

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

**CHAPTER 1240-04-02
LICENSURE RULES FOR DROP-IN CHILD CARE CENTERS**

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1240-04-02-.01 PURPOSE, SCOPE OF SERVICES AND GENERAL LICENSING REQUIREMENTS.

- (1) Scope of Services. These rules are applicable to "drop-in centers" as defined in T.C.A. §71-3-501, et. seq. and these rules.
- (2) Purpose of Licensing. The purpose of licensing is the protection of children. These minimum requirements are intended to help promote the adequate health, safety, and supervision of children while in a group care setting.
- (3) Basis For Approval of a License.
 - (a) The approval and continuance of a license for a drop-in center is based upon the following criteria:
 1. The safety, welfare and best interests of the children in care;
 2. The capability, training and character of the persons providing or supervising the care of children; and the use of such judgment by a caregiver in the performance of any of the caregiver's duties as would be reasonably necessary to prevent injury, harm or the threat of harm to any child in care;
 3. Evidence:
 - (i) That the expected performance of the caregivers, supervisors or management of the child care agency seeking initial licensure or renewal of licensure will be such as to protect children in care from injury, harm or the threat of injury or harm; or
 - (ii) During licensure, that the actual performance of any of the duties of the caregivers, supervisors or management of a licensed child care agency demonstrates or has demonstrated a level of judgment that a reasonable person would exercise or would have exercised, under existing or under reasonably foreseeable circumstances, that would prevent or would have prevented injury, harm, or the threat of injury or harm, to any child in care;
 4. The quality of the methods of care and instruction provided for the children;
 5. The suitability of the facilities provided for the care of the children; and

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

6. The adequacy of the methods of administration, the management of the child care agency, and the agency's personnel policies, as they relate to the care of children.
- (b) General Requirements.
1. The license applies only to the entity to which it is issued. The license is not transferable.
 2. The license applies only to the physical location approved for the operation of the drop-in center. A change in the location of the drop-in center automatically voids the license.
 3. Compliance with Other Legal Requirements.
 - (i) In addition to these requirements, it is the responsibility of the applicant/licensee to comply with all applicable local ordinances, including zoning, fire, and environmental ordinances.
 - (ii) The Department will not intervene on behalf of the child care agency with other Federal, State or local agencies having regulatory control over any other aspects of compliance by the child care agency with laws, regulations or ordinances that may be necessary to become licensed by the Department. The child care agency shall have full responsibility for resolving all issues necessary to obtain approvals of such agencies necessary for the child care agency to receive a license from the Department.
 4. Issuance and maintenance of a license is based upon achievement in meeting and maintaining compliance with all requirements set forth in these rules.
 5. It is the responsibility of the applicant/licensee to obtain and maintain compliance with all applicable requirements contained in these regulations. Parents/guardians may not waive compliance with any rule, or otherwise authorize the applicant/licensee to not comply with any rule, unless specifically provided for within the provisions of the rule.
- (c) Falsification of any information, records or other documents and/or an intentional failure to provide any information, records or other documents required for a license, for participation in, or regulation by, any State or Federal child care services program, shall be the basis for civil penalties, probation, and/or the denial, suspension, or revocation of a license, as appropriate, in accordance with the provisions of T.C.A. §§ 71-3-501 et seq., this Chapter and Chapter 1240-4-5.
- (d) Specifications of the License.
1. All programs shall operate at the address stated on the license, and within the licensed capacity set by the Department.
 2. All programs shall operate within any restrictions stated on the license or pursuant to any orders of the Department or the Child Care Agency Board of Review.

Authority: T.C.A. §§4-5-202, 71-3-501 et seq., 71-3-501(8), 71-3-502(a)(2) and (3), and 71-3-509.
Administrative History: Chapter 1240-04-02 assigned a new control number, removed and renumbered

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

to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005.

1240-04-02-.02 DEFINITIONS.

- (1) **Age Appropriate:** Materials and practices which are designed to provide safe, appropriate care in accordance with the biological needs and the developmental age of the child.
- (2) **Annual License.** An annual permit issued by the Department to a child care agency, authorizing the licensee to provide child care in accordance with provisions of the license, the law, and the rules and policies of the Department. Issuance of a license is not an endorsement of child care methods or of an agency's operational philosophy. A license is not transferable from one location to another or from one licensee/operator to another. The license may be revoked at any time upon thirty (30) days notice to the licensee; provided, however, if the health, safety, or welfare of the children in care imperatively requires it, the license may be suspended immediately.
- (3) **Approval.** Child care agencies operated by a public entity receive an approval rather than a license. For purposes of these rules, a "public entity" includes the State of Tennessee or any of its political subdivisions or any agency of the Federal government. An approved agency shall meet the same requirements and is evaluated in the same manner as a licensed agency.
- (4) **Auxiliary Staff.** Full and part-time employees of the agency who do not provide caregiving services to the children enrolled in the agency.
- (5) **Caregiver.** Any individual, including the primary caregiver, responsible, or who at any time may become responsible, for meeting the supervision, protection, and basic needs of the child.
- (6) **Casual Care.** Consists of places or facilities operated by any person or entity that provide child care, at the same time, for a minimum of five (5) children, but less than fifteen (15) children, who are not related to the primary caregiver, during short periods of time that do not exceed ten (10) hours per week or six (6) hours per day for any individual child while the parents or other custodians of the children are engaged in short-term activities, not including employment of the parent or other custodian of the child.
- (7) **Child or Children.** A person or persons under eighteen (18) years of age.
- (8) **Child Care.** As defined by T.C.A. § 71-3-501, the provision of supervision, protection and, at a minimum, meeting the basic needs of children who are not related to the licensee, for three (3) or more hours a day, but less than twenty-four (24) hours a day.
- (9) "Child care agency" or "agency"
 - (a) Means a place or facility, regardless of whether it is currently licensed, that is operated as a "family child care home", a "group child care home", a "child care center", or a "drop-in center", as those terms are defined in T.C.A. § 71-3-501.
 - (b) The reference to "child care agency" or "agency" in this Chapter shall be deemed to reference a "drop-in center" as defined in T.C.A. 71-3-501(8), unless specifically stated otherwise, or unless the context requires otherwise.
 - (c) A "drop-in center" differs from "casual care" in that fifteen (15) or more children are cared for at the same time in a "drop-in center" as defined in 1240-04-02-.02(15), while

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

“casual care” refers to the care of fewer than fifteen (15) children who are cared for at the same time as defined in paragraph 1240-04-02-.02(6).

- (d) A “drop-in center” differs from a “family child care home,” a “group child care home,” and a “child care center,” in that a “drop-in center” is designed to provide short-term child care, not to exceed the limitations specified in paragraph (15) below. Child care provided in the other three (3) specified categories of child care agencies is not subject to the limitations of paragraph (15).
 - (e) Reference to a “child care agency” or “agency” in these rules also applies to places or entities of an agency seeking or having received an approval under paragraph (3).
- (10) Child Care System. The existence of any drop-in centers approved or licensed and used by a licensed and incorporated by any child care agency in its work; or the existence of two (2) or more facilities used for child care purposes which facilities are under the ownership, administration or control of any individual(s), corporation, partnership, cooperative, or other public or private entity of any kind. Each individual agency within such child care system must be individually licensed in accordance with T.C.A. § 71-3-501 et seq.
- (11) Commissioner. The chief administrative officer in charge of the Department of Human Services.
- (12) Day Care. Synonymous with the definition of “child care.”
- (13) Department (DHS). The Tennessee Department of Human Services and its authorized representatives.
- (14) Director. The person with overall responsibility for the licensed drop-in child care program.
- (15) Drop-In Child Care Center.
- (a) A place or facility operated by any person or entity providing child care for fifteen (15) or more children at the same time, none of whom are related to the primary caregiver, for short periods of time as follows:
 - 1. Workweek Care.
 - (i) Provided during regular working hours, Monday through Friday, 6:00 a.m. to 6:00 p.m.
 - (ii) No individual child may be in child care for more than seven (7) hours per day or fourteen (14) hours per week, exclusive of snow days.
 - 2. Evening and Weekend Care.
 - (i) Provided weekday evenings after 6:00 p.m. and weekends beginning on Friday at 6:00 p.m. and ending on Sunday at 10:00 p.m.
 - (ii) An individual child may receive care in excess of seven (7) hours per day, but may not receive care in excess of a total of twenty (20) hours per week, exclusive of snow days.
 - 3. Exception for Snow Days. Drop-in care for school age children may exceed the maximum hours listed in parts 1 and 2, above, during snow days.

