

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

**CHAPTER 1240-04-03  
LICENSURE RULES FOR CHILD CARE CENTERS**

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**1240-04-03-.01 SCOPE AND PURPOSE.**

- (1) Scope of Rules. These rules are applicable to the licensing of child care centers that care for thirteen (13) or more children, ages six (6) weeks - seventeen (17) years of age for less than twenty-four (24) hours per day as defined by T.C.A. §§ 71-3-501 et seq. Any conflict between this Chapter and any other rules of the Department concerning the licensing procedures and regulations governing child care center standards and licensing and appeal procedures for child care centers shall be resolved by reference to these rules.
- (2) Purpose of Licensing. The primary purpose of licensing is the protection of children. These minimum requirements seek to maintain the adequate health, safety, and supervision of children while in a group care setting. The secondary purpose of licensing is to promote developmentally appropriate child care.

**Authority:** T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2). **Administrative History:** Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed April 22, 1992; effective June 6, 1992. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Repeal and new rule filed June 20, 2006; effective September 3, 2006.

**1240-04-03-.02 DEFINITIONS.**

For purposes of this Chapter, the following definitions are applicable:

- (1) Administrative Hearing. A fair hearing that is held under the Administrative Procedures Act rather than in a court of law. The purpose of the hearing is to allow an agency the opportunity to challenge licensing enforcement actions taken by the Department.
- (2) Annual License. An annual permit issued by the Department to a child agency, authorizing the licensee to provide child care in accordance with provisions of the license, the law, and requirements (rules) of the Department.
- (3) Applicant. The owner or owner's authorized representative who is required, pursuant to the provisions of these rules, to sign the application for a license.

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

- (4) Auxiliary staff. Full and part-time employees of the agency who provide non-caregiving services.
- (5) Capacity. The maximum number of children who can be physically located in the child care space at any given point in time. See also, "Licensed Capacity".
- (6) Caregiver. An individual, whether paid or unpaid, including the Primary Caregiver, who is responsible for meeting the supervision, protection, and basic needs of the child, and who is used to meet the adult:child ratios required by these rules.
- (7) C.C.P. Certified Childcare Professional. An early childhood educational credential granted by the National Child Care Association.
- (8) C.D.A. Child Development Associate. An early childhood educational credential granted by the National Council for Professional Recognition.
- (9) Child or Children. A person or persons under eighteen (18) years of age.
- (10) Child Care. As defined by T.C.A. § 71-3-501, the provision of supervision and protection, and, at a minimum, meeting the basic needs, of a child or children for less than twenty-four (24) hours a day.
- (11) Child Care Center. "Child care center" means any place or facility operated by any person or entity that provides child care for three (3) or more hours per day for at least thirteen (13) children who are not related to the primary caregiver; provided, that a child care agency shall not be classified as a "child care center" that operates as a "group child care home" and keeps three (3) additional school-age children as permitted in subdivision (27); provided, further, that all children, related or unrelated shall be counted in the adult-to-child supervision ratios and group sizes applicable to child care centers; with the exception, that if the child care center is operated in the occupied residence of the primary caregiver, children nine (9) years of age or older who are related to the primary caregiver will not be counted in determining the adult-to-child supervision ratios or group sizes applicable to child care centers if such children are provided a separate space from that occupied by the child care center. The Department may permit children in the separate space to interact with the children in the licensed child care center in such manner as it may determine is appropriate.
- (12) Child Care Agency. "Child care agency" or "agency" means, and only where the context requires in any other provision of law:
  - (a) A place or facility, regardless of whether it is currently licensed, that is operated as a "family child care home", a "group child care home", a "child care center", or a "drop-in center", as those terms are defined in this part; or
  - (b) A place or facility that provides child care for three (3) or more hours per day for five (5) or more children who are not related to the primary caregiver.
- (13) Child Care System. The existence of two (2) or more facilities used for child care purposes which are under the ownership, administration, or control of any individual(s), corporation, partnership, cooperative, or other public or private entity of any kind.
- (14) Commissioner. The executive head of the Department of Human Services, appointed by the Governor.
- (15) Conventional Care. Child care services provided between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday.

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

- (16) Day Care. Synonymous with definition of “child care”, above.
- (17) Department (DHS). The Tennessee Department of Human Services and its authorized representatives.
- (18) Developmentally Appropriate. Practices which use a knowledge of child development to identify the range of appropriate behaviors, activities, and materials for a specific age group. This knowledge is used in conjunction with an understanding about individual children’s growth patterns, strengths, interests, and experiences to design the most appropriate learning environment. A developmentally appropriate curriculum provides for all areas of a child’s development, physical, emotional, social, and cognitive, through an integrated approach.
- (19) Director. The on-site manager for the agency who has overall responsibility for the daily oversight of all staff and direct child care services.
- (20) Drop-In Child Care Center. A place or facility operated by any person or entity providing child care, at the same time, for fifteen (15) or more children, who are not related to the primary caregiver, for short periods of time, not to exceed fourteen (14) hours per week and for not more than seven (7) hours per day for any individual child during regular working hours, Monday - Friday 6:00 a.m. to 6:00 p.m.; provided, however, that a drop-in center may provide such child care during evenings after 6:00 p.m. and weekends, Friday, 6:00 p.m. - Sunday, 10:00 p.m., so long as the drop-in center provides no more than a total of twenty (20) hours per week, exclusive of snow days, defined as days when the school of the affected child is closed; provided, further, that drop-in centers may provide such care during snow days; provided, however, that, notwithstanding any other requirements of this part, training requirements for the staff of this class of child care agency shall be limited to basic health and safety precautions and the detection and reporting of child abuse and neglect for children in care; provided, further, that, notwithstanding any other provision of this chapter to the contrary, drop-in centers operated by not-for-profit organizations that provide child care for no more than two (2) hours per day with a maximum of ten (10) hours per week without compensation, while the parent or other custodian is engaged in short-term activities on the premises of the organization, shall register as providing casual care and shall not be deemed to be a drop-in center or regulated as a drop-in center.
- (21) Exemption. A finding by the Department that, pursuant to the provisions of T.C.A. § 71-3-503, a program involving children is not required to be licensed by the Department of Human Services.
- (22) Extended Care. Child care services offered between the hours of 6:00 p.m. and 6:00 a.m., Monday through Friday, and weekend child care.
- (23) Family Child Care Home. Any place or facility that is operated by any person or entity that provides child care for three (3) or more hours per day for at least five (5) children but not more than seven (7) children who are not related to the primary caregiver; provided, that the maximum number of children present in the family child care home, including related children of the primary caregiver shall not exceed twelve (12), with the exception that, if the family child care home is operated in the occupied residence of the primary caregiver, children related to the primary caregiver nine (9) years of age or older will not be counted in determining the maximum number of children permitted to be present in a “family child care home” if those children are provided a separate space from that occupied by the family child care home. The Department may permit children in the separate space to interact with the children in the licensed family child care home in such manner as it may determine is appropriate.

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

- (24) **Field Trip.** Any off-site activity that is not a part of the regular curriculum of the child care agency and which occurs away from the general premises of the child care agency's licensed facility and beyond reasonable walking distance.
- (a) In order to meet the requirement that the trip not be a part of the regular curriculum, the trip must be an occasional activity that does not represent a regular, ongoing service or program of the agency.
- (b) Regularly-scheduled trips (for example, weekly trips) do not meet the definition of a field trip, regardless of whether the regularly-scheduled trips are to different destinations.
- (25) **Foster Home.** A home approved by the Department of Children's Services or a licensed child-placing agency for the residential care of children. Any other agency type that may place children with surrogate families is not considered a "Foster Home" for the purposes of these Rules.
- (26) **Group.** A specific number of children comprising a specific age range and assigned to specific staff in an assigned space that is divided from the space of other groups by a recognizable barrier.
- (27) **Group Child Care Home.** Any place or facility operated by any person or entity that provides child care for three (3) or more hours per day for at least eight (8) children who are not related to the primary caregiver; provided, however, that the maximum number of children present in a group child care home, including those related to the primary caregiver, shall not exceed twelve (12) children, with the exception that, if the group child care home is operated in the occupied residence of the primary caregiver, children related to the primary caregiver nine (9) years of age or older will not be counted in determining the maximum number of children permitted to be present in a group child care home, if those children are provided a separate space from that occupied by the group child care home; and, provided, further, that up to three (3) additional school-age children, related or unrelated to the primary caregiver, may be received for child care before and after school, on school holidays, on school snow days and during summer vacation. The Department may permit children in the separate space to interact with the children in the licensed group child care home in such manner as it may determine is appropriate.
- (28) **Home School.** For the purposes of these rules home schooling is defined as the provision of full-time educational services, as recognized by the Department of Education, to a child by the child's parent in the child's primary residence.
- (29) **Infant.** A child who is six (6) weeks through fifteen (15) months of age.
- (30) **Law.** Statutory or regulatory provisions affecting the operation of a child care agency including, but not limited to, the licensing law as contained in T.C.A. §§ 71-3-501 through 71-3-513, Chapter 1240-4-5, and these rules.
- (31) **Licensee.** The owner, as defined by these rules, to whom a license to operate a child care facility is issued.
- (32) **Licensed Capacity.** The designated maximum number of children permitted in a facility as determined by the Department based upon available space, age of children, adult:child ratios, and group size. Licensed capacity shall be designated on the license.
- (33) **Meal.** Meat or meat substitute, vegetable and/or fruit, bread or bread product, and fluid milk.

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

- (34) Off-Site Activity. Any activity which occurs away from the general premises of the child care agency's licensed facility and beyond reasonable walking distance.
- (35) Operator. The individual who is an owner or administrator of a child care agency or child care system.
- (36) Owner. The individual(s), corporation, partnership, cooperative, or other private or public entity of any kind, or any combination thereof, who or which, either individually or through their authorized representatives, assume, or is legally required to assume, ultimate legal and administrative responsibility for the management and control of a child care agency.
- (37) Parent. A biological, legal, or adoptive parent, and includes, for purposes of this Chapter, a guardian, legal or physical custodian or other caretaker of a child, any of whom has primary responsibility for a child.
- (38) Physical Restraint. As used in these rules, a therapeutic safe-hold method of temporarily restraining a child who is at imminent risk of serious self-inflicted injury which is performed by trained personnel after all other methods of alleviating the danger to the child have failed.
  - (a) The term "safe-hold" includes any technique through which an adult attempts to immobilize a violent child by wrapping their limbs around the child. The term does not include holds administered for the sole purpose of providing comfort or security to a distressed child.
  - (b) The term "serious self-inflicted injury" includes, but is not limited to, violent outbursts in which a child throws himself/herself against a wall, is hitting or cutting himself/herself, etc.
- (39) Preschool Child. A general term for any child who is six (6) weeks through five (5) years of age and not in kindergarten, including children who are more specifically defined under this subchapter as an "Infant" or a "Toddler".
- (40) Related. As used in this Chapter, any children of the following relationships by marriage, blood, or adoption: children, step-children, grandchildren, siblings, step-siblings, nieces, and nephews of the primary caregiver. The term related includes any "grand" or "great" relationship (e.g., great niece, great grandchild, etc.) within the relationships indicated.
- (41) School-age Child. A child who is five (5) years of age and enrolled in kindergarten through seventeen (17) years of age. A five (5) year-old may be classified as a school-age child in the summer immediately preceding the child's fall entry into kindergarten.
- (42) Sick Child Care. The provision, for three (3) or more hours per day and less than twenty-four (24) hours per day, of the supervision, protection, and meeting the basic needs of children who have short term illness, symptoms of illness, or who have a medical or technological dependency that requires continuous nursing intervention.
- (43) Snack. A fluid drink and two (2) of the following components, provided, however, that a fluid drink shall not be required if a fluid drink is chosen as one of these components:
  - (a) Vegetables or fruits;
  - (b) Bread or bread alternates;
  - (c) Meat or meat alternates; or
  - (d) Fluid milk.

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

- (44) Staff. Full and part-time caregivers, employees, or unpaid volunteers of the agency.
- (45) Substitute. Paid or unpaid persons who are replacements for regular staff.
- (46) Supervision. For the purposes of this Chapter, when children are not within the direct sight and sound of an adult, the term "supervision" means the following requirements:
  - (a) Children six (6) weeks of age through nine (9) years of age:
    - 1. 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.
    - 2. 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.
  - (b) Children ten (10) years of age and older:
    - 1. The adult shall know the whereabouts and activities of the children at all times and must be able to physically respond immediately.
    - 2. Each child shall be greeted and received by the specific caregiver assigned who will have ultimate responsibility and accountability for their supervision, oversight and care.
  - (c) Mixed-age Groups. When children ages ten (10) years or above are grouped with children under ten (10) years of age, the minimum supervision requirements for children ages six (6) weeks through nine (9) years, as set forth in subparagraph (a) above, shall be followed.
  - (d) Helper devices such as mirrors, electronic sound monitors, etc. may be used as appropriate to meet these requirements.
- (47) Temporary License. A permit issued by the Department to a new child care agency allowing and authorizing the temporary licensee to begin child care operations while the agency attempts to attain full compliance with all other applicable regulations. The temporary license is valid, unless suspended, for one hundred twenty (120) days or until the Department grants or denies the application for an annual license.
- (48) Toddler. A child who is twelve (12) months through thirty (30) months of age.
- (49) Vehicle for Child Care. Any vehicle that is under the direction or control of the child care agency or which is utilized by the child care agency through contract or other agreement, and which is used to provide transportation for children enrolled in the agency, including all vehicles owned or operated by the agency, by a contractor for the agency, or by any other third party providing services to or on behalf of the agency.
- (50) Volunteer. A person who provides services for a child care agency without payment and who is used to supplement the regular staff or substitutes, but who is not used to meet the required adult:child ratios; provided, however, that volunteers can be used to meet the required adult:child ratios at the field trip destination.
- (51) Youth. A person who is ten (10) years of age through seventeen (17) years of age.

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

**Authority:** T.C.A. §§4-5-202; 71-1-105(5); 71-3-501 et seq.; 71-3-502(a)(2). **Administrative History:** Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed January 7, 1987; effective April 29, 1987. Amendment filed April 22, 1992; effective June 6, 1992. Amendment filed July 1, 1993; effective September 14, 1993. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Amendment filed September 29, 2000; effective December 13, 2000. Amendment filed October 17, 2001; effective December 31, 2001. Repeal and new rule filed June 20, 2006; effective September 3, 2006.

### 1240-04-03-.03 BASIS FOR ISSUANCE OF A LICENSE.

- (1) Annual License.
  - (a) All child care agencies are required by Tennessee law to be licensed annually by the Department, unless determined by the Department to be exempt from licensing pursuant to the provisions of T.C.A. § 71-3-503.
  - (b) 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.
  - (c) All or any part of the license may be revoked at any time upon thirty (30) days notice to the licensee; or if the health, safety, or welfare of the children in care imperatively requires, the license, or any part of the license, may be suspended immediately.
- (2) Exemption from Licensure.
  - (a) A child care agency claiming an exemption pursuant to T.C.A. § 71-3-503 shall submit to the Department's licensing director, or designee, a sworn, written request for exemption in such manner and form as the Department may require. The request shall provide a detailed description of the operation of the program or activity, the program's or activity's purpose and the applicant's basis for claiming an exemption. The Department shall provide a written response to the exemption request stating the reasons the exemption was granted or denied.
  - (b) Recognition of exemption from licensure by the Department does not exempt the child care agency from compliance with any other local, state, or federal requirements applicable to its operation.
- (3) Issuance of the license is based upon the following criteria:
  - (a) The safety, welfare and best interests of the children in the care of the agency;
  - (b) The capability, training and character of the persons providing or supervising the care to the 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;
  - (c) The quality of the methods of care and instruction provided for the children;
  - (d) The suitability of the facilities provided for the care of the children; and
  - (e) The adequacy of the methods of administration and the management of the child care agency, the agency's personnel policies, and the financing of the agency.

