

REGULATIONS FOR LICENSED AND GROUP DAY CARE HOMES

K.A.R. 28-4-113. Definitions.

- (a) “Care provider” or “provider” means a person, association, corporation or other organization who has control or custody of one or more children under 16 years of age who are unattended by a parent or guardian for the purpose of providing those children with care for less than 24 hours a day, except children related to the person by blood, marriage or legal adoption.
- (b) “Day care home” means the premises in which care is provided for a maximum of 10 children under 16 years of age, with a limited number of children under kindergarten age in accordance with K.A.R. 28-4-114(e)(1).
- (c) “Department” means the Kansas department of health and environment.
- (d) “Emergency care” means care for a period not to exceed two weeks for children not regularly enrolled in the facility.
- (e) “Evening care” means care for children staying with the provider after 6:00 p.m. and leaving before 1:00 a.m. the following day.
- (f) “Extended absence” means more than 10 hours per week away from the day care home or group day care home during hours of operation.
- (g) “Fire inspector” means a person approved by the state fire marshal to conduct fire safety inspections.
- (h) “Group day care home” means the premises in which care is provided for a maximum of 12 children under 16 years of age, with a limited number of children under kindergarten age in accordance with K.A.R. 28-4-114(f)(1).
- (i) “Kindergarten age child” means a child who is five years of age on or after June 1 of the year the child is eligible to enter kindergarten pursuant to K.S.A. 72-1107 and any amendments thereto.
- (j) “License capacity” means the maximum number of children who are authorized to be on the premises at any one time.
- (k) “Licensed physician” means a person licensed to practice medicine or surgery in Kansas as set forth in K.S.A. 1988 Supp. 65-2869 and K.S.A. 65-2870, and any amendments thereto.

- (l) “Overnight care” means care for children staying with the care provider after 1:00 a.m.
- (m) “Primary care provider” means a licensee or his or her designee who is 18 years of age or older and has the ongoing responsibility for the health, safety, and well-being of children in care.
- (n) “Substitute care provider” means a person who supervises children in the day care home or group day care home in the temporary or extended absence of the provider.
- (o) “Temporary absence” means time away from the day care home or group day care home and from the children in care for a period not to exceed 10 hours per week.

(Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, K.S.A. 65-503, and K.S.A. 65-508; effective, E-80-18, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended Feb. 26, 1990.)

K.A.R. 28-4-114. The applicant and licensee.

- (a)
 - (1) Any person desiring to conduct a day care home or group day care home shall apply for a license on forms provided by the Kansas department of health and environment.
 - (2) The applicable fee shall be submitted at the time of license application and replication, and shall not be refundable.
- (b) Each licensee or primary care provider:
 - (1) Shall be at least 18 years of age;
 - (2) shall not be involved in child care or a combination of child care and other employment for more than 18 hours in a 24-hour period; and
 - (3) shall not be engaged in either business or social activities which interfere with the proper care or supervision of children.
- (c) Each licensee who operates more than one child care facility shall maintain each facility as a separate entity.
- (d) Each licensee shall not be licensed concurrently for or provide more than one type of child care or child and adult care in the same premises.
- (e)
 - (1) The maximum number of children for which a day care home may be licensed

shall be as follows:

TABLE I—LICENSE CAPACITY

Maximum Number of Children Under 18 months	Maximum Number of Children 18 months to Kindergarten Age	Kindergarten Age to Age 11	License Capacity
0	7	3	10
1	5	4	10
2	4	3	9
3	3	2	8

*Children kindergarten age and over may be substituted for younger children in the license capacity.