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

- (b) Notwithstanding any other provision of this chapter to the contrary, drop-in centers operated by not-for-profit organizations that provide child care without compensation for no more than two (2) hours per day with a maximum of ten (10) hours per week, while the parent or other custodian is engaged in short-term activities on the premises of the organization, shall register as providing "casual care" and shall not be deemed to be, or regulated as, a drop-in center.
- (16) Enrollment. The process of accepting children for care and meeting rules applicable to enrollment.
- (17) Group. A specific number of children within a defined age range, assigned to specific staff in an assigned space, which is divided from the space of other groups by a recognizable barrier to define limits and to reduce distraction.
- (18) Infant. A child who is six (6) weeks through fifteen (15) months of age. No unrelated child of the licensee who is under six (6) weeks of age shall be accepted into care. Children related to the licensee who are under six (6) weeks of age must be kept in a separate space from children enrolled in the child care agency.
- (19) Illegal Operator. An individual or entity who is operating a child care agency without a license or approval pursuant to the provisions of T.C.A. §71-3-501 et seq. or these rules.
- (20) Licensee. The person, agency, group or entity to whom a license to operate a child care center is issued and who shall assume ultimate legal and administrative responsibility for the child care center. References to a licensee in the requirements also apply to operators of an agency seeking or having received an approval.
- (21) Licensed capacity. The designated maximum number of children permitted in a facility at any one period of time as determined by the Department based upon available space, age of children, adult: child ratios, and group size. Licensed capacity and ages served shall be designated on the license.
- (22) Owner. The individual(s), corporation, partnership, cooperative, or other private or public entity of any kind, or any combination thereof, who or which, through their authorized representative(s), assumes, or is legally required to assume, ultimate responsibility for the control of a child care agency.
- (23) Parent. A biological, adoptive or foster parent, guardian, legal custodian or relative caregiver who has primary responsibility for a child.
- (24) Pre-school Child. A child who is six (6) weeks through five (5) years of age, not in kindergarten. No child unrelated to the licensee who is under six (6) weeks of age shall be accepted into care.
- (25) Related Children. The biological or adoptive children of the licensee, step-children, grandchildren, step-grandchildren, siblings of the whole or half-blood, step-siblings, nieces, nephews or foster children of the primary caregiver.
- (26) School-Age Child. A child who is five (5) years of age and enrolled in kindergarten or a higher grade.
- (27) Snow Day. For purposes of this chapter, a "snow day" is defined as a day when the affected child's school is officially closed by the school system due to weather, teacher in-service, etc.
- (28) Staff. Full and part-time caregivers and other employees of any type.

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

- (29) Substitute. Paid or unpaid persons who are temporary replacements for regular staff.
- (30) Supervision. When children are not within the direct sight and sound of an adult, the term "supervision" includes the following requirements:
- (a) Children six (6) weeks of age through nine (9) years of age: The adult must be able to hear the child at all times, must be able to see the child with a quick glance, and must be able to physically respond immediately.
 - (b) Exception during mealtime: An adult must be in the direct sight and sound of children ages six (6) weeks through five (5) years, not in kindergarten, while the child is eating.
 - (c) Children ten (10) years of age and older: The adult shall know the whereabouts and activities of the children at all times and must be able to physically respond immediately.
 - (d) Helper devices such as mirrors, electronic sound monitors, etc. may be used as appropriate to meet these requirements.
- (31) Temporary License. A permit issued by the Department to a new child care agency authorizing the licensee to begin child care operations. It is valid, unless suspended, for one-hundred and twenty (120) days or until the application for an annual license is finally determined, and is issued upon application by the operator only if the staff and facility do not present any apparent hazards to children, and if the applicant meets the requirements of 1240-04-02-.03(7) and if the facility has received fire safety and environmental sanitation approval. If, at the end of the one-hundred and twenty (120) day period, evidence is provided by the applicant/licensee that such child care agency is suitable and properly managed, that the agency is in compliance with these rules and has the apparent ability to maintain compliance, the Department will issue an annual license to the child care agency.
- (32) Toddler. A child who is twelve (12) months of age through thirty (30) months of age.
- (33) Volunteer. A person who provides services for the licensee without payment and who is used to supplement, rather than substitute for, the regular staff or substitutes.

Authority: T.C.A. §§4-5-202, 71-3-501 et seq., 71-3-501(8), 71-3-502(a)(2), and 71-3-503.
Administrative History: Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005. Amendment filed November 14, 2006; effective January 28, 2007

1240-04-02-.03 APPLICATION PROCEDURES.

- (1) Applications for a license are obtained through the local county office of the Tennessee Department of Human Services.
- (2) Pre-Licensure Orientation Training: The Department will require pre-application training as set forth in 1240-04-02-.05(4)(b) for both the owner and director. In the case of a program that is governed by a board of directors or trustees or is controlled by another public or private entity, this training shall be attended by a designee who is responsible, in addition to the on-site director, for the day-to-day management of the program.
- (3) A complete application for a license must be submitted to the Department and signed by the prospective licensee.

(Rule 1240-04-02-.03, continued)

- (4) The owner or prospective licensee must provide a federal tax identification number to identify the child care agency. The Department shall not accept individual social security numbers for such purposes.
- (5) Application Fees. The application fees for drop-in child care centers are as follows:
 - (a) Annual Fee: \$200.00
 - (b) Biennial Fee: \$250.00
 - (c) Triennial Fee: \$300.00
- (6) Receipt of an application begins the evaluation process, which is completed with the issuance or denial of an annual license. This process includes:
 - (a) At least two (2) visits by a Department Program Evaluator to the drop-in child care center, one of which shall be unannounced;
 - (b) Review of agency records; and
 - (c) Requests for information related to licensure requirements.
- (7) Upon satisfaction of the following minimum requirements, a temporary license may be issued if:
 - (a) The Director's qualifications meet the requirements of Chapter 1240-04-02-.05(4);
 - (b) Three (3) satisfactory references for the Director are verified;
 - (c) Physical facilities receive fire safety and environmental approval;
 - (d) The applicant has demonstrated that the applicant and the personnel who will care for the children are capable in all substantial respects to provide appropriate group care for children;
 - (e) The applicant has reasonably demonstrated that the applicant has the ability and intent to comply and maintain compliance with the licensing law and regulations; and
 - (f) The Department has determined, after appropriate inspection, that the site is suitable for child care activities and does not endanger the welfare or safety of children.
 - (g) No temporary or annual license shall issue unless and until the Department determines, in accordance with the provisions of this Chapter and Department policy that the applicant has complied with the provisions of this paragraph (7) and any other applicable provisions of the law or this Chapter.
- (8) Right of Inspection.
 - (a) Receipt of an application and/or acceptance of a license constitutes agreement to allow the Department:
 1. The right of entry, without notice, into the child care agency for the purpose of inspection for compliance with these rules; and

(Rule 1240-04-02-.03, continued)

2. The right to observe and account for all children enrolled or present in the drop-in child care center, to determine the status of their health, safety and welfare, and the right to inspect and copy all records related to compliance with these rules.
 - (b) Refusal to allow entry and/or refusal to allow the Department to inspect the premises or relevant records for compliance with these rules or to observe and account for all children enrolled or present in the drop-in center, to determine the status of their health, safety and welfare, is a basis, by itself, for the summary suspension, revocation, and/or denial of the license and any additional remedies set forth in T.C.A. § 71-3-508.
- (9) Upon issuance of an annual license, the licensee shall maintain compliance with the requirements of this Chapter throughout the licensing period.
- (10) Re-evaluation.
 - (a) The Department shall notify the licensee of the re-evaluation of the agency for a renewal of its license before the expiration of the current license.
 - (b) Application for renewal of the license must be made before the expiration of the existing license, or the existing license will expire upon the expiration date of the licensing period established by the license.
 - (c) Applicants for the renewal of a license are evaluated in the same manner and must comply with the same requirements as applicants for a new license.
- (11) Immediately upon receipt of the license, the licensee shall post near the main entrance and in a conspicuous location:
 - (a) The current license;
 - (b) The Department of Human Services' toll-free Child Care Complaint Hotline phone number; and
 - (c) Any other documents as directed by the Department.
- (12) The licensing procedures for a drop-in center are also subject to the requirements of Chapter 1240-4-5, Procedures Affecting Licenses of Child Care Agencies.

Authority: T.C.A. §§4-5-202, 71-3-501 et seq., 71-3-501(8), and 71-3-502(a)(2). **Administrative History:** Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005.

1240-04-02-.04 OWNERSHIP, ORGANIZATION AND ADMINISTRATION.

- (1) Statement of Purpose.
 - (a) An applicant for a license to operate a child care agency shall submit a written statement to the Department of Human Services governing the following areas:
 1. A description of all services to be offered to children and parents;
 2. Ages of children to be served;
 3. Hours of operation;
 4. Number and type of meals and snacks to be served, if applicable;

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

5. Admission requirements and enrollment procedures; and
6. Provisions for providing or obtaining emergency medical care.

(b) If, after being licensed, a licensee wishes to change the scope or type of service offered to children and families, an amended statement shall be filed with the Department for approval prior to implementation.

(2) Organizational Structure.

(a) The organization of every drop-in child care center shall be such that legal and administrative responsibility is clearly defined, and the licensee must provide any and all documentation reasonably required by the Department to validate such legal and administrative responsibility.