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

- (4) The licensee must maintain compliance with the licensing criteria listed in paragraph (3) above and any other licensing criteria throughout the licensing year.
- (5) Foster Homes may not receive a license to operate a child care facility within the foster home. The Department may, in its discretion, waive this requirement if circumstances clearly warrant such an exemption. The request for a waiver shall be submitted in writing to the Department's Licensing Director.
- (6) Falsification of Information. Includes but is not limited to falsified or forged records, documents, and/or concealment of services or children from monitoring by the Department. Falsification of any information required for licensure shall be grounds for suspension, denial, or revocation of the license.
- (7) Scope of Licensed or Exempt Operation.
  - (a) Licensed capacity shall be designated on the license. All programs shall operate within the licensed capacity or exemption criteria, the hours of operation, the specific age ranges, services offered, and at the address designated on the license or at which the operation was exempted.
  - (b) All programs shall operate within any restrictions stated on the license.

**Authority:** T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2) and (3), and 71-3-503(a)(6),(8), and (9). **Administrative History:** Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed January 7, 1987; effective April 29, 1987. Amendment filed April 22, 1992; effective June 6, 1992. Amendment filed July 1, 1993; effective September 14, 1993. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Withdrawal of repeal of 1240-04-03-.03(4)(f) and (1) filed August 31, 1998. Amendment filed September 29, 2000; effective December 13, 2000. Repeal and new rule filed June 20, 2006; effective September 3, 2006.

#### 1240-04-03-.04 PROCEDURES FOR OBTAINING A LICENSE.

- (1) Licensing Procedures.
  - (a) The procedures for licensing, administrative actions, probation, civil penalties, and suspension, denial, revocation of licenses and appeals of licensing actions taken by the Department are contained in Chapters 1240-4-5, 1240-5-13 and this Chapter.
  - (b) The Department may initiate administrative licensing action and/or judicial action against the licensee pursuant to any provisions of T.C.A. § 71-3-501 et seq. and Chapters 1240-4-5, 1240-5-13, this Chapter or any other provisions of the law.
  - (c) Any conflict between the definitions and procedures contained in Chapters 1240-4-5 and 1240-5-13 and this Chapter shall be resolved by reference to the provisions of this Chapter.
- (2) When an individual or group is giving consideration to opening a child care service/business, the local county office of the Tennessee Department of Human Services must be contacted to obtain an application.

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

- (3) The applicant shall attend one pre-application training session as provided by the Department. In the case of a program that is governed by a board of directors or trustees, this training shall be attended by the applicant. If the applicant is not responsible for the day-to-day management of the program, this training shall be attended by both the applicant and the individual responsible for the day-to-day management.
- (4) In addition to the training required in paragraph (3) above, new directors/managers shall attend a pre-service orientation training as provided by the Department and which is at least four (4) hours in length. In the case of a program that is governed by a board of directors or trustees, this training shall be attended by an individual who is responsible for the day-to-day management of the program.
- (5) A completed application form shall be signed by the owner or the owner's authorized representative and shall be submitted to the Department in the form and manner directed by the Department.
  - (a) The failure to fully complete all application forms and/or submit all required supporting documentation as directed by the Department shall void the application for a license.
  - (b) Application fees must be submitted by certified check or money order prior to the issuance of a license; provided, however, that government agencies may submit checks drawn on government accounts.
- (6) Issuance of a Temporary License to New Child Care Agencies shall require:
  - (a) Submission of all required application documentation and the license fee;
  - (b) Verification that the administrative structure of the agency, as required by subchapter 1240-04-03-.05, appropriately identifies and provides structures and procedures for the full-time management of the center;
  - (c) Verification that the qualifications for management positions fully comply with the requirements in Chapter 1240-04-03-.07 and subparagraph (j) below;
  - (d) Verification of three (3) satisfactory written references for the director/management;
  - (e) Verification that the physical facilities have received fire safety and environmental approval;
  - (f) Verification that the on-site director/manager has successfully completed a criminal background check and has a negative criminal history as required by T.C.A. § 71-3-507 and this Chapter;
  - (g) Verification that the applicant and the personnel who will care for the children are capable in all substantial respects to care for the children;
  - (h) Verification that the applicant has the apparent ability and intent to comply with the licensing law and regulations;
  - (i) Verification by the Department, after appropriate on-site inspection, that the site is suitable for child care activities and does not endanger the welfare or safety of children;
  - (j) Verification that the applicant, owner, director or an employee of the agency has not previously been associated in an ownership or management capacity with any child care agency that has been cited by the Department for violations of this part or the Department's regulations, including the agency for which the application is pending,

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

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

- (k) Verification that the criteria in 1240-04-03-.03(3) support the issuance of a restricted or unrestricted license.
- (7) Denial or Restriction of Temporary License.
- (a) If the Department determines that any of the requirements set forth in this Chapter has not been, or cannot be, satisfactorily met, then it may deny the application for a temporary license.
  - (b) If the Department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted temporary license that permits operation of a child care agency, but limits the agency's authority in one (1) or more areas of operation.
  - (c) Appeals of the denial or restriction of a license are governed by Chapters 1240-4-5 and 1240-5-13.
- (8) Terms of the Temporary Licensure Period.
- (a) The temporary license shall remain in effect, unless suspended, for a period of one hundred and twenty (120) days, or until such time as the Department grants or denies the application for an annual license, whichever is later.
  - (b) During the temporary licensure period the licensee must attain and maintain compliance with all applicable licensing regulations. The failure to obtain and maintain such compliance during this period may result in the denial of the application for an annual license.
- (9) Evaluation Process for Annual License During the Temporary Licensing Period.
- (a) The temporary license is issued to authorize the temporary licensee to begin child care operations while the agency attempts to attain full compliance with all other applicable regulations.
  - (b) The Department shall perform a minimum of two (2) visits to the child care center during the temporary licensing period, at least one (1) of which shall be unannounced.
  - (c) The Department shall perform at least one (1) observation of the caregivers' interaction with children during the temporary licensing period.
  - (d) During the temporary licensing period, the applicant must provide verification, including any required supporting documentation as directed by the Department, of compliance with all applicable licensing regulations and further, that the applicant otherwise meets, or has continued to meet, all the requirements set forth in paragraph (6) above.
  - (e) During the temporary licensure period the Department shall determine whether an annual or restricted annual license shall be issued to the applicant.
  - (f) If the Department determines that any of the requirements set forth in this Chapter has not been, or cannot be, satisfactorily met then it may deny the application for an annual license.

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

- (g) If the Department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted temporary license that permits operation of a child care agency, but limits the agency's authority in one (1) or more areas of operation.
  - (h) Issuance of an Annual License. The Department shall issue an annual license if the Department determines that the applicant:
    - 1. Has fully complied with all laws and regulations governing the specific classification of child care agency for which the application was made; and
    - 2. Has demonstrated a reasonable probability that the applicant can maintain compliance with all licensing regulations during the annual license period.
    - 3. Upon issuance of an annual license, the licensee must maintain compliance with all applicable licensing regulations and restrictions on the license, if any, throughout the licensing period.
- (10) Re-Licensure Evaluation Process.
- (a) Agencies currently licensed by the Department must submit an application for re-licensure prior to the expiration of the existing license. The failure to submit a complete application prior to the expiration of the current license shall result in the automatic termination of the annual license upon the expiration date, and a new application for a temporary license will be required.
  - (b) In addition to the evaluation requirements set forth in paragraphs (6) and (9) above, applicants for re-licensure shall be evaluated for the Report Card and Star-Quality Child Care Program as set forth in Chapter 1240-4-7.
  - (c) Upon demonstration of compliance with all laws and regulations governing the specific classification of child care agency for which the application was made; and, if the applicant has demonstrated a reasonable probability that the applicant can maintain compliance with all licensing regulations during the annual license period, the Department shall issue a new annual license.
  - (d) If the Department determines that any of the requirements set forth in this Chapter has not been, or cannot be, satisfactorily met, then it may deny the application for an annual license.
  - (e) If the Department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted annual license that permits operation of a child care agency, but limits the agency's authority in one (1) or more areas of operation.
- (11) Upon receipt of an application for a license, and throughout the temporary licensing period and during the annual licensing period, immediate access to all areas of the child care facility shall be granted to all Department representatives and other inspection authorities (i.e., fire safety, sanitation, health, Department of Children's Services, etc.) during operating hours.
- (12) If the Department determines, as a result of its inspections or investigations or those of other local, state or federal agencies or officials, or through any other means, that a plan is necessary to insure the safety of the children in the care of the child care center the Department may require the center to implement such safety plan.

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

**Authority:** T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), and 71-3-508(c).  
**Administrative History:** Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed April 22, 1992; effective June 6, 1992. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Repeal and new rule filed June 20, 2006; effective September 3, 2006.

#### **1240-04-03-.05 OWNERSHIP, ORGANIZATION, AND ADMINISTRATION.**

- (1) Required Written Statement of Agency's Purpose.
  - (a) An applicant for a license to operate a child care agency shall submit a written statement in the form and manner directed by the Department which provides the following information:
    1. A description of all services to be offered to children and parents;
    2. Ages of children to be served;
    3. Planned hours of operation;
    4. Meal service plan, including the number and type of meals and snacks to be served, as applicable;
    5. Admission requirements and enrollment procedures; and
    6. Plans for the provision for 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 of the changes.
- (2) Organizational Structure.
  - (a) The organization of every child care center shall be such that legal and administrative responsibility is clearly defined in writing, in the form and manner directed by the Department, with such writing accompanying the application for a license.
  - (b) Every child care center shall have an on-site director.
  - (c) Following the issuance of an annual license a child care center may operate without an on-site director for a period of no more than sixty (60) days total within the licensing year. A qualified person, as determined by the Department, shall be in charge in the interim.
- (3) Finances and Legal and Regulatory Status.
  - (a) In order to ensure the appropriate continuity of care for children the applicant must provide a reasonable plan with a proposed budget for the financial support of a center. The proposal must demonstrate adequate funding for both preliminary and ongoing costs associated with staffing, equipment and safe operation. Adequate financing of the center's operation shall be maintained throughout the licensing year.

(Rule 1240-04-03-.05, continued)

- (b) Proposed budgets and other relevant financial records shall be immediately available to the Department upon request.
  - (c) If any child care agency is the subject of any bankruptcy or receivership petition or order, or any other action that may affect the financial status or operational status of the child care agency, including but not limited to foreclosure notices, liens, etc., or, if any child care agency is the subject of any local, state or federal regulatory action, such as, but not limited to, the fire safety, health, environmental zoning or local, state or federal program compliance status or tax enforcement proceedings, the agency's management shall immediately notify the Department and shall provide current documentation of the status of the agency, including copies of necessary administrative and/or court legal documents applicable to that status.
- (4) Insurance.
- (a) **General liability, automobile liability and medical payment insurance coverage shall be maintained on the operations of the child care agency's facilities and on the vehicles owned, operated or leased by the child care agency and as follows:**
    - 1. General liability coverage on the operations of the child care agency facilities shall be maintained in a minimum amount of five hundred thousand dollars (\$500,000) per occurrence and five hundred thousand dollars (\$500,000) general aggregate coverage.
    - 2. 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.
    - 3. Automobile coverage for agencies that transport children:
      - (i) Automobile liability coverage shall be maintained in a minimum amount of five hundred thousand dollars (\$500,000) combined single limit of liability.
      - (ii) Medical payment coverage shall be maintained in the minimum amount of five thousand dollars (\$5,000) for injuries to children being transported in vehicles owned, operated or leased by the child care agency.
  - (b) The requirements of this paragraph shall not apply to an agency that is under the direct management of a self-insured administrative department of the state, a county or a municipality, or any combination of those three (3), or that has, or whose parent entity has, a self-insurance program that provides, as determined by the Department, the coverages and the liability limits required by these rules.
  - (c) Documentation that the necessary insurance is in effect, or that the administrative department or other entity is self-insured, shall be maintained in the records of the child care agency and shall be available for review by the Department.
- (5) Enrollment Restrictions.
- (a) Enrollment of children under six (6) weeks of age is prohibited.
  - (b) Children shall not be in care for more than twelve (12) hours in a twenty-four (24) hour period except in special circumstances (e.g., acute illness of or injury to parents, severe weather conditions, natural disaster, and unusual work hours). In such cases every effort shall be made to minimize the amount of time spent in the child care

(Rule 1240-04-03-.05, continued)

- agency by exploring and documenting alternatives (i.e., part time care, care with a relative, etc).
- (c) Individualized plans for the care of a child in excess of twelve (12) hours due to special circumstances shall be signed by the parent and the director and must be approved by the Department. Plans shall be updated annually.
  - (d) The agency shall not admit a child into care until the parent has supplied the agency with a completed application, immunizations record (for children over two (2) months of age), and a health history.
  - (e) All children physically present in the facility shall be counted in the adult:child ratio and group size, and shall have all required records on file before care is provided.
  - (f) The agency shall maintain written documentation that the parent performed an on-site visit to the agency to review the agency's facility and child care policies and practices prior to the child being enrolled into care.
- (6) Requirements for Communication with Parents.
- (a) A copy of the agency's policies, procedures, and the Department's Summary of Licensing Requirements shall be supplied to the parent/ upon admission of the child. The agency's policies shall include:
    - 1. Criteria for the disenrollment of children; and
    - 2. Specific criteria concerning the release of children to anyone whose behavior may place the children at immediate risk.
  - (b) The agency shall require the parent to sign for receipt of the policies and Licensing Summary, and the signed receipt shall be maintained by the agency in the child's file.
  - (c) Parents shall be permitted to see the professional credential(s) of staff upon request.
  - (d) The agency shall implement a plan for regular and ongoing communication with parents. This plan shall include but not be limited to communication concerning curriculum, changes in personnel, or planned changes affecting children's routine care. Documentation shall be maintained for the most recent quarter.
  - (e) During operating hours, parents shall be permitted immediate access to their children.
    - 1. The agency shall grant access to noncustodial parents if the noncustodial parent provides the agency with a valid court order granting the noncustodial parent access to the child during agency operating hours; provided, however, that such access is not otherwise restricted or prohibited by an Order of Protection or other legal document.
    - 2. The custodial parent may not prohibit or restrict, or require the agency to prohibit or restrict, the noncustodial parent's access to the child while in the care of the agency if the noncustodial parent meets the provisions of part (e)1 above.
    - 3. The agency may place reasonable restrictions on access by any parent as needed to limit disruption of the children's routines, e.g., limiting the number of days each week the parent may visit, the duration of the visit, etc. Any such limitations or restrictions must be clearly stated in the agency policy provided to

(Rule 1240-04-03-.05, continued)

the parent upon enrollment of the child, or at any subsequent time if the agency's policy is changed.