- (2) Children 11 years of age to 16 years of age, unrelated to the provider, shall be included in the license capacity if child care for this age group as a whole exceeds three hours a week.
- (3) Children under 11 years of age who are related to the provider shall be included in the maximum number of children in each age group.
- (f) (1) The maximum number of children for which a group day care home may be licensed shall be as follows:

TABLE II--LICENSE CAPACITY, ONE ADULT

Age of Children Enrolled	License Capacity
2 ½ Years to 11 Years of Age	9
3 Years to 11 Years of Age	10
Kindergarten Age to 11 Years of Age	12

TABLE III—LICENSE CAPACITY, TWO ADULTS*

Maximum	Maximum Number	Kindergarten Age	License
---------	----------------	------------------	---------

Number of Children Under 18 months	of Children 18 months to Kindergarten Age	Child** to Age 11	Capacity*
1	8	3	12
2	7	3	12
3	6	3	12
4	4	2	10

Maximum # of Children 18 Mos. To 2 ½ Years		
0	5	12

*A second person 16 years of age or older shall be present when the number of children exceeds the maximum number allowed for one adult. (See Table I.) ** Children kindergarten age and over may be substituted for younger children in the license capacity.

- (2) Children 11 years of age to 16 years of age unrelated to the provider shall be included in the license capacity if child care for this age group as a whole exceeds three hours a week.
- (3) Children under 11 years of age who are related to the provider shall be included in the maximum number of children in each age group in a group day care home.
- (g) Children who do not function according to age-appropriate expectations shall be counted in the age group which reflects their developmental level.
- (h) The total number of children on the premises including children under 11 years of age related to the provider shall not exceed the license capacity.
- (i) Emergency care for a period not to exceed two weeks, or drop-in care may be provided for children not regularly enrolled in the day care home or group day care home if the additional children do not cause that home to exceed its license capacity.
- (j) An exception for overlap enrollment may be granted by the department upon request by the licensee, as follows:
 - (1) Not more than two school-age children for not more than one hour before and after school or over the noon hour. An additional adult shall not be required. Each exception for this overlap enrollment shall be in effect only during the school year.
 - (2) To accommodate shift change. An additional adult and fire safety approval may be required.
- (k) Each primary care provider in a day care home shall, within 60 days following initial application for a license or employment, submit documentation that one of the following training requirements has been met:

- (1) Five sessions of observations, not less than 2 ½ consecutive hours per observation, in a licensed day care home, group day care home or a child care center which has been in continuous operation for three or more years. Observations shall be planned so that all daily activities (morning, lunch, nap, late afternoon) can be observed;
 - (2) a child development associate credential;
 - (3) fifteen hours of directed readings, videotapes or attendance at workshops or membership meetings on child care topics; or
 - (4) employment for not less than three months in a licensed day care home, group day care home or child care center which had been in continuous operation for three or more years.
- (l) Each primary care provider in a group day care home shall, within 60 days following initial application for a license or employment, submit documentation that one of the following training requirements has been met:
- (1) six months' supervised employment in licensed facilities with children of the same age as enrolled in the group day care home;
 - (2) five sessions of observations for not less than 2 ½ consecutive hours per session in a licensed group day care home or child care center which has been in continuous operation for three or more years, and 10 hours of directed readings, video tapes or attendance at workshops or membership meetings on child care topics;
 - (3) a minimum of three semester hours of academic credit or equivalent training in child development, early childhood education, and curriculum resources, and supervised observation in high school or college or three months' work experience with children of the same age as enrolled in the group day care home;
 - (4) a child development associate credential; or
 - (5) the requirements for a program director of a child care center as specified in K.A.R. 28-4-429.
- (m) Prior to relicensure, each primary care provider in a day care home or group day care home shall provide documentation of:
- (1) five clock-hours of in-service training which may include child care association membership meetings and annual conferences, extension homemaker programs, or other programs on child care;
 - (2) five hours of directed reading or video tapes on child care topics; or
 - (3) current accreditation by the National Association for Family Day Care.
- (n) (1) Each applicant or licensee shall arrange for a substitute care provider 16 years of

age or older to care for children in the event of a temporary absence. In the event of an extended absence, the substitute provider shall be 18 years of age or older.

- (2) Each substitute providing care for an extended absence shall meet K.A.R. 28-4-114(k).
- (o) Each license shall be posted as required by K.S.A. 1988 Supp. 65-504, and a copy of the “regulations for licensing day care homes and group day care homes for children” shall be kept on the premises at all times.
- (p) Each care provider shall notify the county health department or the department when day care or group day care is to be discontinued.
- (q) Each applicant or licensee receiving notice of denial or revocation of license or a notice of intent to assess a civil fine shall be notified of the right to an administrative hearing by the department and subsequently shall be notified of the right to appeal the denial or revocation to the district court. A licensee may continue to provide child care pending a final decision by the department regarding denial or revocation of a license or assessment of a civil fine unless other action is initiated by the department.

(Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, K.S.A. 65-503, K.S.A. 1988 Supp. 65-504, 65-505, and K.S.A. 65-508; effective, E-80-18, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended Feb. 26, 1990.)

K.A.R. 28-4-115. The home.

- (a) If a public water supply or a public sewerage system is not available, each care provider's home shall have a safe water supply and a sewage disposal system which complies with the requirements of K.A.R. 28-4-50 and K.A.R. 28-4-55 and amendments thereto.
- (b) Each day care home and group day care home shall have 25 square feet of available play space per child, and shall be so constructed, arranged, and maintained as to provide adequately for the health and safety of children in care. The home shall:
 - (1) have walls which are in good condition;
 - (2) be skirted and anchored if a mobile home;
 - (3) have a 2A 10B:C fire extinguisher;
 - (4) have a smoke alarm on each level of the home;
 - (5) be reasonably clean and uncluttered;
 - (6) have kitchen and outdoor trash and garbage in covered containers or in tied plastic bags;

- (7) have each open-faced gas stove or gas space heater vented and each heating element guarded;
 - (8) have each electrical outlet covered when not in use;
 - (9) have each stairway with more than two steps railed;
 - (10) have each stairway guarded and have balusters not more than four inches apart or guarded to prevent a child's head or body from falling through if children under two-and-a-half are in care;
 - (11) have a readily available second means of escape from the first floor;
 - (12) have each bathroom door able to be unlocked from both sides; and
 - (13) be maintained at a temperature of not less than 65°F, and not more than 90° F in the play area.
- (c) Each group day care home shall be approved annually for fire safety by a fire inspector.
- (d) A basement or a second floor used for child care in a day care home or a group day care home shall be approved for fire safety by a fire inspector before use and annually thereafter. A third floor shall not be used for child care.
- (e) A refrigerator shall be available for the storage of perishable foods. Refrigerated medications shall be in a locked box.
- (f) If children under one year are enrolled in homes using private well water, commercially bottled drinking water shall be purchased and used until a laboratory test confirms the nitrate content of the private well water is not more than 45 milligrams per liter as nitrate (NO₃).
- (g) The following hazardous items shall be safely stored as follows:
- (1) All household cleaning supplies and all bodily care products with warning labels to keep out of reach of children or which contain alcohol shall be in locked storage or stored out of reach of children under six years of age.
 - (2) Dangerous chemicals, household supplies with warning labels to keep out of reach of children, and all medications shall be in locked storage or stored out of reach of children under 10 years of age.
 - (3) Sharp instruments shall be stored in drawers equipped with child proof devices to prevent access by children or stored out of reach of children.
 - (4) Cigarettes, ashtrays, cigarette lighters, and matches shall be stored out of reach of children.

- (h) All guns and other dangerous weapons shall be in locked storage. Guns may be equipped with trigger locks in lieu of being in locked storage.
- (i)
 - (1) Outdoor play equipment which is safely constructed and in good repair shall be available, and placed in an area which is free from hazards which might be dangerous to the life and health of the children.
 - (2) Climbing equipment and swings shall be anchored in the ground with metal straps or pins, or set in cement.
 - (3) Surfaces used under anchored play equipment shall be approved by the Kansas department of health and environment license surveyor prior to installation. Asphalt, cement, or coarse gravel shall not be used.
 - (4) Swings shall be safely located and shall not have wooden or metal seats.
 - (5) Teeter-totters and merry-go-rounds designed for school-age children shall not be used by children under kindergarten age.
 - (6) The outdoor play area shall be fenced if the area surrounding, or the conditions existing outside, the play area present hazards which might be dangerous to the safety of the children or if the play area adjoins that of another child care facility.

(Authorized by and implementing K.S.A. 65-508; effective, E-80-18, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; amended Feb. 26, 1990.)

K.A.R. 28-4-116. The children in care.

