation from an accredited institution, public or private, based on the issuing state's or country's required number of academic credits and includes passing a GED test or equivalent as defined by Tennessee law.
- (28) Inaccessible. Inaccessible means that the item is located in a place that is unable to be reached by children in that classroom. This location may vary, depending on what age the children are in the classroom where the item is located, such as being placed on a high shelf in an infant room or locked in a locked cabinet in a preschool room.
- (29) Infant. A child who is six (6) weeks through twelve (12) months of age or until ambulation.
- (30) Insurance Terms.
 - (a) General Liability Insurance. Provides coverage for legal liability of businesses arising out of business operations for bodily or personal injury and property damage.
 - (b) Auto Liability Insurance. Provides coverage if an insured is legally liable for bodily injury or property damage caused by an accident arising out of ownership or operation of an automobile.
 - (c) Medical Payment Insurance. Provides coverage for necessary medical expenses regardless of who has been assigned fault.
 - (d) Sexual Abuse and Molestation Insurance. Provides coverage against claims arising from alleged sexual misconduct or molestation by an employee or other representative of an insured.
- (31) Licensee. The owner, to whom a license to operate a child care agency is issued.
- (32) 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.
- (33) Non-traditional Hours. Child care services offered between the hours of 6:00 p.m. and 6:00 a.m. Monday through Friday, and weekend child care.
- (~~33~~[34]) Owner. The individual or entity who has legal and administrative responsibility for the management and control of a child care agency.

- (~~34~~~~[35]~~) Physical Restraint. The use of body contact by staff with a child/youth to restrict freedom of movement or normal access to his or her body.
- (~~35~~~~[36]~~) Pre-school Child. A child who is at least thirty-one (31) months of age and who has not entered kindergarten.
- (~~36~~~~[37]~~) Primary Educator. The adult on site at a family or group child care home who is directly responsible for care, education, and supervision of children in a child care home and for the daily operation of a child care home. For the purpose of these rules, the term primary educator is equivalent to primary caregiver as referenced in T.C.A. § 71-3-501.
- (~~37~~~~[38]~~) Provisional license. A license issued to a child care agency for one hundred twenty (120) days for the purpose of allowing the child care agency to demonstrate their ability to attain and maintain compliance with all licensing laws and regulations. Such provisional license may continue in effect, unless suspended if the Department fails to issue a continuous license after the one hundred twenty (120) day period if the Department determines an extension is necessary to allow the child care agency to demonstrate ability to maintain compliance with licensing laws and regulations.
- (~~38~~~~[39]~~) Related. Children, step-children, grandchildren, step-grandchildren, siblings of the whole or half-blood, step-siblings, nieces, nephews or foster children of the primary educator.
- (~~39~~~~[40]~~) Restricted license. A license which, either at the time of issuance, or during the license's existence, is reduced in its operational authority 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 child care agency's operations are not in compliance with child care laws or regulations or the child care 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. A restricted license may also be imposed by the Child Care Agency Board of Review as part of its review of the licensing status of a child care agency in the same manner and for the same reasons as such a license is issued or imposed by the Department. A restricted license may be appealed to the Child Care Agency Board of Review.
- (~~40~~~~[41]~~) Safety Plan. A mandatory plan applicable to a child care agency as a result of an investigation. 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 child care agency, the modification or elimination of services at the child care agency, the re-inspection of the child care agency, the training of child care agency management, staff or volunteers.
- (~~41~~~~[42]~~) School-Age Child. A child who has entered kindergarten through seventeen (17) years of age. A child may be considered school-age during the summer immediately preceding their entry into kindergarten.
- (~~42~~~~[43]~~) Screen time. Instances in which television, videos, video games, cell phones, computers, and other digital devices are used, excluding adult-directed presentations using screens (ex. Power Point, slideshow, Smart/Whiteboards) provided such media are educational and used interactively with children.
- (~~43~~~~[44]~~) Seclusion: The confinement of a child/youth alone in a room or an area where the child/youth is physically prevented from leaving. Seclusion includes, but is not limited to, instances in which a child/youth is confined by a locked or closed door.
- (~~44~~~~[45]~~) Serious Incident. Serious incident includes but is not limited to: any incident involving serious injuries; any reports made to the Department of Children's Services and/or law enforcement; anytime it is necessary to call 911; any incident that may result in staff exclusion

from child care per 1240-04-01-.07; any transportation accidents and/or moving violations including traffic citations (such as a driver cited for speeding) that occur when children are in a child care agency operated vehicle; and any child or adult fatality at the child care agency[any incident of children leaving the premises without supervision, or children left unsupervised (in a classroom, on the playground or any other area of the facility, at a field trip location, or being left on a vehicle) that may result in imminent harm].

(45[46]) Serious Injury. An injury that requires treatment from an outside medical professional or facility such as an emergency medical technician, physician, health clinic, or hospital.

(47) Shift Care. Care that is provided in a way that accommodates multiple shifts of children during traditional and non-traditional hours while maintaining adult: child ratio, group sizes, and licensed capacity during overlaps in drop-off/pick up times.

(46[48]) Specialized Services. Services provided to children with special needs by individuals having extensive training or expertise in a particular field such as speech/language therapy, physical therapy, play therapy, mental health counseling, or health care treatments, etc.

(47[49]) Staff. Full- and part-time paid educators and employees of the child care agency[including Directors and Assistant Directors].

(48[50]) Substitute. Paid or unpaid persons who are replacements for regular staff.

(49[51]) Sugar sweetened beverages. Beverages with added sweeteners (such as flavored milk, soft drinks, fruit drinks with added sugar, sports drinks, and energy drinks).

(50[52]) Time Out. A means of correcting undesirable behavior by removing the child from the environment, placing the child in a quiet place away from the group for a few minutes, and then talking about the problem.

(54[53]) TDHS eLicensing System: The system of record for all child care agencies licensed by the Department of Human Services as of the effective date of these rules.

(52[54]) TNPAL: Tennessee Professional Archive of Learning (TNPAL) is the central repository and system of record for all child care training and professional development.

(53[55]) Toddler. A child who is thirteen (13) months through thirty (30) months of age.

(54[56]) Unsupervised ~~Access to~~ [Contact with] a Child. When a person who is not an approved staff person has access to a child and no other approved staff person is present with the child and supervising.

(55[57]) Volunteer. A person who provides services for a child care agency without payment and who is used to supplement the regular staff.

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-202; 71-1-105; 71-1-105(a)(5) and (a)(12); 71-3-501, et seq.; 71-3-502(a)(2); and 71-3-502(a)(4)(B); and Acts 2000, Ch. 981, §§ 3(a)(4) and 14. **Administrative History:** Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed July 1, 1993; effective September 14, 1993. Amendment filed November 18, 1999; effective January 31, 2000. Amendment filed September 29, 2000; effective December 13, 2000. Amendment filed August 30, 2001; effective November 13, 2001. Amendment filed November 21, 2002; effective February 4, 2003. Emergency rules filed July 1, 2016; effective through December 28, 2016. Amendments filed September 28, 2016;

effective December 27, 2016. Amendments filed May 1, 2018; effective July 30, 2018. Amendments filed March 31, 2022; effective June 29, 2022.

1240-04-01-.03 REQUIREMENTS FOR LICENSURE AS A CHILD CARE AGENCY.

- (1) Upon receipt of an application for a license and throughout 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.).
- (2) Scope of Licensed Operation.
 - (a) All programs shall operate within:
 1. Their licensed capacity;
 2. The approved hours of operation;
 3. The specific age ranges of children served;
 4. The services offered;
 5. At the address designated on the license; ~~and~~
 6. Any restrictions stated on the license-[:]
 7. Their same ownership and legal business status as listed on the license; and
 8. Within the licensed and approved child care space.
- (3) Multiple Child Care Agencies Operated by a Licensee at the Same Location.
 - (a) If two (2) or more child care agencies are located on the same property, each child care agency shall independently meet the requirements for a license.
 - (b) A child care agency shall not operate on the same property as an unlicensed, unregulated, or exempt child care agency unless approved in advance by the Department.
 - (c) If more than one licensed child care agency occupies the same building, the programs shall not share space and children from each child care agency shall not intermingle.

Exception to shared space: The programs may share the same [cafeteria, gym, or] playground space as long as children from each program are not using the space at the same time.
- (4) All child care agencies subject to the licensure requirements of this chapter shall:
 - (a) Register as a user through the provider portal, and
 - (b) Utilize the provider portal to submit information needed to maintain the provider record and compliance with these requirements.

Accommodations for submission of materials outside the provider portal will be made on a case-by-case basis upon request.

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-202; 71-1-105; 71-1-105(a)(5) and (a)(12); 71-3-501, et seq.; 71-3-502(a)(2) and (3); 71-3-503(a)(6), (8), and (9); and 71-3-508(c); Acts 2000, Ch. 981, §§ 8 and 14; Acts 2003, Ch. 412, § 2; and Acts 2016, Ch. 839. **Administrative History:** Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed July 1, 1993; effective September 14, 1993. Amendment filed April 30, 1996; effective July 14, 1996. Amendment filed September 29, 2000; effective December 13, 2000. Amendment filed September 29, 2003; effective December 13, 2003. Emergency rules filed July 1, 2016; effective through December 28, 2016. Amendments filed September 28, 2016; effective December 27, 2016. Amendments filed May 1, 2018; effective July 30, 2018. Amendments filed March 31, 2022; effective June 29, 2022.

1240-04-01-.05 OWNERSHIP, ORGANIZATION, AND ADMINISTRATION.

- (1) Child Care Agency Program Description.
 - (a) An applicant shall submit a written program description to the Department that includes the following information:
 1. All services and types of care to be offered;
 2. Ages of children accepted;
 3. Hours of operation;
 4. Description of food service; and
 5. If applicable, plans for sharing outdoor equipment and space with children not enrolled in the child care agency.
 - (b) Notification of changes to the program description shall be submitted to the Department at least ten (10) calendar days prior to making the change.
- (2) Finances.
 - (a) The applicant shall provide a proposed budget that demonstrates adequate funding for both preliminary and ongoing costs associated with staffing, equipment and safe operation.
 - (b) Relevant financial records of the child care agency shall be immediately available to the Department upon request.
- (3) Records of Subsidized Child Care and Food Supplement Payments.
 - (a) A child care 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 and make available immediately upon request of any auditing or licensing authority the following:
 1. Complete and accurate record of payments received;

2. Children's attendance;
3. A record of food served for each program in which the child care agency participates; and
4. Any other records required by the Department or any other child care agency for reimbursement for the child's care and/or feeding.

(4) ~~Liability and Medical Payment~~ Insurance Coverage.

- (a) General liability, automobile liability~~[.] and medical payment[, and sexual abuse and molestation]~~ 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:
 - (i) Three Hundred Thousand Dollars (\$300,000) per occurrence; and
 - (ii) 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:
 - (i) Five Hundred Thousand Dollars (\$500,000) per occurrence; and
 - (ii) Five Hundred Thousand Dollars (\$500,000) general aggregate coverage.
3. Medical payment coverage for injuries to children resulting from the operation of the child care agency shall be maintained in the minimum amount of Five Thousand Dollars (\$5,000).
4. Automobile Coverage for Child Care Agencies that Transport Children:
 - (i) Automobile liability coverage.
 - (I) 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 for injuries to children being transported in vehicles owned, operated or leased by the child care agency shall be maintained in the minimum amount of five thousand dollars (\$5,000).

5. Sexual abuse and molestation coverage for situations resulting from the operation of the child care agency shall be maintained in the minimum amount of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate. This coverage can be obtained as an individual policy or as part of broader coverage such as through a general liability or homeowner's policy.

- (b) A standard homeowner's policy is not sufficient to provide the coverage requirements for a child care facility outlined in this section.
 - (c) The requirements of this paragraph shall not apply to a child care 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.
 - (d) Unless subparagraph (c) is applicable, non-profit corporations that administer Head Start child care programs and are defined as government entities for the purposes of the governmental tort liability act (T.C.A. §§ 29-20-101 et seq.) shall have the insurance required by subparagraph (a) above.
 - (e) Documentation that the necessary insurance is in effect, or that the administrative Department or other entity is self-insured, shall be maintained in the records of the child care agency and shall be available for review by the Department. Documentation shall include the declarations page of the insurance policy and this documentation shall reflect, at a minimum, the requirements described above.
- (5) Enrollment Restrictions.
- (a) Enrollment of children under six (6) weeks of age is prohibited.
 - (b) Any child care agency licensed by the Department shall place the following children ahead of any civilian (non-military) parents or guardians on a waiting list, including: children who have a parent or legal guardian who is an active duty member of the armed forces; children who have a parent who was killed or died as a direct result of injuries received during a qualifying period of armed conflict; children who have a parent who has been reported as a prisoner of war or missing in action while serving honorably during a qualifying period of armed conflict; and children who have a parent who was a former prisoner of war or was formerly missing in action while serving honorably during a qualifying period of armed conflict.
 - (c) Children shall not be in care for more than twelve (12) hours in a twenty-four (24) hour period except in special circumstances.
 - (d) 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 educator/director and approved in advance by the Department. Plans shall be updated annually.
 - ~~(e) The child care agency shall not admit a child into care until the parent/guardian has supplied the child care 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. There is an exception after an initial eligibility determination for children who are homeless and/or children in state custody. Those children may receive care prior to providing all required documentation as determined by the Department. Care without such documentation of immunizations shall not exceed sixty (60) days.~~
 - (e) The child care agency shall not admit a child into care until the parent/guardian has supplied the child care 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. There is an exception after an initial eligibility

determination for children who are homeless, children in state custody, and/or children admitted to the United States as a refugee or as an asylee under the Immigration and Nationality Act. Those children may receive care prior to providing all required documentation as determined by the Department. Care without such documentation of immunizations shall not exceed sixty (60) days.

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

(6) Home Schooling.

- (a) Home schooling shall not take place during child care hours unless a qualified primary educator, 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 shall be conducted in a space separate from the designated child care space.

~~(7) Extended Care.~~

- ~~(a) Extended care services may be offered by a child care agency as an additional component to conventional care services, or the child care agency may exclusively provide extended care services.~~
- ~~(b) In order for a child care agency to offer extended care services, the Department shall issue a license bearing a notation that the child care agency is authorized to provide extended care services.~~
- ~~(c) A child care agency may not offer extended care services without the Department's approval.~~

(7) Non-traditional Hours.

- (a) Care services during non-traditional hours may be offered by a child care agency as an additional component to conventional care services, or the child care agency may exclusively provide care services during non-traditional hours.
- (b) In order for a child care agency to offer care during non-traditional hours, the Department shall issue a license bearing a notation that the child care agency is authorized to provide care during non-traditional hours.
- (c) A child care agency may not offer extended care during non-traditional hours without the Department's approval.

(8) Child Care Agency Drug Testing Policy.

- (a) Child care agencies shall establish a drug testing policy for all staff that have direct contact with children, as defined by the Department, with a child in the care of the child care agency.
- (b) The policy shall:

1. Specify when and how testing should be completed;
 2. Provide for immediate and effective enforcement action in the event of a positive drug test; and
 3. 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 remuneration for the agency are engaged in the use of illegal drugs.
- (c) The child care agency shall provide the policy to all staff that have direct contact with children upon the individual's employment with the child care agency.
- (d) The child care agency shall maintain drug test results for all currently employed staff members who are subject to drug testing and for five (5) years after employment is terminated. All drug test results shall be immediately provided to the Department upon request.
- (e) Drug testing results are confidential and may be disclosed only for purposes of enforcing this part.
- (f) The Department may require the licensee or operator of a family child care home who has direct contact with children to submit to a drug test at the expense of the licensee or operator, when reasonable suspicion exists.
- (g) A child care agency that does not comply with this section is subject to the Department:
1. Denying the application for a license or;
 2. Suspending or revoking a license issued.
- (9) Parent Communication and Engagement.
- (a) The child care agency shall ensure that a copy of the child care agency's policies, procedures, and the Department's Summary of Licensing Requirements is supplied to the parents/guardians upon admission of the child.
- (b) The child care agency's policies shall include, at a minimum:
1. Criteria for the disenrollment of children;
 2. Specific criteria concerning the release of children;
 3. Written parental permission for observation of children by non-child care agency staff;
 4. Behavior management techniques;
 5. Hours of operation;
 6. Late fees;
 7. Rates;
 8. Inclement weather;

9. Emergency policy;
 10. Whether the environment is smoke free;
 11. Meal service policy; ~~and~~
 12. Shaken baby syndrome/abusive head trauma/child maltreatment, to include:
 - (i) Recognizing potential signs and symptoms;
 - (ii) Creating strategies for coping with crying, fussing or distraught children; and
 - (iii) Understanding the development and vulnerabilities of the brain in infancy and early childhood; and
- ~~42~~[13]. Child care agency after-hours contact telephone phone number in case of an emergency.
- (c) Parents/guardians shall be permitted to see the professional credential(s) of staff upon request.
 - (d) The child care agency shall have ongoing communication with parents/guardians to include curriculum, changes in personnel, changes in policies and/or substantive licensing requirements, and any changes affecting children's routine care, and shall document such communication in writing.
 - (e) Child care agencies shall provide information about the benefits of immunizing children against influenza and other communicable diseases as requested by the Department each August or September to parents/guardians of all children enrolled in the child care agency and document such communication in writing.
 - (f) The child care agency shall use a developmental checklist recognized by the Department as a guide for conducting annual individual parent meetings to discuss the child's progress and development. Documentation of the meetings must be maintained in the child's record. This is not required for school-age children participating in after-school programs.
 - (g) All child care agencies shall disseminate materials and information to parents/guardians, as required by the Department.
 - (h) Child care agencies shall obtain training relevant to the special needs of the children in care and shall consult with parents/guardians and appropriate service providers regarding techniques used in the home to ensure the children's safety. If children with special needs are enrolled, Section 504 of the federal Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) guidelines shall be consulted regarding the reasonable accommodations a child's disability may require and complied with.
 - (i) Specialized Services.
 1. The provision of specialized services shall be conducted only by individuals who hold the appropriate license or certification and with written permission by the parent/guardian and shall be documented in the child's record.

2. Any information exchanged regarding specialized services that is shared with or received from third parties shall also be documented in each child's record.
 - (j) During operating hours, parents/guardians shall be permitted immediate access to their children, unless an Order of Protection or other legal document otherwise restricts or prohibits such access.
 - (k) Documented permission, including prior notification and consent for each field trip, shall be obtained from the parents/guardians prior to the child's removal from the premises for a field trip.
 - (l) Authorized Removal of Children.
 1. An authorized investigator with the Department of Children's Services or law enforcement may take a child off the premises of the child care agency if he/she has obtained custody of the child as follows:
 - (i) Voluntary placement agreement with the parent/guardian;
 - (ii) Court order;
 - (iii) Emergency assumption of custody under T.C.A. § 37-1-113 without parent/guardian permission;
 - (iv) If the child's parent or legal guardian is present and approves; or
 - (v) In conjunction with investigative procedures under the child abuse laws.
 2. The child care agency shall request visual confirmation of an investigator's identification.
- (10) Notifying Parents/Guardians.
- (a) The child care agency shall post the following in a clearly visible location and obtain parents'/guardians' signatures indicating they have read the document:
 1. A formal notice of a critical licensing violation that put a child at imminent risk of harm or resulted in actual harm;
 - (i) Critical violations include but are not limited to the following:
 - (I) Transportation;
 - (II) Ratios;
 - (III) Supervision;
 - (IV) Failure to properly dispense or store medications;
 - (V) Background checks/Failure to complete or failure to exclude;
 - (VI) Failure to store hazardous items;
 - (VII) Failure to properly remove or secure firearms;

- (VIII) Corporal punishment;
- (IX) Failure to report suspected abuse or neglect;
- (X) Falsification of documents required by the Department;
- (XI) Failure to have CPR/first aid certification as required by the Department;
- (XII) Six (6) or more minor violations of any type within a three (3) month period; or
- (XIII) Three (3) or more minor violations of the same type within a three (3) month period.