(b) Every drop-in child care center shall have an on site director.

Exception: Following the issuance of an annual license, a drop-in child care center may operate without an on-site director, as deemed appropriate by the Department and within any restrictions that may be established by the Department, for a period of no more than sixty (60) days total within the licensing year.

(3) Liability and Medical Payment Insurance Coverage.

(a) General liability and medical payment insurance coverage shall be maintained on the operations of the child care agency's facilities.

(b) General liability coverage on the operations of the child care agency's facilities shall be maintained in a minimum amount of Five Hundred Thousand Dollars (\$500,000) per occurrence and Five Hundred Thousand Dollars (\$500,000) general aggregate coverage.

(c) Medical payment coverage shall be maintained in the minimum amount of Five Thousand Dollars (\$5,000) for injuries to children resulting from the operation of the child care agency.

(d) The requirements of this paragraph shall not apply to an agency that is under the direct management of a self-insured administrative department of the state, a county or a municipality or any combination of those three (3) or that has, or whose parent entity has, a self-insurance program that provides, as determined by the Department, the coverage and the liability limits required by these rules.

(e) Documentation that the necessary insurance is in effect, or that the administrative department or other entity is self-insured, shall be maintained in the records of the child care agency and shall be available for review and copying by the Department's licensing staff.

(4) Records and Reports.

The following records shall be maintained in an organized manner at the drop-in center and made available to the Department upon request:

(a) Children's Records.

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

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

- (i) A current information form which includes the child's name, date of birth, name of parent(s), child's and parents' home address(es), emergency contact numbers (e.g., home, work, cell phone, pager, etc., as applicable), and the name and address (home and business or school) of a responsible person to contact in an emergency if the parent(s) cannot be located promptly;
 - (ii) Name, address, and telephone number of a physician to call in case of an emergency;
 - (iii) Written consent of parent(s) regarding emergency medical care;
 - (iv) A child release plan stating to whom the child shall be released and a clear policy concerning the release of child(ren) to anyone whose behavior may place the child(ren) in immediate risk;
 - (v) A signed statement from the parent or guardian verifying that the child or children are in good health and current with immunizations; and
 - (vi) Daily attendance records for each child.
 2. A child's records shall be kept by the drop-in center for one (1) year following the child's being disenrolled from the center.
- (b) Staff Records.
1. The following information shall be secured when employing staff, maintained in each employee's record, updated as changes occur, and shall be maintained in the individual employment record for at least one (1) year following the separation of the employee from the agency:
 - (i) Name, birth date, social security number, address, and telephone number of all staff members, including volunteers, and a contact for each staff member in an emergency;
 - (ii) Educational background and educational experiences, including dates and places of diplomas received, and conferences, courses, and workshops attended in the preceding year;
 - (iii) Health records as directed under subchapter 1240-04-02-.08(11), Health and Safety;
 - (iv) At least three (3) written references, with documented interviews of each reference, on each new staff member;
 - (v) Written, verified record of employment;
 - (vi) Date of employment and date of separation from the agency; and
 - (vii) Daily attendance (including time in/out) of staff members.
 - (viii) Verification of the status check on the Department of Health's Vulnerable Persons Registry required by Rule 1240-04-02-.05(e)4.
 2. Professional credentials of staff shall be available to parents.

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

(5) Right to Privacy/Confidentiality.

The licensee and agency staff shall not disclose or knowingly permit the use by other persons of any information concerning a child or family except as required by law or regulation or as may be necessary to be disclosed to public authorities in the performance of their duties and which may be necessary for the health, safety, or welfare of any child enrolled at the center or his or her family.

(6) Admission of Children and Communication with Parents.

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

1. All the information in paragraph (4)(a) above; and
2. A statement regarding the estimated amount of time that the parent anticipates that the child will be in attendance at the drop-in center.

(b) A child shall be at least six (6) weeks old before being accepted in a drop-in center.

(c) No child shall be accepted into child care in excess of the maximum allowable hours as set forth in paragraph 1240-04-02-.02(15). The drop-in center shall maintain and make available to the Department attendance records verifying that no child receives care in excess of the maximum allowable hours.

(d) The drop-in center shall make the licensure rules for drop-in care available to parents of children enrolled.

(e) During normal operating hours, parents shall be permitted immediate access to their children, and ready access to all areas of the child care facility shall be granted Department representatives and inspection authorities (i.e., fire safety, sanitation, and health).

(f) Parents shall be informed in advance of the child's removal from the premises except in cases of emergencies or removal by the Department of Children's Services or a law enforcement agency pursuant to law.

(7) Care of School-Age Children on Snow Days.

(a) A drop-in center may not accept any school-age child for care unless:

1. The Department has previously determined that the center is an appropriate and safe location for school-age children on snow days.
2. The drop-in center applied for, and was granted, a license which specifically authorizes the licensee to provide such care. Any such authorization to provide such care shall be noted on the license.

(b) The Department shall set a limit on the number of school-age children that a center may accept at any given time based upon the amount of space that the center has available.

(c) No child thirteen (13) years of age or older may be cared for by a drop-in center on a snow day.

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

- (d) In order to assure that the center is capable of providing safe care to the additional numbers of children needing care during school closings, the center shall annually provide the Department with an updated list of trained caregivers and staff available for emergency call duty.

(8) Transportation.

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

Authority: T.C.A. §§4-5-202, 71-3-501 et seq., and 71-3-502(a)(2). **Administrative History:** Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005. Amendment filed November 14, 2006; effective January 28, 2007.

1240-04-02-.05 STAFF REQUIREMENTS.

(1) Responsibility for Staff.

- (a) The applicant/licensee shall be responsible for selecting individuals of suitable character to work with children.
- (b) The director shall be responsible for the daily supervision of the staff and program.
- (c) An appropriate staff member meeting the qualifications for a “caregiver” at the drop-in center shall be designated to be in charge in the absence of the director.
- (d) The applicant/licensee and the director shall be responsible for ensuring that the behavior of staff reflects knowledge and understanding of the special needs, growth, and developmental patterns of young children, as well as an understanding of appropriate activities. Such behavior shall be evaluated in staff’s performance evaluations.
- (e) Criminal History Background Review and Abuse Registry Requirements; Exclusions from Contact with Children, Waivers from Exclusions; Appeals of Waiver Denials.
 - 1. Individuals Requiring a Fingerprint Criminal History Background Review and Abuse (Vulnerable Persons) Registry Check:
 - (i) Any individual applying to work as a paid employee, director or manager of the child care agency in a position that will require or allow the individual to have contact with children at any time;
 - (ii) Any individual applying to work as a new substitute and who is expected to offer, or who provides, at least thirty-six (36) hours of substitute services to the agency in any calendar year;
 - (iii) Any individual applying for a license to operate a child care agency that is not the renewal of an existing license, or any individual who otherwise seeks to be an operator, as defined by the rules of the Department, of a child care agency, as defined in T.C.A. § 71-3-501, and who will, in the course of their role as licensee, have significant contact, as determined by the Department, with the children in care. For purposes of this paragraph, “operator” shall be an individual who is an owner or administrator of a child care agency or child care system;

(Rule 1240-04-02-.05, continued)

- (iv) Residents of a New Agency. Any individual who is a resident of the child care agency and who is fifteen (15) years of age or older upon the date the agency receives its initial temporary license or, if the agency has been issued an annual license, then upon the date the agency received its annual license; and
 - (v) New Residents of an Existing Agency. Any individual who is fifteen (15) years of age or older upon moving into a licensed/approved child care agency.
- 2. Pending outcome of the criminal history background review as described in this paragraph, and the outcome of the review of the individual's status on the Department of Health's Vulnerable Persons Registry, the applicant for employment or a substitute or volunteer position, or for a license to operate, shall be conditional and shall be dependent upon the results of these background checks.
- 3. Requirements for Submission of a Fingerprint Sample.
 - (i) Criminal History Disclosure Form. Individuals identified in subparagraph (a) shall complete and sign the Criminal History Disclosure Form provided by the Department.
 - (I) The failure to properly complete all sections of the Criminal History Disclosure Form shall result in the individual being prohibited from working, substituting, residing in or acting as a licensee for the child care agency.
 - (II) The failure to disclose all criminal history information may result in the individual being:
 - I. Excluded from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and
 - II. Referred for criminal prosecution pursuant to the provisions of state law.
 - (ii) Fingerprint Sample. The child care agency shall be responsible for obtaining and submitting the fingerprint sample of any person required by this Chapter in the form and manner directed by the Department:
 - (I) Within ten (10) calendar days of the first day of beginning employment or substitute status;
 - (II) Within ten (10) calendar days of the license application or seeking operator status;
 - (III) Within ten (10) calendar days of the application for an initial license for a facility in which the person resides; or
 - (IV) Within ten (10) calendar days after the resident moves into the child care facility.
 - (iii) Unless otherwise notified by the Department, the child care agency shall be responsible for all costs associated with obtaining the fingerprint

(Rule 1240-04-02-.05, continued)

sample, and the Department will pay for the costs of the criminal background check by the Tennessee Bureau of Investigation.