- (f) Parents shall give written permission in advance of the child's removal from the premises, including prior notification and consent for each off-site activity, except in cases of emergencies or investigative procedures conducted pursuant to the child protective service laws or other applicable laws.
  - (g) Children shall be signed in and out of the center by the custodial parent or other person specifically authorized by the parent or the appropriate staff person. Center staff shall verify parental authorization and the identity of any person to whom a child is released.
  - (h) An abuse prevention awareness program for parents shall be offered at least once a year. The program shall include a child abuse prevention component, as recognized by the Department with information on the detection, reporting, and prevention of child abuse in child care agencies and in the home.
  - (i) Notifying Parents of Licensing Violations.
    - 1. Within the licensing year, after issuing two (2) formal notices of licensing violations, a notice of Probation, or after issuing any type of legal enforcement order, the Department may, in its discretion, require the agency to notify parents and funding sources of the circumstances. Such notification shall be a letter prepared by the Department to be provided to each parent or posted in the center with parents' signatures indicating that they have seen the letter.
    - 2. The Department may, in its discretion, notify parents and funding sources of any decision affecting the child care agency rendered by the Child Care Agency Board of Review pursuant to Chapter 1240-5-13 or by any court.
- (7) General Record Requirements.
- (a) All records required by this Chapter shall be maintained in an organized manner on-site at the agency and shall be immediately available to the Department upon request.
  - (b) A child's records shall be kept for one (1) year following the child's leaving the agency; provided, however, that the health record shall be returned to the child's parent upon request when the child leaves the agency.
  - (c) Staff records shall be maintained for at least one (1) year following the separation of the staff from the agency.
- (8) Children's Records.
- (a) General Requirements for Children's Records shall include:
    - 1. A current information form, which shall be updated annually and as changes occur, and which shall include:
      - (i) The child's name and date of birth;
      - (ii) Name of parent(s);
      - (iii) Child's and parents' home addresses and phone numbers;
      - (iv) Parents' business addresses, phone numbers and work hours;

(Rule 1240-04-03-.05, continued)

- (v) Any special needs or relevant history of the child or the child's family; and
  - (vi) The name and address (home and business or school) of a responsible person to contact in an emergency if parents cannot be located promptly.
2. Name, address, and telephone number of a physician to call in case of an emergency.
  3. Written consent of parent regarding emergency medical care.
  4. A written plan stating to whom the child shall be released.
  5. Written transportation agreement between parent and the center regarding daily transportation between the home and the center and the center and the school. If parents have a third-party transportation arrangement, verification and details of the arrangement shall be maintained in the child's file.
  6. A copy of the child's health history provided by the child's parent or other caretaker, which need not be signed or certified by a health care provider, shall be on file in the center and shall be available to appropriate staff.
  7. Daily attendance records that include the time in and time out for each child.
  8. Prior written permission of parent for each off-site activity.
  9. Immunization Record.
    - (i) The agency shall maintain a written record in the child's file, as set forth in subparagraphs (b) and (c) below, verifying that the child has been immunized according to current Department of Health guidelines.
    - (ii) Exceptions to this immunization record requirement may be made only if:
      - (I) The child's physician or the health department provides a signed and dated statement, giving a medical reason why the child should not be given a specified immunization; or
      - (II) The child's parent provides a signed written statement that such immunizations conflict with his/her religious tenets and practices.
  10. Reports of Incidents, Accidents, Injuries and Fatalities.
    - (i) Incidents, accidents and injuries shall be reported to the parent as soon as possible, but no later than the child's release to the parent or authorized representative.
    - (ii) Incidents, accidents and injuries to children shall be documented immediately as follows:
      - (I) Date and time of occurrence;
      - (II) Description of circumstances; and
      - (III) Action(s) taken by the agency.

(Rule 1240-04-03-.05, continued)

- (iii) Documentation of incidents, accidents and injuries to children shall be filed in the child's record no later than one (1) business day immediately following the occurrence.
    - (iv) The Department shall be notified of any child fatality at the agency no later than one (1) calendar day immediately following the death.
  - (b) **Preschool Children's Record Requirements.**
    - 1. Additional information for infants, toddlers and all non-verbal children shall be recorded and shared with parents daily as follows: the time and amount of feeding, any incidence of excessive spitting up, toileting and/or times of diaper changes, sleep patterns, and developmental progress.
    - 2. Before a child under the age of thirty (30) months of age is accepted for care, the parent shall provide proof of a physical examination within three (3) months prior to admission, signed or stamped by a physician or health care provider. This record must be kept on file at the agency.
    - 3. A copy of each preschool child's immunization record, signed or stamped by a certified health care provider, shall be on file in the child care center and shall be available to the appropriate staff.
  - (c) **School-age Children's Record Requirements.**
    - 1. The information form for school-age children shall list the name, address, and phone number of the school the child attends.
    - 2. Before a school-age child is accepted for care, the center shall have on file a statement from the parent (or the school) that the child's immunizations are current and that his/her health record is on file at the specified school which the child attends.
    - 3. The records of any child who is five (5) years old in an agency which lacks approved kindergarten status for purposes of T.C.A. § 49-6-201 shall include a signed acknowledgment by the child's parents that recognizes that the child's attendance does not satisfy the mandatory kindergarten prerequisite for the child's enrollment in first grade. The statement of acknowledgment shall be signed by the parent and maintained in the child's file.
  - (d) **Record Requirements for Children with Special Needs.** A daily activity record that consists of a daily accounting of anything and everything the child did that day for children with special needs must be maintained.
- (9) **Staff Record Requirements Shall Include:**
  - (a) Name, birth date, the social security number used by the employer for Federal/State tax purposes, address, and telephone number of all staff members, including volunteers, and a contact for each staff member in an emergency;
  - (b) Educational background and educational experiences, including dates and places of diplomas received, and conferences, courses, and workshops attended in the preceding year;
  - (c) Documentation, signed by the examining licensed physician, licensed psychologist, licensed clinician, Nurse Practitioner or Physician's Assistant, verifying that the staff

(Rule 1240-04-03-.05, continued)

person is physically, mentally and emotionally capable of safely and appropriately providing care for children in a group setting. The documentation shall be on file within ten (10) calendar days of employment or starting to work;

- (d) An updated statement of each staff member's physical health shall be obtained every third (3<sup>rd</sup>) year, or more often if deemed necessary by the Department;
- (e) At least three (3) references from non-relatives, either written or with documented interviews of each reference, on each new staff member;
- (f) Written, verified record of employment history;
- (g) Documentation of annual performance reviews;
- (h) Date of employment and date of separation from the agency;
- (i) Daily attendance (including time in/out) of staff;
- (j) Signed and completed criminal history disclosure form;
- (k) Verification of criminal background check results;
- (l) Verification of Vulnerable Persons Registry results;
- (m) Driver records shall additionally contain:
  - 1. Copy of driver's license showing proper endorsement;
  - 2. Verification of a passed drug screen; and
  - 3. Verification of Cardiopulmonary Resuscitation (CPR) and First Aid certifications; and
- (n) Volunteer Records. Records of volunteers shall be maintained on-site at the agency and must include the names, addresses, telephone numbers and dates of service for all volunteers.

(10) 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, regulation or court order, 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 of the child's family.

(11) Posting of License, Report Card, and Other Required Documentation.

- (a) During the hours of operation, the current license to operate the child care center shall be posted near the main entrance in a conspicuous location.
- (b) During the hours of operation, the agency Report Card shall be posted near the main entrance in a conspicuous location.
- (c) The Department's toll-free child care complaint number shall be posted in a conspicuous location.

(Rule 1240-04-03-.05, continued)

- (d) The Department of Children's Services' child abuse reporting number shall be posted near the main entrance in a conspicuous location and at each telephone.
  - (e) A copy of all current applicable Department licensing rules shall be maintained in a central space and available to all staff and parents.
  - (f) No smoking signs shall be posted in a conspicuous manner; provided, however, that such signs are not required in child care agencies which are operated within private residences.
  - (g) The agency shall post any other materials as directed by the Department.
- (12) Release of Children.
- (a) Children shall only be released to a responsible designated person in accordance with the child release plan required by these rules. The agency shall verify the identity of the authorized person by requiring presentation of a photo identification.
  - (b) The person to whom the child is released must sign the child out of the agency.
  - (c) Children shall not be released to anyone whose behavior may, as deemed by a reasonable person, place the child in imminent risk; provided, however, that if the agency reasonably believes that refusal to release the child could place staff or other children in imminent risk the agency may release the child, but must immediately call 911 or other local emergency services number.

**Authority:** T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2). **Administrative History:** Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed April 22, 1992; effective June 6, 1992. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Repeal and new rule filed June 20, 2006; effective September 3, 2006.

#### 1240-04-03-.06 SUPERVISION.

- (1) Supervision Procedures.
  - (a) Agency Responsibility for the Children's Supervision.
    - 1. The management of the agency shall maintain a system that enables all children in the agency's care to receive a level of supervision of their status and activities that is appropriate to their age and their developmental, physical and mental status so as ensure their health and safety and that allows agency personnel to know the whereabouts of each child in their care.
    - 2. This system shall include a mandatory visual inspection of all areas of the building and grounds immediately prior to closing the agency for the day in order to ensure that no children have been unintentionally left in any part of the agency's facilities or in any vehicles that the agency uses to transport children.
  - (b) Children six (6) weeks of age through nine (9) years of age:
    - 1. 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.

(Rule 1240-04-03-.06, continued)

2. 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:
1. The adult shall know the whereabouts and activities of the children at all times and must be able to physically respond immediately.
  2. Each child shall be greeted and received by the specific caregiver assigned who will have ultimate responsibility and accountability for their supervision, oversight and care.
  3. When children, age ten (10) and above, are permitted to leave one caregiver's assigned area and go to another, the center shall implement a system to track the whereabouts of each child and recognize the transfer of responsibility from one caregiver to another.
- (d) Mixed-age Groups. When children ages ten (10) years or above are grouped with children under ten (10) years of age, the minimum supervision requirements for children ages six (6) weeks through nine (9) years, as set forth in subparagraph (b) above, shall be followed.
- (e) Helper devices such as mirrors, electronic sound monitors, etc. may be used as appropriate to meet these requirements.
- (f) Caregivers shall monitor children's toileting and be aware of their activities while respecting the privacy needs of the child.
- (g) When more than twelve (12) children are present on the premises, but a second (2<sup>nd</sup>) adult is not required by the adult:child ratio rules contained in this Chapter, a second (2<sup>nd</sup>) adult must be physically available on the premises.
- (h) The agency shall maintain a plan, approved by the Department, that enables a caregiver in an emergency situation to call a second (2<sup>nd</sup>) adult who can respond quickly while maintaining as much supervision of the children in care as is possible under the circumstances.
- (i) If children with special needs are enrolled, Section 504 of the federal Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) guidelines shall be consulted regarding the number of caregivers that a reasonable accommodation of a child's disability may require.
- (j) All children for whom care is provided at any one time shall be included in the agency's enrollment, square footage allowance, and licensed capacity.
- (k) Auxiliary staff may be used as emergency substitutes if their qualifications permit, but not while performing other duties.
- (l) If meals are served, any person responsible for preparing meals and washing the dishes shall not be included in the adult:child ratio while preparing these meals or washing dishes.
- (m) When more than twelve (12) children in first grade and above are present, a separate group, a separate space, and a separate program shall be provided for them.

(Rule 1240-04-03-.06, continued)

- (2) Assignment of Children to Groups.
- (a) Each child must be on roll in a defined group and assigned to that group with a specific caregiver(s).
  - (b) Maximum group size requirements shall be maintained at all times with the exception of meals served in common dining rooms, napping in common nap rooms, or outdoors on the playground.
  - (c) When infants are cared for in a center with older children, they shall not be grouped with children older than thirty (30) months of age, and a separate area shall be provided for them.
  - (d) Extended Care. Children age thirteen (13) months and older may be grouped together while sleeping in overnight care.
  - (e) In order to assure the continuity of care for children and their caregivers, the children shall be kept with the same group throughout the day and shall not be moved, shuffled, or promoted to a new group until required based upon the developmental needs of the child; provided, however, that:
    - 1. Groups, excluding infants and toddlers, may be combined for short periods for a special activity, e.g., special assembly, visiting performers or community helpers, etc., of no more than thirty (30) minutes duration per day as long as adult:child ratios are met.
    - 2. Groups, excluding infants and toddlers, may be combined, for up to one (1) hour at the beginning of the day and for up to one (1) hour at the end of the day as set forth in Adult:Child Ratio Chart 3 in part (3)(d)3 below.
  - (f) Each group must have a "home base" with enough space for the entire group.
- (3) Required Adult:Child Ratios.
- (a) The adult:child ratios shall be maintained by the child care agency while the children are indoors and on the playground.
  - (b) Adult:child ratios and group sizes may exceed the required limit by up to ten percent (10%), rounded to the nearest whole number, for no more frequently than three (3) days per week; provided, however:
    - 1. Infant and toddler groups may never exceed the required ratios and group sizes;
    - 2. The licensed capacity of the classroom may not be exceeded; and
    - 3. The Department may modify or terminate this 10% variance in individual cases according to the provisions for issuance of a restricted license pursuant to T.C.A. § 71-3-502(d)(7)(B).
  - (c) Any number of children in excess of the adult:child ratios requires a second qualified adult caregiver; provider, however, that the maximum group size shall not be exceeded.
  - (d) Adult:Child Ratio Charts

(Rule 1240-04-03-.06, continued)

1. Chart 1 – Single Age Grouping & Adult:Child Ratio Chart.

Single-Age Grouping	8	12	14	16	18	20	No Max
Infants: Six (6) wks.– Fifteen (15) mos.	1:4						
Toddlers (Twelve (12) mos.–Thirty (30) mos.)		1:6					
Two (2) years (Twenty-Four (24) mos.– Thirty-Five (35) mos.)			1:7				
Three (3) years					1:9		
Four (4) years						1:13	
Five (5) years						1:16	
School-Age (K and above)							1:20

2. Chart 2 – Multi-Age Grouping & Adult:Child Ratio Chart.

Multi-Age Grouping	10	16	18	20	22	24	No Max
Infants/Toddlers: Six (6) wks.–Thirty (30) mos.	1:5						
Two (2)-Four (4) years		1:8					
Two and One-Half (2½)– Three (3) years (Thirty (30)–Forty-Seven(47) mos.)			1:9				
Two and One-Half (2½)– Five (5) years				1:11			
Two and One-Half (2½)– Twelve (12) years	1:10						
Three (3)–Five (5) years (includes Three (3)–Four (4) years)					1:13		
Four (4)–Five (5) years						1:16	
Five (5)–Twelve (12) years							1:20

3. Chart 3 – Allowable Combined Grouping & Adult:Child Ratio Chart for first/last hour of each day only:

Maximum Grouping Size and Adult:Child Ratios				
	10	15	20	
2.5–12 years	1:10			
3–12 years		1:15		
4–12 years			1:20	

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

- (a) At naptime and during nighttime care, after the children have settled down, adult:child ratios may be relaxed so long as the children are adequately protected and all of the following requirements are met:

(Rule 1240-04-03-.06, continued)

1. At least one (1) adult shall be awake and supervising the children in each nap room/sleeping area;
  2. Infant/toddler ratios shall be maintained; and
  3. The adult:child ratio for children ages thirty-one (31) months and above can be fifty percent (50%) of the required ratio if there are enough adults on the premises so that the adult:child ratio required for children when they are awake shall be met immediately in an emergency.
- (b) Maximum group size limits do not apply as long as the appropriate adult:child ratio is met at the fifty percent (50%) level.
- (c) **Sudden Infant Death Syndrome. Because of the possibility of Sudden Infant Death Syndrome:**
1. **Infants shall be positioned on their backs when placed in a crib for sleeping.**
  2. **In order to avoid the risk of smothering, soft bedding for infants is prohibited.**
  3. **Infants shall not be wrapped tightly or swaddled in blankets for sleeping.**
  4. **Infants shall be touched by a caregiver every fifteen (15) minutes in order to check breathing and body temperature.**
  5. **Pillows shall be prohibited for infants.**
  6. **If a child appears not to be breathing, the agency must immediately begin CPR and call for emergency medical assistance.**
  7. **Before any caregiver can assume caregiving duties of any type in an infant room they shall be oriented in the foregoing SIDS procedures.**
- (d) Naproom Lighting. The areas where infants sleep shall be lit in a manner which allows the caregiver to quickly, at a glance, verify that the child's head is uncovered, that the child is breathing, and otherwise visually verify the child's condition.
- (5) Playground Supervision.
- (a) The same adult:child ratios are applicable for the playground as in the classrooms.
  - (b) A playground supervision plan shall be written and implemented which includes:
    1. Arrival and departure procedures;
    2. Supervision assignments of staff to assure that all areas of the playground can be seen so that all children can remain within sight of the caregivers;
    3. Identification of which staff will merely supervise in their assigned zone while other caregivers, if any, interact with children as play facilitators;
    4. Emergency plans specific to a variety of circumstances, such as, child injury, weather evacuation, toileting and other personal care needs of children or staff, etc.; and

(Rule 1240-04-03-.06, continued)

5. A communication link among playground supervisors and a designated staff person, if available, inside the agency.

(6) Supervision During Off-Site Activities.