- 2. Any issuance of a legal enforcement order;
- 3. Any decision rendered by the Child Care Agency Board of Review pursuant to Chapter 1240-04-05;
- 4. An Order affecting the child care agency's operations issued by any court of law; or
- 5. Notice of probation.

(11) Right to Privacy/Confidentiality.

The licensee and child care agency staff shall not disclose or knowingly permit the use by other persons, any information concerning a child or family enrolled at the child care agency except as required by law.

(12) Posting Required Documentation.

- (a) The following shall be posted near the main entrance where staff, parents, and others may view them:
 - 1. The child care agency license;
 - 2. Current child care agency quality rating improvement system score;
 - 3. The child care agency's operating hours;
 - 4. The Department's toll-free Child Care Complaint Hotline phone number and email address; and
 - 5. The Department of Children's Services' Central Intake Child Abuse Hotline number.
- (b) "No Smoking" signs shall be posted in a conspicuous manner at each entrance to the facility.
- (c) Required adult:child ratios and group size shall be posted in every classroom.
- (d) Items that must be accessible in a place where staff, parents, and others may view:

1. A link to the electronic location of applicable Department licensing rules and a hard copy on-site available for reference;
 2. Weekly menu;
 3. Daily schedule;
 4. Notice of requirements to report child abuse;
 5. Emergency procedures; and
 6. Record of fire and other emergency drills.
- (e) Any other materials shall be posted as directed by the Department.
- (13) The child care agency shall have a written expulsion policy.
- (a) The policy shall be:
 1. Clearly articulated to staff and parents;
 2. Developmentally appropriate and consistent; and
 3. Non-discriminatory in practice and impact.
 - (b) Other options shall be considered prior to expulsion, such as but not limited to reducing the number of days or amount of time the child may attend, or if applicable, referrals to a behavioral health program or other appropriate supporting program.
 - (c) Procedures shall be developed to allow for a planned transition of a child to another program if expulsion must occur.
 - (d) Aggregate data that includes reasons for expulsions shall be maintained and reported to the Department on a Department-approved form when such expulsions take place and as requested.
- (14) Data Reporting. Child care agencies shall submit data as requested by the Department:
- (a) Quarterly on topics such as but not limited to: active enrollment, homeless children, non-traditional hours, English as a Second Language/dual language learners, and children with disabilities; and
 - (b) As it occurs: death/serious injuries, child abuse.
- (15) Falsification of any information or documentation is prohibited.

Authority: 7 C.F.R. § 226.15(e); T.C.A. §§ 4-5-202; 4-5-209; 39-17-1803; 71-1-105(a)(5) and (a)(12); 71-3-501, et seq.; 71-3-502(l); 71-3-502, et seq.; and 71-3-512; and Acts 2008, Ch. 1032. **Administrative History:** Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Amendment filed June 7, 1982; effective September 30, 1982. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed June 27, 1985; effective September 13, 1985. Amendment filed October 9, 1987; effective January 27, 1988. Amendment filed April 30, 1996; effective July 14, 1996. Public necessity rule filed October 1, 2008; effective through March 15, 2009. Amendment filed December 29, 2008; effective March 14, 2009. Amendments filed May 1, 2018; effective July 30, 2018. Amendments filed March 31, 2022; effective June 29, 2022.

1240-04-01-.06 STAFF.

(1) Responsibility for Staff.

(a) Owners, directors, and primary educators shall be responsible for:

1. Selecting qualified and capable staff;
2. The supervision, training, and evaluation and performance management of the staff;
3. The efficient operation of the child care agency's program; and
4. Providing written policy to staff that includes job functions, qualifications, lines of authority, staff performance evaluations, and disciplinary process.

(b) Annual Evaluations.

1. Teaching staff, assistant directors, and directors shall be evaluated on the performance of their duties at least annually.
2. Records of performance evaluations shall be maintained in the educator's files and made available to the Department upon request.

(2) Organizational Management.

(a) Family and group home child care agencies must notify parents in advance of person(s) in charge during the primary educator's absence.

(b) The primary educator/director shall identify and notify staff of the person in authority in the event of his/her absence.

(c) The child care agency shall be responsible for all volunteers and service providers/contractors providing services to the child care agency.

1. Service providers or contractors shall never be alone with children unless:

- (i) Written authorization is obtained from a parent/guardian for the child prior to receiving the service;
- (ii) Written authorization is obtained from a 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 provide identification prior to signing the child out or delivering the service and shall sign the child back in upon completion of service.

(d) The Director shall be onsite for at least fifty percent (50%) of the agency's hours of operation.

(3) General Child Care Agency Staff Qualifications.

- (a) Staff involved in transporting children are subject to general qualifications in addition to the requirements and qualifications detailed in the transportation rules found in this chapter.
- (b) Every staff person shall be capable of performing his/her duties satisfactorily.
- (c) A staff member shall be designated to be in charge of the child care agency in the absence of the primary educator/director and the name of the person in authority shall be communicated to staff. Such person shall be familiar with child care agency policies and procedures.
- (d) The primary educator/director or designee shall ensure that ~~no person who has a physical, mental, or emotional condition that poses a risk to children, or exhibits any evidence suggestive of illegal or inappropriate drug/alcohol use or possession, shall have any access to children~~ [the staff person is physically, mentally, and emotionally capable of safely and appropriately providing care for children].
- (e) Examinations to Determine Physical, Mental, and Emotional Status.
 - 1. A child care agency may, upon reasonable cause/suspicion require any persons having significant contact with children to obtain physical/mental health evaluations to determine their ability to satisfactorily perform their job duties.
- (f) Prior to having ~~unsupervised~~ contact with children, each new employee shall receive orientation in, and have a working knowledge of the following items:
 - 1. Program philosophy and policies;
 - 2. Job description;
 - 3. Emergency health and safety procedures;
 - 4. Behavior management procedures;
 - 5. Detection, reporting, and prevention of child abuse;
 - 6. Procedures for receiving and releasing children;
 - 7. Safe sleep procedures;
 - 8. Meal service and safe food preparation policies;
 - 9. Supervision during high risk activities such as eating and outdoor play;
 - 10. Food allergies;
 - 11. Expectations for communications with parent/guardian;
 - 12. Disease control and health promotion, including childhood obesity and the beneficial health impacts of physical activity;
 - 13. An overview of licensing requirements; and
 - 14. Information on risks of Cytomegalovirus (CMV) to female employees of childbearing age.

- (g) Prior to having ~~unsupervised~~ contact with children, each new employee shall complete training in the following areas:
1. Shaken baby syndrome/abusive head trauma~~/child maltreatment~~; and
 2. Pre-service training as recognized by the Department which shall include all federally required components.
- (h) Documentation of the requirements in subparagraphs (f) and (g) shall be maintained in the staff file.
- (4) Substitutes and Practicum Students.
- (a) Substitutes and Practicum Students providing services for more than thirty-six (36) hours in a calendar year shall:
1. Meet the background check requirements prior to beginning their duties;
 2. Meet the same requirements as regular staff for the physical examination required by these rules; and
 3. Have a minimum of four (4) hours of annual training if they acted as substitutes/educators for more than thirty-six (36) hours in the previous calendar year.
 4. Each agency is required to train employees on the agency policies and procedures regarding emergency preparedness plans, reporting of child abuse, neglect, and maltreatment, and safe sleep practices.
- (b) Substitutes that do not meet the requirements listed in subparagraphs (4)(a)1.–~~3~~4. above shall never be left alone with children. Practicum students shall never be left alone with children. Documentation of direct supervision of substitutes without such background checks and practicum students shall be maintained in agency files.
- (c) Child care agencies shall document and report service hours of every substitute staff or practicum student as may be required by the Department.
- (5) Volunteers.
- (a) Volunteers may not be counted to meet the adult:child ratios and shall never be left alone with children except parents/guardians may be counted in the adult:child ratio at a field trip location.
- (6) Education/Training Requirements.
- (a) This chart provides ~~educational and pre-licensure training requirements~~ [the educational and training requirements that must be completed by staff prior to having contact with children]:

Position	Minimum Age	Education	Pre-Licensure Training Requirements
Family and Group Homes	18	HS Diploma or equivalent	1. Child care agency orientation session during the pre-licensure period;

Primary Educator			<p>2. Small Business Academy;</p> <p>3. Licensing Rules and Regulations Training;</p> <p>4. Shaken Baby/Abusive Head Trauma[Child Maltreatment] Training prior to contact with children;</p> <p>5. Pre-Service Training (Before You Begin);</p> <p>6. Sudden Infant Death Syndrome Training prior to contact with children if caring for infants.</p>
Family/Group Educator Assistant	16	None	<p>1. Licensing Rules and Regulations Training;</p> <p>2. Shaken Baby/Abusive Head Trauma[Child Maltreatment] Training prior to contact with children;</p> <p>3. Pre-Service Training (Before You Begin);</p> <p>4. Sudden Infant Death Syndrome Training prior to contact with children if caring for infants.</p>
Child Care Center Director	21	<p>Graduation from an accredited 4-year college or be a registered nurse with less than a 4-year degree and 1 year of full-time experience with children in a group setting; or</p> <p>36 hours of coursework at least 30 of which shall be in business management, child or youth development, early childhood education or a closely related field or a TN Early Childhood Administrator Credential; and 2 years of full-time</p>	<p>1. Child care agency orientation session during the pre-licensure period;</p> <p>2. Small Business Academy training through Child Care Resource and Referral Agency;</p> <p>3. Licensing Rules and Regulations Training;</p> <p>4. Shaken Baby/Abusive Head Trauma[Child Maltreatment] Training prior to contact with children;</p>

		<p>experience with children in a group setting; or</p> <p>High School diploma (or equivalent as recognized by state law) and Tennessee Early Childhood Training Alliance Certificate for 30 clock hours of Administrator Orientation training or the equivalent as recognized by the Department and 4 years of full-time experience with children in a group; or</p> <p>Continuously employed as an on-site child care director or a child care agency owner as of the effective date of these rules.</p>	<p>5. Pre-Service Training (Before You Begin);</p> <p>6. Sudden Infant Death Syndrome Training prior to contact with children if caring for infants.</p>
Child Care Center Student Assistant	16	Current enrollment in technical child care educational program	<p>1. Licensing Rules and Regulations Training;</p> <p>2. Shaken Baby/Abusive Head Trauma[/Child Maltreatment] Training prior to contact with children;</p> <p>3. Pre-Service Training (Before You Begin);</p> <p>4. Sudden Infant Death Syndrome Training prior to contact with children if caring for infants.</p>
Child Care Center Assistant Director	18	HS Diploma/equivalent and 2 years of experience	<p>1. Child care agency orientation session during the pre-licensure period Licensing Rules and Regulations Training;</p> <p>2. Shaken Baby/Abusive Head Trauma[/Child Maltreatment] Training prior to contact with children;</p> <p>3. Pre-Service Training (Before You Begin);</p> <p>4. Sudden Infant Death Syndrome Training prior to contact with children if caring for infants.</p>

Child Care Center Educator	18	None or HS Diploma/equivalent if only educator for group or to meet group requirement	1. Licensing Rules and Regulations Training; 2. Shaken Baby/Abusive Head Trauma[/ Child Maltreatment] Training prior to contact with children; 3. Pre-Service Training (Before You Begin); 4. Sudden Infant Death Syndrome Training prior to contact with children if caring for infants.
Drop-in Child Care Center Director	21	HS Diploma/equivalent and 1 year of experience	1. Child care agency orientation session during the pre-licensure period; 2. Pre-Service Training (Before You Begin).
Drop-in Child Care Center Educator	18	HS Diploma/equivalent	1. Licensing Rules and Regulations Training; 2. Pre-Service Training (Before You Begin).

- (b) This chart provides the training requirements and expectations ~~for~~ as defined by your role as educators, primary educators, assistant directors, and directors for each class of licensed care during the provisional licensure period. These training requirements also apply to new employees. Please note that all hours earned during the provisional licensure period count towards the first year hourly training requirements.

Position	Provisional Licensing Period (first 120 days) Training Requirements (These requirements are also applicable to new employees hired after the provisional licensure period, to be completed within the first four (4) months of employment).
Family and Group Homes Primary Educator	1. 3 hours on developmental learning standards (TN-ELDS); 2. New Director Training; 3. Transportation Training (if applicable at the agency) before providing transportation. Training will include anyone responsible for the transportation of children; 4. First Aid Training; 5. CPR Training; 6. Personal Safety Training (one representative from the agency); 7. Additional training hours as determined by the Department.
Family/Group Home Educator	1. 3 hours on developmental learning standards;

	<p>2. Transportation Training (if applicable at the agency) before providing transportation;</p> <p>3. First Aid Training;</p> <p>4. CPR Training;</p> <p>5. Additional training as identified by the Department.</p>
Child Care Center Director	<p>1. 3 hours on developmental learning standards (TN-ELDS);</p> <p>2. New Director Training;</p> <p>3. Transportation Training (if applicable at the agency) before providing transportation. Training will include anyone responsible for the transportation of children;</p> <p>4. First Aid Training;</p> <p>5. CPR Training;</p> <p>6. Personal Safety Training (one representative from the agency);</p> <p>7. Additional training hours as determined by the Department.</p>
Child Care Center Student Assistants	<p>Additional training hours as determined by the Department.</p>
Child Care Center Assistant Director	<p>1. 3 hours on developmental learning standards (TN-ELDS);</p> <p>2. New Director Training;</p> <p>3. Transportation Training (if applicable at the agency) before providing transportation. Training will include anyone responsible for the transportation of children;</p> <p>4. First Aid Training;</p> <p>5. CPR Training;</p> <p>6. Personal Safety Training (one representative from the agency);</p> <p>7. Additional training hours as determined by the Department.</p>
Child Care Center Educator	<p>1. 3 hours of applicable developmental learning standards [(TN-ELDS)]. If an educator has a Bachelor's or Associate's degree in child development or a related field, or a CDA or CCP credential recognized by the Department, that educator shall instead comply with the training requirements for experienced educators during the 1st year.</p> <p>2. Transportation Training (if applicable at the agency) before providing transportation. Training will include anyone responsible for the transportation of children;</p> <p>3. First Aid Training;</p> <p>4. CPR Training;</p>

	5. Personal Safety Training (one representative from the agency);
	6. Additional training hours as determined by the Department
Drop-in Child Care Center Director	1. In the first 3 months, Department Rules Training and Pre-Service Training (Before You Begin); 2. First Aid Training; 3. CPR Training; 4. Additional training hours as determined by the Department.
Drop-in Child Care Center Educator	1. First Aid Training; 2. CPR Training; 3. Additional training hours as determined by the Department.

- (c) This chart provides the first year and ongoing training requirements and expectations ~~for~~ [as defined by your role as] educators, primary educators, assistant directors, [substitutes,] and directors for each class of licensed care. During the first year, any hours earned during the provisional licensure period count towards the hourly requirements.

Primary Educator – Family or Group Home	Training Hours/Notes
Annual Training	18 hours total
Health and Safety	At least 6 of the 18 total hours
Pre-Literacy and Literacy Skills and Education Implementation	At least 3 of the 18 total hours
Adverse Childhood Experiences	Every 5 years – length not specified
4 hours of the 18 total hours may be earned by conducting training. Hours earned during the pre-licensure and provisional licensure period may count towards these total hours.	
Educator – Family or Group Home	Training Hours/Notes
Annual Training	12 hours total
Health and Safety	At least 6 of the 12 total hours
Pre-Literacy and Literacy Skills and Education Implementation	At least 3 of the 12 total hours
Adverse Childhood Experiences	Every 5 years – length not specified
4 hours of the 12 total hours may be earned by conducting training. Hours earned during the pre-licensure and provisional licensure period may count towards these total hours.	
Director – Single-Site Center	Training Hours/Notes
Earn credit during the year in 1 academic course (in administration, child development, early childhood education, health/safety or related field) from accredited academic institution, or	
Annual Training	At least 24 total hours
Health and Safety	At least 6 of the 24 total hours

Pre-Literacy and Literacy Skills and Education Implementation	At least 3 of the 24 total hours
Adverse Childhood Experiences	Every 5 years – length not specified
4 hours of the 24 total hours may be earned by conducting training.	
Assistant Director – Center	Training Hours/Notes
Earn credit during the year in 1 academic course (in administration, child development, early childhood education, health/safety or related field) from accredited academic institution, or	
Annual Training	At least 18 total hours
Administration, Management or Supervisory training	At least 4 hours of the 18 total hours
Pre-Literacy and Literacy Skills and Education Implementation	At least 3 of the 18 total hours
Health and Safety	At least 6 of the 18 total hours
Adverse Childhood Experiences	Every 5 years – length not specified
4 hours of the 18 total hours may be earned by conducting training. Hours earned during the pre-licensure and provisional licensure period may count towards these total hours.	
Educator – Center	Training Hours/Notes
Annual Training	12 total hours
Pre-Literacy and Literacy Skills and Education Implementation	At least 3 of the 12 total hours
Health and Safety	At least 6 of the 12 total hours
Adverse Childhood Experiences	Every 5 years – length not specified
4 hours of the 12 total hours may be earned by conducting training.	
Educators who hold one of the following degrees/credentials as recognized by the Department shall instead comply with the training requirements for experienced educators after the first year: Bachelor's or Associate's degree in child development or a related field; CDA credential; Certified Child Care Professional (CCP) credential.	
<u>Substitute – Center</u>	<u>Training Hours/Notes</u>
<u>Health and Safety</u>	<u>At least 4 total hours</u>
Director – Drop-in Center	Training Hours/Notes
Annual Training	At least 6 total hours
Health and Safety	At least 3 of the 6 total hours
Administration, Management, or Supervisory	At least 3 of the 6 total hours
Adverse Childhood Experiences	Every 5 years – length not specified
2 hours of the 6 total hours may be earned by conducting training. Hours earned during the pre-licensure and provisional licensure period may count towards these total hours.	
Educator – Drop-in Center	Training Hours/Notes
Annual Training – Health and Safety	At least 3 total hours

Adverse Childhood Experiences	Every 5 years – length not specified
1 hour of the 3 total hours may be earned by conducting training. Hours earned during the pre-licensure and provisional licensure period may count towards these total hours.	
Clarifications:	
Child Care and Development Block Grant (CCDBG) Health and Safety Training Topics: Family, Group, and Center Staff cycle through the requisite topics every three years. Drop-in staff cycle through the topics every 4 years.	
Required topics: prevention and control of infectious diseases (including immunization); SIDS and use of safe sleep practices; administration of medication; prevention/response to food allergies; building and physical premises safety; prevention of shaken baby syndrome[,] and abusive head trauma[,and child maltreatment]; emergency preparedness and response planning; storage of hazardous materials and biocontaminants; precautions in transporting children (if applicable); first aid and CPR; recognition and reporting of child abuse and neglect; child development, including the major domains (cognitive, social, emotional, physical development and approaches to learning).	

Authority: T.C.A. §§ 4-5-202; 37-1-603(b)(1)(A); 71-1-105(a)(5) and (a)(12); 71-3-501, et seq.; 71-3-502(a)(2); and 71-3-507. **Administrative History:** Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Amendment filed June 7, 1982; effective September 30, 1982. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Emergency rules filed July 1, 2016; effective through December 28, 2016. Amendments filed September 28, 2016; effective December 27, 2016. Amendments filed May 1, 2018; effective July 30, 2018. Amendments filed March 31, 2022; effective June 29, 2022.

1240-04-01-.07 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 have a background check no more than ninety (90) days before having access to any child care agency:
 1. Any person who owns or operates a child care agency;
 2. Any person who applies to work in a child care agency as an employee, director or manager;
 3. 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
 4. Any person who is fifteen (15) years of age or older who will reside in a child care agency.
 - (b) New background checks are required when the staff member has been separated from employment from a child care provider within the State for a period of more than 180 consecutive days.
 - (c) Background checks are required for all staff at least every five (5) years.
 - (d) Requirements for disclosure of criminal/juvenile and state register history and fingerprinting, are provided by T.C.A. § 71-3-507 and as required by the Child Care and

Development Block Grant Act. Such requirements may include filling out additional forms as necessary for out-of-state registry and criminal background checks.