4. Vulnerable Persons Registry. The child care agency shall be responsible for determining, within the same time periods as set forth in subpart (e)3(ii) above, the status on the Department of Health's Vulnerable Persons Registry of any individual who is required by part 1 above to undergo a criminal history background review. Verification of such status check shall be maintained in the employee's record pursuant to the requirements set forth in 1240-04-02-.04(4)(b).
- (f) Exclusion of Persons from Contact with Children.
1. Prohibited Criminal or Abuse or Neglect History.
 - (i) No individual with a prohibited criminal history as defined below, regardless of whether such individual is required by these rules to undergo a criminal history background review, may work, substitute or volunteer in a child care agency, or be a resident, licensee, director or manager of a child care agency who has access to children, or be an operator who has significant contact with children or otherwise have unrestricted access to children in any manner whatsoever.
 - (ii) An individual shall be immediately and automatically excluded from child care or any contact whatsoever with children, as described above, if the individual's criminal history includes:
 - (I) A criminal conviction or a no-contest or guilty plea; or any pending criminal action, including individuals subject to any warrant, indictment, presentment, etc.; or placement in a pretrial diversion; or,
 - (II) A pending juvenile action or previous juvenile adjudication, which, if an adult, would constitute a criminal offense; and
 - (III) Any of the circumstances in items (I) or (II) above involves any of the following criminal offenses:
 - I. Any offense (including a lesser included offense) involving the physical, sexual or emotional abuse or gross neglect of a child, or involving a threat to the health, safety or welfare of a child;
 - II. Any offense (including a lesser included offense) involving violence or the threat of violence against another person; and/or
 - III. Any offense (including a lesser included offense) involving the manufacture, sale, distribution or possession of any drug.
 - (iii) An individual shall also be immediately and automatically excluded from child care or from access in any manner whatsoever to the children in the care of the agency, if the individual:
 - (I) Reveals a prohibited or potentially prohibited criminal history on the Criminal History Disclosure Form; or

(Rule 1240-04-02-.05, continued)

- (II) Is listed on the Department of Health's Vulnerable Persons Registry; and/or
 - (III) Is known to the management or licensee of a child care agency as a perpetrator of child abuse or child sexual abuse or to have a prohibited criminal history, or who is identified to the child care agency's management or licensee by the Department of Human Services or by the Department of Children's Services as a validated perpetrator of abuse of a child based upon an investigation conducted by the Department of Children's Services or by the child protective services agency of any other state; or, who at anytime is identified by any person or entity to the child care agency's management or licensee and is confirmed by the Department of Human Services as having a prohibited criminal history.
- (iv) Exclusion from driving duties. An individual with a prohibited history as set forth below shall be immediately and automatically excluded from providing driving duties on behalf of the child care agency if the individual:
- (I) Has a pending criminal action (including warrants, indictments, presentments, etc.), is completing a pretrial diversion, or has been convicted of or pled guilty to any offense involving the use of a motor vehicle while under the influence of any intoxicant, which constitutes a violation of T.C.A. §§ 39-13-213; 55-10-101; 55-10-102 or 55-10-401; or
 - (II) Has been convicted of or pled guilty to any felony involving the use of a motor vehicle while under the influence of any intoxicant. In such case, the individual shall not be employed or otherwise serve as a driver for a child care agency for a period of five (5) years from the date of the conviction or guilty plea.
- (v) Exclusions for Child Neglect. An individual who has been identified by the Department of Children's Services as having neglected a child based on an investigation conducted by that Department or any child protective services agency of any state, and who has not been criminally charged or convicted or pled guilty or no-contest as stated above, shall be supervised by another adult while providing care for children.
2. The child care agency shall immediately, upon receipt, review the results of the criminal history background review and Vulnerable Persons Registry and shall immediately exclude any individual with a prohibited history as directed by the Department.
3. Failure to exclude individuals with a criminal history or abuse or neglect finding.
- Failure to immediately exclude any individual subject to exclusion or supervision pursuant to this subchapter and T.C.A. § 71-3-507, as directed by the Department, may result in the immediate suspension, denial or revocation of the child care agency's license.
- (g) Waivers from Exclusions Due to Criminal or Abuse or Neglect History.
1. Any person who is excluded or whose license is denied based upon the results of the criminal history background review, or based upon any other determination, may request in writing to the Department's Director of Licensing within ten (10)

(Rule 1240-04-02-.05, continued)

calendar days of receiving notice of such exclusion or denial a waiver from these automatic exclusion requirements.

2. Excluded individuals, prior to receiving official notice of the exclusion or denial from the Department, may also make a written request for a waiver by letter or directly on the Department's Criminal History Disclosure Form.
3. Requests for a waiver shall state the basis for the request, including any extenuating or mitigating circumstances that would, in the person's opinion, clearly warrant an exemption from the exclusion. Any documentary evidence may also be submitted with the request.
4. Requests for waivers shall be heard by an advisory committee and reviewed by the Department in accordance with the provisions of T.C.A. § 71-3-507.
5. Any person who is excluded from providing care or services to children under any provisions of this subchapter shall remain excluded pending the outcome of any exemption review and appeals.

(h) Supplemental Background Checks.

1. The Department may, at anytime, request that the criminal background or status on the Department of Health's Vulnerable Persons Registry of any individuals having access to children under any of the circumstances set forth in this subchapter be reviewed using the processes described above or in T.C.A. § 71-3-507. All other provisions applicable to any pre-employment or post-employment, residential or access status of any individual shall apply to any background review conducted pursuant to this subparagraph (h).
2. The employment status of persons for whom a post-employment criminal history background review was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a child care agency for whom a criminal history background review was conducted after license approval or after employment or assuming duties as a volunteer or substitute, and who were not otherwise subject to a pre-status applicant background check and to the exclusionary provisions provided in this subchapter, shall be governed by the provisions of this subchapter and T.C.A. § 71-3-507.

(2) Staff Qualifications.

- (a) Every staff person, including volunteers, practicum students, and substitutes, shall be physically, mentally, and emotionally capable of performing his/her duties satisfactorily.
 1. The Department may require, in its sole discretion, any individual, whether a pending or current employee, volunteer or any other person, who has contact with children in the care of the agency to undergo a mental health examination, physical health examination, or drug screening test when, in the Department's sole determination, there is reasonable cause to believe that such individual may have an impairment that potentially poses a risk of harm to children in the care of the agency. An individual requested to undergo such examinations or screenings may refuse to do so, but will not be permitted to have any further contact with children in the care of the child care agency until completion of the examination and satisfactory evidence is provided to the Department that the person does not represent a risk of harm to the children in the agency's care.
 2. Safety Plans.

(Rule 1240-04-02-.05, continued)

- (i) Pending the outcome of such testing, the Department may require, in its sole discretion, the child care agency to enter into a safety plan approved by the Department that prohibits or limits such individual's contact with children in the care of the child care agency.
 - (ii) The Department may otherwise require, in its sole discretion, that the child care agency enter into a long-term or permanent safety plan that prohibits or limits an impaired individual's contact with children in the care of the agency.
 - (iii) Failure to adhere to the safety plan shall be grounds for action by the Department against the child care agency's license as permitted by T.C.A. § 71-3-508(c).
 - (iv) The child care agency or any individual whose employment status is directly and adversely impacted by a safety plan or by refusal to undergo an examination as directed by the Department, may, at any time during the existence of the plan or during the pendency of the directive for an examination, request, in writing, that the Director of Licensing conduct an intradepartmental review of a safety plan. Such review shall be conducted by the Director or the Director's designee within five (5) business days of the written request.
 - (v) Any individual whose employment status is directly and adversely impacted by a safety plan that has been in effect for more than ten (10) business days or by their refusal to undergo an examination as directed by the Department, and who has requested an intradepartmental review pursuant to subpart (iv), may appeal the plan's application to such individual or the directive to undergo testing to the Department by filing a written request for an administrative hearing before the Department's Appeals Division within ten (10) days of the Director's decision. The hearing shall be held by the Division within twenty (20) business days of the receipt of the request for an administrative hearing.
 - (vi) Any safety plan that exceeds ninety (90) days when proposed or that continues for more than ninety (90) days may be appealed by the child care agency to the Child Care Agency Board of Review.
- (b) A person who has a physical, mental, or emotional condition which is in any way potentially harmful to children shall not be present with the children.
 - (c) Each new employee must be provided a copy of these rules.
 - (d) Each new employee shall serve a probationary period of three (3) to six (6) months, during which close supervision is provided. Staff performance shall be reviewed prior to the end of the probationary period. All employees shall have annual reviews. Discussion of evaluations with staff shall be documented.
 - (e) Contents of Employee Records
 - 1. The agency's records shall contain verification that, prior to assuming duties, each new employee has received orientation in, and is able to explain:
 - (i) Child care philosophy;