- (a) Daily activities. The provider shall offer each child the opportunity to participate daily in activities which promote healthy growth and development.
 - (1) Age-appropriate toys and play equipment of safe construction and in good repair shall be available.
 - (2) Television programs or videos watched by children shall be age appropriate. R- and x-rated videos shall be prohibited.
 - (3) Toys and play equipment used by children under 18 months of age shall be washed and sanitized daily.
 - (4)
 - (A) Each child 18 months or older shall have at least one hour of outdoor play daily and each child under 18 months shall be taken outdoors daily unless prohibited by the child's medical condition or extreme weather conditions.
 - (B) Children three years of age or older who are playing outdoors shall be

under the supervision of an adult who is within hearing distance at all times.

- (C) Children under three years of age who are playing outdoors shall be attended by a person fourteen years of age or over. The adult responsible for the children shall be within hearing distance at all times.

(b) Napping and sleeping.

- (1) Each child shall have a daily, supervised rest period as needed. Each child who does not sleep shall be given the opportunity for quiet play.

- (2) Napping facilities or sleeping facilities for evening and overnight care shall be provided as follows:

- (A) A crib or playpen with slats not more than 2 3/8 inches apart or equipped with bumpers shall be used for each child under 18 months.

- (B) A family bed, cot, sofa, lower bunk or a pad over the carpet shall be used for each child 18 months or older. Each pad shall be at least one half inch thick, washable or enclosed in a washable cover, and shall be long enough so that the child's head and feet do not rest on the carpet. Two children may sleep on a double bed.

- (C) Individual bedding shall be available for each child and shall be kept clean.

- (3) Cribs, cots, or pads, when in use, shall be separated by at least 24 inches in all directions except when bordering on the wall. When not in use, they shall be stored in a clean and sanitary manner.

(c) No person shall smoke while providing direct physical care to children.

(d) Food service.

- (1) If children under 18 months of age are in care, the following regulations shall be met:

- (A) Infants shall be held when bottle fed until they can hold their own bottles.

- (B) Infants and toddlers shall not be allowed to sleep with bottles in their mouths.

- (C) Prepared formula and juice shall be refrigerated until used. Leftover formula and juice shall be labeled and refrigerated with the nipple covered, and shall be used within 24 hours.

- (D) Solid foods shall be offered in consultation with the child's parents.

Opened containers of solid foods shall be labeled with the child's name, and shall be covered and refrigerated.

- (2) Each day care home or group day care home provider shall serve nutritious meals and snacks as follows:

Length of Time at Facility	Food Served
2 ½ to 4 hours	1 snack
4 to 8 hours	1 snack & 1 meal
8 to 10 hours	2 snacks & 1 meal or 1 snack & 2 meals
10 hours or more	2 meals & 2 or 3 snacks

- (e) Meals and snacks.

- (1) Breakfast shall include:

- (A) A fruit, vegetable, full-strength fruit juice or full-strength vegetable juice;
- (B) bread, a bread product or cereal; and
- (C) milk.

- (2) Noon and evening meals shall include one item from each of the following:

- (A) Meat, poultry, fish, egg, cheese, cooked dried peas or beans, or peanut butter;
- (B) two vegetables or two fruits, or one vegetable and one fruit;
- (C) bread, bread produce or cereal; and
- (D) milk.

- (3) Mid-morning and mid-afternoon snacks shall include at least two of the following:

- (A) Milk, milk product or food made with milk;
- (B) fruit, vegetable, full-strength fruit juice or full strength vegetable juice;
- (C) meat or a meat alternate; or
- (D) bread, bread product or cereal.

- (f) A sufficient quantity of food shall be prepared for each meal to allow the children second portions of vegetables or fruit, bread, and milk.