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

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

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

1. The fingerprint sample is rejected and the fingerprint sample must be resubmitted;
2. The child care agency submits a second fingerprint sample for an individual more than one (1) time within a thirty (30) day period; or
3. The child care agency submits a fingerprint sample for a person who is not a resident or a person who has been selected by the child care agency, substitute pool, or staffing agency to fill a position as an employee, or substitute who will work directly with children.

(c) No person shall be employed with, be a licensee or operator of, provide substitute services to, or have unsupervised contact with children in a child care agency prior to the completion of the criminal history review, as documented by either:

1. A Final Clearance Letter; or

2. A Conditional Letter allowing the applicant to work under supervision of another fully cleared applicant, until all of the results from other state(s) have been issued.

(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, be a licensee or operator, or provide substitute services, reside, or have any access to children in a child care agency if the criminal background check identifies an excludable criminal offense for which the person has:

1. Been convicted of, or 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:

1. The physical, sexual or emotional abuse or 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.
5. The criminal offenses for which a person will be excluded from a child care agency include but are not limited to the following offenses as well as their lesser included offenses (and including convictions for equivalent offenses in other states or jurisdictions):
 - (i) Aggravated arson (T.C.A. § 39-14-302);
 - (ii) Aggravated assault (T.C.A. § 39-13-102);
 - (iii) Aggravated child abuse (T.C.A. § 39-15-402);
 - (iv) Aggravated child neglect (T.C.A. § 39-15-402);
 - (v) Aggravated cruelty to animals (T.C.A. § 39-14-212);
 - (vi) Aggravated kidnapping (T.C.A. § 39-13-304);
 - (vii) Aggravated rape (T.C.A. § 39-13-502);
 - (viii) Aggravated rape of a child (T.C.A. § 39-13-531);
 - (ix) Aggravated robbery (T.C.A. § 39-13-402);
 - (x) Aggravated sexual battery (T.C.A. § 39-13-504);
 - (xi) Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);
 - (xii) Aggravated vehicular homicide (T.C.A. § 39-13-218);
 - (xiii) Arson (T.C.A. § 39-14-301);
 - (xiv) Assault (T.C.A. § 39-13-101);
 - (xv) Carjacking (T.C.A. § 39-13-404);
 - (xvi) Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);
 - (xvii) Criminal attempt, under T.C.A. § 39-12-101, to commit any criminal offense that requires exclusion from child care;
 - (xviii) Criminal exposure to HIV (T.C.A. § 39-13-109);
 - (xix) Criminal homicide (T.C.A. § 39-13-201);
 - (xx) Criminally negligent homicide (T.C.A. § 39-13-212);
 - (xxi) Cruelty to animals (T.C.A. § 39-14-202);
 - (xxii) Custodial interference (T.C.A. § 39-13-306);
 - (xxiii) Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);

- (xxiv) Domestic assault (T.C.A. § 39-13-111);
- (xxv) Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);
- (xxvi) Especially aggravated burglary (T.C.A. § 39-14-404);
- (xxvii) Especially aggravated kidnapping (T.C.A. § 39-13-305);
- (xxviii) Especially aggravated robbery (T.C.A. § 39-13-403);
- (xxix) Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);
- (xxx) Exploitation of a minor by electronic means (T.C.A. § 39-13-529);
- (xxxi) False imprisonment (T.C.A. § 39-13-302);
- (xxxii) First degree murder (T.C.A. § 39-13-202);
- (xxxiii) Incest (T.C.A. § 39-13-302);
- (xxxiv) Indecent exposure (T.C.A. § 39-13-511);
- (xxxv) Involuntary labor servitude (T.C.A. § 39-13-307);
- (xxxvi) Kidnapping (T.C.A. § 39-13-105);
- (xxxvii) Rape (T.C.A. § 39-13-503);
- (xxxviii) Rape of a child (T.C.A. § 39-13-522);
- (xxxix) Reckless endangerment (T.C.A. § 39-13-103);
- (xl) Reckless homicide (T.C.A. § 39-13-215);
- (xli) Robbery (T.C.A. § 39-13-401);
- (xlii) Second degree murder (T.C.A. § 39-13-210);
- (xliii) Sexual battery (T.C.A. § 39-13-505);
- (xliv) Sexual battery by an authority figure (T.C.A. § 39-13-527);
- (xlv) Sexual exploitation of a minor (T.C.A. § 39-17-1003);
- (xlvi) Solicitation of a minor (T.C.A. § 39-13-528);
- (xlvii) Stalking (T.C.A. § 39-17-315);
- (xlviii) Statutory rape (T.C.A. § 39-13-506);
- (xlix) Statutory rape by an authority figure (T.C.A. § 39-13-532);
- (l) Trafficking a person for sexual servitude (T.C.A. § 39-13-309);

- (li) Vehicular assault (T.C.A. § 39-13-106);
 - (lii) Vehicular assault while intoxicated (T.C.A. § 39-13-106);
 - (liii) Vehicular homicide (T.C.A. § 39-13-213);
 - (liv) Voluntary manslaughter (T.C.A. § 39-13-211); and
 - (lv) Weapons offenses (unlawful possession, carrying, use, etc.).
- (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 to, within the last five (5) years any of the following criminal offenses:
 - (i) Vehicular homicide;
 - (ii) Accidents involving death or personal injury;
 - (iii) Accidents involving damage to a vehicle;
 - (iv) Driving under the influence of an intoxicant, drug or drug producing stimulant; or
 - (v) Any felony involving the use of a motor vehicle while under the use of any intoxicant.
- (4) Exclusion from access to child care based on a listing on a state registry.
 - (a) No person shall be employed, be a licensee or operator, provide substitute services, reside, or have any access to children in a child care agency if the results of the state registry review identify the person as being:
 - 1. Listed on the Vulnerable Persons Registry;
 - 2. Listed on the Sexual Offender Registry; or
 - 3. Substantiated in the records of the Department of Children's Services as a perpetrator of abuse or neglect of a child.
- (5) 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 Department's Director of Field Operations for Adult and Child Care Licensing.
 - (a) 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.
 - (b) Requests for waivers shall be reviewed by an advisory committee. 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 Department's Director of Child and Adult Care Licensing of whether to grant or deny the waiver request. The Director has full discretion over the final decision on whether to grant or deny the requested waiver.

- (c) Any person who is the subject of an exclusion who is dissatisfied with the decision of the Department's Director of Child and Adult Care Licensing regarding a waiver may appeal such decision in writing to the Department by filing a written request for an appeal with the Department's 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 of the Tennessee Code Annotated.
- (d) The following offenses are not waivable and persons with such a conviction may not seek a waiver:
 - 1. Appearing on a state sex offender registry or repository or the National Sex Offender Registry;
 - 2. Felony convictions of murder; child abuse or neglect; a crime against children, including child pornography; spousal abuse; a crime involving rape or sexual assault; kidnapping; arson; physical assault or battery;
 - 3. A drug-related offense committed during the preceding 5 years; or
 - 4. A violent misdemeanor committed as an adult against a child, including: child abuse, child endangerment, sexual assault, or a misdemeanor involving child pornography.

Authority: T.C.A. §§ 4-5-202; 55-50-102(11) and (20); 71-1-105(a)(5) and (a)(12); 71-3-501, et seq.; 71-3-502(a)(2); 71-3-507; and 71-3-508(c); Acts 2003, Ch. 412, §§ 1(c), 2, and 3; and 49 Code of Federal Regulations Part 571. **Administrative History:** Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed November 21, 2002; effective February 4, 2003. Amendment by Acts of 2003, Public Chapter 412, §§ 1(c) and 3 filed June 25, 2003; effective July 1, 2003. Amendment filed September 29, 2003; effective December 13, 2003. Amendment filed October 21, 2004; effective January 4, 2005. Amendments filed May 1, 2018; effective July 30, 2018. Amendments filed March 31, 2022; effective June 29, 2022.

1240-04-01-.08 RECORD KEEPING.

- (1) General Record Requirements.
 - (a) All records required by this chapter shall be maintained in an organized manner on-site, in a centralized location, or available electronically, and made readily available upon Department request.
- (2) General Children's Records.
 - (a) The child care agency shall maintain a file for each child in a central location within the child care agency.

- (b) A child's records shall be kept for one (1) year following the child's leaving the child care agency; however, the health record shall be returned to the parent/guardian upon request when the child leaves the child care agency.
- (c) All children, including related children younger than age nine (9), shall have required records on file before care is provided.

Exception: After an initial eligibility determination, children of homeless families and/or children in state custody may receive care prior to providing required documentation as determined by the Department.

- (d) General Requirements - Children's Records shall include:

1. A current information form, containing the following:
 - (i) The child's name and date of birth;
 - (ii) Name of parents/guardians;
 - (iii) Child's and parents'/guardians' home addresses and phone numbers;
 - (iv) Parents'/guardians' business addresses, phone numbers, and work hours (if applicable);
 - (v) Any diagnosed disabilities for children who have special needs, medical conditions (including allergies) or relevant history of the child;
 - (vi) For a child with life-threatening allergies, a written plan of action endorsed by the child's pediatrician or licensed medical provider;
 - (vii) Name, address, and telephone number of a physician to call in case of an emergency;
 - (viii) Written consent of parents/guardians regarding emergency medical care; and
 - (ix) The name and address (home and business or school) and current phone number of an emergency contact.
2. A written statement stating to whom the child shall be released.
3. Written transportation agreement, if applicable, between parent/guardian and the child care agency regarding daily transportation between the home and the child care agency and the child care agency and the school.
4. Daily attendance records that include the full name and time in and time out for each child shall be maintained on-site but not necessarily in the individual child's file.
5. Daily attendance records shall be kept for one (1) year after the child has left the child care agency.
6. An individual attendance list shall be maintained in each classroom.

7. The child care agency shall obtain individual permission slips signed and dated by the parent/guardian for each field trip prior to the activity.
8. A signed Personal Safety Curriculum Notification Form indicating the parent/guardian have been provided an opportunity to review the personal safety curriculum offered by the child care agency and have been notified of the child sexual abuse/personal safety curriculum.

(e) Immunization Record Requirements.

1. The child care agency shall have a Tennessee Department of Health Official Immunization Certificate before accepting any child age two (2) months or older into care. All required vaccinations must be completed by eighteen (18) months of age.
2. Exceptions to immunization record requirements may be made only if:
 - (i) The child's physician or a state or local health department provides a signed and dated statement giving a medical reason why the child should not be given a specified immunization;
 - (ii) The child's parent provides a signed written statement that such immunizations conflict with his/her religious tenets and practices; or
 - (iii) If care for children of homeless families and/or children in state custody is needed before documentation of immunizations can be confirmed. Care without documentation of immunizations shall not exceed sixty (60) days.
3. Before a school-age child is accepted for care, the center shall have on file a statement from the parent or school that the child's immunizations are current and that his or her health record is on file at the specified school which the child attends.

(f) Children's Record Requirements.

1. The following information shall be documented and shared with all educators of an infant, toddler or non-verbal child during the day:
 - (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 provide documentation, signed or stamped by a physician or licensed medical provider, that the child has completed a well-child examination unless the children are homeless and/or in state custody. If the children of homeless families and/or children in state custody are accepted for care, they may

supply well-child documentation no more than sixty (60) days after enrollment. This record shall be kept on file at the child care agency for one (1) year.

3. Each infant, toddler and pre-school child shall have a transition plan for moving from one age group to another.

(g) School-Age Children's Record Requirements.

1. The information form shall list the name, address, and phone number of the school the child attends.
2. The records of any child who is five (5) years old in a child care 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.

- (h) Record Requirements for Children with Special Needs. The child care agency will maintain a written activity record that consists of daily activities and behavior and information pertinent to the needs of the individual child.

(3) Staff Record Requirements.

- (a) The child care agency shall maintain a file for all staff in a central location within the child care agency.
- (b) Staff records shall be maintained for at least one (1) year following the separation of the staff from the child care agency.
- (c) Staff records shall include the following information for each staff member:
 1. The name, birth date, the social security number, address, and telephone number;
 2. An emergency contact name/phone number/address;
 3. Documentation of education and certificates of conferences and workshops attended in the preceding year, as recorded in the TNPAL system;
 4. 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, if the staff person is an educator, owner, operator, director, manager, or will otherwise have unsupervised ~~access to~~ [contact with] children. The documentation shall be on file within ten (10) calendar days of employment or work start date;
 5. Documentation that staff have been screened and/or tested for all communicable diseases as required by the Department of Health prior to having contact with children;
 6. Written employment history verified in a written statement that employment history has been checked prior to employment;

7. Documentation of annual performance reviews including personnel and corrective actions;
 8. Date of employment and date of separation, as applicable, from the child care agency;
 9. Daily attendance (including time in/out);
 10. Signed and completed criminal history disclosure form; and
 11. Verification of criminal and juvenile background check results, the vulnerable person's and sex offender registries results, and the results of a review of the protective services records of the Departments of Children's and Human Services.
- (d) In addition, driver records shall contain the following information:
1. Copy of driver license showing proper endorsements;
 2. Verification of a valid driver license and driver history check;
 3. Annual physical exam;
 4. Verification of a clear drug screen prior to assuming driving duties; and
 5. Verification of Cardiopulmonary Resuscitation and First Aid Certification.
- (e) Substitute and Volunteer Records. Records of substitutes and volunteers shall include their names, addresses, telephone numbers and hours and dates of service.
- (f) Substitute Pool Records. All staff records shall be available on-site where the substitute is working either as print copies or web-accessible documents.

Authority: T.C.A. §§ 4-5-202; 71-1-105(a)(5) and (a)(12); 71-3-501, et seq.; and 71-3-502(a)(2).
Administrative History: Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-01-.07). Amendments filed May 1, 2018; effective July 30, 2018. Amendments filed March 31, 2022; effective June 29, 2022.

1240-04-01-.09 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/guardian no later than the child's release to the 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.
 - (c) The child care agency shall not delay seeking emergency treatment due to a delay in contacting the parent/guardian.
 - (d) Incidents, accidents, injuries, and signs of serious illness to children shall be documented immediately with the following information:

1. Child's name and date of birth;
 2. Name of the person writing the report;
 3. Date and time;
 4. Date and time of completion of incident report;
 5. Description of incident and circumstances; and
 6. Action(s) taken by the child care agency.
- (e) The documentation shall be provided to the parent/guardian the same day of the incident, and filed in the child's record.
- (f) The child care agency shall notify the Department of all serious incidents the same day of the incident, by emailing or calling the Complaint Hotline or making the submission through the provider portal. Serious incidents include but are not limited to the following:
1. Any injury that requires medical treatment beyond on-site first aid;
 2. Reports made to the Department of Children's Services, law enforcement, or anytime it is necessary to call 911;
 3. Any incident that may result in staff exclusion from child care as a result of an excludable offense (see background check requirements);
 4. Transportation accidents and moving violations that occur when children are in the vehicle; ~~and~~
 5. Any child or adult fatality at the child care agency-~~;~~ and
 6. Any incident of children leaving the premises without supervision, or children left unsupervised (in a classroom, on the playground or any other area of the facility, at a field trip location, or being left on a vehicle) that may result in imminent harm.
- (g) Serious injuries must be reported to the Department using the Department-provided form and must be submitted the same day the injury occurred.
- (h) Serious incidents involving suspected child abuse or neglect must be reported to the Department of Children's Services.

Authority: T.C.A. §§ 4-5-201, et seq.; 71-1-105(a)(5) and (a)(12); 71-3-501, et seq.; and 71-3-502(a)(2).
Administrative History: Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-01-.08). Amendments filed May 1, 2018; effective July 30, 2018. Amendments filed March 31, 2022; effective June 29, 2022.

1240-04-01-.11 SUPERVISION.

- (1) Supervision. When children are not within the direct sight and sound of an adult, the term “supervision” means:
 - (a) For children six (6) weeks of age through nine (9) years of age, the adult must be able to hear the child at all times, must be able to see the child with a quick glance, and must be able to physically respond immediately.
 - (b) For children six (6) weeks of age through five (5) years of age during mealtime, an adult must be in the direct sight and sound of children while the children are eating.
 - (c) For children ten (10) years of age and older, the adult shall know the whereabouts and activities of the children at all times and must be able to physically respond immediately.
 - (d) For children ages ten (10) years and above who are grouped with children under ten (10) years of age, the minimum supervision requirements for children ages six (6) weeks through nine (9) years, shall be followed.
 - (e) Each child shall be greeted and received by the specific educator assigned who will have ultimate responsibility and accountability for their supervision, oversight and care upon the child’s arrival.
 - (f) Helper devices such as mirrors, electronic sound monitors, etc. may be used as appropriate to meet these requirements.
- (2) Supervision Procedures.
 - (a) To ensure the health and safety of all children enrolled, the management of the child care agency shall maintain a system that enables all children to receive a level of supervision that is appropriate to their age and their developmental, physical and mental status. The child care agency staff shall be within sight and sound of the children in their care at all times, be aware of their activities, and be able to intervene appropriately.
 - (b) Staff shall conduct a visual inspection of all areas of the building and grounds immediately after closing the child care agency for the day in order to ensure that no children have been unintentionally left in any part of the child care agency’s facilities.
 - (c) If any child is left unattended at any time, the child care agency is subject to legal enforcement action. A child left unattended includes, but is not limited to a child:
 1. Walking out of a child care agency without the knowledge of staff;
 2. Being left in a classroom or any other area of the facility;
 3. Being left on the playground;
 4. Being left at a field trip location; or
 5. Being left on a vehicle.
 - (d) Procedures for Release of Children from the Care of the Child Care Agency.
 1. Children shall be released to only the child’s parent/guardian, or other person authorized by the parent/guardian in accordance with the child care agency’s policies, unless otherwise directed by the Department of Children’s Services or law enforcement authorities.

2. The child care agency shall verify the identity of the parent/guardian or other authorized person and shall require presentation of a photo identification for comparison with the child's file if the educator does not recognize the individual.
3. In the event an unauthorized person requests release of a child, authorization may be obtained by calling the parent/guardian.
 - (i) The child care agency shall document the date and time of the contact, to whom he/she spoke, and to whom the child was released.
 - (ii) The child care agency shall verify the identity of the unauthorized person by requiring presentation of a photo identification.
4. The person to whom the child is released shall sign the child out of the child care agency as required in subparagraph (e) below.
5. The child care agency shall immediately call 911 or other local emergency services number if anyone whose behavior may place a child at imminent risk attempts to pick up a child.

(e) Sign-In/Sign-Out Procedures.

1. Child care agencies shall maintain a daily sign-in and sign-out sheet or electronic sign-in or sign-out record that includes:
 - (i) Each child's printed or typed full name;
 - (ii) Date;
 - (iii) Time of entry;
 - (iv) Time of departure; and
 - (v) Name of the individual who brought the child to the child care agency and the individual's name that picked up the child from the child care agency.
2. Child care agency staff shall only sign children in and out of the child care agency when transported to the child care agency by the child care agency's transportation service or local school transportation system and no parent/guardian or authorized representative is present or at the discretion of the Department.
3. These sign-in and sign-out sheets or electronic records shall be maintained for one (1) year and shall be kept on-site and immediately available.

(3) Meal and Snack Time Supervision.

- (a) During meal and snack time, staff shall maintain direct supervision of children between six (6) weeks and five (5) years of age and maintain supervision of children between six (6) and nine (9) years of age.
- (b) During meal and snack times, educators that are providing supervision are prohibited from engaging in any activities unrelated to mealtime while children are eating.