(Rule 1240-04-02-.05, continued)

- (ii) Job description;
 - (iii) Personnel policies;
 - (iv) Emergency procedures;
 - (v) Discipline policies, and
 - (vi) Policies for receiving and dismissing children.
2. Within the first two (2) weeks of employment, each employee shall receive instruction in disease control and health promotion. Such training shall be documented in the agency's records.
 3. Within the first thirty (30) days of employment, each employee shall receive instruction in parent-center communication, and an overview of licensing requirements. Such training shall be documented in the agency's records.
- (f) Training.
1. Notwithstanding any other requirements of Title 71, Chapter 3, Part 5 of the Tennessee Code Annotated, training requirements for the staff of any Drop-In Child Care Center shall be limited to basic health and safety precautions as well as the detection and reporting of child abuse and neglect for children in the center's care.
 2. Within the first thirty (30) days of employment, all staff working with children shall receive training in the detection, reporting, and prevention of child abuse. Such training shall be documented in the agency's records.
- (3) Substitutes.
- (a) The names, addresses, telephone numbers and dates of service shall be recorded for all substitutes in the staff personnel records of the drop-in center.
 - (b) Substitutes shall comply with the orientation requirements of 1240-04-02-.05(2)(e).
 - (c) Substitutes acting as caregivers shall meet the training requirements of 1240-04-02-.05(5)(c) if they have acted as caregivers for two hundred (200) or more hours in the previous calendar year.
 - (d) Substitutes providing services for thirty-six (36) hours or more in a calendar year are required to have a criminal background check pursuant to 1240-04-02-.05(1)(e), and shall meet the same requirements as regular staff for physical examinations as required by 1240-04-02-.08(11)(a); provided, however, that persons serving temporarily as caregivers in field service placements as part of an educational course of study or other curriculum requirement shall not be considered as substitutes for purposes of this rule.
- (4) Director of a Drop-in Child Care Center.
- (a) The drop-in center shall have an on-site director [except as otherwise permitted pursuant to 1240-4-.04(2) above]. The director shall have earned a high school diploma or its equivalent and one (1) year of full time documented work experience with young children in a group setting.

(Rule 1240-04-02-.05, continued)

- (b) Prior to issuance of the first annual license, the licensee and director shall complete a child care orientation course offered through or recognized by the Department. New directors of child care agencies currently licensed shall complete the orientation course within (3) months of assuming the position.
 - (c) The director shall have evidence of completing at least six (6) clock hours annually of Department-recognized training. At least three (3) of these hours shall be in administration, management or supervisory training.
 - (d) The director shall complete four (4) hours of pre-employment training, which is offered or recognized by the Department, that includes, but is not limited to, training in interviewing and evaluating caregivers for service in an agency and in working effectively with parents. If the Department determines that the director has received specific training meeting the requirements of this part within three (3) years prior to employment, the requirement of this part may be waived by the Department.
- (5) Caregivers.
- (a) Each caregiver who is used to meet the minimum required adult:child ratio must be at least eighteen (18) years of age.
 - (b) At least one (1) caregiver who is present in the agency shall be able to read and write English.
 - (c) Caregivers shall have evidence of receiving at least three (3) clock hours annually in Department-recognized training.
 - (d) New caregivers shall complete two (2) clock hours of pre-service orientation training offered or recognized by the Department. For purposes of this rule, "pre-service" orientation shall mean that such orientation occurs within the first thirty (30) days of employment with the agency. Pending completion of the orientation training, the caregiver's status is conditional. Failure of the caregiver to complete the required two (2) hours of pre-service orientation shall require that the employee be removed from caregiver duties for children until completion of the training.
 - (e) Auxiliary Staff.
 - 1. Any auxiliary staff persons (e.g., maintenance staff, kitchen staff, etc.) shall be physically and mentally capable of performing satisfactorily in their respective positions.
 - 2. Any auxiliary staff directly employed by the center shall receive orientation to their position within the first two (2) weeks of employment. This training shall include:
 - (i) Personnel policies;
 - (ii) Job responsibilities;
 - (iii) Parent communication;
 - (iv) Daily schedule and routine;
 - (v) Center policies regarding discipline;
 - (vi) Detection and reporting of child abuse; and

(Rule 1240-04-02-.05, continued)

- (vii) Emergency procedures.

Authority: T.C.A. §§4-5-202,71-1-105(5) and (12), 71-3-501 et seq., 71-3-501(8), and 71-3-502(a)(2).
Administrative History: Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005. Amendment filed November 14, 2006; effective January 28, 2007.

1240-04-02-.06 EQUIPMENT FOR CHILDREN.

- (1) General.
- (a) All indoor and outdoor equipment shall be safe for use with the applicable age group and shall be properly maintained to avoid any potential risk to children.
 - (b) Equipment shall not contain any dangerous angles, sharp edges, splinters, nails sticking out, open S-hooks or pinch points that are within children's reach.
 - (c) Damaged equipment shall be repaired or removed immediately.
 - (d) Equipment shall be kept clean by washing frequently.
 - (e) There shall be age appropriate equipment and furnishings for each age group in attendance.
 - (f) In infant/toddler areas, equipment and space shall be provided for climbing, crawling, and pulling without the restraint of playpens or cribs.
- (2) Indoor Play Equipment.
- (a) Any equipment which may present a fall hazard, such as television sets, bookcases, appliances, etc. shall be secured or supported so that they will not fall or tip over.
 - (b) Indoor equipment, materials, and toys shall be available to allow children to make choices among different active play activities and among different quiet play activities.
 - (c) Toys, educational, and play materials shall be organized and displayed within children's reach to allow children to select and return items independently.
 - (d) No materials that contain small parts that can be inhaled or swallowed which may present a potential choking hazard shall be accessible to children under three (3) years of age.
- (3) Outdoor Play Equipment.
- (a) If outdoor play equipment is provided, it shall be age appropriate.
 - (b) The Consumer Products Safety Commission's "Handbook on Public Playground Safety" or similar authority shall be used for guidance on playground construction and maintenance.
 - (c) All outdoor play equipment shall be placed to avoid injury. Fall zones shall extend at least six (6) feet away from the perimeter of equipment and away from retainer structures, fences, and other equipment and out of children's traffic paths.

(Rule 1240-04-02-.06, continued)

- (d) Resilient surfacing material shall cover fall zones in the manner and depth directed by the Department in accordance with the recommendations set forth in subparagraph 3(b) above.
 - (e) Supports for climbers, swings, and other heavy equipment that could cause injury if toppled shall be securely anchored to the ground, even if the equipment is designed to be portable.
- (4) Naptime and Sleeping Equipment.
- (a) There shall be equipment for napping or sleeping.
 - (b) All nap/sleep equipment shall be properly maintained and comply with the following requirements:
 - 1. Individual cots or two-inch mats shall be provided for mature toddlers and for children through age five (5).
 - 2. Individual beds or cots shall be provided for children sleeping for extended periods of more than two and one half (2-1/2) hours, such as during nighttime care.
 - 3. A clean sheet or towel shall be used to cover whatever the child sleeps on.
 - 4. A clean coverlet shall be available to each child.
 - 5. Each infant shall have an individual crib (at least twenty-two inches (22") x thirty-six inches (36")) with an open top. Mattresses and foam pads shall be covered with safe, waterproof material. Soiled sheets and coverlets shall be replaced immediately.

Authority: T.C.A. §§4-5-202, 71-3-501 et seq., and 71-3-502(a)(2). **Administrative History:** Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005.

1240-04-02-.07 PROGRAM.

- (1) Schedule and Routines.
 - (a) Rest for the children shall occur as needed.
 - (b) A child shall not be left in a crib or on a cot for an unreasonable length of time.
 - (c) Agencies providing nighttime care shall provide calming activities preceding bedtime, including listening to a story or soft music, etc., and individual/adult attention shall be provided as needed.
 - (d) Children shall not be forced to sit on the potty or toilet for more than five (5) minutes.
- (2) Television, Videos, and Computers.
 - (a) All television, computer/video games, programs/movies shown shall be designed for children's education and/or enjoyment. Programs/movies/games with violent or adult content (including "soap operas") shall not be permitted in children's presence. Programs/movies shall be age appropriate for the viewers.