- (a) Preschool Children. The adult:child ratios in charts 1 and 2 must be doubled during off-site activities.

- (b) School-age Children.

1. The number of trained caregivers required to be present on off-site activities shall be at a minimum, equivalent to the number that would be required in the classroom; additional adults to meet the following off-site ratios in chart 4 may be caregivers, volunteers or unpaid staff.

2. Chart 4 - Off-Site Activities for School-age Children

Number of Children On Activity	Trained Caregivers	Additional Adults	Total Adults Required
1 - 20	1	1	2
21 - 30	2	1	3
31 - 40	2	2	4
41 - 50	3	2	5

- (c) A minimum of two (2) adults is required for any off-site activity.
- (d) The center must maintain a system utilizing an off-site attendance roll which tracks the whereabouts of each child while off the center premises.

(7) Supervision While Swimming. When children are swimming, the adult:child ratios in Chart 5 and the following requirements shall be met:

- (a) Chart 5 - Swimming Adult:Child Ratio Chart.

Age Group	Ratio
Infants(Six (6) wks-Twelve (12)months)	1:1
Toddlers/twos (Thirteen (13) –Thirty-Five (35) months)	1:2
Three (3) Year Olds	1:4
Four (4)Year Olds	1:6
Five (5) Year Olds	1:8
School-Age (K And Above)	1:10

- (b) Although group swimming for infants and toddlers is not prohibited, it is not recommended due to the high risk.
- (c) At least one (1) adult present shall have a current certificate in advanced aquatic lifesaving skills. This person must supervise from above the level of the swimmers, preferably from an elevated lifeguard chair or otherwise from the pool deck.
- (d) The lifeguard may not be included in the required adult:child ratio while performing lifeguard duties.
- (e) Remaining caregivers shall supervise children who are both in and out of the water.

(Rule 1240-04-03-.06, continued)

- (8) Transportation Supervision. Supervision for transportation of children shall comply with rules in 1240-04-03-.13.

**Authority:** T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2). **Administrative History:** Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Amendment filed June 7, 1982; effective September 30, 1982. Amendment filed June 27, 1985; effective September 13, 1985. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed January 7, 1987; effective April 29, 1987. Amendment filed April 22, 1992; effective June 6, 1992. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Amendment filed November 18, 1999; effective January 31, 2000. Amendment filed September 29, 2000; effective December 13, 2000. Amendment filed August 27, 2001; effective November 10, 2001. Amendment filed November 21, 2002; effective February 4, 2003. Repeal and new rule filed June 20, 2006; effective September 3, 2006.

#### 1240-04-03-.07 STAFF.

- (1) Responsibility for Staff.

- (a) The board, owner, applicant/licensee, or other designated agent of the child care center shall be responsible for selecting qualified individuals of suitable character and ability to work with children.
- (b) The director, with the guidance of the board or owner of the center, shall be responsible for supervision, training and evaluation of the staff, the program and the day-to-day operation of the center.
- (c) Each location where children are kept shall have an on-site director.
- (d) To be designated as such, the on-site director of a center which is in operation up to twelve (12) hours a day shall be physically present in the center daily at least half of the total hours of operation. If a program operates more than one (1) shift the on-site director shall be physically present at least one shift.
- (e) To be designated as the director or person in charge (on a daily basis) of a multi-site child care program, he/she shall be employed full-time in that capacity.
- (f) An assistant director or other staff member shall be designated to be in charge in the absence of the director and all staff shall be notified of this designation.
- (g) Management shall evaluate all staff in the performance of their duties. Caregivers shall be evaluated for knowledge and understanding of growth and development patterns of children and understanding of appropriate activities for children as well as those with special needs.

- (2) General Staff Qualifications.

- (a) Every staff person, including auxiliary staff, substitutes, volunteers, and practicum students, shall be physically, mentally, and emotionally capable of using the appropriate judgment for the care of children and otherwise performing his/her duties satisfactorily.
- (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.

(Rule 1240-04-03-.07, continued)

- (c) Every staff person, both paid and unpaid, who are under the age of eighteen (18) years must be supervised by an adult while in the presence of children.
  - (d) At least one (1) adult available on the premises at all times during child care operating hours must be able to read and write English.
  - (e) Prior to assuming duties, each new employee shall receive orientation in, and be able to explain:
    - 1. Program philosophy;
    - 2. Job description;
    - 3. Emergency procedures;
    - 4. Policies regarding discipline of children;
    - 5. Policies regarding the reporting of child abuse; and
    - 6. Policies for receiving and dismissing children.
  - (f) Within the first two (2) weeks on the job, each employee (including auxiliary staff, such as bus driver, cook, etc.) shall receive instruction in:
    - 1. Child abuse detection, reporting, and prevention;
    - 2. Parent-center communication;
    - 3. Disease control and health promotion;
    - 4. An overview of licensing requirements; and
    - 5. Information on risks of infection to female employees of childbearing age.
  - (g) All training must be documented in the agency's records and be available for review by the Department's staff at anytime.
  - (h) The agency must maintain written documentation that each employee has read the full set of all applicable licensure rules. In addition, a copy of such rules shall be maintained in an area that is readily accessible to all staff.
- (3) Multi-Site Personnel Qualifications.
- (a) Multi-Site Coordinator. The multi-site coordinator must meet the same requirements listed below for a single-site child care center director.
  - (b) Qualifications of On-Site Director under a Multi-Site Coordinator.
    - 1. At least two (2) years of college training or a Department-recognized credential in addition to at least one (1) year of full-time (paid or unpaid) documented work experience with young children in a group setting; or
    - 2. A high school diploma or equivalent educational credential recognized by the Department in addition to at least two (2) years of full-time (paid or unpaid) documented work experience with young children in a group setting.

(Rule 1240-04-03-.07, continued)

(4) Qualifications for Director of a Single-Site Child Care Center.

(a) The director shall meet at least one (1) of the minimum qualifications listed in the chart below:

If Minimum Education Is:	The Minimum Group Care Experience Required Is:
Graduation from an accredited four-year (4-year) college	(1) year of full-time (paid or unpaid) experience in a group setting
Sixty (60) semester hours (two [2] years) of college training, with at least thirty (30) hours of which shall be in business or management, child or youth development, early childhood education or related field	Two (2) years of full-time (paid or unpaid) experience in a group setting
High School Diploma (or Department-recognized equivalent), and Tennessee Early Childhood Training Alliance (TECTA) certificate for completing thirty (30) clock hours of orientation training, or the equivalent as recognized by the Department	Four (4) years of full-time (paid or unpaid) experience in a group setting
Has been continuously employed as an on-site child care director or a child care agency owner since July 1, 2000	Not Applicable

(b) Training Requirements:

1. Prior to issuance of the first annual license. Owners (or a designee thereof who is not the on-site director) and directors shall complete a child care orientation course sponsored by the Department.
2. During the first year of employment a new director shall:
  - (i) Complete an orientation course sponsored by the Department within three (3) months of assuming her position; provided, however, that this course shall not be required if the director has:
    - (I) Received specific training meeting the requirements of this part within three (3) years prior to employment; or
    - (II) Earned a Bachelors degree, an Associates degree in child development or early childhood education, a CDA credential, or a CCP credential;
  - (ii) Have evidence of receiving at least thirty-six (36) hours of Department-recognized, competency-based training, at least six (6) hours of which must be in administration, management or supervisory training; or
  - (iii) Earn credit for the year in one (1) academic course in administration, child development, early childhood education, health/safety or other related field.
3. After the first (1<sup>st</sup>) year of employment, the director shall:

(Rule 1240-04-03-.07, continued)

- (i) Earn credit during the year in one academic course in administration, child development, early childhood education, health/safety or other related field; or
  - (ii) Have evidence of receiving at least eighteen (18) clock hours annually in Department-recognized workshops, competency-based training, or one-to-one consulting sessions:
    - (I) Six (6) hours of training shall be in administration, management or supervisory training; and
    - (II) Four (4) hours of the required eighteen (18) hours may be earned by conducting training.
- (5) Assistant Director Qualifications.
- (a) The on-site assistant director shall have at least two (2) years of college training or a Department-recognized credential and one (1) year of full-time (paid or unpaid) documented work experience in a group setting; or
  - (b) The on-site assistant director shall have earned a high school diploma or equivalent educational credential recognized by the Department and two (2) years of full-time (paid or unpaid) documented work experience in a group setting.
- (6) Caregiver Qualifications.
- (a) Each caregiver shall be at least eighteen (18) years of age. Exception: Sixteen (16) and seventeen (17) year-old students currently enrolled in a Department-recognized vocational child care program may be counted in the adult-child ratio; provided, however, that they shall always be under the direct supervision of an adult and shall not be left alone with a group of children.
  - (b) Each group shall have at least one (1) caregiver present who has a high school diploma or equivalent educational credential as recognized by the Department.
  - (c) Training for Caregivers During the First (1<sup>st</sup>) Year of Employment.
    - 1. New caregivers shall complete, within the first (1<sup>st</sup>) thirty (30) days of employment with the agency, two (2) clock hours of pre-service orientation training offered or recognized by the Department. Pending completion of the orientation training, the caregiver's employment status as a caregiver with the agency is conditional.
    - 2. New caregivers shall additionally complete sixteen (16) hours of Department-recognized, competency-based training within the first (1<sup>st</sup>) year of employment, six (6) hours of which must be completed within the first six (6) months of employment.
    - 3. Failure of the caregiver to complete the required two (2) hours of pre-service orientation and/or failure to complete the required six (6) hours of training within the first (1<sup>st</sup>) six (6) months of employment shall require that the employee be removed from caregiver duties until completion of the training.
    - 4. Exception. Caregivers who have been employed in child care during the last three (3) years, hold a Bachelors or Associates degree in child development or a related field, or who hold a CDA credential or CCP credential as recognized by

(Rule 1240-04-03-.07, continued)

the Department shall instead comply with the training requirements for experienced caregivers required in subparagraph (d) below.

- (d) Training for Caregivers After the First (1<sup>st</sup>) Year of Employment.
  - 1. Experienced caregivers shall complete at least twelve (12) clock hours annually of Department-recognized, competency-based training.
  - 2. A maximum of two (2) hours training credit annually may be credited for Child and Adult Care Food Program (CACFP) training.
  - 3. At least six (6) hours of the required training must be non-agency based, e.g., obtained outside of the center.
  - 4. Up to four (4) hours training credit annually may be earned by conducting training.
  - 5. Credit for Tennessee Early Childhood Training Alliance Orientation Training. Completion of a thirty (30) hour orientation class through the TECTA program shall satisfy the caregiver's minimum annual training requirements for two (2) years.
  
- (7) Substitutes.
  - (a) The names, addresses, telephone numbers and dates of service shall be recorded for all substitutes in the staff personnel records of the agency.
  - (b) Substitutes shall comply with the same orientation requirements of these rules for all agency staff.
  - (c) Substitutes who have acted as caregivers for two hundred (200) or more hours in the previous calendar year shall meet the training requirements contained in these requirements for caregivers.
  - (d) Substitutes providing services for thirty-six (36) hours or more in a calendar year shall:
    - 1. Meet the criminal background check requirements contained in these rules; and
    - 2. Meet the same requirements as regular staff for the physical examination required by these rules.
  - (e) Practicum Students. 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 paragraph.
  
- (8) Volunteers.
  - (a) Volunteers may be used to provide services and supplement the required caregivers or substitutes without payment, but are not counted to meet the adult:child ratios. If counted in the adult:child ratio, or provide services for more than twenty (20) hours per calendar week, volunteers shall meet the qualifications for substitutes as set forth in paragraph 1240-04-03-.07(7) above.
  - (b) Management shall be responsible for and supervise the activities of volunteers to assure safety of the children.

(Rule 1240-04-03-.07, continued)

(c) Records for volunteers shall be maintained as required in 1240-04-03-.05.

(9) Criminal Background and Vulnerable Persons Registry Review Requirements.

(a) Individuals Requiring a Fingerprint Criminal Background Review and Abuse (Vulnerable Persons) Registry Check:

1. 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;
2. Any individual applying to work as a new substitute and who is expected to offer, or who provides, at least thirty (36) hours of substitute services to the agency in any calendar year;
3. 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 § 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;
4. 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
5. 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.

(b) Pending outcome of the criminal background check 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.

(c) Requirements for Submission of a Fingerprint Sample.

1. 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.

(Rule 1240-04-03-.07, continued)

2. 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.
3. Vulnerable Persons Registry. The child care agency shall be responsible for determining, within the same time periods as set forth in part (c)2 above, the status on the Department of Health's Vulnerable Persons Registry of any individual who is required by subparagraph (a) above to undergo a criminal history background check. Verification of such status check shall be maintained in the employee's record pursuant to the requirements set forth in 1240-04-03-.05.
4. Unless otherwise notified by the Department, the child care agency shall be responsible for all costs associated with obtaining the fingerprint sample, and the Department will pay for the costs of the criminal background check by the Tennessee Bureau of Investigation.

(10) Exclusion of Persons from Contact with Children.

(a) Prohibited Criminal or Abuse or Neglect History.

1. No individual with a prohibited criminal history as defined below, regardless of whether such individual is required by these rules to undergo a criminal background check, 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.
2. 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 subparts (i) or (ii) above involves any of the following criminal offenses:

(Rule 1240-04-03-.07, continued)

- (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.
3. 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
  - (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.
4. 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.
5. 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.

(Rule 1240-04-03-.07, continued)

- (b) The child care agency shall immediately review the results of the criminal background check and Vulnerable Persons Registry review upon receipt and shall immediately exclude any individual with a prohibited history as directed by the Department.
- (c) 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 or 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.

(11) Waivers from Exclusions Due to Criminal or Abuse or Neglect History.

- (a) 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) calendar days of receiving notice of such exclusion or denial, a waiver from these automatic exclusion requirements.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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.

(12) Supplemental Background Checks

- (a) 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 paragraph (12).
- (b) The employment status of persons for whom a post-employment criminal background check was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a child care agency for whom a criminal background check 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.

**Authority:** T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), and 71-3-507.  
**Administrative History:** Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment

(Rule 1240-04-03-.07, continued)

*filed April 22, 1992; effective June 6, 1992. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Withdrawal of new rule 1240-04-03-.07(4)(e) and (m)1. filed August 31, 1998. Amendment filed September 29, 2000; effective December 13, 2000. Stay of effective date filed December 8, 2000 by The House Government Operations Committee for subparts 3, 4, 11, 12, 13 and 14 of subparagraph (e) of paragraph (4). The new effective date for the these subparts is February 13, 2001. Amendment filed August 27, 2001; effective November 10, 2001. Amendment filed October 17, 2001; effective December 31, 2001. Amendment filed September 29, 2003; effective December 13, 2003. Repeal and new rule filed June 20, 2006; effective September 3, 2006.*

#### **1240-04-03-.08 EQUIPMENT FOR CHILDREN.**

(1) General.

- (a) The manufacturer's safety instructions shall be followed for the use and/or installation of all indoor and outdoor equipment and appliances. Such instructions shall be retained and communicated to all appropriate staff.
- (b) All indoor and outdoor equipment shall be well-made and safe. There shall be no dangerous angles, no sharp edges, splinters, protruding nails, nuts and bolts, heavy or hard swing seats, head entrapment spaces, no open S-hooks or pinch points, etc. within children's reach.
- (c) Electrical cords on equipment for children shall be inaccessible to the children.
- (d) Damaged or unsteady equipment shall be repaired or removed from the room or playground immediately.
- (e) Equipment shall be kept clean by washing frequently with soap and water.
- (f) There shall be developmentally-appropriate equipment and furnishings for each age group in attendance.
- (g) Individual lockers or cubbies, separate hooks and shelves or other containers, placed at children's reaching level, shall be provided for each child's belongings.
- (h) In infant/toddler rooms, equipment and space shall be provided for climbing, crawling, and pulling without the restraint of playpens or cribs.