- (c) Child care agencies shall develop and follow a written mealtime supervision plan that addresses:
 - 1. Room arrangement that will allow staff to directly supervise each child at all times;
 - 2. Individual staff duties to ensure age-appropriate supervision can be given to each child at all times;
 - 3. Individual children's needs, including high risk behaviors; and
 - 4. Interruptions and emergencies.
 - (d) Mealtime supervision plans shall be updated as needed.
 - (e) The mealtime supervision plan shall be prominently posted in each area where food is served.
- (4) Playground Supervision.
- (a) The same supervision requirements are applicable on the playground as in the classroom.
 - (b) Child care agencies shall develop and follow a written playground supervision plan that includes:
 - 1. Arrival and departure procedures;
 - 2. Playground design and placement of equipment;
 - 3. Individual staff duties to ensure age-appropriate supervision can be given to each child at all times;
 - 4. Individual children's needs, including high risk behaviors;
 - 5. Emergency procedures, including communication with other staff; and
 - 6. ~~Roll call~~ [Name-to-face roll call] before leaving classroom and upon arrival at playground and prior to leaving playground and upon arrival in classroom.
 - (c) Playground supervision plans shall be updated as needed.

(5) Supervision during Transitions.

- (a) Child care agencies shall develop and follow a written plan that includes the use of a name to face roll call when transitioning children to and from the classroom, including:
 - 1. Restroom breaks;
 - 2. Kitchen/cafeteria;
 - 3. Gyms or other indoor play areas;
 - 4. Transportation drop off/pick up sites; and

5. Any other location in the area that children are transitioned to or from the classroom.

~~(5)~~**[6]** Supervision during Field Trips.

- (a) Child care agencies shall provide direct supervision to each child at all times during field trips.
- (b) The adult:child ratio shall be doubled during field trips. Exception: for family and group homes, the adult:child ratio during field trips shall be increased by one (1).
- (c) The child care agency shall monitor attendance by checking attendance as follows:
 - 1. Prior to leaving the child care agency;
 - 2. Upon arrival at each destination;
 - 3. At the beginning and end of each activity (such as lunch, breaks, etc.);
 - 4. Upon departing each destination; and
 - 5. Upon arrival at the child care agency.

~~(6)~~**[7]** 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:
 - 1. Swimming Ratio Chart

Age Group	Adult:Child Ratio
Six (6) weeks – Twelve (12) months	1:1
Thirteen (13) months – Thirty-five (35) months	1:2
Three (3) years	1:3
Four (4) years	1:4
Five (5) years	1:5
School-age (Kindergarten and above)	1:10

- 2. One (1) adult present shall have a current certificate in advanced aquatic lifesaving skills. This person shall supervise from above the level of the swimmers. This person may be the lifeguard provided by the facility.
 - 3. The lifeguard, including those provided by a swimming facility, shall not be included in the required adult:child ratio while performing lifeguard duties.

~~(7)~~**[8]** Safe Sleep Supervision Procedures.

- (a) To reduce the risk of Sudden Unexpected Infant Death (SUID), including Sudden Infant Death Syndrome (SIDS), suffocation and other sleep-related deaths, child care agencies shall follow safe sleep practices.
 - 1. Infants shall sleep in cribs or play yards with a firm sleep surface with a fitted sheet;

2. No infant shall be allowed to sleep on a sofa, soft mattress, adult bed, in a car seat, in a swing, or in other restraining devices;
3. Infants shall be positioned on their backs for sleeping;
4. Bibs shall be removed prior to placing infants in a crib for sleeping;
5. Soft bedding is prohibited and includes, but is not limited to, pillows, bumper pads, blankets, quilts, comforters, stuffed toys, and other soft items;
6. Mobiles and other toys that attach to any part of the crib are prohibited;
7. It is not necessary to reposition infants once they have demonstrated the ability to turn front to back and back to front independently;
8. Any cribs or other sleeping equipment prohibited by federal product safety regulations shall not be permitted;
9. Infants shall be touched by an educator every fifteen (15) minutes in order to check breathing, body temperature and position;
10. If a child appears not to be breathing, the child care agency shall immediately begin CPR and immediately call for emergency medical assistance;
11. The child care agency shall have a written policy describing safe sleep practices and provide a copy of that policy and training to all educators and volunteers assuming infant-caregiving duties;
12. All infant educators shall follow safe sleep procedures;
13. Infants that arrive asleep in car seats or fall asleep in any piece of equipment other than a crib must be immediately removed and placed on their back in a crib;
14. Avoid letting the infant overheat and ensure infants are dressed appropriately for the environment (no greater than 1 layer more than an adult would wear in the same environment); and
15. Any practice that is an exception to the above procedures shall not be used without written authorization from a physician.

(8[9]) Naptime Supervision and Requirements for Naptime

- (a) At naptime, after the children have settled down, adult:child ratios for ages thirty-one (31) months and above may be reduced by fifty percent (50%) in each classroom as long as the children are adequately protected and all of the following requirements are met:
 1. At least one (1) adult educator shall be awake and supervising the children in each nap room/sleeping area;
 2. There are enough adults on the premises so that the adult:child ratio required for children when they are awake shall be met immediately; and
 3. Ratios for children six (6) weeks through thirty (30) months shall be maintained.
- (b) Maximum group size limits do not apply.

(9[10]) Requirements for Nighttime Care.

- (a) If there is a sleeping or resting child during nighttime, there shall be at least one (1) adult educator awake and supervising.
 - 1. The educator 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. Helper devices such as mirrors, electronic sound monitors, etc. may be used as appropriate to meet these requirements.

(11) Educators and other staff members may not use cell phones, headphones/air pods, smartwatches, or other electronic devices when supervising children, unless the use is directly related to agency activities.

Authority: T.C.A. §§ 4-5-202; 71-1-105(a)(5) and (a)(12); 71-3-501, et seq.; and 71-3-502(a)(2).
Administrative History: Original rule filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-01-.10). Amendments filed May 1, 2018; effective July 30, 2018. Amendments filed March 31, 2022; effective June 29, 2022.

1240-04-01-.12 HEALTH AND SAFETY.

- (1) The on-site staff shall be responsible for the daily health and safety of children in care.
- (2) The child care agency shall ensure that the child care environment and practices support child health and safety.
- (3) The receiving educator shall observe each child upon arrival each day for signs of illness and injury.
- (4) Designated staff shall immediately contact a parent/guardian when a child shows sign of illness or infection.
- (5) The receiving educator shall document any obvious marks or injuries and shall note any comments from the parents pertaining to the marks or injuries.
- (6) A child showing signs of illness shall be cared for apart from other children to the extent that supervision can be maintained for all children, and the parent shall be contacted and arrangements made for pick up.
- (7) A child's temperature shall be taken using a non-invasive method unless otherwise prescribed by a physician.
- (8) Universal and standard precautions, as defined by the Centers for Disease Control, shall be followed when handling or cleaning bodily fluids.
- (9) 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) All staff shall obtain first aid training within ~~ninety (90)~~ [one hundred twenty (120)] days of employment. At least one staff member who has current certification in first aid from a certifying organization recognized by the Department shall be on-site at all times.
 - 1. The certification shall be applicable to the ages present in the classroom:
 - (i) Infant/Child first aid; and/or
 - (ii) Adult first aid if children over age twelve (12) are present.
 - (c) Current and comprehensive first aid information shall be prominently posted in each area that children use.
 - (d) ~~Extended-Care~~ [Non-traditional Hour] First Aid Requirements. One (1) staff person on duty at all times shall have current certification or the equivalent in first aid from a certifying organization recognized by the Department.
- (10) Cardiopulmonary Resuscitation (CPR) Requirements.
- (a) All staff on duty shall receive training in Cardiopulmonary Resuscitation (CPR) as recognized by the Department within ninety (90) days of employment. At least one staff member who has certification in CPR from a certifying organization recognized by the Department shall be present on-site at all times.
 - 1. The certification shall be applicable to the ages present in the classroom:
 - (i) Infant/Child CPR; and/or
 - (ii) Adult CPR if children over age twelve (12) are present.
- (11) Communicable Diseases.
- (a) A child diagnosed with a [reportable] communicable disease shall have proof of treatment prior to readmission if necessary.
 - (b) Parents/guardians of every child enrolled shall be notified immediately if a diagnosed [reportable] communicable disease has been identified in the child care agency.
 - (c) The child care agency shall report the occurrence of any [reportable] communicable disease to the local health department no later than the end of the day on which it is discovered.
- (12) Medications.
- (a) Receiving Medications.
 - 1. All medications shall be received from the parent/guardian by a designated staff person.
 - 2. The designated staff person(s) shall:
 - (i) Obtain the parent's/guardian's written authorization to administer each medication;

- (ii) Document that the medicines or drugs are in the original container, are not expired, and are labeled with the child's name;
- (iii) Document the specific dosage and times the medication is to be administered to the child; and
- (iv) Document that the parent/guardian has provided the child care agency with instructions on the means and method of administration.

(b) Administering Medications.

- 1. All medications shall be administered by a staff person or persons who have received training in medication administration. Online training is available through the American Academy of Pediatrics at no cost.
- 2. The following documentation shall be maintained in the child's file and a copy provided to the parent/guardian:
 - (i) Medication was administered according to parent/guardian or health care provider instruction, including times and amounts of medications administered;
 - (ii) Any side effects observed;
 - (iii) Name of staff person administering medication to child; and
 - (iv) Unused medication was returned to the parent/guardian.
- 3. Medication shall never be administered in bottles or infant feeders unless authorized by a physician. Educators shall ensure that medication administered in this way is not accessible to other children.

(c) Accessibility of Medications.

- 1. Medication shall not be accessible to children unless a physician's authorization for the current school year is on file that allows a school-age child to have self-administered medication.
- 2. All medication shall be stored in a child-proof compartment or container.
- 3. If medications requiring refrigeration are kept in a refrigerator used for food storage, the medicine shall be put in a leak-proof, child-proof container.
- 4. 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.

(d) Diaper cream, ointments, sunscreens and lotions shall be inaccessible to children.

(13) Prohibited Practices and Products.

(a) Smoking.

- 1. Smoking/vaping is not permitted in any indoor area or vehicle of the child care agency at any time.

2. Smoking/vaping is not permitted on the playground or in any outdoor area accessible to children during the time children are present.
3. Smoking/vaping is not permitted within fifty (50) feet of the child care agency entrance.
4. "No Smoking" signs shall be posted conspicuously at each child care entrance, as required by state law.

(b) Alcoholic Beverages.

1. The use of alcoholic beverages is not permitted in a child care agency during the hours of operation.
2. Alcoholic beverages stored in areas of the child care agency where care is provided shall not be accessible to children.

(c) Illegal activities, inappropriate activities, or any activities that otherwise place children at risk that occur on the premises, property, or in a vehicle on the property of the child care agency.

~~(d) Firearms shall not be permitted on the premises of a child care agency, in any vehicle used to transport children for the child care agency, or in the presence of a child.~~

~~1. In a private residence, deadly weapons and potentially hazardous items, such as power tools, are permitted on the premises, but shall be kept locked, out of sight, and inaccessible to children at all times. Firearms kept in a private residence shall be locked and unloaded with ammunition locked up separately.~~

~~2. The provisions of this subparagraph (d) are not applicable to law enforcement officers.~~

(~~e~~d) Kitchen knives and other potentially dangerous utensils or tools shall be secured so that they are inaccessible to children.

(~~f~~e) All items labeled "keep out of reach of children" shall be stored so that they are inaccessible to children.

(~~g~~f) 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.

(14) Firearms and Weapons.

(a) Firearms shall not be permitted on the premises of a child care agency, in any vehicle used to transport children for the child care agency, or in the presence of a child.

1. In a private residence, deadly weapons and potentially hazardous items, such as power tools, are permitted on the premises, but shall be kept locked, out of sight, and inaccessible to children at all times. Firearms kept in a private residence shall be locked and unloaded with ammunition locked up separately.

2. The provisions of this subparagraph (a) are not applicable to law enforcement officers or to armed security guards/officers meeting all registration and training requirements as set forth in Tennessee Code Annotated, Title 62, Chapter 35 for

providing security or patrol services at or in a public school, public charter school, private school, or church-related school.

(~~44~~15) Diapering.

- (a) Children shall be checked regularly throughout the day to determine if they are wet or soiled.
- (b) Children shall be diapered/changed and cleaned promptly when wet or soiled.
- (c) The diapering area and/or toileting area shall be located near a hand-washing station and shall be located in a separate area from the food preparation area.
- (d) Diapering surfaces shall be off the floor and nonporous.
- (e) Children shall never be left unattended on an off-the-floor diapering surface.
- (f) Educators shall provide rich social interchanges such as smiling, talking, touching, singing, calling child by name, and engaging in eye contact.
- (g) Educators shall utilize sanitary diapering procedures:
 - 1. Adults shall wash their hands, using soap and running water, following each diaper change;
 - 2. The child's hands shall be cleaned when soiled;
 - 3. Diapering surface shall be washed with soap and water and sanitized after diapering each child;
 - 4. Soiled diapers and wipes shall be disposed of in such a manner as to prevent access by children and to prevent cross-contamination;
 - 5. The required diapering procedure shall be used with children of all ages and abilities who require diapering;
 - 6. Pre-school and 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;
 - 7. Children who require diapering may be diapered on a nonporous, washable diapering surface that adequately protects the floor from contamination and is not located in the food preparation area; and
 - 8. The floor beneath and surrounding the diapering surface shall be immediately cleaned and sanitized if the area has become contaminated after each diapering.
- (h) Cleaning, Sanitizing and Disinfecting.
 - 1. Child care agencies shall use U.S. Environmental Protection Agency (EPA)-registered products for cleaning, sanitizing and disinfecting. Environmentally friendly products may be used if they have been certified by Green Seal, UL/EcoLogic, and/or EPA's Safer Choice.

2. Cleaning, sanitizing and disinfecting products should not be used in close proximity to children, and adequate ventilation should be maintained when the products are in use.
3. Bleach and Water solution:
 - (i) Agencies should refer to current Department of Health guidelines on making an appropriate bleach solution.
 - (ii) After cleaning the area with ~~bleach~~ [soap] and water solution, spray or wipe the surfaces with ~~disinfectant~~ [disinfectant/bleach and water]. Make sure to allow surfaces to fully air dry.

(45[16]) Staff Health.

- (a) Staff members with signs of a communicable disease shall not be present, and the child care agency shall take prompt steps to prevent further spread of the illness.

Authority: T.C.A. §§ 4-5-201, et seq.; 71-1-105(a)(5); 39-17-1803; 71-3-501, et seq.; 71-3-502(a)(2)-(3); and 71-3-508. **Administrative History:** Original rules filed May 1, 2018; effective July 30, 2018. Amendments filed March 31, 2022; effective June 29, 2022.

1240-04-01-.13 FOOD AND FOOD SERVICE.

(1) Meal and Snack Time Procedures.

- (a) Staff shall wash their hands with soap and water before and after preparing and serving meals and snacks. Children shall wash their hands with soap and water before and after meals, snacks, and bottle feeding.
- (b) An educator shall be present near the table or high chair where a child is eating. Educators shall not be engaged in any activities unrelated to mealtime while children are eating.
- (c) Children shall be seated at appropriately sized tables and chairs while eating.
- (d) Educators shall engage children in developmentally appropriate conversation to include nutrition and healthy eating choices.
- (e) Child care agencies shall work to teach children appropriate portion sizes by serving meals and snacks using plates, bowls, and cups that are developmentally suited to their nutritional needs.
- (f) An infant shall be held while drinking from a bottle if the infant is too young to use a high chair.
- (g) Educators shall ensure that infants have completed feeding and swallowed all milk/formula before being laid down for a nap.
- (h) Children shall be restrained using the manufacturer's safety restraint while sitting in a high chair or similar seating device.
- (i) Bottles may be served from the refrigerator without warming.

- (j) If desired, bottles may be warmed:
 - 1. Under running warm tap water; or
 - 2. In a container of warm water no warmer than one hundred twenty degrees Fahrenheit (120°F) for no more than five minutes.
- (k) Bottles shall not be propped, and a child shall not be given a bottle while lying flat.
- (l) Children shall not be permitted to carry a bottle with them throughout the day.
- (m) Children shall not have food or drink while in beds, cots, cribs or on mats.
- (n) Prevention of Injuries by Bottle Warmers, Crock Pots and Microwaves:
 - 1. Crock pots are prohibited for use as bottle warmers;
 - 2. Crock pots shall be kept in the kitchen area for cooking meals and shall be inaccessible to children;
 - 3. Microwave ovens and their immediate surrounding area, including cords, shall not be accessible to infants, toddlers, or pre-school children;
 - 4. To prevent scalding, liquid and solid foods heated in a microwave shall be stirred and carefully checked for "hot spots" prior to serving;
 - 5. School-age children shall use microwaves only under direct supervision;
 - 6. Breast milk and formula shall not be heated in a microwave oven; and
 - 7. All heated bottles shall be checked for safe temperatures before serving.
- (2) Choking Prevention.
 - (a) Solid foods (including cereal) shall not be given to children with normal eating abilities in bottles or infant feeders unless written authorization from a physician is on file.
 - (b) It is the responsibility of the supervising educator to ensure that food is not accessible or served until it has been chopped, diced, cut or mashed and is appropriate for each child's age, and individual eating, chewing and swallowing ability.
 - (c) Food shall not be given to a child until the supervising educator is able to provide focused attention to the child.
 - (d) Educators shall check that no food is left in the mouth of an infant/toddler before putting the infant/toddler down to sleep.
 - (e) The supervising educator is prohibited from performing other classroom duties unrelated to food service during mealtime.
 - (f) Children shall not be permitted to wear teething necklaces, pacifiers, or any item around their neck or attached to their clothing that are potentially hazardous and associated with choking.
- (3) Food Preparation.

- (a) Powdered milk shall not be substituted for fluid milk, formula, or breast milk.
 - (b) Formulas shall be used as directed on the container or as directed in writing by a physician.
 - (c) Once milk, formula, or breast milk has been warmed, it shall not be re-warmed or returned to the refrigerator.
 - (d) Breast milk and formula remaining in bottles after a feeding shall be disposed of in accordance with the timeframes recommended by the Centers for Disease Control and Prevention.
 - (e) Frozen breast milk shall be labeled with the date it was expressed and the name of the child.
 - (f) Food, formula, milk, or breast milk brought from home shall be:
 - 1. Labeled with the child's name;
 - 2. Labeled with the date the item(s) were received; and
 - 3. Shall be refrigerated immediately, if applicable.
 - (g) Previously opened baby food jars shall not be accepted in the child care agency.
 - (h) If food is fed directly from the jar by the educator, the jar shall be used for only one feeding and discarded.
- (4) Nutrition.
- (a) If the child care agency provides food, it shall be in accordance with the USDA's Child and Adult Care Food Program (CACFP) nutritional guidelines.
 - (b) No sugar sweetened beverages shall be served to children at any time by the child care agency.
 - (c) Whether provided by the parent or the child care agency, the following meals/snacks shall at a minimum be offered to children based on their hours of attendance:
 - 1. Breakfast or morning snack;
 - 2. Lunch;
 - 3. Afternoon snack;
 - 4. A child in care for ten (10) hours or more shall be offered an additional snack or meal;
 - 5. Breakfast shall be provided to children who arrive before 7:00 a.m. and have not had breakfast at home unless they are school-age children at the facility for before care; and

6. ~~Extended Care~~ Care during non-traditional hours: 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.

(5) Food Service.

- (a) A child shall not be forced to eat.
- (b) Food shall not be withheld from a child.
- (c) Children shall be given adequate time to eat.
- (d) Food shall not be used as a reward. This does not prohibit special events such as a holiday celebration or a birthday party.
- (e) Food Allergies.
 - 1. Information about individual children's 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 educator has immediate access.
 - 3. Any child's food allergies and the accommodations and precautions in place to address food allergies shall be prominently noted.
 - 4. Outline child care agency procedures that reduce cross-contamination of allergenic foods and other inadvertent exposure to allergens for any child with food allergies.
- (f) A weekly menu that includes all snacks and foods served shall be posted and followed.
- (g) Meal and snack substitutions shall be noted on the menu in advance.
- (h) The feeding schedule for an infant shall be in accordance with the child's need.
- (i) When caring for nursing children, the child care agency shall make accommodations that support and facilitate a family's decision to continue breast feeding.