(Rule 1240-04-02-.07, continued)

- (b) All programs, videos, and movies must be previewed by staff for content.
 - (c) Parents shall be informed of movie showings and ratings of the movies to be shown.
 - (d) Other activities shall be available to children during television/movie viewing or computer/video game use.
 - (e) Computer/video game use must be monitored by staff.
- (3) Behavior Management and Guidance.
- (a) Attention spans and skills of children shall be considered so that caregivers do not require behaviors of children which are developmentally inappropriate.
 - (b) Discipline shall be reasonable, appropriate, and in terms the children can understand.
 - (c) Punishment that is shaming, humiliating, frightening, verbally abusive, or injurious to children shall not be used.
 - (d) Punishment shall not be related to food, rest, or toileting.
 - (e) Spanking or any other type of corporal punishment is prohibited. (“Corporal punishment” is the infliction of bodily pain as a penalty for behavior of which the punisher disapproves.)
 - (f) Caregivers shall not focus solely upon unacceptable behavior.
 - (g) Praise and encouragement of good behavior shall be used.
 - (h) When a child is engaging in unacceptable behavior the caregiver shall, prior to using punishment, attempt to distract the child’s attention and substitute a desirable activity.
 - (i) Time Out.
 - 1. Use of time-outs shall be reasonable and age appropriate.
 - 2. A time-out shall take place in an appropriate location based upon the development of the child.
 - 3. The length of each time-out session shall be based on the age of the child and shall not exceed one (1) minute per each year of the child’s age.
- (4) Age-Appropriate Activities.
- (a) Age-appropriate activities shall be available for all ages of children the center is licensed to serve.
 - (b) Interaction by staff with infants/toddlers should stimulate the development of language, gross motor, fine motor, social/personal, cognitive, and self-help skills. Examples of such activities include music, dramatic play, story time, free activity periods, outdoor play, and the opportunity to explore many materials, situations, and roles.
- (5) Swimming. Swimming is prohibited.
- (6) Personal Safety Curriculum.

(Rule 1240-04-02-.07, continued)

- (a) For ages three (3) through school-age, a curriculum shall be offered that shall include instruction, at least once a year, in personal safety.
- (b) Personal Safety Curriculum Components and Guidelines.
 - 1. The personal safety curriculum shall include a Department-recognized component for the prevention of child abuse, including, for children four (4) years of age and older, a child sexual abuse prevention component.
 - 2. The curriculum shall be based upon curriculum guidelines provided by the Department to the child care provider in any suitable format. The child care provider may choose terminology and instructional methods for this curriculum with a goal of providing clear, effective and appropriate instruction to the children in personal safety, including the prevention of all forms of child abuse.
- (c) Personal Safety Instruction Requirements for School-Age Children.
 - 1. For school-age children, the curriculum shall include instruction for reporting physical, sexual or verbal abuse.
 - 2. Children of school-age shall not be required to receive personal safety instruction from the child care agency if they annually receive personal safety instruction as required by this paragraph (6) in the curriculum of their local public education agency, or, if they receive such instruction in any other educational setting, as approved, in either circumstance, by the Department.
 - 3. Documentation of Personal Safety Instruction in Educational Settings.
 - (i) Written documentation, in a form and manner approved by the Department, verifying that annual personal safety instruction as required by this paragraph (6) is being provided in a public educational setting to each child enrolled in the child care agency, shall be maintained on file with the Department.
 - (ii) For children who do not attend public schools, the child care provider shall secure and maintain documentation, in a form and manner approved by the Department, verifying that each school-age child enrolled in the child care agency is receiving annual personal safety instruction as required by this paragraph (6).
- (d) Beginning October 1, 2008, the personal safety curriculum used by a child care agency shall be made available by the child care agency to parents and legal guardians for review. The child care agency shall use a standard notification form developed by the Department that will be provided to the parents or legal guardians by the child care agency to confirm that the parents/guardians have been notified of the curriculum to be used and of their opportunity to review the personal safety curriculum.
- (e) The record of each enrolled child shall include a copy of the signed notification form acknowledging that parents/legal guardians have been provided an opportunity to review the agency's personal safety curriculum, and have been notified of the sexual abuse/personal safety curriculum for their child.
- (f) If parents/legal guardians have questions regarding the personal safety curriculum, a representative of the child care agency shall meet with the parents/legal guardians to discuss the curriculum.

(Rule 1240-04-02-.07, continued)

Authority: T.C.A. §§4-5-202, 4-5-209, 71-3-501 et seq., 71-3-502, 71-3-502(a)(2), 71-3-502(l) and 2008 Tenn. Pub. Acts 1032. **Administrative History:** Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005. Public necessity rule filed October 1, 2008; effective through March 15, 2009. Amendment filed December 29, 2008; effective March 14, 2009.

1240-04-02-.08 HEALTH AND SAFETY.

(1) Supervision and Grouping of Children.

- (a) The management of the center shall maintain a system that allows personnel to know the whereabouts of each child in their care. This system shall include a mandatory visual inspection of all areas of the building and grounds immediately prior to closing the center for the day in order to ensure that no children have been unintentionally left.
- (b) Children must have adult supervision at all times as defined in section 1240-04-02-.02 (29).
- (c) No child (ren) shall be left unattended for any reason.
- (d) Caregivers shall not leave the group until replacement(s) have arrived.
- (e) Arrangements shall be made so that in an emergency, a caregiver, without having to leave the group, can call by phone or voice for a second adult to help.
- (f) Age Categories and Adult: Child Ratios.
 - 1. Children shall be placed in age-appropriate groups and with adequate adult supervision as established in parts 2-5 below.

2. Single-age Grouping

Age	Adult:Child Ratio
Infant (6 weeks to 12 months)	1:4
Toddler (12 months to 24 months)	1:10
2 years	1:12
3 years	1:15
4 years	1:18
5 years (not in Kindergarten)	1:20
K & Above	1:22

3. Multi-Age Grouping.

- (i) The adult:child ratio of a multi-age grouping shall be determined by the age of the majority of the children in the group; provided, however:
 - (I) No majority age: If the ages of the children are evenly divided, and thus there is not a majority age, the adult:child ratio shall be determined by the age of the youngest child in the group.
 - (II) Infants: The adult: child ratio of any group containing an infant shall be determined solely by the number of infants in the group as set forth in subparagraphs (ii) and (iii) below.

(Rule 1240-04-02-.08, continued)

- (ii) The adult: child ratio for any multi-age grouping containing three (3) or more infants is 1:4.
- (iii) The adult: child ratio for a multi-age group containing one (1) or two (2) infants is as follows:

Majority Age	One Infant	Two Infants
Toddlers (12 to 24 months)	1:8	1:6
2 Years	1:10	1:8
3 Years	1:12	1:10
4 Years	1:15	1:12
5 Years (not in Kindergarten)	1:17	1:13
K & Above	1:19	1:15

- 4. When more than fourteen (14) children are present, children under two (2) years of age must have their own designated area.
- 5. The Federal Americans with Disabilities Act guidelines shall be consulted to determine the appropriate adult: child ratios for children with special needs.

(2) Sudden Infant Death Syndrome.

(a) Infants under six (6) months of age:

- 1. Shall be positioned on their backs or sides when placed in a crib for sleeping;
- 2. Shall not be wrapped tightly in blankets; and
- 3. Shall be checked by a caregiver every thirty (30) minutes by touching them.
- 4. Infants who have been identified to the center as suffering from gastric reflux, or who the center should reasonably know are experiencing excessive spitting-up and/or sinus or respiratory congestion, shall be checked by a caregiver every fifteen (15) minutes by touching them.

(b) Bedding for Infants under six (6) months of age:

- 1. Soft bedding is prohibited.
- 2. Pillows are prohibited.
- 3. Bottles shall never be propped, nor otherwise be placed on or near the child's bedding.

(c) If a child appears to not be breathing, emergency medical assistance shall be immediately provided.

(d) The failure to comply with the requirements of this paragraph (2) by themselves, shall be a basis for the denial, revocation, or suspension of all or part of the center's license.

(3) Children's Health Records.

(a) Before a child older than eight (8) weeks is accepted for care, a written statement signed by the parents that includes a list of allergies, medical conditions, and age appropriate shots shall be on file. If a child who was accepted for care at six (6) weeks

(Rule 1240-04-02-.08, continued)

of age continues in care at eight (8) weeks, the written statement described in the preceding sentence shall be in the child's record before care for that child may continue.

- (b) If children with mental, physical or other impairment or with a medical disorder are enrolled and special care is needed, their health records shall include a statement identifying the condition and giving any and all special instructions for the child's care.
- (4) Children's Health.
- (a) Children shall be checked upon arrival and observed for signs of communicable disease during the day. Symptomatic children shall not be admitted. Every sign of illness shall be reported to the parent as soon as possible, but no later than the end of the day in which it occurred.
 - (b) Accidents and injuries to children shall be documented, including date and time occurred, description of circumstances, and action taken by caregivers. Injuries of more than a minor nature shall be reported as soon as possible to parents, but no later than the end of the day in which they occurred.
- (5) Nutritional Needs.
- (a) A meal or a supplement shall be available every three (3) hours according to a normal feeding pattern as follows:
 - 1. Three (3) to five (5) hours: One (1) feeding; and
 - 2. Five (5) to six (6) hours: Two (2) feedings.
 - (b) Special-needs diets shall be served as prescribed by a parent or physician. Such feeding instructions must be in writing and signed by the parent/guardian or physician.
 - (c) Food shall not be forced on, or withheld, from children. Foods served as part of the meal/supplement pattern shall not be used as reward, nor shall food be used or withheld as punishment.
 - (d) Meals or supplements prepared outside the center (e.g., sack lunches or catered food) shall be monitored by center staff.
 - (e) The feeding schedule for infants shall be in accordance with the child's needs rather than according to the hour.
- (6) Meal Service.
- (a) Children shall be supervised during mealtime as set forth in 1240-04-02-.08(1). The failure to properly supervise children during mealtime may, in itself, result in the immediate suspension of all or part of the center's authority to operate under its license.
 - (b) Sanitation.
 - 1. Caregivers and children shall wash their hands according to prescribed handwashing techniques (see subparagraph (11)(c) below).
 - 2. Furniture and cabinets where food is prepared or served shall be washed with soap and water and sanitized before and after snacks and meals.