- (g) Food allergies or special dietary needs of specific children shall be considered.
- (h) Pasteurized milk products shall be served.
- (i) Dishes shall be washed, rinsed and stacked or placed in a dishwasher after meals.
- (j) Sanitary methods of food handling and storage shall be followed.
- (k) An individual cup, towel, and washcloth or disposable products shall be provided for each child.
- (l) Each child and each adult shall wash his or her hands with soap and water before and after eating and after using the bathroom.
- (m) A file shall be maintained for each child, including each child enrolled for emergency care, which includes:
 - (1) The full name, home and business addresses, and home and business phone numbers of each child's parent or parents or guardian, and the name, address and telephone number of the person to notify in case of emergency;
 - (2) the full name and telephone number of each person authorized to pick up the child, and to provide transportation to and from the day care home or group day care home;
 - (3) a medical record as required by K.A.R. 28-4-117(a), except that children enrolled for emergency care shall be exempt from K.A.R. 28-4-117(a)(1)(B); and
 - (4) written parental permission for emergency medical care and for children to go off premises as required by K.A.R. 28-4-124 and K.A.R. 28-4-127(b)(1)(A).

(Authorized by K.S.A. 65-508; implementing K.S.A. 65-507, 65-508; effective, E-80-18, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1985; amended May 1, 1987; amended Feb. 26, 1990.)

K.A.R. 28-4-117. Health care requirements for children under 16 years of age.

- (a)
 - (1) A completed medical record on a form supplied by the department shall be on file for each child under 11 years of age enrolled for care and for each child under 16 living in the child care facility.
 - (2) Each medical record shall include the results of a health assessment conducted by a nurse trained to perform health assessments or a licensed physician, within six months before the child's initial enrollment in a child care facility.
 - (3) Each medical record shall include a medical history obtained from the parent.
- (b) A child under 16 years of age shall not be required to have routine tuberculin tests.

- (c) Immunizations for each child, including each child of the provider under 16 years of age shall be current as medically appropriate and shall be maintained current for protection from the diseases specified in K.A.R. 28-1-20(d). A record of each child's immunizations shall be maintained on the child's medical record.
- (d) Exceptions to the requirements for immunizations shall be permitted as specified in K.S.A. 65-508 and amendments thereto. Documentation of each exception shall be maintained on file at the child care facility.
- (e) If an infant who has not been immunized against measles, mumps, rubella, and varicella because of the age of that child is enrolled and there are children in care who have not had measles, mumps, rubella, and varicella immunizations due to exemption, including the children of the provider, the parents of the infant at risk shall sign a statement that they have been informed of the risk to their child. This statement shall be in the infant's file at the day care or group day care home.
- (f) If a child is moved to a different child care provider, a new health assessment shall not be required if the previous medical record is available.
- (g) Each licensee shall provide information to parents of children in the licensee's program about the benefits of annual well-child health assessments for children under the age of six years and biennial health assessments for children six years of age and older. Each licensee shall also provide information about the importance of seeking medical advice when children exhibit health problems. This information may be given on a form provided by the department to the parent when the child is enrolled or posted in a conspicuous place, with copies of the form available to parents on request.

(Authorized by K.S.A. 65-508; implementing K.S.A. 65-507 and 65-508; effective, E-80-18, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1981; amended, T-83-27, Sept. 22, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended Feb. 26, 1990; amended July 11, 2008.)

K.A.R. 28-4-118. Policies relating to illness and reporting of child abuse.

- (a) Non-prescription medications shall be administered to children only with permission of the parent or guardian. A record shall be kept.
- (b) Prescription medications shall be administered only from a container labeled with the child's name, name of the medication, dosage, dosage intervals, name of the physician and the date the prescription was filled. The label shall be considered the order from the physician. A record of medications administered shall be kept.
- (c) Each child care provider, as required by law, shall report to the Kansas state department of social and rehabilitation services or the district court any evidence of suspected child abuse or neglect observed in children enrolled for care.

(Authorized by and implementing K.S.A. 65-508; effective, E-80-18, Oct. 17, 1979; effective

May 1, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1986; amended Feb. 26, 1990.)

K.A.R. 28-4-119b. Compliance with regulations.

- (a) An exception to a regulation may be allowed by the department if:
 - (1) The applicant requests an exception from the department on a form supplied by the department; and
 - (2) The secretary determines the exception to be in the best interests of the day care child or children and their families.
- (b) Written notice from the Kansas department of health and environment stating the nature of the exception and its duration shall be posted with the license.

(Authorized by and implementing K.S.A. 65-508; effective May 1, 1984; amended Feb. 26, 1990.)