(6) 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) Floors under tables and high chairs on which food is served shall be swept and/or vacuumed after each meal and cleaned as needed.

(7) Dishes and Utensils.

- (a) Napkins and individual break-resistant utensils, glasses/cups and appropriate dishware shall be provided for children who eat independently.
- (8) Food Storage.
 - (a) Foods requiring refrigeration or cold storage shall be maintained at forty degrees Fahrenheit (40°F) or below.
 - (b) Foods 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 refrigerators, freezers and all other cold storage equipment.
 - (e) No poisonous or toxic materials, except those required for sanitization purposes, may be used or stored in a food-service area of a facility.
- (9) Food Sanitation.
 - (a) All food shall be protected from contamination during storage, preparation, transportation, and serving.
 - (b) The child care agency shall not serve home-preserved food or raw milk to children in care.
 - (c) Raw fruits and vegetables prepared on-site shall be washed before use.
 - (d) 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.
 - (e) All re-useable utensils, cups, and dishware shall be made from nontoxic materials.
 - (f) All re-useable utensils, cups, and dishware shall be thoroughly cleaned and sanitized after each use.
 - (g) Single-service articles shall be made from nontoxic materials and shall be stored, handled, and dispensed in a sanitary manner.
 - (h) All utensils and food-contact surfaces or equipment used in the preparation, transportation, service, display, or storage of food shall be thoroughly cleaned and sanitized prior to and after each use.

Authority: T.C.A. §§ 4-5-201, et seq.; 71-1-105(a)(12); and 71-3-501, et seq. **Administrative History:** Original rules filed May 1, 2018; effective July 30, 2018. Amendments filed March 31, 2022; effective June 29, 2022.

1240-04-01-.15 PROGRAM, LANGUAGE, AND LITERACY DEVELOPMENT.

- (1) Schedule and Routines.
 - (a) Each child shall be provided an opportunity to participate in the program activities.

- (b) The environment shall support the development of each child's independence and self-help skills.
- (c) Routines such as snacks, meals, and rest shall occur at approximately the same time each day.
- (d) There shall be a balance between child's choice and educator-directed activities.
- (e) There shall be a balance between vigorous activity and quiet play or rest throughout the day.
- (f) The child care agency shall plan for and provide distinctive arrival and departure routines that will support children in their transitions.
- (g) The educator(s) shall give individual attention to each child throughout the day to include the following activities:
 - 1. For infants/toddlers:
 - (i) The educator shall hold and comfort children that are upset;
 - (ii) The educator shall provide rich social interchanges such as smiling, talking, touching, rocking, singing, and reading;
 - (iii) The educator shall respond to the child's sound;
 - (iv) The educator shall engage in interactive play that includes activities such as movement, dance, musical games, pretend play and finger play;
 - (v) The educator shall be attuned to child's needs and respond;
 - (vi) Children that lack mobility shall have an opportunity to experience their environment by engaging in the following activities daily:
 - (I) Being read to individually or in small groups;
 - (II) Carrying them around in order to explore the classroom;
 - (III) Allowing them to touch a variety of objects; and
 - (IV) Naming and identifying objects.
 - (vii) A variety of culturally diverse books shall be available for children to explore including board, cloth, and soft vinyl books; and
 - (viii) For infants less than (6) months of age, each infant shall have direct supervised tummy time every day when they are awake and alert. Engage with infants on the ground each day to optimize adult-infant interactions. Infants should be placed on a firm, safe surface such as a non-plush carpet, mat, or rug for tummy time, with no soft materials placed under or around the infant during tummy time. If the infant falls asleep during tummy time, educators shall immediately place the infant in a crib on their back and follow all safe sleep procedures.

2. For pre-school children:

- (i) The educator shall engage in pretend play;
- (ii) The educator shall provide age-appropriate puzzles and blocks;
- (iii) The educator shall encourage children to talk with each other;
- (iv) The educator shall provide opportunities for problem-solving activities;
- (v) The educator shall provide opportunities for writing;
- (vi) The educator shall provide opportunities for creative activities;
- (vii) A variety of culturally diverse books shall be available for children to handle including board, cloth, and soft vinyl books;
- (viii) The educator shall read to individually or in a group daily;
- (ix) The educator shall provide sorting and identifying activities; and
- (x) The educator shall provide opportunities for helping with daily classroom and self-care routines.

3. For school-age children:

- (i) The educator shall provide opportunities for group activities and cooperative play;
- (ii) The educator shall provide activities that foster gaining a sense of competence and developing pride in their accomplishments;
- (iii) The educator shall provide activities that promote learning to make decisions with others;
- (iv) The educator shall provide opportunities for learning to share and take turns;
- (v) The educator shall provide activities that foster coordination of large and small muscles; and
- (vi) The educator shall provide opportunities for increasing problem-solving skills and for conflict resolution.

- (h) Upon arrival, infants and toddlers shall be removed from car seats immediately.
- (i) Children shall never be left unattended in any restraining device, including swings and high chairs.
- (j) Children shall not be kept in restraining devices such as swings and high chairs, or similar seating devices for longer than fifteen (15) minutes.

Exception: Children may remain in high chairs while eating.

- (k) The educator shall plan and provide developmentally appropriate opportunities for children to interact with one another.

- (l) The educator shall provide opportunities for children to play alone or do homework, if they choose, in a small, quiet area away from other activities while maintaining supervision requirements in 1240-04-01-.11.
 - (m) School-age children shall be encouraged to participate in planning their own schedules and activities.
 - (n) ~~Extended Care~~ [Care during non-traditional hours]. Children shall be given the same opportunities for developmentally appropriate activities during ~~extended~~ [non-traditional] care hours as during conventional care hours.
- (2) Electronic Media and Devices.
- (a) If electronic media, including but not limited to television, videos/DVDs, or video/computer games, or personal electronic devices are used, they shall be limited as follows:
 - 1. For children less than two (2) years of age, use of electronic media and other electronic devices is prohibited.
 - 2. Television and video/DVD viewing shall be limited to one (1) hour per day and for educational or physical activities only.

Exception: Viewing time may exceed one (1) hour per day for special activities such as movie time as long as the total average time per week does not exceed one hour per day.
 - 3. Computer and personal electronic device time is limited to one (1) hour per day.
 - 4. Television and video/DVD viewing is not allowed during meal or snack time.
 - 5. Exceptions:
 - (i) Use of electronic media for personal recorded messages from relatives serving abroad in the military is not limited.
 - (ii) Use of electronic media during transition times when there is a single educator such as during preparation of a meal is limited to the duration of the transition.
 - (iii) School-age children may use computers for completion of homework with no time limitations.
 - (iv) All children may participate in activities that utilize computers and electronic devices for educational programs.
 - (b) If used, computers which allow internet access by children shall be equipped with monitoring or filtering software, or other type of software protection that limits children's access to inappropriate websites, e-mail, and instant messages.
 - (c) Videos, movies, and video/computer games shall be previewed by staff for content.
 - (d) Programs, movies, computer games, and music with violent or adult content shall not be permitted in children's presence.

- (e) Programs, movies, computer games, and music shall be developmentally appropriate for the viewers.
 - (f) Child care agencies shall inform parents in writing of any scheduled media program viewing.
 - (g) Other activity choices shall be available to children who do not wish to participate in media time.
- (3) Outdoor Play and Playground Routines.
- (a) Children of all ages, including infants, who are in care more than three (3) daylight hours, shall have a daily 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 it is not raining.
- Exception: Child care agencies where outdoor play is prohibitive or dangerous, as determined in the discretion of the Department, may substitute unoccupied indoor space providing fifty (50) square feet per child, subject to approval by the Department.
- (b) Agencies shall develop written policies promoting physical activity and shall strive to remove any potential barriers for children to participating in physical activity.
 - (c) Outdoor play and moderate to vigorous indoor or outdoor physical activity shall be available as follows:
 - 1. Weather permitting, infants shall be taken outside two to three times per day.
 - 2. Toddlers and preschoolers shall have sixty (60) to ninety (90) minutes of outdoor play per day for full-time programs.

Exception: Indoor activity can be increased if adverse weather does not permit outdoor play.

 - 3. Toddlers shall have sixty (60) to ninety (90) minutes of moderate to vigorous physical activity per eight (8) hour day for full-time programs.
 - 4. Preschoolers shall have ninety (90) to one hundred and twenty (120) minutes of moderate to vigorous physical activity per eight (8) hour day for full-time programs.
 - 5. Physical Activity Requirements for Part-Time Providers:

Number of Hours in Operation	2 hour s	3 hour s	4 hour s	5 hour s	6 hour s	7 hour s
Approximate Minutes Required	15	25	30	40	45	50
 - (d) Children shall be properly dressed, and the length of time outside adjusted according to the weather conditions and the age of the children.
 - (e) Educators shall be alert for any signs of weather-related distress, including dehydration, heat stroke and frostbite.

- (f) Each child care agency shall develop simple playground rules that use positive language. Staff shall verbally communicate these rules to children prior to outdoor play.
 - (g) Staff shall plan and implement activities that engage all children in developmentally appropriate active, physical play such as skipping, running, and jumping.
- (4) Reclining Rest Period.
- (a) All children in care for six (6) hours or more shall have an opportunity for a reclining rest period. This is not required for school-age children attending only before and after care or if the children attending the center are on a lengthy field trip.
 - (b) Children who are fatigued shall be offered an opportunity to 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) No child shall be forced to lie down or nap or be forced to stay on a cot or on a mat for an extended period of time.
 - 1. Children shall be allowed to participate in a quiet activity if not asleep within a reasonable time or if they wake up prior to the end of the rest period.
 - (f) Nap Room Environment.
 - 1. Areas where a child sleeps shall have adequate lighting which allows the educator to see each child with a quick glance and respond appropriately to each child's physical and emotional needs.
 - 2. If music is played in areas where children sleep, the music shall be soothing and soft enough so children can be heard.
- (5) 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, injurious discipline methods, and/or techniques that isolate the child are prohibited.
 - (d) Discipline shall not be related to food, rest, or toileting. Food shall not be used or withheld as a form of discipline. Active play opportunities shall not be withheld from children who have misbehaved.
 - (e) Spanking and all types of corporal punishment are prohibited.
 - (f) Mechanical and chemical restraints are prohibited.
 - (g) Educators shall focus upon positive behavior and on the individual child's strengths.

- (h) The educator shall address each incident of unacceptable behavior by using methods of positive guidance and discipline to help the child manage his/her behavior.
 - (i) Each time a child is engaging in unacceptable behavior the educator shall first redirect the child's attention and substitute a desirable activity prior to disciplining the child.
 - (j) Less restrictive, positive behavior management techniques shall be employed before using time-out.
 - (k) 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 educator redirection or guidance.
 - 1. Time-out shall be reasonable and developmentally appropriate and shall not include restraint or seclusion.
 - 2. The length of each time-out session shall be based on the age of the child and shall not exceed one (1) minute per each year of age of the child; provided, however, that no child under thirty-six (36) months shall be placed in time out.
 - 3. Time-out shall take place in an appropriate location within sight of the educator.
 - 4. Restraining devices such as high chairs, cribs, or car seats shall not be used for time-out.
 - 5. Redirection or a similar approach shall be used for children younger than thirty-six (36) months of age.
 - (l) Physical Restraint and Seclusion. The following is not considered physical restraint and is considered acceptable:
 - 1. Physical touch associated with prompting, comforting, or assisting that does not prevent the service recipient's freedom of movement or normal access to his or her body.
 - 2. Physical restraint and seclusion are emergency safety interventions, not therapeutic techniques, and are implemented in a manner designed to protect the child/youth's safety, dignity, and emotional well-being.
 - 3. The use of physical restraint is allowed only in the case of an emergency when the child/youth is at imminent danger of self-harm or of harming others and no other option exists to protect the safety of the child/youth and staff members.
 - 4. Clothing may not be removed from a child/youth in conjunction with the use of physical restraint or seclusion, other than that which has been determined to place the child/youth or others at risk.
- (6) 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 and assisted as needed in a safe, sanitary manner.
- (7) Educational Activities.
- (a) Activities shall be intentionally planned based upon the developmental age of the child.
 - (b) A daily program shall provide developmentally appropriate opportunities for learning math, literature, science, and health, as well as opportunities for self-expression through a variety of creative and multi-cultural activities such as art, music, movement, and dramatic play.
 - (c) Indoor physical activities, requiring children to use both large and small muscles, shall be provided for children of each age group.
 - (d) For infants and toddlers, a portion of the day shall include floor time to optimize adult-infant interactions, including direct supervised tummy time for infants less than six (6) months of age, for activities that develop physical, social, language and cognitive skills. The floor shall be clean and safe. Infants should be placed on a firm, safe surface such as a non-plush carpet, mat, or rug for tummy time, with no soft materials placed under or around the infant during tummy time. If the infant falls asleep during tummy time, educators shall immediately place the infant in a crib on their back and follow all safe sleep procedures.
 - (e) Educators shall listen to and respond verbally to infants and toddlers throughout the day.
 - (f) The director or primary educator shall observe and document the use of the applicable developmental learning standards.
- (8) Personal Safety Curriculum Components and Guidelines.
- (a) For ages three (3) years through school age, a personal safety curriculum shall be provided at least once a year.
 - (b) The personal safety curriculum shall include a Department-recognized component for the prevention of child abuse.
 - (c) For children four (4) years of age and older, a child sexual abuse prevention component shall be included.
 - (d) The child care agency may choose terminology and instructional methods for this curriculum that provides clear, effective and appropriate instruction to the children in personal safety, including the prevention of all forms of child abuse.
 - (e) 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. School-age children shall not be required to receive personal safety instruction from the child care agency if they annually receive the personal safety instruction

required under this paragraph (8) from their school or other educational setting, as approved by the Department.

3. Documentation of Personal Safety Instruction in Educational Settings.

- (i) Written documentation 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 agency shall maintain documentation that each school-age child enrolled in the child care agency is receiving annual personal safety instruction as required by this subparagraph (e).
- (f) The personal safety curriculum used shall be made available to parents/guardians for review. The child care agency shall use a notification form developed by the Department to document that the parents/guardians have been notified of the curriculum and of their opportunity to review.
- (g) The record of each enrolled child shall include a copy of the signed notification form.
- (h) If requested, child care agency staff shall meet with the parents/guardians to discuss the curriculum.
- (i) Specific requirements for drop-in centers are described in 1240-04-01-.23.
- (9) ~~Extended Care~~ Care during non-traditional hours. Child 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, children shall receive individual attention from educators 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 tooth brushing, bath time, and bedtime rituals.
- (10) The parents/guardians shall be consulted in developing a plan to meet the individual needs of a child with special needs.

Authority: T.C.A. §§ 4-5-201, et seq.; 71-1-105(a)(5); 71-3-501, et seq.; and 71-3-502(a)(2).
Administrative History: Original rules filed May 1, 2018; effective July 30, 2018. Amendments filed March 31, 2022; effective June 29, 2022.

1240-04-01-.18 EMERGENCY PREPAREDNESS.

- (1) All persons or entities operating a child care agency as defined in this chapter, excluding drop-in child care centers and those programs and facilities exempt from licensing as provided in T.C.A. § 71-3-503, shall, in consultation with appropriate local authorities and local emergency management, develop a written multi-hazard plan to protect children in the event of emergencies, including, but not limited to, fires, tornados, earthquakes, chemical spills, and floods. Such plans must address the following components: evacuation, relocation, shelter-in-place and lock down, staff and volunteer emergency preparedness training and practice drills,

communication and reunification with families, continuity of operations, and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions.

- (2) All child care agencies shall also inform parents and guardians of children attending the child care agency of the plan. The child care agency shall comply with all other requirements related to emergency preparedness provided under T.C.A. § 71-3-517.
- (3) The Department may temporarily waive certain provisions of child care licensing and Quality Rating Improvement System rules when a state of emergency is declared by the Governor or the Governor's designee, or by activation of the Tennessee Emergency Management Plan ("TEMP") pursuant to T.C.A. § 71-3-517.
- (4) The Department may also waive, on a temporary basis, certain provisions of the child care licensing and Quality Rating Improvement System rules as they pertain to a particular child care agency as needed on an individual basis in case of a single incident such as a fire or other type of disaster.

(5) All child care agency staff persons shall be trained on the plan annually.

Authority: T.C.A. §§ 4-5-201, et seq.; 71-1-105(a)(5); and 71-3-517. **Administrative History:** Original rules filed May 1, 2018; effective July 30, 2018. Amendments filed March 31, 2022; effective June 29, 2022.

1240-04-01-.21 SPECIFIC REQUIREMENTS FOR GROUP CHILD CARE HOMES.

- (1) Required Adult:Child Ratios.
 - (a) Adult:child ratios shall be maintained at all times while the children are on the premises, including outdoors or on the playground.
 1. 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.
 2. The maximum number of children present in a group child care home shall not exceed twelve (12).
 - (i) Exception:
 - (I) If the group child care home is in the occupied residence of the primary educator, children nine (9) years of age or older and related to the primary educator are not counted if those children are provided a separate space from that occupied by the group child care home; and
 - (II) Up to three (3) additional school-age children, related or unrelated to the primary educator, may be in care before and after school, on school holidays, on school snow days and during summer vacation.
 3. Children related to the primary educator 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 and supervision is not compromised.
 4. Adult:child ratios and group sizes in group child care homes may exceed requirements by up to ten percent (10%), rounded to the nearest whole number, no more frequently than three (3) days per week.

- (i) At no time shall the licensed capacity be exceeded.
- (ii) Infant and toddler groups may never exceed the required ratios and group sizes.
- (iii) The Department may terminate this variance in individual cases under provisions for issuance of a restricted license pursuant to T.C.A. § 71-3-502.
- (iv) Group Child Care Home child care agencies who use the variance may, at the Department's discretion, be required to obtain fire approval prior to enrolling additional children.

~~(b) The number of educators required shall comply with one of the options listed on the Chart below.~~

~~Group Home Ratio and Group Size Chart:~~

Number of Children	Ages of Children	Educators Required
Twelve (12) – Fifteen (15) (any number over twelve (12) must be school-age)	No more than twelve (12) children three (3) years of age or older	4
Twelve (12) – Fifteen (15) (any number over twelve (12) must be school-age)	Up to nine (9) children under three (3) years of age; and No more than four (4) present under two (2) years of age	2
Twelve (12) – Fifteen (15) (any number over twelve (12) must be school-age)	Ten (10) or more under three (3) years of age	3

~~(b) Group Home Ratio Chart:~~

Maximum Number of Children and Ages	Educators Required
(including children "related" to the primary educator under nine (9) years of age)	
Seven (7) or fewer children; and no more than four (4) under two (2) years	1
Seven (7) or fewer children; and five (5) or more under two (2) years	2
More than seven (7) or fewer children; and no more than four (4) under two (2) years	2
More than seven (7) children; and five (5) or more under two (2) years	3

- (c) If school-age children are enrolled, a school-age program shall be provided.
- (d) If four (4) or more infants/toddlers attend a group child care home, they shall have a separate and distinct space and their own educator.
 - 1. The space shall provide thirty (30) square feet per child.
 - 2. Barriers shall be sufficient to provide separation without isolating children.