(Rule 1240-04-02-.08, continued)

3. Sanitizing agents shall comply with the requirements set by the Department of Health and/or the local jurisdiction environmental inspector.
 4. The floors under areas where food is served shall be swept and/or vacuumed after each meal and cleaned as needed.
- (c) Solid foods (including cereal) shall never be mixed with liquid foods, nor shall they otherwise be provided in a bottle or infant feeder unless authorized by the written and signed instructions of a licensed physician. Failure to comply with this rule may, in itself, immediately result in the suspension of all or part of the center's license to operate.
 - (d) Individual napkins, utensils and dishes shall be provided for children who feed themselves, as appropriate for the type of feeding. Routine food service dishes, utensils, and bottles shall be break-resistant and shall not be glass.
 - (e) All formulas and food brought from home shall be labeled with the child's name. Milk shall be in an insulated container and stored with the child's individual ice pack or placed immediately in the refrigerator. Once milk has been warmed, it shall not be re-warmed or returned to the refrigerator. For optimum digestion, formula is to be served at body temperature.
 - (f) Microwave ovens shall not be accessible to pre-school children.
 - (g) School-age children shall use microwaves only under direct supervision.
 - (h) Bottled breast milk, infant bottles, and formula shall not be heated in a microwave oven. Other bottle warming devices shall be used safely, according to directions and shall not be accessible to children.
 - (i) In order to reduce the risk of splash or burn, children shall not be held, nor otherwise allowed in close proximity to the adult removing a bottle from a crockpot or other bottle-warming device.
 - (j) An adult must test, and allow cooling, as needed, all heated food prior to serving.
 - (k) Previously opened baby food jars shall not be accepted in the center. If food is fed directly from the jar by the caregiver, the jar shall be used for only one feeding.
 - (l) Infants shall be held while being fed as long as they are unable to sit in a high chair, an infant seat, or at the table. Bottles shall not be propped, and a child shall not be given a bottle while lying flat.
- (7) Medication.
- (a) The center shall not administer any medication, internal or external, except upon written authorization signed by a licensed physician, licensed physician's assistant, or licensed nurse clinician.
 - (b) Authorized medications shall be labeled with the child's name and the specific instructions for their administration.
 - (c) Administration of medications and noticeable side effects shall be charted and reported to parents.

(Rule 1240-04-02-.08, continued)

- (d) Medication shall not be accessible by, or otherwise handled by, children.
 - 1. Exception: Children may self-administer medication with the written authorization of a physician.
 - 2. Staff shall monitor the child's self-administration and shall document the date and time of the self-administration in the child's file.
- (e) Medications shall be made inaccessible to children by storing them in locked compartment or container.
 - 1. Exceptions:
 - (i) Emergency medications requiring immediate administration, including, but not limited to, injections for anaphylactic allergic reactions, asthma treatments, etc., may be stored in unlocked containers that are clearly inaccessible to children.
 - (ii) Self-administered medication shall be stored in a locked container unless prescribed for the child to self-administer "as needed". Medication that is self-administered as needed shall be held by the caregiver or shall otherwise be stored in such a manner as to allow immediate access while insuring that the medication remains inaccessible to other children.
 - (iii) Medication requiring refrigeration that is kept in a refrigerator used for food storage shall be put in a leak-proof locked container. Keys for these compartments shall be inaccessible to children.
- (8) Prohibited practices and products
 - (a) Smoking is prohibited inside the drop-in center and in the presence of children. No smoking signs shall be posted conspicuously within the facility.
 - (b) The use of alcoholic beverages is prohibited during the hours of operation of the center.
 - (c) Firearms are prohibited in the drop-in center and are otherwise prohibited in the presence of children enrolled at the drop-in center.
 - (d) Any activities on the premises or property which may place children at risk are prohibited.
- (9) Diapering
 - (a) Children shall immediately be diapered/changed and cleaned when wet or soiled.
 - (b) The diapering area shall be off the floor, have a washable surface, be located near a handwashing lavatory and shall not be in a food preparation/service area. Exception: school-age special needs children may be placed on a non-absorbent mat which protects the floor from contamination.
 - (c) All diapering surfaces must be nonporous and shall be sanitized after use with each child by using solutions described or otherwise permitted in paragraph (10) below.
- (10) Cleaning Solutions for General Cleaning and Sanitizing Purposes.

(Rule 1240-04-02-.08, continued)

- (a) For general cleaning and sanitizing purposes, a fresh solution of one quarter (1/4) cup chlorine bleach to one (1) gallon of water (or one [1] tablespoon bleach to one [1] quart of water) shall be made daily.
- (b) Substitutions for the bleach solution required in subparagraph (a) that are approved for the child care setting by the Department of Health are permissible.

(11) Staff Health.

- (a) Within thirty (30) days after beginning to work, all staff members shall have on file written evidence of a physical examination within the last three (3) years and a statement that their general physical and mental condition will permit them to direct and actively participate in the activities of a group of young children with reasonable accommodation, if necessary. The form or statement shall have the signature or stamp of a licensed physician, a certified nurse practitioner, or a certified physician's assistant.
- (b) An updated statement of each staff member's physical health shall be obtained every third year or more often if deemed necessary by the Department.
- (c) For the protection of children and adults, the Centers for Disease Control guidelines for handwashing and diapering procedures shall be followed.
- (d) For the protection of children and adults, when blood is to be handled (e.g., resulting from injury to a child or adult, from nosebleed, or from spillage), vinyl or latex gloves shall be used and properly disposed of following use with/by one individual. Following blood spillage, surfaces shall be cleaned and sanitized.

(12) Safety.

- (a) At least one staff member who has current certification or equivalent in infant/child Cardiopulmonary Resuscitation (CPR) shall be on duty at all times.
- (b) When school age children are present, at least one staff member who has current certification or the equivalent in adult CPR shall be on duty at all times.
- (c) At least one staff member who has current certification or the equivalent, as recognized by the Department, in infant/child first aid shall be on duty at all times.
- (d) Current and comprehensive first aid information shall be available to all staff who interact with children and they shall be familiar with such information.
- (e) A standard first aid kit (such as one approved by the American Red Cross) shall be available to the staff.
- (f) Kitchen knives and other potentially dangerous utensils or tools shall be secured so that they are not accessible to children.
- (g) The drop-in center, in consultation with appropriate local authorities, shall develop a written plan to protect children in the event of disaster such as, but not limited to, fire, tornado, earthquake, chemical spills, floods, terrorist attacks, etc.
- (h) The center's disaster plan referenced in subparagraph (g), above, must be reviewed with new staff within ten (10) days of beginning employment. All staff must review the plan a minimum of every six (6) months.

(Rule 1240-04-02-.08, continued)

- (i) Emergency telephone numbers shall be posted next to the telephone and readily available to any staff member as follows:
 1. Fire department;
 2. Police department/sheriff;
 3. Hospital;
 4. Child abuse hotline;
 5. Local emergency management agency, if available in the community;
 6. Rescue squad, if available in the community;
 7. Ambulance, if available in the community;
 8. Poison control center telephone numbers shall also be posted, if available in the community;
 9. If a generic number (such as, but not limited to, 911) is operable in the community, it shall be posted in addition to the above numbers; and
 10. Numbers where parents can be reached shall be readily available to all staff.
- (13) Duty to Report Child Abuse and Neglect.
- (a) Duty to Report.
 1. Every operator, owner, licensee, director, or staff member of, or substitute staff member or volunteer in a child care agency licensed by the Department of Human Services is individually responsible, and is required by T.C.A. §§ 37-1-403 and 37-1-605, to immediately report any reasonable suspicion of child abuse or neglect to the Department of Children's Services, local law enforcement or the judge of the juvenile court in the county of the child's residence.
 2. Determining Suspicion of Abuse/Neglect.
 - (i) Due to both the immediate risk to children's safety, as well as to the extreme risk of destroying or losing critical evidence, the agency and/or individual staff shall not delay reporting possible abuse or neglect in an attempt to conduct an investigation to verify the abuse/neglect allegations.
 - (ii) In determining a reasonable suspicion for purposes of reporting, the agency shall limit questioning of the child and may make only the most basic inquiries necessary to determine if any reasonable possibility of abuse or neglect exists.
 - (iii) The agency does not have to, and shall not attempt to, validate (or "prove") the allegation prior to making a report as required by this paragraph (13). A final determination of the validity of the report of abuse or neglect shall be made exclusively by the Department of Children's Services and/or by law enforcement based upon the report by the child care agency's staff.