(2) Indoor Play Equipment.

- (a) Pieces of equipment, such as television sets, bookcases, shelves and appliances, shall be secured or supported so that they will not fall or tip over.
- (b) Sufficient indoor equipment, materials, and toys shall be available to:
  - 1. Meet the active and quiet play needs of all children enrolled;
  - 2. Provide a variety of developmentally appropriate activities so that each child has at least three (3) choices during play time; and
  - 3. Adequately provide for all the activities required in the Program subchapter (1240-04-03-.09) of these rules.

(Rule 1240-04-03-.08, continued)



- (c) Toys, educational materials, and play materials shall be organized and displayed within children’s reach so that they can select and return items independently.
  - (d) Toys and teaching aids that are small or that have small parts that can be inhaled or swallowed shall be inaccessible to infants and toddlers.
- (3) Outdoor Play Equipment.
- (a) There shall be developmentally appropriate outdoor play equipment for all children who are in care more than three (3) daylight hours.
  - (b) All outdoor play equipment and materials shall be sufficient in amount and variety so that children have an opportunity to participate in a minimum of at least three (3) different types of play using either stationary equipment and/or portable play materials.
  - (c) All outdoor play equipment shall be placed to avoid injury:
    - 1. Fall zones shall extend six (6) feet away from the perimeter of climbing equipment and away from retainer structures, fences, and other equipment and out of children’s traffic paths.
    - 2. Agencies with a playground continually licensed since prior to January 1, 2002, shall be permitted to maintain fall zones of at least four (4) feet; provided, however that any expansion or addition shall comply with the six (6) foot fall zone required by part 1 above.
  - (d) Anchorage of Equipment.
    - 1. 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.
    - 2. Portable equipment shall otherwise be anchored to the ground if the height and weight of the equipment exceeds the height and weight of the smallest child who will use the equipment.
  - (e) An acceptable resilient surfacing material, as recognized by the Department, shall cover fall zones in accordance with the following chart:

Resilient Surfacing Material	Minimum Acceptable Depth
Wood chips or Mulch	Six (6) inches
Double Shredded Bark	Six (6) inches
Pea Gravel	Six (6) inches
Medium Gravel	Eight (8) inches
Fine Sand	Eight (8) inches
Course Sand	Eight (8) inches
Artificial (Manufactured) Surface	As Recommended by Manufacturer

- (4) Naptime and Sleeping Equipment.
- (a) Napping or sleeping equipment shall be available for each preschool child who is in care for six (6) hours or more.

(Rule 1240-04-03-.08, continued)

- (b) A quiet rest area and cots or mats shall be available for all children who want to rest or nap; provided, however, that no child shall be forced to nap.
- (c) No child shall be forced to stay on a cot or on a mat for an extended period of time.
- (d) All nap/sleep equipment shall be clean and in good repair, and shall comply with the following requirements:
  - 1. Individual cots or two-inch (2") mats shall be provided for children ages twelve (12) months through five (5) years.
  - 2. Individual beds or cots shall be provided for children sleeping for extended periods of more than two and one half (2 1/2) hours, such as during nighttime care.
  - 3. Each child under twelve (12) months shall have an individual, free-standing, crib at least twenty-two inches (22") x thirty-six inches (36") with an open top.
  - 4. Mattresses and foam pads shall be upholstered with a safe, waterproof material.
  - 5. A clean sheet or towel shall be used to cover whatever the child sleeps on.
  - 6. A clean coverlet shall be available to each child.
  - 7. Soiled sheets and coverlets shall be replaced immediately.
  - 8. For health and safety reasons each crib, cot, bed or mat shall be labeled to assure that each child naps on his own bedding.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2). **Administrative History:** Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed April 22, 1992; effective June 6, 1992. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Repeal and new rule filed June 20, 2006; effective September 3, 2006.

#### **1240-04-03-.09 PROGRAM.**

- (1) Schedule and Routines.
  - (a) Routines such as snacks, meals, and rest shall occur at approximately the same time each day.
  - (b) There shall be a balance between child's choice and adult-directed activities.
  - (c) There shall be alternating periods of vigorous activity and quiet play or rest throughout the day.
  - (d) Special consideration shall be given to providing early morning and late afternoon activities that will help children cope with possible unhappiness over separation from parents and end-of-day fatigue.
  - (e) Each caregiver shall be responsible for providing consistent care for a specific infant(s)/toddler(s). "Consistent care" includes, but is not limited to: planning and

(Rule 1240-04-03-.09, continued)

record-keeping for the child, communication, general interaction with and routine care of the child.

- (f) The caregiver(s) shall give individual attention to each child, in addition to the time devoted to diapering and feeding.
  - (g) Children shall not be left in restraining devices such as swings, car seats, or high chairs (in excess of thirty (30) minutes). Stimulation shall be provided to children in those settings.
  - (h) Opportunities shall be provided for children to interact with one another.
  - (i) Opportunities shall be provided for children to be by themselves to play alone or do homework, if they choose, in a small, quiet area away from other activities.
  - (j) Children ten (10) years and older shall be encouraged to participate in the planning of their own schedules and activities.
  - (k) Extended Care. Children shall be given the same opportunities for developmentally appropriate activities during extended care hours as during conventional care hours.
- (2) Television, Radio, Videos, and Computers.
- (a) Programs, movies, computer games, and music with violent or adult content (including “soap operas”) shall not be permitted in children’s presence.
  - (b) Programs/movies/computer games shall be developmentally appropriate for the viewers.
  - (c) Parents shall be informed of movie showings and video/computer games and their ratings.
  - (d) Videos, movies, and video/computer games must be previewed by staff for content.
  - (e) If television, video tapes/DVDs, video/computer games, and/or movies are used, they shall be limited to:
    - 1. Two (2) hours per day, or the length of a movie if more than two (2) hours in the case of school-agers.
    - 2. Extended Care. Television viewing by children during night care between 6 p.m. and 6 a.m., shall be limited to one (1) hour.
  - (f) All programs shall be designed for children’s education and/or enjoyment.
  - (g) Up to one (1) additional hour per day, but not more than three (3) days per week, can be added to viewing time for computer use.
  - (h) School-age children may use computers for completion of homework with no time limitations.
  - (i) Computers, if used, shall be located in view of a caregiver for monitoring purposes.
  - (j) Computers which allow internet access by the children shall be equipped with monitoring or filtering software, or an analogous software protection, which limits children’s access to inappropriate web sites, e-mail, and instant messages.

(Rule 1240-04-03-.09, continued)

- (k) Other activity choices shall be available to children during television/movie viewing or computer use.
- (3) Outdoor Play and Playground Routines.
- (a) An opportunity for outdoor play shall be extended to children of all ages who are in care more than three (3) daylight hours; provided, however, for agencies where outdoor play is prohibitive or dangerous, as determined in the discretion of the Department, unoccupied indoor space providing fifty (50) square feet per child is acceptable.
  - (b) Children shall be allowed to experience a variety of weather conditions:
    - 1. Children shall be provided an opportunity for outdoor play when the temperature range, after adjustment for wind chill and heat index, is between thirty-two (32) degrees and ninety-five (95) degrees Fahrenheit and not raining;
    - 2. Children shall be properly dressed and the length of time outside adjusted according to the conditions and the age of the children.
  - (c) Caregivers shall be alert for signs of dehydration, heat stroke, frostbite, etc., dependent upon the season.
  - (d) Each agency shall develop a set of age appropriate playground rules that uses positive language. Rules shall be posted in each play area.
- (4) Reclining Rest Period:
- (a) A reclining rest period of at least one (1) hour shall be provided for all preschool children in care for six (6) hours or more. Extended Care: Children shall be allowed reasonable rest time as indicated in the extended night care schedule.
  - (b) Each child shall be allowed to form his or her own patterns of sleep.
  - (c) A child shall not be left in a crib or on a cot for an unreasonable length of time.
- (5) Behavior Management and Guidance.
- (a) Attention spans and skills of children shall be considered so that caregivers do not require children to engage in developmentally inappropriate behavior.
  - (b) Discipline shall be reasonable, appropriate, and in terms the children can understand.
  - (c) Discipline that is potentially shaming, humiliating, frightening, verbally abusive, or injurious to children shall not be used.
  - (d) Discipline 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.

(Rule 1240-04-03-.09, continued)

- (h) Efforts shall be made to help children develop a feeling of self-worth beginning at infancy and continuing throughout the school-age years.
  - (i) When a child is engaging in unacceptable behavior the caregiver shall, prior to disciplining the child, first distract the child's attention and substitute a desirable activity.
  - (j) Time out shall be reasonable and developmentally appropriate.
    - 1. Time out shall take place in an appropriate location within sight of the caregiver.
    - 2. The length of each time out session shall be based on the age of the child and shall not exceed one (1) minute per each year of age of the child; provided, however, that in no event shall any child below the age of thirty-six (36) months be placed in time-out for more than three (3) minutes, and no child between thirty-six (36) months and sixty (60) months of age shall be placed in time-out for longer than five (5) minutes.
- (6) Physical Care-Toilet.
- (a) Toilet training shall never be started until a child has been in the child care setting long enough to feel comfortable.
  - (b) Toilet training shall not be started until a child is able to understand, to do what is asked of them, and to communicate their need to use the bathroom.
  - (c) Children shall not be made to sit on the potty or toilet for more than five (5) minutes.
  - (d) Children shall be diapered or cleaned immediately in a safe, sanitary manner.
- (7) Educational Activities.
- (a) Activities shall be based on developmentally appropriate educational practices.
  - (b) A daily program shall provide opportunities for learning, self-expression, and participation in a variety of creative activities such as art, music, literature, dramatic play, science, and health.
  - (c) Staff shall plan ahead for developmentally appropriate activities; written lesson plans shall be provided for children of each age group.
  - (d) Indoor physical activities, requiring children to use both large and small muscles, shall be provided for children of each age group.
  - (e) For infants/toddlers, a portion of the day shall include floor time for activities that develop physical, social, language and cognitive skills.
  - (f) Because of the importance of language development and communication skills infants and toddlers shall have language experiences with adults on a daily basis.
  - (g) Personal Safety Curriculum.
    - 1. For ages three (3) through school-age, a curriculum shall be offered that shall include instruction, at least once a year, in personal safety.
    - 2. Personal Safety Curriculum Components and Guidelines.

(Rule 1240-04-03-.09, continued)

- (i) 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.
  - (ii) 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.
3. Personal Safety Instruction Requirements for School-Age Children.
- (i) For school-age children, the curriculum shall include instruction for reporting physical, sexual or verbal abuse.
  - (ii) 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 subparagraph (g) 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.
  - (iii) 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 subparagraph (g) is being provided in a public educational setting to each child enrolled in the child care agency, shall be maintained on file with the Department.
    - (II) For children who do not attend public schools, the child care provider shall secure and maintain documentation, in a form and manner approved by the Department, verifying that each school-age child enrolled in the child care agency is receiving annual personal safety instruction as required by this subparagraph (g).
4. 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.
5. 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.
6. 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 1240-04-03-.09, continued)

- (8) Extended Care. Agencies providing nighttime care shall meet the following additional requirements:
  - (a) Calming activities preceding bedtime shall be provided, e.g., listening to a story or soft music. In addition, individual/adult attention shall be provided as needed.
  - (b) Routine personal hygiene shall be encouraged and supervised. A plan shall be made with parents for brushing teeth, baths, bed dress, etc.

**Authority:** T.C.A. §§4-5-201 et seq., 4-5-202; 4-5-209, 71-1-105(5), 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:** Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998, new effective date October 31, 1998. Repeal and new rule filed June 20, 2006; effective September 3, 2006. Public necessity rule filed October 1, 2008; effective through March 15, 2009. Amendment filed December 29, 2008; effective March 14, 2009.

#### 1240-04-03-.10 HEALTH AND SAFETY.

- (1) Children's health records shall be maintained as directed under subchapter 1240-04-03-.05.
- (2) Children shall be immunized in accordance with current Department of Health guidelines unless exempted pursuant to 1240-04-03-.05. The agency shall maintain written policies for the disenrollment of children who fail to comply with Department of Health immunization guidelines in a timely manner.
- (3) Children shall be checked upon arrival and observed for signs of communicable disease during the day.
- (4) A child's temperature must be taken using a non-invasive method unless otherwise prescribed by a physician.
- (5) Symptomatic children shall be removed from the group until parents are contacted and health issues are resolved.
- (6) Universal precautions, as defined by the Department of Health, shall be followed when handling or cleaning bodily fluids.
- (7) First Aid.
  - (a) A standard first aid kit (for example, one approved by the American Red Cross) shall be available to all staff, and all staff shall be familiar with its contents and use.
  - (b) At least one staff member who has current certification or equivalent in first aid from a certifying organization recognized by the Department shall be on duty at all times. The course shall be a minimum of three (3) hours and shall be taught by a certified first aid instructor. Extended Care: All staff shall have certification or equivalent in first aid from a certifying organization recognized by the Department.
  - (c) Current and comprehensive first aid information shall be available to all staff who interact with children and the agency shall provide periodic training and updates on basic first aid and the use of the first aid kit.

(Rule 1240-04-03-.10, continued)

(8) Emergency Treatment.

(a) Cardiopulmonary Resuscitation (CPR) Requirements.

1. At least one staff member on duty shall hold current certification in Infant/Pediatric Cardiopulmonary Resuscitation (CPR) from the American Red Cross, the American Heart Association, or other certifying organization, as recognized by the Department.
2. Extended Care. All staff shall be certified in Infant/Pediatric Cardiopulmonary Resuscitation (CPR) from a certifying organization recognized by the Department.

(b) The initial CPR course shall be a minimum of four (4) hours and shall be taught by an individual currently certified, as recognized by the Department, to provide CPR instruction.

(c) When school-age children are present, and/or in a school-age only program, at least one staff member shall hold current certification, pursuant to the requirements listed in subparagraphs (a) and (b) above, in Adult CPR. Extended Care: All staff shall be certified pursuant to the requirements listed in subparagraphs (a) and (b) above, in adult CPR.

(9) Preparation for Emergencies.

(a) The agency, 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, etc. and shall inform parents of the plan.

(b) The agency shall implement these emergency procedures through timely practice drills to meet local regulations and local emergency services plans and shall maintain documentation of drills for one year. Extended Care: At least one (1) of these drills shall be conducted during extended care hours.

(c) The following emergency telephone numbers shall be posted next to all telephones and be readily available to any staff member:

1. Fire Department;
2. Police Department/Sheriff;
3. Nearest Hospital Emergency Room;
4. Child Abuse Hotline;
5. Local Emergency Management Agency;
6. Ambulance or Rescue Squad; and
7. Poison Control Center.

(d) If 911 or a similar generic number is operable in the community, it shall be posted in addition to the above numbers.

(e) All home/work contact numbers for parents shall be readily available to all staff.

(Rule 1240-04-03-.10, continued)

(10) Contagious Conditions:

- (a) Impetigo and diagnosed strep shall be treated appropriately for twenty-four (24) hours prior to readmission of the child to the center.
- (b) Children diagnosed with scabies or lice shall have proof of treatment and be free of nits prior to readmission.
- (c) The agency may not provide care and/or isolation for a child with a contagious condition unless written instructions are obtained from a licensed physician or certified health care provider.
- (d) Parents of every child enrolled shall be notified immediately if one of the following communicable diseases has been introduced into the agency:
  - 1. Hepatitis A;
  - 2. Food borne outbreaks (food poisoning);
  - 3. Salmonella;
  - 4. Shigella;
  - 5. Measles, mumps, and/or rubella;
  - 6. Pertussis;
  - 7. Polio;
  - 8. Haemophilus influenza type B;
  - 9. Meningococcal meningitis; and
  - 10. Any other illness identified by the state or local Department of Health.
- (e) The agency shall report the occurrence of any of the above diseases to the local health department as soon as possible, but no later than the end of the day in which it occurred.