- (e) If attendance drops to seven (7) or fewer children, family child care home ratios apply.
 - (f) 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 educator awake and supervising the child.
 - (i) The educator 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 Educator Qualifications for Group Child Care Homes.
- (a) Primary educators shall have a high school diploma or equivalent educational credential as recognized by state law.
 - (b) The primary educator shall complete a Department-sponsored child-care informational intake meeting and an orientation session that is at least four (4) hours in length no later than six (6) months prior to a license being issued.
 - (c) The primary educator shall complete at least three (3) hours of training on the applicable developmental learning standards within the first three (3) months.
 - (d) The primary educator in a group child care home shall have, in addition to other required training in specific subject areas, evidence of receiving annual training as follows in Department-recognized workshops/training, or one-on-one consulting sessions:
 - 1. Effective July 1, 2018, at least eighteen (18) clock hours.
 - (i) At least six (6) hours must be health and safety such as but not limited to:
 - (I) Prevention and control of infectious diseases (including immunization);
 - (II) Prevention of sudden infant death syndrome and use of safe sleeping practices;
 - (III) Administration of medication, consistent with standards for parental consent;
 - (IV) Prevention of and response to emergencies due to food and allergic reactions;
 - (V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
 - (VI) Prevention of shaken baby syndrome[,] ~~and~~ abusive head trauma[, and child maltreatment];

- (VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);
 - (VIII) Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;
 - (IX) Precautions in transporting children (if applicable);
 - (X) First aid and cardiopulmonary resuscitation (CPR);
 - (XI) Poison prevention;
 - (XII) Nutrition and physical activity;
 - (XIII) Child development; or
 - (XIV) Caring for and inclusion of children with special needs.
- (ii) At least three (3) hours of training on pre-literacy and literacy skills and education implementation.
 - (iii) 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.
 - (iv) Training in first aid and CPR may be counted as necessary to maintain current certification as required by 1240-04-01-.12.
- 2. The primary educator shall have evidence of completing training in Adverse Childhood Experiences every five (5) years.
- (d) Owners who are employed elsewhere shall ensure that a primary educator is always on-site.
 - (e) The primary educator shall not be employed at any other job during the hours of operation unless the Department has approved the primary educator's employment in an official capacity in a program sponsored or recognized by the Department.
 - (f) An educator shall be on-site any time that the primary educator is not on-site during child care operating hours.
- (3) Educator Qualifications for Group Child Care Homes.
 - (a) Educators/Assistants sixteen (16) through seventeen (17) years of age may assist a primary educator and be counted in the ratio if the individual is:
 - 1. Never left alone with children; and
 - 2. Always under the direct supervision of a primary educator.

- (b) An educator in a group child care home shall have, in addition to other required training in specific subject areas, evidence of receiving annual training as follows in Department-recognized workshops/training, or one-on-one consulting sessions:

1. Effective July 1, 2018, at least twelve (12) clock hours.

(i) At least six (6) hours must be health and safety such as but not limited to:

- (I) Prevention and control of infectious diseases (including immunization);
- (II) Prevention of sudden infant death syndrome and use of safe sleeping practices;
- (III) Administration of medication, consistent with standards for parental consent;
- (IV) Prevention of and response to emergencies due to food and allergic reactions;
- (V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
- (VI) Prevention of shaken baby syndrome~~[.]~~ ~~and~~ abusive head trauma~~[.]~~ and child maltreatment;
- (VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);
- (VIII) Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;
- (IX) Precautions in transporting children (if applicable);
- (X) First aid and cardiopulmonary resuscitation;
- (XI) Poison prevention;
- (XII) Nutrition and physical activity;
- (XIII) Child development; or
- (XIV) Caring for and inclusion of children with special needs.

(ii) At least three (3) hours of training on the applicable developmental learning standards within the first three months.

(iii) At least three (3) hours of training on pre-literacy and literacy skills and education implementation.

- (c) 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.
 - (d) Training in first aid and CPR may be counted as necessary to maintain current certification as required by 1240-04-01-.12.
 - (e) Educators shall have evidence of completing training in Adverse Childhood Experiences every five (5) years.
- (4) All staff responsible for food service, preparation, or supervision shall be trained on the mealtime supervision plan as described in 1240-04-01-.11(2)(c).
- (5) Licensed Capacity of Physical Space.
- (a) A minimum of thirty (30) square feet of usable indoor play space shall be provided for each child.
 - (b) The maximum number of children who may be present inside a physical space shall be determined in accordance with the minimum square footage requirements.
 - (c) The Department may restrict the child care agency's licensed capacity below the maximum.
 - (d) The following shall not be counted toward to the square footage requirements:
 - 1. Restrooms;
 - 2. Hallways;
 - 3. Kitchen;
 - 4. Office space; and
 - 5. Any space used by cribs or large pieces of furniture.
 - (e) Adequate Plumbing Facilities. The child care agency shall have the minimum number of functional toilets and hand-washing stations 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(a)(5); 71-3-501, et seq.; and 71-3-502(a)(2).
Administrative History: Original rules filed May 1, 2018; effective July 30, 2018.

1240-04-01-.22 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) At no time shall the licensed capacity be exceeded.

(ii) Infant and toddler groups may never exceed the required ratios and group sizes.

(iii) The Department may terminate this variance in individual cases under provisions for issuance of a restricted license pursuant to T.C.A. § 71-3-502.

(iv) Child care centers that use the variance may, at the Department's discretion, be required to obtain fire approval prior to enrolling additional children.

2. When more than twelve (12) children are present on the premises, a second adult shall be physically available on the premises.

(c) Child Care Ratio and Group Size Charts.

1. Chart 1 – Age Grouping.

Age of Children	Adult:Child Ratio	Maximum Group Size
Six (6) weeks – Fifteen (15) months	1:4	8
Twelve (12) – Thirty [-six] (30 [36]) months	1:6	12
Twenty-four (24) – Thirty-five (35) months	1:7	14
Three (3) years	1:9	18
Four (4) years	1:13	20
Five (5) years	1:16	20
School-age	1:20	No-Max

2. Chart 2 – Age Grouping.

Age of Children	Adult:Child Ratio	Maximum Group Size
Six (6) weeks – Thirty (30) months	1:5	10
Six (6) weeks – Fifteen (15) months	1:4	8
Twelve (12) months – Thirty-Six (36) months	1:6	12
Two (2) – Four (4) years	1:8	16
Two and one-half (2½) – Three (3) years (Thirty (30) – Forty-seven (47) months)	1:9	18
Two and one-half (2½) – Five (5) years	1:11	20

Two and one-half (2½) – Twelve (12) years	1:10	10
Three (3) – Five (5) years	1:13	22
Four (4) – Five (5) years	1:16	24
Five (5) – Twelve (12) years	1:20	No Max
Kindergarten through Fifth Grade	1:20	No Max
Sixth Grade through Eighth Grade	1:20	No Max
Ninth Grade through Twelfth Grade	1:20	No Max

3. Chart 3 – Allowable Combined Grouping and Adult:Child Ratio Chart for first/last hour and one-half (½) of each day only:

Age of Children	Adult:Child Ratio	Maximum Group Size
Two and one-half (2½) – Five (5) years	1:10	10
Three (3) – Twelve (12) years	1:15	15
Four (4) – Twelve (12) years	1:20	20
Thirteen (13) – Seventeen (17) years	1:20	20

(d) Assignment of Children to Groups.

- Each child shall be on roll in a defined group and assigned to that group with a specific educator(s).
- Maximum group size requirements, as established in subparagraph (c) above, 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.
- Infants shall have a separate space and shall never be grouped with children older than thirty (30) months of age.
- ~~Extended Care~~ ~~[Care during non-traditional hours]~~. Children age thirteen (13) months and older may be grouped together while sleeping in overnight care.
- Children shall be kept with the same group throughout the day.
- Children shall not be promoted to a new group until required based upon the age and developmental needs of the child.
- 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.
- Pre-school and school-age groups may be combined for up to one and one-half (1½) hours at the beginning of the day and for up to one and one-half (1½) hours at the end of the day as set forth in Adult:Child Ratio Chart 3 in 1240-04-01-.22(1)(c)3.
- Groups of children may never be mixed as part of the regular routine or operation.

Exception: Pre-school and school-age groups may be mixed based upon emergencies, holidays or low attendance days.

10. Child care agencies shall define grouping for each classroom.
 - (e) Each group shall have a designated classroom 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 educator, a separate group, a separate space, and a separate program shall be provided for them.
- (2) Licensed Capacity of Physical Space.
 - (a) The maximum number of children who may be present inside a physical space, i.e., the child care agency's "licensed capacity", shall be determined in accordance with the minimum square footages set forth in this subparagraph.
 - (b) The Department may, in its discretion, and as determined to be reasonably necessary to maintain the health and safety of the children in care, restrict the child care agency's licensed capacity below the maximum set forth in these rules.
 - (c) A minimum of thirty (30) square feet of usable indoor play space shall be provided for each child in each classroom.
 - (d) Each nap room shall contain a minimum of thirty (30) square feet of floor space per child.
 - (e) Locations providing teen parenting, occupational/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. The designated separate space may be located in the same room and divided by movable barriers less than four (4) feet in height.
 - (f) The following are not counted toward required square footage:
 1. Restrooms;
 2. Halls;
 3. Kitchen;
 4. Office space; or
 5. Any space used by cribs or large pieces of furniture.
 - (g) Rooms with sufficient floor space may be divided by a barrier at least four (4) feet in height for use by more than one (1) group if 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 child care agency shall have the minimum number of functional toilets and hand-washing stations 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.

- (3) Meals and Snacks. Any person responsible for preparing meals or snacks shall not be included in the adult:child ratio while preparing meals/snacks or doing related tasks, such as washing dishes.
- (4) Schedules and Routines. In an infant or toddler room with more than one (1) educator, each educator 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.
- (5) Interim Director. Following the issuance of a 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.

Authority: T.C.A. §§ 4-5-201, et seq.; 71-1-105(a)(5); 71-3-501, et seq.; and 71-3-502(a)(2).
Administrative History: Original rules filed May 1, 2018; effective July 30, 2018. Amendments filed October 5, 2018; effective January 3, 2019. Amendments filed March 31, 2022; effective June 29, 2022.

1240-04-01-.23 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) 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) An individual child may not exceed seven (7) hours of care per day or fourteen (14) hours of care per week during regular working hours (Monday - Friday, 6:00 a.m. to 6:00 p.m.).
 - (c) 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 of care per week, exclusive of snow days when the school of the affected child is closed.
 - (d) 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 child care 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"; and

2. "Personal Safety Curriculum Notification Form for Drop-In Child Care Centers."
 - (b) The child care agency shall provide parents of children ages three (3) and over with a copy of the above forms.
 - (c) The child care agency shall maintain a copy of the Personal Safety Curriculum Notification Form signed by the parent/guardian on file at the child care 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 the license specifically authorizes the licensee to provide such care.
 - (b) The number of school-age children that a drop-in center may accept at any given time shall be determined by the Department based upon the amount of floor space.
 - (c) No child thirteen (13) years of age or older may be cared for by a drop-in center on a snow day.
 - (d) The center shall annually provide the Department with an updated list of trained educators and staff available for emergency call duty.
- (5) Transportation. Transportation 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.

Exception: A drop-in child care center may operate without an on-site director no more than sixty (60) days total within the licensing year.
- (7) 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 educator supervision as established in parts 2.-4. below.
 2. Age Grouping.

Age of Children	Adult:Child Ratio
Six (6) weeks – Fifteen (15) months	1:4
Twelve (12) months – Thirty (30) months	4:8 [1:7]
Two (2) years	4:12 [1:9]
Three (3) years	4:15 [1:12]
Four (4) years	4:18 [1:15]
Five (5) years (not in Kindergarten)	4:20 [1:18]
School-age (Kindergarten and 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, 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.
- (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 of Children Present	One Infant	Two Infants
Twelve (12) months – Thirty (30) months	4:8 [1:7]	1:6
Two (2) years	4:10 [1:9]	4:8 [1:6]
Three (3) years	4:12 [1:8]	4:10 [1:7]
Four (4) years	4:15 [1:10]	4:12 [1:9]
Five (5) years (not in Kindergarten)	4:17 [1:18]	1:13
School-age (Kindergarten and above)	4:19 [1:22]	1:15

- 4. When more than fourteen (14) children are present, children under two (2) years of age shall have their own designated area.

(8) 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~~ [Care during non-traditional hours]: 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.
- (c) If the child care agency provides food, it shall be in accordance with the USDA's Child and Adult Care Food Program (CACFP) nutritional guidelines.

(9) Licensed Capacity of Physical Space.

- (a) The maximum number of children who may be present inside a physical space shall be determined in accordance with the minimum square footage. The Department may, in its discretion, restrict the child care 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 shall be provided for each child.
- (c) Each nap room shall contain a minimum of thirty (30) square feet of floor space per child.
- (d) For the purposes of calculating square footage requirements, the following shall not be counted:
 - 1. Restrooms;
 - 2. Hallways;
 - 3. Kitchen;
 - 4. Office space; or
 - 5. Any space used by cribs or large pieces of furniture.
- (e) Rooms with sufficient floor space, as defined by the requirements set forth in these rules, may be divided by a barrier at least four (4) feet in height and used for more than one (1) group.
- (f) Adequate Plumbing Facilities. The child care agency shall have the minimum number of functional toilets and hand-washing stations 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.
- (10) Staff shall have documentation of all children's allergies and how to deal with any allergic reaction.
- (11) Staff shall review emergency preparedness and fire procedures and shall physically walk through the evacuation process every quarter.
- (12) Prohibited Activities and Rules Not Applicable to Drop-In Child Care Centers:
 - (a) Prohibited Activities:
 - 1. Swimming;
 - 2. Transportation;
 - 3. Provision of specialized services.
 - (b) Rules Not Applicable to Drop-In Child Care Centers:
 - 1. Completed child application, immunization certificates (for children over two (2) months of age), and health history prior to admission;
 - 2. Written documentation of parent/guardian pre-enrollment visit;
 - 3. License notation to provide ~~extended~~ care during non-traditional hours;

4. Parent/guardian signed receipt of policies and summary of licensing requirements;
5. Ongoing parent/guardian communication regarding curriculum, personnel changes, and changes in child's routine care;
6. Posting a report card;
7. Emergency procedure practice drills for the children;
8. Written action plan for each child with life-threatening allergies;
9. Immunization requirement exceptions;
10. Documentation of specific infant, toddler, or non-verbal child activities under children's records;
11. Documentation of well-child exam prior to care (child under sixty (60) months);
12. Parent/guardian signed kindergarten status acknowledgement;
13. Daily written activity record for children with special needs;
14. Records regarding proof of staff education;
15. Staff sign-in of children during transportation;
16. First aid certification for all staff during ~~extended~~ [non-traditional] hours;
17. Accommodations that support and facilitate a family's decision to continue breast feeding;
18. Sufficient indoor equipment, materials, and toys based upon the activities in 1240-04-01-.14;
19. Outdoor play or equipment;
20. Napping or sleeping equipment for each child six (6) weeks to five (5) years in care for six (6) or more hours;
21. Bedding labeled with each child's name or corresponding code;
22. Time limitation on the use of television, radio, video, computers, and personal electronic devices;
23. A reclining rest period for children in care six (6) or more hours;
24. Individual educator attention to each child described in 1240-04-01-.15;
25. Educational activities described in 1240-04-01-.15(7);
26. Plans for bedtime rituals/routines;
27. Developmental checklist of developmental milestones upon disenrollment; and

28. Requirement regarding when toilet learning is started.

Authority: T.C.A. §§ 4-5-202; 71-3-501, et seq.; and 71-3-502(a)(2). **Administrative History:** Original rules filed May 1, 2018; effective July 30, 2018. Amendments filed March 31, 2022; effective June 29, 2022.

**HUMAN SERVICES
STANDARDS FOR REGULATED INSTITUTIONS**

**CHAPTER 1240-04-05
PROCEDURES AFFECTING LICENSES OF CHILD CARE AGENCIES**

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1240-04-05-.02 DEFINITIONS.

- ~~(1) Applicant The person or entity seeking an initial annual license or renewal of an annual license from the Department of Human Services.~~
- ~~(2) Application The form for, and the process of, applying for a license from the Department of Human Services.~~
- ~~(3) Application for Renewal Application for a new license during the existence of a currently valid license.~~
- ~~(4) Child care agency The person or entity providing child care as defined by the licensing law in T.C.A. §§ 71-3-501 et seq. and the rules of the Department of Human Services.~~
- ~~(5) Child Care Agency Board of Review, Board of Review or Board The entity established by T.C.A. §§ 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 imposed by the Department of Human Services against a child care agency under its jurisdiction.~~
- ~~(6) Civil Penalty A financial sanction imposed by the Department against a child care agency that has violated a licensing regulation.~~
- ~~(7) Commissioner Executive head of the Tennessee Department of Human Services.~~
- ~~(8) Denial The decision of the Department not to issue or renew a license.~~
- ~~(9) Department The Tennessee Department of Human Services.~~
- ~~(10) Hearing Official The administrative law judge or hearing officer assigned to conduct summary suspension hearings or for Child Care Agency Board of Review hearings as may be permitted by law.~~
- ~~(11) Law The statutory or regulatory provisions affecting the operation of a child care agency.~~
- ~~(12) License A 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 regulations of the Department of Human Services. Issuance of a license is not an endorsement of child care methods or of an agency's operational philosophy.~~
- ~~(13) Licensee The person, agency, group, or entity to whom or to which a license to operate a child care agency is issued by the Department of Human Services.~~
- ~~(14) Reapplication Application for a new license following denial or revocation of a license.~~
- ~~(15) 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. A restricted license may also be imposed by the Child Care Agency Board of Review as part of its review of the licensing status of a child care agency in~~

~~the same manner and for the same reasons as such a license is issued or imposed by the Department. A restricted license may be appealed to the Child Care Agency Board of Review.~~

~~(16) Revocation The permanent removal of an existing license.~~

~~(17) Summary Suspension The emergency suspension of a license for violation(s) of licensing laws or regulations needed to adequately protect the health, safety, or welfare of children in a child care agency. Summary suspension may be ordered in circumstances that have resulted in death, injury or harm to a child or that have posed or threatened to pose a serious and immediate threat of harm or injury to a child based upon the intentional or negligent failure to comply with licensing laws or regulations.~~

~~(18) 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 attempts 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.~~

(1) Applicant. The owner or owner's representative who is required, pursuant to the provisions of these rules, to sign the application for a license.

(2) Application. The form for, and the process of, applying for a license from the Department of Human Services.

(3) Child care agency. 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", 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 educator.

(4) Child Care Agency Board of Review, Board of Review or Board. A committee established to review actions initiated by the Department of Human Services and the Department of Children's Services to deny, revoke, or otherwise limit any license, except for summary suspension of, or probation involving, a license; any civil penalties imposed by the Department of Human Services; or any safety plan implemented by the Department of Human Services that will be, or has been, in effect ninety (90) days or more.

(5) Civil Penalty. A financial sanction imposed by the Department against a child care agency that has violated a licensing regulation.

(6) Commissioner. The Commissioner of the Department of Human Services.

- (7) Denial. The decision of the Department not to issue a provisional or continuous license.
- (8) Department (DHS). The Tennessee Department of Human Services and its authorized representatives.
- (9) Hearing Official. The administrative judge assigned to conduct summary suspension hearings or for Child Care Agency Board of Review hearings as may be permitted by law.
- (10) Law. The statutory or regulatory provisions affecting the operation of a child care agency.
- (11) License. A 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 regulations of the Department of Human Services. Issuance of a license is not an endorsement of child care methods or of an agency's operational philosophy.
- (12) Licensee. The person, agency, group, or entity to whom or to which a license to operate a child care agency is issued by the Department of Human Services.
- (13) Provisional license. A license issued to a child care agency for one hundred twenty (120) days for the purpose of allowing the child care agency to demonstrate their ability to attain and maintain compliance with all licensing laws and regulations. Such provisional license may continue in effect, unless suspended if the Department fails to issue a continuous license after the one hundred twenty (120) day period if the Department determines an extension is necessary to allow the child care agency to demonstrate ability to maintain compliance with licensing laws and regulations.
- (14) Reapplication. Application for a new license following denial or revocation of a license.
- (15) 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. A restricted license may also be imposed by the Child Care Agency Board of Review as part of its review of the licensing status of a child care agency in the same manner and for the same reasons as such a license is issued or imposed by the Department. A restricted license may be appealed to the Child Care Agency Board of Review.
- (16) Revocation. The permanent removal of an existing license.
- (17) Summary Suspension. The emergency suspension of a license for violation(s) of licensing laws or regulations needed to adequately protect the health, safety, or welfare of children in a child care agency. Summary suspension may be ordered in circumstances that have resulted in death, injury, or harm to a child or that have posed or threatened to pose a serious and immediate threat of harm or injury to a child based upon the intentional or negligent failure to comply with licensing laws or regulations.