(Rule 1240-04-02-.08, continued)

3. Each center shall develop procedures, approved by the Department of Human Services in conformity with DCS policy, for staff to follow to report suspected abuse and neglect.
 4. Any statement from a child reasonably indicating abuse/neglect of that child or another child or any evidence of abuse/neglect observed on a child shall be immediately reported by staff to the Department of Children's Services in a manner specified by that department, to local law enforcement or to the judge of the juvenile court in the county of the child's residence.
- (b) The telephone numbers of the Department of Children's Services, the local law enforcement or the juvenile judge of the county of the child's residence for staff to call to report suspected abuse and neglect shall be posted in a conspicuous location by each telephone.
- (c) Prohibited Procedures for Reporting Suspected Child Abuse/Neglect/Penalties.
1. The agency shall not develop or implement a policy that inhibits, interferes with or otherwise affects the duty of any staff, including substitutes and volunteers, to report suspected abuse or neglect of a child as required by subparagraph (a) above and T.C.A. §§ 37-1-403 and 605, and shall not otherwise directly or indirectly require staff to report to the agency management or seek the approval of agency management prior to any individual staff member reporting the suspected abuse or neglect.
 2. A report of suspected child abuse or neglect of a child enrolled in the child care agency by the operator, owner, licensee, director or staff member of, or substitute staff member or volunteer in, a child care agency shall not be made to any other entities or persons, including, but not limited to, hospitals, physicians, or educational institutions as an alternative to or substitute for the reporting requirements to the persons or entities specifically listed in subparagraph (a) above.
 3. The operator, owner, licensee, director, or staff member of, or substitute staff member or volunteer in, the child care agency shall not suggest to, advise or direct a parent or caretaker of a child enrolled in the child care agency to make a report of suspected child abuse or neglect regarding that parent's or caretaker's own child who is enrolled in the child care agency as a means of fulfilling the duty of the operator, owner, licensee, director, or staff member of, or substitute staff member or volunteer in, the child care agency to report child abuse or neglect as required by T.C.A. §§ 37-1-403 and 37-1-605.
 4. Because the statutory requirements of T.C.A. §§ 37-1-403 and 37-1-605 do not authorize the prohibited procedures described in parts 1-3 of this subparagraph (c) to fulfill the statutory duty of any person, and especially the duty of those licensed by the State of Tennessee to care for and protect vulnerable children, to make timely and effective reports of child abuse and neglect to appropriate investigative agencies, and because the prohibited procedures described in parts 1-3 of this subparagraph (c) are completely unreliable procedures to ensure that the appropriate authorities are able to timely and satisfactorily investigate suspected child abuse or neglect, any action that does not comply in all respects with subparagraph (a) above will not fulfill the statutory duty to report child abuse or neglect and the licensing requirements of this Chapter.
 5. Failure to Report Properly Is Grounds for Suspension, Denial or Revocation of the Agency License.

(Rule 1240-04-02-.08, continued)

- (i) Failure to make the reports required by subparagraph (a) above or the use of the prohibited methods described in parts 1-3 of this subparagraph (c) as an attempt to fulfill the duty to report suspected child abuse or neglect, for children in the care of the child care agency are, by themselves, grounds for suspension, denial or revocation of the agency's license.
 - (ii) If the facts establish by a preponderance of the evidence that there has not been strict compliance with the requirements of subparagraph (a) above or that the prohibited procedures described in parts 1-3 of this subparagraph (c) have been utilized as an alternative means of fulfilling the requirements of subparagraph (a) above, these circumstances shall create a rebuttable presumption for the Administrative Law Judge and the Child Care Agency Board of Review that the duty to report child abuse or neglect has not been fulfilled, and this ground for suspension, denial, or revocation of the agency's license by the Department of Human Services shall be sustained unless such presumption is rebutted by a preponderance of the evidence.
- (d) Agency Duties During Investigations of Child Abuse and Neglect; Custodial Authority of Children.
1. Every operator, owner, licensee, director, or staff member of, or substitute staff member or volunteer in, a child care agency licensed by the Department of Human Services shall fully cooperate with all agencies involved in the investigation of child abuse or neglect, and with the Department of Human Services in efforts to provide protection for children enrolled in the child care agency.
 2. The agency shall provide access to records of children and staff.
 3. The agency shall allow appropriate investigators to interview children and staff.
 4. The agency shall not interfere with a child abuse and neglect investigation.
 5. The agency shall protect the child by requesting the investigator's identification.
 6. The agency shall maintain confidentiality of the investigation and shall not disclose the investigation or details of the investigation except as required to carry out procedures for the protection of children or as otherwise directed by the Department of Children's Services, law enforcement or the Department of Human Services.
- (e) Upon notification of a pending abuse/neglect investigation of any agency staff member or resident of a home-based center, the agency shall enter into a Safety Plan with the Department regarding the individual's access to the agency and to children in the care of the agency.
- (f) All agency staff, including non-caregiving staff, shall receive training every six (6) months regarding procedures to report child abuse and neglect.

Authority: T.C.A. §§4-5-202, 37-1-101 et seq., 37-1-113, 37-1-401 et seq., 37-1-601 et seq., 71-3-501 et seq., and 71-3-502(a)(2), **Administrative History:** Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005. Amendment filed November 14, 2006; effective January 28, 2007

1240-04-02-.09 PHYSICAL FACILITIES.

- (1) Inspections.
 - (a) Facilities that have been unlicensed, relocated, and/or renovated, and new construction, major renovations, additions to existing facilities, and /or changes in occupancy shall comply with the standards of the fire prevention division of the Tennessee Department of Commerce and Insurance and of the Division of Food and General Sanitation of the Department of Health.
 - (b) Fire safety requirements and environmental standards shall be met before a license can be issued.
 - (c) Requests for inspections are made by the Department, but it is the responsibility of the applicant to obtain verification of the inspections and the approvals. The Department of Human Services will not intervene with Federal, State or local agencies on behalf of an applicant/licensee in any effort to obtain the approvals required by this Chapter.
- (2) Plans. Plans for new construction must be drawn by a registered architect or engineer and submitted to the fire prevention division of the Department of Commerce and Insurance and to the local health department when required by such departments and in accordance with the respective departments' procedures.
- (3) Continuing compliance.
 - (a) Physical facilities shall at all times meet all requirements and codes applicable to child care as set forth by the fire safety section of the Department of Commerce and Insurance and the Food and General Sanitation section of the Department of Health, as well as any updated fire safety or environmental standards for child care adopted by these departments.
 - (b) Failure to maintain such approved inspections may, in itself, result in the immediate suspension of all or part of the drop-in center's license.
- (4) Annual inspection. All facilities shall be inspected and approved annually by either state codes enforcement officers or authorized local fire safety inspectors and environmentalists.
- (5) The drop-in center shall not be located in a building used for purposes that are or may potentially be hazardous to children.
- (6) There shall be a working telephone in the center. If answering machines/voice mail must be used, they shall be monitored at thirty (30) minute intervals (except when staff and children are off premises) so that emergency messages can be received. Parents shall be informed that answering machines/voice mails are used.
- (7) Facilities shall provide at least thirty (30) square feet of useable indoor play space per child, not including restrooms, halls, kitchen, or office space. Each nap room must also contain thirty (30) square feet of floor space per child.
- (8) Outdoor play areas shall contain a minimum of fifty (50) square feet of useable play space for each child using the area at one time.
- (9) The areas where children play or are cared for shall be properly maintained. These areas shall be free of hazardous items or materials unless adequately protected by storage, inaccessibility, proper supervision, or other safety procedures. These areas shall present no

(Rule 1240-04-02-.09, continued)

conditions which may be hazardous to children. All such areas shall be free of all animal wastes.

(10) Trampolines are prohibited.

Authority: T.C.A. §§4-5-202, 71-3-501 et seq., and 71-3-502(a)(2).. **Administrative History:** Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005.

1240-04-02-.10 CARE OF CHILDREN WITH SPECIAL NEEDS.

- (1) In addition to the preceding rules, if children with disabilities are cared for in the center, the requirements of paragraphs (2) and (3) below shall be met.
- (2) When children with disabilities are enrolled, all reasonable and appropriate efforts shall be made to provide those children with equal opportunities to participate in the same program activities as their peers.
- (3) The drop-in center shall have written emergency plans for children with disabilities where more assistance would be needed in case of an emergency. Examples: non-ambulatory children, or children with a hearing or visual impairment.

Authority: T.C.A. §§4-5-202, 71-3-501 et seq., and 71-3-502(a)(2).. **Administrative History:** Chapter 1240-04-02 assigned a new control number, removed and renumbered to 0250-4-2 filed and effective March 25, 1999. New rule filed November 15, 2004; effective January 29, 2005.