(11) Notification to Parents of Accidents, Injuries, Illnesses.

- (a) Serious injuries, including but not limited to, massive bleeding, broken bones, head injuries, possible internal injury, etc. shall be reported to the parent immediately to arrange for emergency treatment.
- (b) Signs of serious illness, including but not limited to, high temperature, disorientation, coughing, vomiting or diarrhea with blood present, severe difficulty breathing, seizure, etc. shall be reported to the parent immediately to arrange for emergency treatment.
- (c) Accidents, injuries, and every sign of illnesses shall be reported, or a reasonable attempt made to report, to the parent as soon as possible, but no later than the child's release to the parent or authorized representative.
- (d) In no event shall the agency delay seeking emergency treatment due to a delay in making contact with the parent.

(Rule 1240-04-03-.10, continued)

(12) Medications.

- (a) All medications, prescribed and non-prescribed, shall be received from the parent by a designated staff person or management level staff person.
- (b) An alternate staff person shall be available to administer medication in the event the designated staff person is absent.
- (c) The staff person designated in subparagraph (a) above shall document verification of the following:
  1. The parent's written authorization to administer each medication;
  2. That the medicines or drugs are in the original prescription container, are not out of date, and are labeled with the child's name;
  3. The specific dosage and times the medication is to be administered to the child; and
  4. That the parent has provided the agency with instructions on the methods of administration.
- (d) The following documentation of administration shall be maintained in the child's file and a copy provided to the parent:
  1. Times medications administered;
  2. Noticeable side effects; and
  3. Name of staff person administering medication to child.
- (e) The parent shall sign documentation verifying that:
  1. The administration information required by subparagraph (c) above was received; and
  2. Unused medication was returned to the parent.
- (f) Medication shall not be handled by children. Exception: A physician's authorization for the current school year shall be on file for school-age children who must have self-administered medication.
- (g) Medication shall never be administered in bottles or infant feeders unless authorized by a physician.
- (h) Accessibility of Medications.
  1. All medications, prescription and non-prescription, whether requiring refrigeration or not, shall be stored in a locked compartment or container.
  2. If medications requiring refrigeration are kept in a refrigerator used for food storage, the medicine shall be put in a leak-proof locked container.
  3. Keys for these compartments/containers shall be inaccessible to children.

(Rule 1240-04-03-.10, continued)

4. Exception for Emergency Administration. Medication requiring emergency administration, as directed by the physician, nurse practitioner or physician's assistant, e.g., "EpiPen", asthma inhaler, etc., may be kept in an unlocked container that is inaccessible to children.

(i) Unused medications shall be returned to the parent.

(13) Prohibited Practices and Products.

(a) Smoking.

1. Smoking is not permitted in the presence of children.
2. Under state law, smoking in child care centers that are not private homes is restricted within a child care facility to areas where children are not permitted access, and parents must be given notice that the facility has a smoking area.
  - (i) No smoking signs must be posted conspicuously within the facility as provided by state law.
  - (ii) Federal law prohibits smoking in any part of a child care facility that is not a private residence if the facility is constructed, operated, or maintained with Federal funds.

(b) Alcoholic Beverages.

1. The use of alcoholic beverages is not permitted in child care centers during the hours of operation of the center.
2. Alcoholic beverages shall not be located in the designated child care space when children are present.

(c) Illegal or inappropriate activities on the premises, property, or in a vehicle on the facility property or used for transportation of children enrolled in the child care center, or any activity that otherwise places children at risk are prohibited.

(d) Firearms shall not be on the premises of a child care agency, in any vehicle used to transport children or in the presence of a child. Exception: In a private residence, firearms and other deadly weapons or tools on the premises shall be secured in such a way that they are inaccessible to children.

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

(f) Staff's personal belongings (such as, but not limited to, contents of purses, backpacks, coat pockets, diaper bags, etc.) shall be inaccessible to children at all times.

(14) Diapering.

(a) Children shall be diapered/changed and cleaned immediately when wet or soiled.

(b) For the protection of children and adults, the Centers for Disease Control guidelines for handwashing and diapering procedures shall be followed.

(c) The diapering area and/or toilet training area shall be located near a handwashing lavatory and shall be located in a separate area from the food preparation area.

(Rule 1240-04-03-.10, continued)

- (d) All diapering surfaces shall be off the floor, nonporous, and shall be sanitized using the following cleaning solutions for general cleaning and sanitizing purposes:
    - 1. For general cleaning and sanitation purposes, a fresh solution of one quarter (1/4) cup chlorine bleach to one gallon of water (or one (1) tablespoon chlorine bleach to (1) quart of water) must be made daily.
    - 2. Substitutions for the bleach solution required in part 1 above, that are approved for the child care setting by the Department of Health are permissible.
    - 3. The solution required in part 1 above is not appropriate for items associated with food preparation or for items that children frequently place in their mouths, and the Health Department does not permit the use of higher concentration than these in food preparation areas. Specific jurisdictions may have even more stringent requirements; therefore, the local health department should be consulted.
  - (e) A tightly covered container with plastic liner shall be used for diaper disposal and shall be inaccessible to children. This container shall be emptied by closing the liner and disposing of it in an outside receptacle.
  - (f) Special Needs Children.
    - 1. If older children are enrolled who lack independent toileting abilities, rules regarding diapering of preschool children shall apply.
    - 2. Children shall be changed in a location designated for that purpose and which provides privacy from other children and adults.
    - 3. School-age children may be diapered on the floor on a nonporous, washable diapering surface that adequately protects the floor from contamination.
    - 4. The floor beneath the diapering surface shall be immediately cleaned after each diapering.
    - 5. The diapering area shall be located near a handwashing lavatory. This area shall be in a separate location from the food preparation area.
- (15) Naptime Care.
- (a) In order to avoid the spread of airborne diseases children shall be positioned on mats in a face to feet alternating pattern.
  - (b) Spacing of cots, cribs, and mats shall allow sufficient space to walk between them.
- (16) Tuberculosis Screening.
- (a) Tuberculosis (TB) screening prior to on-going contact with children is required for any individual who:
    - 1. Was born in a country other than the United States, Canada, Western Europe, Australia, New Zealand, and Japan;
    - 2. Has a weakened immune system (Human Immunodeficiency Virus [HIV], cancer, taking chemotherapy drugs, etc.); or

(Rule 1240-04-03-.10, continued)

3. Has been recently exposed to tuberculosis.
  - (b) Any individual who has had a cough for three (3) weeks or longer shall be evaluated by a physician for tuberculosis.
  - (c) Future screening is not required for individuals who have been treated for TB or latent TB infection unless persistent pulmonary symptoms develop or there is contact with tuberculosis.
  - (d) All children born in countries other than the United States, Canada, Western Europe, Australia, New Zealand, and Japan shall present evidence of a tuberculin skin test performed in the United States at any time after twelve (12) months of age. Any child with a positive tuberculin skin test shall be referred to a physician for evaluation. After the initial evaluation, future periodic screening is not required unless the child develops persistent pulmonary symptoms or there is contact with tuberculosis.
- (17) Staff Health.
- (a) Staff health records shall be maintained as directed under subchapter 1240-04-03-.05.
  - (b) A statement of mental or emotional health shall be obtained from a psychiatrist or clinical psychologist when deemed necessary by the Department.
- (18) 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 Tennessee Code Annotated, §§ 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 (18). 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 1240-04-03-.10, 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 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 Tennessee Code Annotated, §§ 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 Tennessee Code Annotated, §§ 37-1-403 and 37-1-605.
  4. Because the statutory requirements of Tennessee Code Annotated, §§ 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.

(Rule 1240-04-03-.10, continued)

5. Failure to Report Properly Is Grounds for Suspension, Denial or Revocation of the Agency License.
    - (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.
- (19) A parent shall be notified before the child leaves the premises except in emergency circumstances, except that an authorized investigator with the Department of Children's Services or local law enforcement may take a child off the premises of the agency if he/she has obtained custody of the child as follows:

(Rule 1240-04-03-.10, continued)

- (a) Voluntary placement agreement with the parent;
- (b) Court order;
- (c) Emergency assumption of custody under T.C.A. §37-1-113 without parental permission;
- (d) If the child's parent or legal guardian is present and approves; or
- (e) In conjunction with investigative procedures under the child abuse laws.

**Authority:** T.C.A. §§4-5-201 et seq., 37-1-113, 37-1-401 et seq., 37-1-403, 37-1-601 et seq., 37-1-605, 39-17-1601 et seq., 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), and 71-3-508; and 20 U.S.C. § 6081 et seq. **Administrative History:** Original rule certified June 10, 1974. Amendment filed April 3, 1980; effective May 18, 1980. Repeal and new rule filed October 6, 1986; effective November 20, 1986. Amendment filed April 22, 1992; effective June 6, 1992. Repeal and new rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Amendment filed November 21, 2002; effective February 4, 2003. Amendment by Acts of 2003, Public Chapter 412, §§1(c) and 3 filed June 25, 2003; effective July 1, 2003. Amendment filed September 29, 2003; effective December 13, 2003. Amendment filed October 18, 2004; effective January 1, 2005. Amendment filed August 3, 2005; effective October 17, 2005. Repeal and new rule filed June 20, 2006; effective September 3, 2006.

**1240-04-03-.11 FOOD.**

- (1) Nutritional Needs.
  - (a) If the agency provides meals, the agency shall provide developmentally appropriate meals, snacks, and drinks for each child that are of sufficient proportions and nutritional value to meet each child's health needs in accordance with the following minimum requirements:
    1. For children in care at least four (4) hours, one (1) snack shall be provided, unless the four (4) hour period covers a normal meal hour, in which case a meal shall be served; provided, however that, if the child is fed their meal at home or in school the child shall be served two (2) snacks in lieu of a meal.
    2. Children in care five (5) to six (6) hours shall be provided one (1) meal and one (1) or two (2) snacks; provided, however that, if the child is fed their meal at home or in school the child shall be served two (2) snacks in lieu of a meal.
    3. Children in care seven (7) to ten (10) hours shall be provided one (1) meal and one (1) or two (2) snacks.
    4. Children in care longer than ten (10) hours shall be provided two (2) complete meals and one (1) or two (2) snacks.
    5. A meal shall be offered to children who arrive before 7:00 a.m. and have not had breakfast at home.
    6. Extended Care. For extended night care children, meal and snack service will not apply while children are asleep, but snacks will be offered if the child awakens and indicates hunger.

(Rule 1240-04-03-.11, continued)

- (b) Appropriate foods shall be encouraged; highly inappropriate foods, e.g. foods high in sugar and/or fat content, but containing low nutritional value, shall be discouraged.
  - (c) Powdered milks shall be used only in a cooked food product.
  - (d) All special needs diets shall be prepared as prescribed by a physician or by the written instructions of the parent.
  - (e) **Order for parents to be aware of the food their children are receiving the week's menus shall be planned and posted by the first day of each week and remain posted throughout the week.**
    - 1. **These menus shall be followed, although reasonable substitutions are permissible, if the substituted food contains the same nutrients.**
    - 2. **Any change shall be documented in advance of the meal.**
  - (f) Food shall not be forced on or withheld from children.
  - (g) Food as Behavior Management.
    - 1. Foods served as part of the meal/supplement pattern shall not be used as reward; nor shall food be used or withheld as a form of discipline.
    - 2. Desserts and sweets shall not be used as rewards or a form of discipline.
  - (h) New foods shall be introduced to infants and toddlers one at a time over a five (5) to seven (7) day period with parent's approval.
  - (i) The feeding schedule for infants shall be in accordance with the child's need rather than according to the hour.
  - (j) **Staff shall support and facilitate a parent's decision to continue breast feeding.**
  - (k) Parents and caregivers shall work together when weaning an infant to ensure consistency in the weaning process. Weaning shall be delayed until after an infant adjusts to group care.
  - (l) Children shall not be permitted to carry a bottle with them throughout the day.
- (2) Meal Service.
- (a) Caregivers and children shall wash their hands with soap and water.
  - (b) High chairs and tables on which food is prepared and served shall be washed with soap and water and sanitized prior to and after snacks and meals.
  - (c) Floors under tables and high chairs on which food is served shall be swept and/or vacuumed after each meal and cleaned as needed.
  - (d) Dishes and Utensils.
    - 1. Napkins, individual forks and/or spoons shall be provided for children who feed themselves.

(Rule 1240-04-03-.11, continued)

2. Individual dishes as necessary for the type of feeding shall be provided.
  3. Routine food service dishes, utensils, and bottles shall be break-resistant.
- (e) Due to the extreme risk of choking, solid foods (including cereal) shall not be given in bottles or with infant feeders to children with normal eating abilities unless authorized by a physician. Violation of this rule may result in suspension, revocation or denial of the agency's ability under its license to provide infant care.
- (f) To avoid choking, foods shall be appropriate for the eating and chewing abilities of children. Hotdogs, if served to preschool children, shall be finely chopped or quartered lengthwise because they swell if trapped in a child's throat.
- (g) At mealtime, children shall be seated at tables and chairs of appropriate size, and adults shall sit with them.
- (h) Formula and Food Brought from Home:
1. All formulas and food brought from home shall be labeled with the child's name.
  2. Milk shall be placed immediately in the refrigerator.
  3. Once milk has been warmed, it shall not be re-warmed or returned to the refrigerator.
  4. For optimum digestion, formula is to be served at body temperature.
  5. Frozen breast milk shall be dated when expressed.
  6. All formulas remaining in bottles after feeding shall be discarded.
- (i) Microwaves, Bottle Warmers, and Crock Pots. In order to prevent scald and splash burns:
1. Microwave ovens, bottle warming devices, and crock pots, including cords, shall not be accessible to preschool children.
  2. School-age children shall use microwaves only under direct supervision.
  3. Children shall never be held while removing a bottle from a crock pot or warming device.
  4. The "splash zone" area immediately surrounding microwaves, crock pots and warming devices shall be kept inaccessible to children at all times.
  5. All crock pots, bottle warmers and other warming devices shall be maintained at the device's lowest available temperature setting.
  6. Crock pots and bottle warming devices shall be secured in such a manner as to prevent them from tipping over, splashing or spilling.
  7. Bottled breast milk, infant bottles, and formula shall not be heated in a microwave oven.
  8. To prevent scalding, liquid and solid foods heated in a microwave shall be carefully checked for "hot spots" prior to serving.

(Rule 1240-04-03-.11, continued)

- (j) 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.
  - (k) 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.
  - (l) To avoid the risk of serious injury or choking, children shall always be restrained in the high chair manufacturer's restraint device while sitting in a high chair. Children who are too small or are too large to be restrained using the manufacturer's restraint device shall not be placed in a high chair.
  - (m) Bottles shall not be propped, and a child shall not be given a bottle while lying flat.
  - (n) When children are capable of using a high chair, they shall be allowed to do so and to experiment with food, with feeding themselves, and to eat with fingers or a spoon.
  - (o) Children shall never be left without adult supervision while eating.
- (3) Food Storage.
- (a) Potentially hazardous foods requiring cold storage shall be maintained at 45 degrees F or below, and accurate thermometers for measurement of the food temperature shall be kept in the refrigerators where such food is stored.
  - (b) Potentially hazardous food requiring hot storage shall be maintained at an internal temperature of 140 degrees F or above.
  - (c) Frozen foods shall be maintained at a temperature of 0 degrees F or below.
  - (d) Thermometers shall be placed in all freezers and all other cold storage equipment.
  - (e) All dry food supplies shall be stored in closed containers. These foods shall be stored in a manner to prevent possible contamination and to allow for proper cleaning of the storage area. Containers of food shall be stored a minimum of six inches above the floor or on movable dollies.
  - (f) All food shall be protected from contamination during storage, preparation, transportation, and serving.
  - (g) No poisonous or toxic materials except those required for sanitization purposes may be used or stored in a food-service area of a facility.
- (4) Food Sanitation.
- (a) Home canned food and raw milk are prohibited.
  - (b) Raw fruits and vegetables shall be washed before use.
  - (c) All eating and drinking utensils shall be thoroughly cleaned and sanitized after each use with the exception of single-service utensils which shall be discarded following use.
  - (d) Single-service articles shall be made from nontoxic materials and shall be stored, handled, and dispensed in a sanitary manner.