Authority: T.C.A. §§ 4-5-201, et seq.; 71-1-105; 71-3-501, et seq.; 71-3-509(e); and Acts 2000, ch. 981, §§ 1-3, 10, and 14. **Administrative History:** Chapter 1240-04-05 has been assigned a new control number, removed and renumbered to chapter 0250-04-05 filed and effective March 25, 1999. New rule filed September 29, 2000; effective December 13, 2000. Amendments filed May 1, 2018; effective July 30, 2018.

1240-04-05-.03 LICENSING PROCESS.

- (1) Licensing Criteria.
 - (a) A license for the operation of a child care agency is issued and its continued approval is based upon the following general criteria:
 1. The safety, welfare and best interests of the children in the care of the agency;
 2. The capability, training and character of the persons providing or supervising the care to the children;
 3. The quality of the methods of care and instruction provided for the children;
 4. The suitability of the facilities provided for the care of the children; and
 5. 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.
 - (b) Failure to attain or maintain the criteria in subparagraph (a) either alone, or in conjunction with failure to attain or maintain compliance with any other regulations governing the specific class of child care agency, may be the basis for refusal to grant a license, or for placing the child care agency on probation, or for suspension, denial or revocation of the agency's license.
- (2) The Department shall assist applicants or licensees in meeting the child care standards of the Department unless the circumstances demonstrate that further assistance is not compatible with the continued safety, health or welfare of the children in the agency's care and that regulatory action affecting the agency's license is warranted. It is the responsibility of the applicant/licensee to comply with all regulations of the Department of Human Services and those regulations of any other federal, state or local regulatory agency which are necessary for the proper operation of a child care business and to demonstrate to the Department a good faith commitment to attaining and maintaining compliance with all applicable licensing standards. All costs and expenses arising from or related to meeting the child care standards of the Department shall be borne entirely by the applicant or licensee; provided, however, the Department may, in its discretion, provide from available funds technical assistance to child care agencies, and for the training of child caregivers and directors.
- (3) If a licensee is denied ~~the renewal of a license~~, or if a license is revoked or suspended, or if any applicant for a license cannot meet the standards, then the Department shall offer reasonable assistance to the parent, guardian or custodian of the child in planning for the placement of such children in licensed child care agencies or other suitable care.
- (4) Application for an Initial License ~~or for Renewal of an Existing License~~.
 - (a) Application for an initial ~~or renewal~~ license to operate a child care agency shall be made in writing to the Department in such manner as the Department determines and shall be accompanied by the appropriate fee set forth in the fee schedule in paragraph (15).
 - ~~(b) Application for and Granting of the Renewal of a License.~~
 - ~~1. Child care agencies currently licensed by the Department shall submit a renewal application, the required fee, and any required supporting documentation sixty (60) calendar days prior to the expiration of the existing license.~~

- ~~2. Failure to submit a completed application and the required fee sixty (60) calendar days prior to the expiration of an existing license, shall result in the automatic termination of the license upon the expiration date, and the child care agency shall cease operations immediately after that date. Child care agencies may initiate a new application process if the child care agency fails to meet the sixty (60) calendar day deadline; however, the child care agency must cease operations until such time as the new application is approved.~~
- ~~3. A licensee seeking renewal of a license must demonstrate satisfactory compliance with all health and safety requirements applicable to its operations and any other applicable licensing laws and rules of the Department to obtain renewal of the license.~~

(5) ~~Temporary~~ [Provisional] License.

- (a) If the Department determines that the applicant for an initial ~~annual~~ license has presented satisfactory evidence that the facility which is proposed for the care of children has received fire safety and environmental safety approval, that 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 law and regulations, the Department ~~shall issue a temporary license~~ [may issue a provisional license] to the applicant. No ~~temporary~~ [provisional] license will be issued until, at a minimum, fire safety and environmental safety inspections have been conducted and the applicant has received approval from the appropriate agencies.
- (b) If the Department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted ~~temporary~~ [provisional] license which limits the agency's authority in one or more areas of operation.
- (c) The purpose of the ~~temporary~~ [provisional] license is to permit the license applicant to begin the operation of a child care agency after meeting certain minimum requirements and to demonstrate during the ~~temporary~~ [provisional] licensing period that it has the ability to attain and maintain compliance with all licensing laws and regulations.
- (d) Within one hundred twenty (120) days of the issuance of the ~~temporary~~ [provisional] license, the Department shall determine if the applicant has demonstrated that it meets all of the requirements for the issuance of a license for the classification of child care agency for which the application was made.

(6) ~~Annual~~ [Continuous] License.

- (a) If the Department determines that the applicant for any license has complied with all licensing regulations for the classification of child care agency for which application was made, the Department ~~shall issue an annual license~~ [may issue a license], or shall, if appropriate issue a restricted ~~annual~~ license as provided in subparagraph (b).
- (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 ~~annual~~ license which limits the agency's authority in one or more areas of operation.

(7) License Information.

- (a) Based upon information provided in the license application or as may be requested by the Department, 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.

- (b) 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 chairman of the board or other executive head of such controlling body.

(8) Posting of License.

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.

(9) Before and After School Services.

- (a) In order for a child care agency to offer before or after school services, the Department will issue a license bearing a notation that the agency is authorized to provide such services.
- (b) An agency is not authorized to offer such services unless the license bears such a notation.

- (10) In granting a license, the Department may limit the total number of children who may be enrolled at the agency regardless of the agency's physical capacity or the size of its staff.

(11) License Status Following Application or Appeal.

- (a) If the Department fails to issue or deny ~~an annual~~ [a] license within one hundred twenty (120) days of the granting of the ~~temporary~~ [provisional] license, the ~~temporary~~ [provisional] license shall continue in effect, unless suspended as provided in 1240-04-05-.04(5), until such determination is made.
- (b) If ~~an annual~~ [a] license is denied following the issuance of a ~~temporary~~ [provisional] license, and if a timely appeal is made of the denial of the ~~annual~~ license, the ~~temporary~~ [provisional] license shall remain in effect, unless suspended as provided in 1240-04-05-.04(5), until the Child Care Agency Board of Review renders a decision regarding the denial of the ~~annual~~ license.

- (12) If a ~~temporary~~ [provisional] or ~~annual~~ [continuous] license is denied, or ~~an annual~~ [a continuous] license is restricted, the applicant may file an appeal as provided in T.C.A. § 71-3-509 and other applicable laws and rules governing the Child Care Agency Board of Review.

(13) Transfers of Licenses.

- (a) Except as provided in this chapter, no license for a child care agency shall be transferable from one location to another or from one licensee/operator to another, and the transfer by sale or lease, or in any other manner, of the operation of the child care agency to any other person or entity shall void the existing license immediately and any pending appeal involving the status of the license, and the child care agency shall be required to close; provided that if the transferee has made application for, and is granted, a ~~temporary~~ [provisional] license, the child care agency may continue operation under the direction

of the new licensee. The new licensee in such circumstances may not be the transferor or any person or entity acting on behalf of the transferor.

(b) Notice of Termination to Buyer/Lessee/Transferee.

1. Except for transfers subject to the provisions of subparagraph (d), at least thirty (30) days before the sale, lease, or transfer by any other means, of a child care agency, the licensee/owner/management of the child care agency shall notify in writing the buyer, lessee or other prospective transferee of the child care agency that the license of the child care agency is not transferable and that upon the effective date of the transfer, the license of the child care agency will automatically terminate and of the need to seek a ~~temporary~~ provisional license from the Department for continued operation of the child care agency.
2. The licensee/owner/management of the child care agency shall notify in writing the Department at the same time the notice required by part 1 is sent and shall clearly identify the date of the transfer and the identity of the prospective buyer/lessee/transferee.

- (c) If the Department determines that any person or entity has transferred nominal control of a child care agency to any persons or entities who are determined by the Department to be acting on behalf of the purported 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 and other applicable laws and rules governing the Child Care Agency Board of Review.
- (d) The license of any child care agency shall not be voided nor shall any pending appeal be voided pursuant to this paragraph solely for the reason that the child care 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.
- (e) If the current licensee dies or is incapacitated, and provided that no licensing violations require the suspension, denial or revocation of the child care agency's license, the Department may grant family members of the licensee, or administrators or executors of the licensee, a new ~~temporary~~ provisional license to continue operation for a period of one hundred and twenty (120) days. At the end of such period, the Department shall determine whether ~~an annual~~ a license should be granted to a new licensee as otherwise provided in this chapter.
- (f) Nothing in this paragraph (13) 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 child care agency.

~~(14) Licensing Fees.~~

~~The following licensing fees shall apply to applications for licenses for child care agencies licensed by the Department effective January 1, 2001:~~

(a) Family child care homes:	Annual fee	\$100.00
	Biennial fee	\$150.00
	Triennial fee	\$175.00

(b) Group child care homes	Annual fee	\$125.00
	Biennial fee	\$175.00
	Triennial fee	\$200.00
(c) Child care centers (Less than 100 children)	Annual fee	\$200.00
	Biennial fee	\$250.00
	Triennial fee	\$300.00
(d) Child care centers (More than 100 children)	Annual fee	\$400.00
	Biennial fee	\$450.00
	Triennial fee	\$500.00
(e) Child care centers (More than 250 children)	Annual fee	\$500.00
	Biennial fee	\$550.00
	Triennial fee	\$600.00
(f) Drop-in centers	Annual fee	\$200.00
	Biennial fee	\$250.00
	Triennial fee	\$300.00

(14) Application Fees.

The following application fees shall apply to applications for provisional licenses for child care agencies licensed by the Department:

<u>(a) Family child care homes:</u>	<u>\$100.00</u>
<u>(b) Group child care homes:</u>	<u>\$125.00</u>
<u>(c) Child care centers (Less than 100 children):</u>	<u>\$200.00</u>
<u>(d) Child care centers (More than 100 children):</u>	<u>\$400.00</u>
<u>(e) Child care centers (More than 250 children):</u>	<u>\$500.00</u>
<u>(f) Drop-in centers:</u>	<u>\$200.00</u>

Authority: T.C.A. §§ 4-5-201, et seq.; 71-1-105; 71-3-501, et seq.; 71-3-502; and Acts 2000, ch. 981, §§ 3 and 14. **Administrative History:** Chapter 1240-04-05 has been assigned a new control number, removed and renumbered to chapter 0250-04-05 filed and effective March 25, 1999. New rule filed September 29, 2000; effective December 13, 2000. Amendments filed May 1, 2018; effective July 30, 2018.

1240-04-05-.04 VIOLATIONS OF LICENSING REGULATIONS.

(1) Right of Inspection[.]

- (a) It is the duty of the Department, through its duly authorized agents, to inspect at regular intervals, without previous notice, all child care agencies or suspected child care agencies, as defined in T.C.A. § 71-3-501.
- (b) The Department is given the right of entrance, privilege of inspection, access to accounts, records, and information regarding the whereabouts of children under care for

the purpose of determining the kind and quality of the care provided to the children and to obtain a proper basis for its decisions and recommendations.

- (c) If refused entrance for inspection of a licensed, approved or suspected child care agency, the chancery or circuit court of the county where the licensed, approved or suspected child care agency may be located may issue an immediate ex parte order permitting the Department's inspection upon a showing of probable cause, and the court may direct any law enforcement officer to aid the Department in executing such order and inspection. Refusal to obey the inspection order may be punished as contempt.
 - (d) Except where court orders prohibit or otherwise limit access, parents or other caretakers of children in the care of a child care agency licensed pursuant to T.C.A. § 71-3-501 et seq. shall be permitted to visit and inspect the facilities and observe the methods for the care of their children at any time during which the children are in the care of the agency and, except those records of other children in the care of the agency and their parents or caretakers, shall further be permitted to inspect any records of the agency which are not privileged, or are not otherwise confidential, as provided by law or regulation, and the parents' or caretakers' access for these purposes shall not be purposely denied by the agency.
 - (e) Any violation of the rights given in this paragraph is a Class A misdemeanor.
- (2) Probation.
- (a) If, during the licensing period, the Department determines that a child care agency is not in compliance with the laws or regulations governing its operation, and, if after reasonable written notice to the child care agency of the non-compliance, the Department determines that the violation or related violations remain uncorrected, the Department may place the licensed child care agency on probation for a definite period of not less than thirty (30) days nor more than sixty (60) days as determined by the Department. The Department shall provide the child care agency a written notice describing the violation of the licensing rules that support the basis for the probationary status.
 - (b) If placed on probation, the agency shall immediately post a copy of the probation notice, together with a list provided by the Department of the violations which were the basis for the probation, in a conspicuous place as directed by the Department and with the agency's license, and the agency shall immediately notify in writing the custodians of each of the children in its care of the agency's status, the basis for the probation and of the agency's right to an informal review of the probationary status.
 - (c) If the child care agency requests an informal review within two (2) business days of the imposition of probation, either verbally or in writing, an informal review of the probationary status shall be conducted by Department licensing personnel who were not involved in the decision to impose the probation. The child care agency may submit any written or oral statements as argument to the licensing supervisor or designee within five (5) business days of the imposition of the probation. Written and oral statements may be received by any available electronic means. The licensing supervisor or designee shall render a decision in writing upholding, modifying or lifting the probationary status within seven (7) business days of the imposition of the probation.
 - (d) If the licensing supervisor or designee did not lift the probation under subparagraph (c), the agency may also appeal such action in writing to the Commissioner within five (5) business days of the receipt of the notice of the licensing supervisor or designee's decision regarding the agency's probationary status as determined in subparagraph (c).

If timely appealed, the Department shall conduct an administrative hearing pursuant to the contested case provisions of T.C.A. §§ 4-5-301 et seq. concerning the Department's action within fifteen (15) business days of receipt of the appeal and shall render a decision in writing within seven (7) business days following conclusion of the hearing. The hearing officer may uphold, modify or lift the probation.

- (e) The imposition of probation pursuant to the provisions of this paragraph (2) shall be discretionary with the Department, and shall not be a prerequisite to any licensing action, to impose a civil penalty or to suspend, deny or revoke a license of a child care agency.

(3) Civil Penalties.

(a) General Provisions [L]

1. If the Department determines that there exists any violation with respect to any person or entity required to be licensed pursuant to T.C.A. §§ 71-3-501 et seq., the Department may assess a civil penalty against such person or entity for each separate violation of a statute, rule or order pertaining to such person or entity in an amount ranging from Fifty Dollars (\$50.00) for minor violations up to a maximum of One Thousand Dollars (\$1,000.00) for major violations or violations resulting in death or injury to a child. Each day of continued violation constitutes a separate violation.
2. Any recommendation made by licensing staff for a civil penalty shall be reviewed and approved by the Department's state office management and the Department's legal staff before being imposed.

(b) Civil Penalties Schedule.

1. Major Violations.

- (i) For any violation of any licensing laws or regulations that, due to negligence or intentional disregard of licensing law or regulations, results in serious injury to, or death of, a child, the Department may assess a civil penalty in a range from Seven Hundred Fifty Dollars (\$750.00) up to One Thousand Dollars (\$1,000.00). The Department shall determine the amount of the penalty based upon the extent of the injury to the child and whether the injury or death of the child was the result of negligence or intentional disregard of the licensing regulations. Consideration of the licensee's history of prior violations shall also be a factor in the determination of the amount of the civil penalty.
- (ii) For any violation of any licensing laws or regulations that, due to negligence or intentional disregard of licensing law or regulations, results in an injury to a child, the Department may assess a civil penalty in a range from Five Hundred Dollars (\$500.00) up to Seven Hundred Dollars (\$700.00). The Department shall determine the amount of the penalty based upon the extent of the injury and whether the injury to the child was the result of negligence or intentional disregard of the licensing regulations. Consideration of the licensee's history of prior violations shall also be a factor in the determination of the amount of the civil penalty.
- (iii) For any violation of any licensing laws or regulations that, due to negligence or intentional disregard of licensing law or regulations, results in children leaving the child care agency premises without supervision, or children left

unsupervised that may result in imminent harm, the Department may assess a civil penalty in a range from Seven Hundred Fifty Dollars (\$750.00) up to One Thousand Dollars (\$1,000.00). The Department shall determine the amount of the penalty based upon the extent of the potential harm to the child and whether the potential harm to the child was a result of negligence or intentional disregard of the licensing regulations. Consideration of the licensee's history of prior violations shall also be a factor in the determination of the amount of the civil penalty.

- (iv) For violations of the following categories of regulations the Department may impose a civil penalty of Two Hundred Dollars (\$200.00) for the first violation, Three Hundred Dollars (\$300.00) for the second violation, and Four Hundred Dollars (\$400.00) for the third and any subsequent such violation:
 - (I) Failure to follow any rule related to the proper transportation of children by employees, substitutes, volunteers, agents or contractors of the child care agency;
 - (II) Violation of adult:child ratio requirements;
 - (III) Failure to complete required background checks on staff;
 - (IV) Use of corporal punishment/inappropriate discipline;
 - (V) Lack of Insurance;
 - (VI) Failure to report suspicion of abuse or neglect;
 - (VII) Falsification of documents required by the Department;
 - (VIII) Failure to have CPR/first aid certification as required by the Department;
 - (IX) Lack of proper supervision of children;
 - (X) Failure to properly dispense or store medications;
 - (XI) Failure to remove persons from access to children following notification of a prohibited criminal background or pending criminal charge or following notification of the person's validated status as a perpetrator of child abuse;
 - (XII) Failure to properly store hazardous items such as, but not limited to, cleaning products, pesticides, hazardous chemicals, or other poisonous items; and
 - (XIII) Failure to properly remove or secure firearms within the child care agency area which are under the ownership or control of the child care agency or its staff, substitutes, or other persons permitted access to the children; or failure to prevent exposure of children in the child care agency's care to firearms which are under the control of the child care agency or its staff, substitutes, or other persons who have been permitted by the child care agency to have access to the children.

- (v) The existence of six (6) or more minor violations of any type in any period of three (3) or more months shall constitute a major violation and may be subject to a civil penalty imposed by the Department of Two Hundred Dollars (\$200.00) in addition to the penalty for each minor violation. Three (3) or more minor violations of the same regulation in any period of three (3) or more months shall constitute a major violation and may be subject to a civil penalty imposed by the Department of Two Hundred Dollars (\$200.00) in addition to the penalty for each minor violation.

2. Minor Violations.

- (i) A minor violation shall be any rule violation not described as a major violation in part 1.
 - (ii) Each minor violation may subject the licensee to a civil penalty of Fifty Dollars (\$50.00).
- (c) The Department shall assess any civil penalty that it imposes in an order that states the reasons for the assessment of the civil penalty and the amount of the penalty.
 - (d) The order may be served on the licensee personally by an authorized agent of the Department who shall complete an affidavit of service, or the order may be served by certified mail, return receipt requested.
 - (e) The licensee may appeal the penalty to the Child Care Agency Board of Review by filing a request for an appeal in writing with the Commissioner within ten (10) days of the personal service of the order or mailing date of the order. The hearing on the appeal shall be heard within ninety (90) days unless continued for good cause shown.
 - (f) Civil penalties assessed pursuant to this subsection shall become final ten (10) days after the date an order of assessment is served if not timely appealed, or, if timely appealed, within seven (7) days following entry of the Board's order unless the Board's order is stayed.
 - (g) Remedies for Failure to Pay Civil Penalty.
 - 1. If the violator fails to pay an assessment when it becomes final, the Department may apply to the Chancery Court of Davidson County, Tennessee for a judgment and seek execution of such judgment.
 - 2. No application for a new license ~~or for renewal of an existing license~~ will be accepted by the Department until a civil penalty that has become final has been paid in full. Failure to pay in full a civil penalty which has become final is grounds for denial of a pending application for a ~~new annual license or a pending application for renewal or extension of an existing license~~ provisional or continuous license, and, further, is grounds for revocation of an existing license.
 - (h) The determination to impose a civil penalty shall be discretionary with the Department and shall not be a prerequisite to any other licensing action to suspend, deny or revoke a child care agency's license. Civil penalties may also be used in conjunction with the probation, suspension, denial or revocation of a license.