(Rule 1240-04-03-.11, continued)

- (e) All utensils and food-contact surfaces or equipment used in the preparation, transportation, service, display, or storage of potentially hazardous food shall be thoroughly cleaned and sanitized prior to and after each use.
- (f) Milk and food shall not be placed on the table longer than fifteen (15) minutes prior to the beginning of the meal to avoid contamination and spoilage.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2). **Administrative History:** Original rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-04-03-.10). Repeal and new rule filed June 20, 2006; effective September 3, 2006.

#### 1240-04-03-.12 PHYSICAL FACILITIES.

- (1) Inspections and Compliance with Fire, Health and Safety Standards.
  - (a) All facilities shall annually pass an inspection verifying compliance with all applicable state and local fire and environmental requirements.
  - (b) The following facilities, in addition to meeting the requirements set forth in subparagraph (a) above, shall pass inspection by the State Fire Marshall's Division of the Tennessee Department of Commerce and Insurance and the Food and General Sanitation Division of the Tennessee Department of Health:
    - 1. Facilities that are currently unlicensed;
    - 2. Facilities that have not previously been approved by the State Fire Marshall;
    - 3. Facilities that have relocated; and/or
    - 4. Existing facilities with renovations, new construction, additions to, and/or changes in occupancy.
- (2) Neither a temporary nor an annual license shall be issued unless all of the following requirements are met:
  - (a) The physical facility meets all requirements set forth in paragraph (1) above;
  - (b) The physical facilities (indoor and outdoor) present no apparent hazards; and
  - (c) The physical facilities are otherwise deemed appropriate by the Department for the safe care of children.
- (3) Requests for inspections shall be made by the Department, but it is the responsibility of the applicant to obtain verification of the inspections and the approvals.
- (4) Building Plans. Plans for new construction must be drawn by a registered architect or engineer and submitted to the State Fire Marshall and to the local health department when required by such departments and in accordance with the respective departments' procedures.
- (5) Continuing Compliance. Physical facilities shall maintain compliance with all applicable codes as set forth in paragraph (1) above, throughout the licensing year, and shall additionally

(Rule 1240-04-03-.12, continued)

comply with any updated standards issued by the Department of Health and the State Fire Marshal.

- (6) The agency shall not be located in a building used for purposes which would be hazardous to the children or would prohibit outdoor play unless the agency is an inner city agency which has requested and been granted an exception from the Department pursuant to the requirements for "Outdoor Play" found in paragraph 1240-04-03-.09(3) of this Chapter.
- (7) Telephones and Other Communication Devices.
  - (a) Due to the potential unreliability of cellular phones and the potential failure of cordless phones during power outages and other emergencies at least one (1) working, land-line telephone shall be present in the agency.
  - (b) 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.
  - (c) Parents shall be informed that answering machines/voice mail are used.
- (8) Licensed Capacity of Physical Space.
  - (a) The maximum number of children who may be present inside a physical space (e.g., the agency's "licensed capacity") shall be determined in accordance with the minimum square footages set forth in this paragraph; provided, however, the Department may, in its discretion as determined reasonably necessary to maintain the health and safety of the children in care, restrict the agency's licensed capacity below the maximum which is set forth in these rules.
  - (b) A minimum of thirty (30) square feet of usable indoor play space must be provided for each child.
  - (c) Each naproom must contain a minimum of thirty (30) square feet of floor space per child.
  - (d) Teen parenting vocational classes shall have a separate space for the group, with a minimum of thirty-five (35) square feet of usable play space per child that is apart from the classroom space for students.
  - (e) Occupational/vocational child care classes shall have a separate space for the group, with a minimum of thirty-five (35) square feet per child of usable space, apart from the classroom space for students. The designated separate space may be located in the same room and divided by movable barriers less than four feet (4') in height.
  - (f) For the purposes of calculating square footage requirements, any area used as restrooms, halls, kitchen, or office space, and any space used by cribs or large pieces of furniture, shall not be considered "usable indoor play space" and shall not be counted toward the agency's licensed capacity.
  - (g) Rooms with sufficient floor space, as defined by the requirements set forth in these rules, may be divided and used for more than one (1) group; provided, however, that each area is adequately equipped and arranged and that each group shall have the security of a stable classroom space.
  - (h) Adequate Plumbing Facilities. The agency shall have the minimum number of toilets and handwashing sinks as established by the Department in accordance with the:

(Rule 1240-04-03-.12, continued)

1. Requirements of any applicable local ordinances and regulations;
  2. Proximity of the plumbing to the classroom(s); and
  3. Ages of the children served.
- (9) Outdoor Play Area.
- (a) Outdoor play areas shall contain a minimum of fifty (50) square feet of usable play space for each child using the area at one time.
  - (b) Agencies Initially Licensed After January 1, 2002. The outdoor play area must be enclosed by a fence or barricade at least four feet (4') in height; provided, however, that the agency may request that the Department, in its discretion, waive such requirement upon a clear showing that the the lack of such fence or barricade poses no apparent or potential risk to children.
  - (c) The areas where children play or are cared for shall be properly maintained:
    1. A written playground maintenance plan shall be prepared by the agency to address routine, remedial, and preventive maintenance and to designate who is responsible for each maintenance need.
    2. A pre-play/care inspection of the outdoor play area shall be completed by the agency before children play outdoors.
    3. The play/care areas shall be free of hazardous items or materials unless adequately protected by storage, inaccessibility, proper supervision, or other safety procedures.
    4. These play/care areas shall otherwise present no conditions which may be hazardous to children.
    5. All such play/care areas shall be free of all animal wastes.
- (10) Equipment Hazards.
- (a) Cords on window blinds shall be inaccessible to children.
  - (b) Electrical cords on equipment shall be inaccessible to children.
  - (c) All indoor and outdoor areas shall be kept safe by the absence of, or the immediate removal or repair of, any object, fixture, equipment, or substance in the facility or grounds that could potentially cause injury to a child.
- (11) General Sanitation and Safety of Building and Grounds.
- (a) Water Supply.
    1. The drinking water supply serving child care facilities shall be from a source approved by the health authority having jurisdiction.
    2. Drinking water from individual single service cups or an approved drinking fountain shall be provided in all occupied rooms.

(Rule 1240-04-03-.12, continued)

(b) Sewage and Waste Disposal.

1. Connection to a public sewage disposal system shall be made where possible. The use of a private sewage disposal system shall have the approval of the local health department and it shall be operating satisfactorily.
2. All garbage shall be removed from the building daily.
3. All garbage storage receptacles shall be outside and kept closed with tight-fitting lids.
4. The area surrounding the garbage containers shall be kept clean.

(c) Building, Grounds and Pools.

1. The building shall be kept clean and maintained in good repair, without unsafe cracks, leaks or unsatisfactory plumbing.
2. All outside doors and windows shall be screened and operable unless air-conditioning is operational.
3. Adequate natural and/or artificial lighting shall be provided throughout the facility.
4. All rooms used by children shall be maintained at a temperature of between 68 degrees to 78 degrees F by means of heating, cooling or ventilation sources approved for use.
5. Stoves, hot radiators, steam and hot water pipes, fans, or other shall be adequately protected by screens, guards, insulation, or suitable measures that will protect children from coming in contact with them.
6. Broken glass, trash and debris shall be kept removed from the building and grounds.
7. Building and grounds shall be kept free of unprotected ponds, wells, cisterns, refrigerator or similar hazards.
8. Swimming pools shall be fenced to prevent entry of children without adult supervision.
9. Swimming pools and/or wading pools shall not be used without prior approval by the Health Department.
10. Grounds, tire swings and containers shall have adequate drainage to prevent standing water that can breed mosquitoes and other insects.
11. If animals or birds are kept in classrooms as pets, they shall be caged away from the food storage and preparation or service area, and cages kept clean.
12. Turtles shall not be kept as pets due to the risk of salmonella.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2). **Administrative History:** Original rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new

(Rule 1240-04-03-.12, continued)

*effective date October 31, 1998. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-4-1-.11). Repeal and new rule filed June 20, 2006; effective September 3, 2006.*

**1240-04-03-.13 TRANSPORTATION.**

- (1) Management Responsibility.
  - (a) Prior to offering child care transportation services of any type, directly or by contract, all new and existing child care agencies must provide written notice to the Department.
  - (b) Unless specifically noted otherwise within the context of the rule, the agency is responsible for compliance with all transportation provisions of this subchapter, regardless of whether the agency provides transportation directly, through a third party by contract or otherwise.
  - (c) The child care agency's management shall be fully responsible for the transportation of children between the child's home and the agency, to or from school, and/or for off site activities, on any vehicle which it operates, for which it contracts or which is otherwise under its direction or control.
  - (d) Prior to providing transportation services of any type all existing and new child care agencies must provide a written statement to the Department:
    1. Stating the type(s) of transportation that will be offered, e.g., from the child's home to the child care agency, from the child care agency to the child's school, etc.;
    2. Listing and describing the vehicles that will be used for the transportation of children; for example, "2002 small white school bus";
    3. Describing any contracts, agreements or arrangements with any third (3<sup>rd</sup>) parties for the provision of transportation services, with copies of such contracts or agreements or arrangements available upon the Department's request;
    4. Describing the agency's plan for maintaining compliance with the transportation time limits set forth in this Chapter;
    5. Describing the agency's policy, procedures and staff training plans for maintaining compliance with the responsibilities for loading, unloading, and tracking each child as set forth in this Chapter;
    6. Describing the agency's management plan for ensuring all transportation staff properly perform their duties in accordance with the licensing rules and agency policies and procedures;
    7. Describing the agency's policy, procedures and staff training plans for attaining and maintaining compliance with all applicable child safety restraint requirements as set forth in these rules and state law; and
    8. Describing the provider's policy, procedures and staff training plans for the emergency evacuation of the vehicle.
  - (e) Vehicles used to transport children and which are owned or operated by, contracted for or which are otherwise under the direction or control of the child care agency, shall carry automobile liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by rule 1240-04-03-.05(4) of this Chapter.

(Rule 1240-04-03-.13, continued)

- (2) Supervision of Children During Transportation.
  - (a) An adult must be in the vehicle whenever a child is in the vehicle.
  - (b) An adult must be seated behind the steering wheel if the motor is running and children are being loaded and/or are on board.
  - (c) Adult Monitor Requirements.
    1. An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more children ages six (6) weeks through five (5) years of age, who are not in kindergarten.
    2. An adult monitor, in addition to the driver, is required on the vehicle for all routes exceeding thirty (30) minutes for children ages six (6) weeks through five (5) years of age, who are not in kindergarten, regardless of the total number of children being transported.
    3. An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more non-ambulatory children (permanently or temporarily non-ambulatory) of any age.
    4. An adult monitor shall not be seated in the front passenger seat, but shall be seated in the vehicle in a position which will allow:
      - (i) Each child to be seen with a quick glance;
      - (ii) Each child to be heard at all times;
      - (iii) Each child's activities to be observed; and
      - (iv) The monitor to respond immediately should there be an emergency.
- (3) Responsibility for Loading, Unloading and Tracking Each Child.
  - (a) Passenger Log:
    1. A passenger log provided by, or in a format approved by the Department shall be used to track each child during transportation.
    2. The first and last name of each child received for transport shall be recorded on the passenger log. A sibling group shall not be listed as a single group entry, for example, "Smith children".
    3. Either the driver of the vehicle or the monitor shall be designated by management as the person responsible for completing the log.
  - (b) Loading Procedures:
    1. As each child is loaded onto the vehicle the time the child was placed on the vehicle shall be recorded onto the passenger log by the person designated to keep the log.
    2. If the child was loaded from home, the parent or other authorized person will additionally sign the log indicating that the child was placed on the vehicle.

(Rule 1240-04-03-.13, continued)

(c) Unloading Procedures:

1. The individual designated by the agency as responsible for the log shall update it immediately upon the child being released from the vehicle. The designated staff member shall update the log by:
  - (i) Recording the time the child was released; and
  - (ii) Initialing next to the time of release.
2. When the child is released to a parent or other authorized person, that person must sign the log indicating that the child was released to them.

(d) Confirming that Every Child Is Off of the Vehicle.

1. Driver Responsibilities. Immediately upon unloading the last child and to ensure that all children have been unloaded the driver shall:
  - (i) Physically walk through the vehicle;
  - (ii) Inspect all seat surfaces, under all seats and in all compartments or recesses in the vehicle's interior;
  - (iii) Sign the log, with the driver's full name, indicating the children are all unloaded; and
  - (iv) Give the passenger log to the monitor, or to the additional reviewer if no monitor is required.
2. Monitor Responsibilities. If a monitor was also on the vehicle the monitor shall:
  - (i) Physically walk through the vehicle;
  - (ii) Inspect all seat surfaces, under all seats and in all compartments or recesses in the vehicle's interior;
  - (iii) Sign the log with the monitor's full name indicating the children are all unloaded; and
  - (iv) If the monitor has been designated by the agency as responsible for keeping the log, the monitor shall give the log to the additional reviewer as set forth below.
3. Additional Reviewer Responsibilities:
  - (i) Agency management shall designate an additional person, who did not ride on the vehicle, to conduct an inspection once the vehicle has been unloaded.
  - (ii) The additional reviewer shall:
    - (I) Physically walk through the vehicle;
    - (II) Inspect all seat surfaces, under all seats and in all compartments or recesses in the vehicle's interior;

(Rule 1240-04-03-.13, continued)

(III) Reconcile the passenger log with the agency's attendance roll to verify that each child is off the vehicle and present in his assigned classroom. This transfer of responsibility of each child shall be verified by the reviewer's full signature on the passenger log; and

(IV) Immediately notify the director or other individual designated in charge of any discrepancies between the passenger log and the attendance roll.

(e) Loading/Unloading Children at School.

1. When children are transported to school, they shall be released in accordance with the following procedures:

(i) Children shall be unloaded only at the location designated by the school;

(ii) Children shall be unloaded from the agency's vehicle only at the time the school is open to receive them;

(iii) The driver/monitor shall watch the children who are unloaded from the vehicle walk through the entrance door designated by the school for the children; and

(iv) Any additional procedures established by the school.

2. After all the children have been unloaded at school, the vehicle shall return to the center for the review procedures outlined above.

3. When children are picked up from school they shall be loaded on the vehicle at the location designated by the school using all applicable procedures for logging of children's presence on the vehicle, release and inspection contained in this subchapter 1240-04-03-.13.

4. The child care agency shall develop written policy approved by the Department that:

(i) Contains procedures for the driver to follow in the event that a child scheduled to be picked up does not report to the vehicle; and

(ii) Insures that children will have adult supervision should the driver need to try to locate a missing child.

(f) Unloading Children at the End of the Day. When children are unloaded at the end of the day and the vehicle does not return to the center for the additional review that confirms every child is off the vehicle, the center shall develop procedures, approved by the Department, to:

1. Verify that all children are off the vehicle; and

2. Verify that each child was released to a responsible person authorized by the parent.

(4) Vehicle Monitoring Devices.