(4) Denial and Revocation of Licenses.

- (a) If the Department determines that any applicant for a ~~temporary~~ [provisional] license or ~~for the renewal of an existing license has failed to attain, or~~ an existing licensee has failed to maintain, compliance with licensing laws or regulations after reasonable notice, consistent with the safety of the children in the care of the child care agency, of such failure and a reasonable opportunity to demonstrate compliance with licensing laws or regulations, the Department may deny the application for the ~~new or renewed~~ [provisional] license or may revoke the existing license; provided, however, the Department at any time may deny a ~~temporary~~ [provisional] license if the applicant fails to meet the initial requirements for its issuance; and, provided, further, if the Department determines that repeated or serious violations of licensing laws or regulations warrant the denial or revocation of the license, then, notwithstanding any provisions of T.C.A. § 4-5-320 or this paragraph to the contrary, the Department may seek denial or revocation of the license regardless of the licensee's demonstration of compliance either before or after the notice of denial of the application or before or after notice of the revocation of the license.
 - (b) Notwithstanding the provisions of T.C.A. § 4-5-320, the notice of denial or revocation may be served personally by an authorized representative of the Department who shall verify service of the notice by affidavit, or the notice may be served by certified mail, return receipt requested.
 - (c) If application for the ~~temporary, initial, or renewal~~ [provisional or initial] license is denied or if an existing license is revoked, the applicant may appeal the denial or revocation by requesting in writing to the Department a hearing before the Child Care Agency Board of Review within ten (10) days of the personal delivery or mailing date of the notice of denial or revocation. Failure to timely appeal shall result in the expiration of any existing license immediately upon the expiration of the time for appeal.
 - (d) The hearing shall be held in accordance with the hearing procedures before the Child Care Agency Board of Review pursuant to the licensing law.
 - (e) If timely appeal of the denial or revocation is made, then, pending the hearing upon the denial or revocation, the child care agency may continue to operate pending the decision of the Child Care Agency Board of Review unless the license is summarily suspended as provided in paragraph (5).
- (5) Summary Suspension of Licenses.
- (a) Subject to the following provisions of this section, if the Department determines at anytime that the health, safety or welfare of the children in care of the child care agency imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of the license may be ordered by the Department pending any further proceedings for revocation, denial or other action. Summary suspension may be ordered in circumstances that have resulted in death, injury or harm to a child or which have posed or threatened to pose a serious and immediate threat of harm or injury to a child based upon the intentional or negligent failure to comply with licensing laws or regulations.
 - (b) Contents of the Order of Summary Suspension.
 1. The licensee shall be provided written notice of the issuance of the order of summary suspension and shall be notified that the licensee has the opportunity for an informal hearing before an administrative law judge or before a hearing officer who is not an employee of the Department (except as provided in part (e)3.) within three (3) business days of the issuance of the order of summary suspension.

2. The Department shall set forth with specificity in its order the legal and factual basis for its decision, stating therein the specific laws or regulations which were violated by the agency, and shall state with specificity in the order the reasons that the issuance of the order of summary suspension is necessary to adequately protect the health, safety or welfare of children in the care of the child care agency.
 3. The order shall state the time, date and location of a show cause hearing to determine if the suspension is appropriate, shall state the issues involved as described in subparagraph (f) and shall notify the licensee of the right to be represented by counsel.
- (c) The notice may be personally delivered by any authorized representative of the Department to any person in charge of or reasonably believed to be in charge or who may be supervising the agency at the time of delivery. If such person is not the licensee, the order shall also be sent to the licensee by certified mail, return receipt requested, but the effect of the order shall not be delayed by mail delivery. The order shall contain a certificate of service or shall have attached to it a certificate verifying its service by personal delivery, and, if required, by certified mail service.
- (d) The order shall be effective upon entry by the Commissioner, or the Commissioner's designee, at such time as directed by the order. Upon receipt of the order by any person to whom the order is delivered at the child care agency, the agency shall cease or limit its operations at such time and in such manner as the order directs.
- (e) Hearing Official and Authority.
1. Hearings on summary suspension orders shall be heard by an administrative law judge from the Administrative Procedures Division of the Secretary of State's Office, if the administrative law judge is available within the time frames for a summary suspension hearing.
 2. If the Administrative Procedures Division of the Secretary of State's Office informs the Department that an administrative law judge is unavailable, the Department may obtain an administrative law judge or hearing officer who is not an employee of the Department except as provided herein. The substitute administrative law judge or hearing officer may be obtained by the Department by contract with a private attorney or by contract or agreement with another state agency. If the Administrative Procedures Division of the Office of the Secretary of State informs the Department that the Division's contested case docket prevents the scheduling of a hearing on the issuance of a summary suspension order within the initial timeframes set forth in this subparagraph and if the Department is unable to obtain a private or state agency administrative law judge or hearing officer to hear the show cause hearing on the summary suspension order within the timeframes set forth in this part, the Department may utilize a hearing officer from the Department's Division of Appeals and Hearings.
 3. The administrative law judge or hearing officer shall have authority, as otherwise permitted in this section and subject to the provisions of subparagraph (h), to enter orders binding on the Department resulting from show cause hearings involving summary suspension orders.
- (f) Hearing Procedures.

1. The informal hearing described by this subdivision shall not be required to be held under the contested case provisions of T.C.A. §§ 4-5-301 et seq.
2. The hearing is intended to provide an informal, reasonable opportunity for the licensee to present to the hearing official the licensee's version of the circumstances leading to the suspension order and any measures taken to correct the violations leading to the suspension.
3. The only issues to be considered are whether the public health, safety or welfare imperatively required emergency action by the Department and what, if any, corrective measures have been taken by the child care agency following the violation of the licensing laws or regulations cited by the Department and prior to the issuance of the order of summary suspension, that would eliminate the danger to the health, safety or welfare of the children in the care of the agency.

(g) Hearing Order.

1. Upon conclusion of the hearing, the administrative law judge or hearing officer shall render a decision immediately regarding the status of the agency's license and shall state the basis for the decision.
2. The administrative law judge or hearing officer may lift, modify, or continue the suspension based upon the evidence presented and the stipulations and agreements of the parties.
3. The hearing order containing findings of fact and conclusions of law to support the decision shall be reduced to writing within fifteen (15) days after the hearing and shall be sent to the parties and their counsel.

(h) Revocation, Denial of the License Following Suspension or Modification of the Order of Summary Suspension by the Department.

1. Subsequent to the hearing on the summary suspension, the Department may proceed with revocation or denial of the license or other action as authorized by this part, regardless of the decision concerning summary suspension of the license, or the Commissioner, upon satisfactory proof that the conditions warrant, may by further order, lift or reduce the restrictions contained in the order of summary suspension without further order by the administrative law judge or hearing officer, or, may, upon agreement of the licensee, further modify the order by imposing new, additional or different restrictions or conditions upon the licensee or the licensee's operations. A summary suspension order entered by the Department may be lifted or modified by the Department following its entry by the Department as provided in this part, before, or after, a case is docketed with the Child Care Agency Board of Review, without further approval of the Board or a Board panel.
2. If the Department determines that revocation or denial of the license is warranted following suspension, those proceedings shall be promptly instituted and determined as authorized by the licensing law.
3. Unless extended by agreement of the licensee, the order of summary suspension shall be dissolved upon motion of the licensee unless the Department has issued a notice of denial or revocation of the license within thirty calendar (30) days of the summary suspension order's entry.

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-301, et seq.; 71-1-105; 71-3-501, et seq.; 71-3-509; and Acts 2000, ch. 981, §§ 10 and 14. **Administrative History:** Chapter 1240-04-05 has been assigned a new control number, removed and renumbered to chapter 0250-04-05 filed and effective March 25, 1999. New rule filed September 29, 2000; effective December 13, 2000. Amendments filed May 1, 2018; effective July 30, 2018.

1240-04-05-.05 RESTRICTED LICENSES FOR CHILD CARE AGENCIES.

- (1) Limitation of Authority
 - (a) In determining whether to deny, revoke or summarily suspend a license, the Department may choose to deny, revoke or suspend only certain authority of the licensee to operate and may permit the licensee to continue operation, but may restrict or modify the licensee's authority to provide certain services or perform certain functions, including, but not limited to: transportation or food service, enrollment of children at the agency, the agency's hours of operation, the agency's use of certain parts of the agency's physical facilities or any other function of the child care agency which the Department determines should be restricted or modified to protect the health, safety or welfare of the children.
 - (b) The restrictions shall be contained in the notice of denial or revocation or in the order of summary suspension entered by the Department and shall state the basis for the restriction and the specific areas of operation which are to be limited.
 - (c) The restrictions shall remain on the license until the next license issuance anniversary date unless modified or removed pursuant to (4) below. If the Department determines that the restrictions on the license should continue, the child care agency may appeal to the Child Care Agency Board of Review.
- (2) The actions by the Department authorized by this section may be appealed to the Child Care Agency Board of Review as otherwise provided by the licensing law for any denial or revocation, or as provided in this chapter for summary suspensions of licenses.
- (3) Appeal and Status of Restricted License.
 - (a) If the licensee does not appeal the issuance of a restricted license or the summary suspension of authority to operate, it may petition the Department to request that the restrictions be removed or altered.
 - (b) If timely appeal is made, then, pending the hearing upon the restricted license, the child care agency may continue to operate pending the decision of the Child Care Agency Board of Review unless the license is summarily suspended as provided in Section .04(5).
- (4) The Department may, at any time, modify or remove the restrictions on the license upon order of the Commissioner, or the Commissioner's designee.

Authority: T.C.A. §§ 4-5-201, et seq.; 71-1-105; 71-3-501, et seq.; and Act 2000, ch. 981, §§ 10(f) and 14. **Administrative History:** Chapter 1240-04-05 has been assigned a new control number, removed and renumbered to chapter 0250-04-05 filed and effective March 25, 1999. New rule filed September 29, 2000; effective December 13, 2000.

1240-04-05-.06 REAPPLICATION PERIODS.

- (1) When an application for a license has been denied, or a license has been revoked, on one (1) occasion, the child care agency may not reapply for a license for a period of one (1) year from the effective date of the denial or revocation order if not appealed, or, if appealed, from the effective date of the Child Care Agency Board of Review's or reviewing court's order.
- (2) If application for a license has been denied, or a license has been revoked, on two (2) occasions, the child care agency may not reapply for a license for a period of two (2) years from the effective date of the denial or revocation if not appealed or, if appealed, from the effective date of the Child Care Agency Board of Review's or reviewing court's order.
- (3) If an application for a license has been denied, or a license has been revoked on three (3) occasions, the agency shall not receive another license for the care of children.
- (4) No person who served as full or part owner or as director or as a member of the management of a child care agency shall receive a license to operate a child care agency if that person participated in such capacity in a child care agency which has been denied a license, or which had a license revoked, on three (3) occasions.
- (5) Waivers
 - (a) The time restrictions in paragraphs (1) and (2) may be waived by the Child Care Agency Board of Review in the hearing in which the denial or revocation is sustained, or, if requested by the former licensee in writing to the Commissioner, in a separate subsequent hearing before the Child Care Agency Board of Review or, in the discretion of the Commissioner, upon review by the Commissioner. No waiver may be granted for any permanent restriction imposed pursuant to paragraph (3).
 - (b) The agency must show to the Child Care Agency Board of Review's or the Commissioner's satisfaction, by a preponderance of the evidence, that the agency has corrected the deficiencies which led to the denial or revocation, and that the child care agency can demonstrate that it has the present and future ability, and is willing, to maintain compliance with licensing laws or regulations.
 - (c) The decision of the Child Care Agency Board of Review or the Commissioner shall be reduced to an order, which shall be a final order pursuant to Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated, and may be appealed pursuant to T.C.A. § 4-5-322.
- ~~(7) —When, except for provisions relative to the continuation of the license provided in Rule 1240-04-05-.03(11), 1240-04-05-.04(4)(e) or 1240-04-05-.05(3)(b), a license would have expired during the time a case involving that license is being litigated before the Child Care Agency Board of Review or a reviewing court, and the Child Care Agency Board of Review or reviewing court does not uphold the Department's denial, revocation or restriction of the license, the licensee must apply for a renewal of an annual license within ten (10) business days of the entry of the Child Care Agency Board's or reviewing Court's order.~~
- (8[7]) For purposes of this section, unless otherwise specified in the order, the "effective date of the board's or court's order" shall mean the date the order is entered by the Chair of the Child Care Agency Board of Review or panel chair or vice-Chair of the Child Care Agency Board of Review.

Authority: T.C.A. §§ 4-5-201, et seq.; 71-1-105; 71-3-501, et seq.; and Acts 2000, ch. 981, §§ 10(g) and 14. **Administrative History:** Chapter 1240-04-05 has been assigned a new control number, removed and renumbered to chapter 0250-04-05 filed and effective March 25, 1999. New rule filed September 29, 2000; effective December 13, 2000.

**HUMAN SERVICES
STANDARDS FOR REGULATED INSTITUTIONS**

CHAPTER 1240-04-07

**~~REPORT CARDS AND RATED LICENSING FOR CHILD CARE AGENCIES~~
QUALITY RATING AND IMPROVEMENT SYSTEM FOR CHILD CARE AGENCIES**

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1240-04-07-.02 DEFINITIONS.

- (1) Bonus Payment. An amount paid through the Child Care Certificate Program that is above and beyond the basic subsidy rate and is based upon the score achieved by a child care agency.
- (2) Certificate Payment. Payments made through Child Care Certificate Program to a participating agency, either at the basic subsidy rate or at the higher rate paid to an eligible child care agency based upon the agency's quality rating improvement system score.
- ~~(3) Child Care Agency. Includes a child care center, group child care home, or family child care home.~~
- (3) Child Care Agency. 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", 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 educator.
- (4) Child Care Certificate Program. A Tennessee Department of Human Services program that provides financial assistance to eligible families to help cover the cost of child care.
- (5) Child Care Environment. The organization of space, interactions of children with each other and with staff, 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.
- (6) Child Care Resource & Referral (CCR&R). A statewide network of regionally located agencies that assist parents, child care professionals, and the community by offering information on child care and by providing technical assistance, consultation, resource materials, and training to child care agencies.
- (7) Civil Penalty. A financial sanction imposed by the Tennessee Department of Human Services against a child care agency that has violated a licensing regulation.
- (8) Compliance History. A record of an agency's history with respect to attaining and maintaining compliance with applicable licensing laws and regulations.
- (9) Department. The Department of Human Services.
- ~~(10) Director. The on-site manager for a child care agency who has overall responsibility for the daily oversight of all staff and direct child care services. The director, with the guidance of the board of directors or owner of the agency, shall be responsible for supervision, training, and evaluation of the staff, the program and the day-to-day operation of the center.~~
- (10) Director. The on-site child care center staff member manager for a child care agency who has overall responsibility for the daily oversight of all staff, direct child care services, and overall operation of the center.
- (11) Educator. An individual, whether paid or unpaid, including the Primary Educator, 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. For the purposes of these rules the term educator is equivalent to caregiver as defined by T.C.A. § 71-3-501.

- (12) Early Care and Education. A system that includes pre-kindergarten, Head Start, and licensed center-based, group, and home child care programs, dedicated to the care, education, protection, supervision or guidance of children beginning at birth.
- (13) License. A permit issued by the Department to a child care agency authorizing the agency (the licensee) to provide child care in accordance with the provisions of the license, the law, and the regulations of the Tennessee Department of Human Services.
- ~~(14) Primary Educator. The adult who is responsible for direct care and supervision of children in a family or group child care home and for the daily operation of the home. In a child care home, which is not operated by a child care home administrator, the primary educator is the licensee. Duties may include hiring, training and supervision of other educators.~~
- (14) Primary Educator. The adult on site at a family or group child care home who is directly responsible for care, education and supervision of children. For the purpose of these rules, the term primary educator is equivalent to primary caregiver as referenced in T.C.A. § 71-3-501.
- (15) Quality Rating Improvement System. The system by which all childcare agencies will be evaluated. This system incorporates four (4) evaluations over the course of a year of all childcare agencies.

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-202; and 71-3-502(a)(2) and (j). **Administrative History:** Original rule filed October 30, 2001; effective January 13, 2002. Repeal and new rule filed October 21, 2008; effective January 4, 2009. Amendments filed May 1, 2018; effective July 30, 2018. Amendments filed March 31, 2022; effective June 29, 2022.

1240-04-07-.03 QUALITY RATING **[AND]** IMPROVEMENT SYSTEM.

- (1) The license monitoring process shall include an evaluation of the child care agency for a quality rating improvement system scorecard in accordance with the provisions set forth in this chapter.
- (2) A child care agency shall receive an annual quality rating improvement system score that sets forth the agency's overall score based upon applicable criteria contained within each component area.
- (3) The component areas, as determined by the Department, measure certain key indicators of performance set forth in T.C.A. § 71-3-502(j), as indicated below:
 - (a) Health and Safety; and
 - (b) Teacher/Child Interactions.
- (4) Monitoring Visits.
 - (a) For the purpose of generating an annual quality rating improvement system score, monitoring visits shall consist of four (4) quarterly visits each year, except for programs that are closed during the summer. These agencies will have three (3) quarterly visits and one (1) quarterly visit prior to or just after the three (3) month closure.
 - (b) Each visit will be conducted at a different time of the day to get a look at the entire program throughout the year.

- (c) During each quarterly monitoring visit, twenty-five percent (25%) of the Health and Safety section categories and one hundred percent (100%) of Teacher/Child Interactions will be scored.
- (d) An agency must complete four (4) monitoring visits in a calendar year in order to receive a QRIS score.
- (5) In addition to critical health and safety items, during each quarterly monitoring visit, one of four (4) categories from the Health and Safety section will be scored with a total value of 60 points. The four (4) categories are listed below:
 - (a) Supervision Practices/Facilities/Equipment;
 - (b) Record Keeping;
 - (c) Healthy Weight and Disease Prevention; and
 - (d) Organizational Structure.
- (6) Assignment of Scores.
 - (a) The score for each component area of the Health and Safety section indicates the agency's compliance with departmental licensing regulations.
 - (b) Each element indicator on the classroom observation tool is scored based on "required evidence." Therefore, in order to achieve a score of "met" on an item, all of the required evidence must be either visually observed or documented during the teacher interview when the classroom observation tool is administered during each quarterly visit.
 - (c) The total combined score possible for the Teacher/Child Interactions and Health and Safety sections is 100.
 - (d) Upon completion of the quarterly visit, prior to departure, the Licensing Consultant (LC) will review the scoresheet with the agency director or primary educator and discuss areas of high performance and strategies for areas that may have been deficient. If time or schedule does not allow for the director and/or educator to meet on this day the LC will schedule a time either in person, video chat, or through a telephone conversation within five (5) business days to review.
- (7) The agency's official quality rating improvement system scorecard and license shall be posted together in a conspicuous area at the child care agency, as may be directed by the Department.
- (8) Violations.
 - (a) Agencies found to be in violation of licensing requirements during a live monitoring visit will have points deducted from the item from where the violation was found.
 - (b) Agencies found to be in violation of critical health and safety items and/or teacher/child interactions items between monitoring visits will have points deducted from the item where the violation was found on the next monitoring visit.

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-202; and 71-3-502(a)(2) and (j). **Administrative History:** Original rule filed October 30, 2001; effective January 13, 2002. Repeal and new rule filed October 21,

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