(Rule 1240-04-03-.13, continued)

- (a) All vehicles used by or on behalf of the agency for the transportation of children that are designed to transport six (6) or more passengers must be equipped with a child safety monitoring device approved by the Department which prompts staff to inspect the vehicle for children before an alarm sounds; provided, however, that such device shall not be required:
    - 1. On vehicles in which all the children being transported are five (5) years of age and in kindergarten, or older, unless any of the children are developmentally or physically disabled or non-ambulatory; or
    - 2. On vehicles used exclusively for occasional field trips.
  - (b) Only devices approved by the Department are authorized for use on such a vehicle.
- (5) Transportation Staff Qualifications.
- (a) All drivers and monitors (employed by the agency or provided through contract or otherwise), shall comply with all applicable transportation staff qualifications set forth in this subchapter.
  - (b) Documentation of all transportation staff qualifications shall be kept on file at the agency and shall be immediately available to the Department upon request.
  - (c) Drivers license. At a minimum, the person driving a vehicle used to transport children in a child care agency shall possess a current, valid Tennessee driver license with an "F" ("For Hire") endorsement or an equivalent endorsement recognized by the Department of Safety as meeting the minimum qualifications for transportation of children enrolled in child care agency in the applicable type of vehicle in which the children are being transported.
  - (d) Department of Safety Driver Requirements.
    - 1. Persons transporting children for a child care agency shall have available for review by the Department of Human Services documentation of any training and testing required and provided by the Department of Safety.
    - 2. All persons subject to this paragraph (5) shall obtain a certification document from the Department of Safety to signify that they have passed additional written or skills tests required for persons who may, in the course of their duties, drive a vehicle that transports children enrolled in a child care agency.
    - 3. All persons subject to this paragraph (5) shall be required to obtain annual training that is utilized for school bus drivers offered by the Department of Safety or such other equivalent training as the Department of Safety may determine is appropriate.
  - (e) Health Examinations for Drivers: The agency or the contractor providing transportation services shall maintain documentation, updated annually and signed by the examining licensed physician, licensed psychologist, licensed clinician, Nurse Practitioner or Physician's Assistant, verifying that the individual who drives a vehicle transporting the children for the child care agency is physically, mentally and emotionally capable of safely and appropriately providing transportation for children.
  - (f) Drug Screenings for Drivers.

(Rule 1240-04-03-.13, continued)

1. Individuals shall pass a drug screening test in accordance with procedures established by the Department:
    - (i) No later than ten (10) days prior to the individual being employed full or part-time as a driver (contract or otherwise) who provides transportation services for compensation on behalf of the agency; or
    - (ii) No later than ten (10) days prior to an existing employee (contract or otherwise) assuming driving duties, at any time.
  2. The child care agency management shall immediately review the results of the drug screen upon receipt.
  3. Upon receipt of a positive drug screen result for the individual being considered for driving duties or upon receipt of notification by a contractor or other person or entity providing transportation for compensation regarding such individual, the child care agency shall immediately:
    - (i) Notify the Department and prohibit the individual from any duties involving children enrolled in the child care agency; and
    - (ii) Enter into a safety plan approved by the Department that excludes the individual from driving for the child care agency until the individual passes a drug screen test and is otherwise approved, in writing, by the Department, to perform driving duties involving the transportation of children for the child care agency.
  4. The agency shall be responsible for verifying that a contractor, or other person or entity providing transportation for compensation to the child care agency has not employed or assigned any driving duties for the agency to any individual who fails to pass a drug screen as required by this subparagraph.
- (g) Prior to assuming their duties, all individuals responsible, or who may in the course of their duties become responsible at any time for transporting children (including drivers and monitors), shall complete Department-recognized pre-service training in:
1. The proper daily safety inspection of the vehicle as required by these rules;
  2. The proper use of child safety restraints required by these rules and state law;
  3. The proper loading, unloading, and tracking of children as required by these rules;
  4. The proper use of a blood-borne pathogen kit, first aid kit, and other required vehicle emergency equipment as required by these rules;
  5. The proper verification procedures for the evacuation of the vehicle based upon the type of vehicle and the ages of the children served; and
  6. The developmentally appropriate practices applicable to the behavior management of children during transportation.
- (h) Following the completion of pre-service transportation training, all persons responsible at any time for the transportation of children (including drivers and monitors), shall complete Department-recognized transportation training on transportation rules every six (6) months.

(Rule 1240-04-03-.13, continued)

- (i) Emergency Aid Training. All persons responsible (including all drivers and monitors), or who in the course of their duties may become responsible at any time, for the transportation of children shall hold current certification in:
    - 1. Infant/Pediatric Cardiopulmonary Resuscitation (CPR) from the American Red Cross, the American Heart Association, or other certifying organization as recognized by the Department; and
    - 2. A first aid course sponsored or approved by the American Red Cross, or other first aid course, as recognized by the Department.
  - (j) The training requirements set forth in this paragraph do not apply to individuals who provide transportation services exclusively for occasional field trips.
- (6) Vehicle Requirements and Inspections.
- (a) The requirements of this paragraph include vehicles used at anytime by the agency or by a contractor for the agency as the regular child care vehicle(s) and/or as back-up vehicles.
  - (b) The following equipment shall be maintained in the vehicle and stored in a manner which is not readily accessible to children:
    - 1. Fire extinguisher;
    - 2. Emergency reflective triangles;
    - 3. First aid kit;
    - 4. Blood-borne pathogenic clean-up kit; and
    - 5. Seat-belt cutter or similar device manufactured and designed to immediately release the vehicle's child restraint system(s) in an emergency.
  - (c) The driver or monitor assigned to the vehicle shall be familiar with the location and use of all equipment required under subparagraph (b) above.
  - (d) Emergency exiting procedures shall be practiced on a regular basis by all staff responsible for transporting children.
  - (e) The carrying, possession or storage of firearms or other weapons, alcohol or illegal substances in child care vehicles is prohibited.
  - (f) The child care agency shall maintain documentation that the following daily inspections have been performed and any necessary repairs completed or other appropriate action taken before transporting children:
    - 1. A visual inspection of the vehicle's tires for wear and adequate pressure;
    - 2. A visual inspection for working headlights and taillights (brake lights and back-up lights), signals, mirrors, wiper blades and dash gauges;
    - 3. An inspection for properly functioning child and driver safety restraints;
    - 4. An inspection for properly functioning doors and windows;

(Rule 1240-04-03-.13, continued)

5. An inspection for the presence of safety equipment required by these rules or any other provisions of law or regulations, and repair or replacement as necessary based upon visual evidence of the need to do so;
  6. A determination that the vehicle has adequate fuel; and
  7. An inspection for, and cleaning of, debris from the vehicle's interior.
- (g) The child care agency shall maintain documentation that the following maintenance is performed:
1. Receive regular inspections and maintenance by a certified mechanic in accordance with the maintenance schedule recommended by the vehicle manufacturer, and
  2. Have the following vehicle equipment certified as inspected at least every four thousand (4,000) miles if not covered by, and/or otherwise serviced in accordance with the manufacturer's maintenance schedule:
    - (i) Brakes;
    - (ii) Steering;
    - (iii) Oil levels, coolant, brake, windshield-washer and transmission fluids;
    - (iv) Hoses and belts; and
    - (v) Tires.
- (h) Department of Safety Inspections. All child care vehicles that are designed by the vehicle manufacturer to carry ten (10) or more passengers must be inspected in accordance with the schedule established by the Department of Safety. Any maintenance or repair to the vehicles disclosed by the inspections shall be the sole responsibility of the child care agency.
- (i) No vehicle which does not pass the inspections required in this paragraph (6) shall be used by the child care agency or by its contractors, or others subject to the agency's direction and control, to provide transportation services until necessary repairs, as determined by the Department, have been made.
- (7) Passenger Safety Restraints.
- (a) The provisions of this paragraph (7) apply to all transportation, including field trip transportation, provided by or on behalf of the agency.
  - (b) All child care vehicles must have a rear seat, i.e., passenger seating located behind the driver position that has been factory-installed or professionally retrofitted, and must have factory-installed or professionally retrofitted passenger restraint anchorages and passenger restraints as required by the provisions of this paragraph (7) for the age and size of the driver/passengers being transported and the type of vehicle being used; provided, however, that passenger restraint devices which are designed by the manufacturer to be attached to the seat by the end-user, e.g., add-on restraint systems such as infant carriers and harness systems, are not required to be factory-installed.

(Rule 1240-04-03-.13, continued)

- (c) All restraints must be used in accordance with the restraint manufacturer's instructions and must be secured to the vehicle in accordance with the vehicle manufacturer's and the restraint manufacturer's instructions.
- (d) Passenger air bags shall remain turned off unless an adult or a child fifteen (15) years of age or older is riding in the front passenger seat of the vehicle.
- (e) No child or adult shall ride on the floor of a vehicle.
- (f) No child shall be placed with another child in the same restraint device.
- (g) Children under four (4) years of age shall always be placed in a rear seat of the vehicle. For the purposes of this paragraph (7), a "rear seat" in any vehicle which is categorized as a "school bus" shall mean any passenger seat that has been factory-installed or professionally retrofitted and that is located behind the bus driver or behind the bus entrance which is directly to the right of the bus driver.
- (h) Effective September 1, 2007, all vehicles with a Federal Motor Vehicle Safety Standards ("FMVSS") classification of "Small School Bus" or "Multi-function School Activity Bus" and a Gross Vehicle Weight Rating (GVWR) of ten thousand pounds (10,000 lbs.) or less must, in accordance with federal law, be manufactured with a "Type 2" restraint device, i.e., a lap and shoulder belt assembly) at each designated seating position, except at side-facing positions at which a "Type 1" restraint device, i.e., a lap belt, must be used.
  - 1. Child Restraint Requirements for Vehicles Manufactured before September 1, 2007.

Child passenger restraint equipment and usage requirements contained in this paragraph (7) applicable to any vehicles manufactured before September 1, 2007, that are subject to the class/weight requirements of this subparagraph (h) shall continue to apply after such date, except as amended by law or regulation.
  - 2. Child Restraint Requirements for Vehicles Manufactured on or after September 1, 2007.

In addition to all other child passenger restraint equipment and usage requirements of this paragraph (7) applicable to any vehicles that are subject to the class/weight requirements of this subparagraph (h), children ages nine (9) years or older shall be restrained in a "Type 2" restraint device, i.e., a lap and shoulder belt, at each designated seating position in such vehicles manufactured on or after September 1, 2007, except that, at side-facing positions, a "Type 1" restraint device, i.e., a lap belt, must be used.
- (i) Child Restraint Requirements under Applicable State or Federal Law.

In addition to the requirements set forth in subparagraphs (a) through (h) above, all children shall be restrained in accordance with the requirements for child passenger restraint systems set forth in Tennessee Code Annotated, §§ 55-9-601—55-9-603 and any applicable federal law or regulation.
- (j) Adult Restraint Requirements.
  - 1. Adult Restraint Requirements for Vehicles with a Gross Vehicle Weight Rating (GVWR) of 8,500 lbs. or less:

(Rule 1240-04-03-.13, continued)

All adults operating or riding in any vehicle subject to the weight classification in this part 1 shall be restrained in a "Type 2" restraint, i.e., lap and shoulder belt assembly); provided, however, that if the seating position is not equipped with a Type 2 restraint, the adult must be restrained with a "Type 1" restraint device i.e., a lap belt.

2. Effective September 1, 2007 all vehicles with a Federal Motor Vehicle Safety Standards ("FMVSS") classification of "Small School Bus" or "Multi-function School Activity Bus" and a Gross Vehicle Weight Rating (GVWR) of ten thousand pounds (10,000 lbs.) or less must, in accordance with federal law, be manufactured with a "Type 2" restraint device, i.e., a lap and shoulder belt assembly) at each designated seating position, except at side-facing positions at which a "Type 1" restraint device, i.e., a lap belt, must be used.

- (i) Adult Restraint Requirements for Vehicles Manufactured Before September 1, 2007.

Adult driver/passenger restraint equipment and usage requirements contained in this paragraph (7) applicable to any vehicles manufactured before September 1, 2007, that are subject to the class/weight requirements of this part 2 shall continue to apply after such date, except as amended by law or regulation.

- (ii) Adult Restraint Requirements for Vehicles Manufactured on or After September 1, 2007.

In addition to all other adult driver/passenger restraint equipment and usage requirements of this paragraph (7) applicable to any vehicles that are subject to the class/weight requirements of this part 2, adults operating or riding in such vehicles shall be restrained in a "Type 2" restraint device, i.e., a lap and shoulder belt at each designated seating position in such vehicles manufactured on or after September 1, 2007, except that, at side-facing positions, a "Type 1" restraint device, i.e., a lap belt, must be used.

(8) Capacity Limitations and Cargo Requirements.

- (a) The total number of adults and children in vehicles used for the transportation of children enrolled in the agency shall never exceed the manufacturer's rated passenger capacity.
  - (b) All cargo, luggage or equipment of any type shall be adequately secured at all times in such manner as to protect the passengers in case of accident or emergency maneuvers.

(9) Requirements for Child Care Transportation Vehicles Effective January 1, 2007.

- (a) All vehicles used by a child care agency that are designed to carry ten (10) or more passengers must conform to all Federal Motor Vehicle Safety Standards (FMVSS) governing either "large" school buses or "small" school buses, as applicable, in accordance with the provisions of the FMVSS described in 49 Code of Federal Regulations Part 571, or as such law may be amended.
  - (b) The requirements of this paragraph do not apply to vehicles used exclusively for the provision of occasional field trips.

(10) Vehicle Signage Requirements.

(Rule 1240-04-03-.13, continued)

- (a) The requirements of this paragraph are applicable to all vehicles used for the transportation of children enrolled in the agency, including vehicles operated by a contractor of the agency or vehicles operated by any other provider of services under the direction or control of the child care agency, unless specifically exempted by these rules.
- (b) On each side of the vehicle the following information shall be displayed in a block font that is not less than one and one-half inches (1½") in height:
  - 1. The full name of the child care agency and emergency contact number for the agency in any font or color, including the agency's current logo and lettering scheme, which is clearly readable at a distance of fifty feet (50') on a stationary vehicle in daylight conditions; and
  - 2. The words "Child Care Transportation Complaints" followed by the Department's toll-free Child Care Complaint phone number in black text on a clearly contrasting background that is clearly readable at a distance of fifty feet (50') on a stationary vehicle in daylight conditions.
- (c) On the rear of the vehicle the following information shall be displayed:
  - 1. The full name of the child care agency and the words "Child Care Transportation Complaints" followed by the Department's toll-free Child Care Complaint phone number in black letters in a block font not less than one inch (1") in height on a clearly contrasting background that is clearly readable at a distance of forty feet (40') on a stationary vehicle in daylight conditions.
  - 2. Exception: Display of the Complaint number is not required on passenger automobiles (excluding minivans) used for transportation by the child care agency with a manufacturer's rated seating capacity of six (6) or fewer passengers.
- (d) The vehicle signage required by these rules shall be applied to the vehicle in one of the following formats:
  - 1. Painted directly on the vehicle in accordance with the paint manufacturer's instructions using paint recommended by the paint manufacturer as appropriate for use on a vehicle; or
  - 2. A weather-resistant sign securely fastened to the vehicle. The term "securely fastened" includes magnetic signs and signs bolted to the vehicle. The term does not include adhesives such as tape or glue unless recommended by the adhesive manufacturer as being appropriate for outdoor use on a vehicle.
- (e) Special Requirements for Centralized Transportation.
  - 1. Central transportation operations or any other entity that may own or operate more than one child care agency and which may provide centralized transportation services for its child care agencies; and/or
  - 2. Contractors, or other transportation service providers under the direction or control of the child care agency, which may provide centralized transportation services to more than one child care agency may substitute for the name and phone number of the child care agency the full name and emergency contact number of the central operator, contractor or other transportation service

(Rule 1240-04-03-.13, continued)

providers under the direction or control of the child care agency. If the name on the vehicle does not clearly designate the agency or entity as one providing child care transportation, words such as "Child Care Transportation Vehicle" or "Child Care Transportation Services", or similar language approved by the Department, must be displayed on the vehicle in a manner that demonstrates, as determined by the Department, that the vehicle is providing child care transportation.

- (f) Exceptions to Vehicle Identification Requirements.
  1. Vehicles used exclusively for the provision of occasional field trips; and
  2. Vehicles used exclusively for the limited provision of emergency transportation, e.g., as a result of the mechanical breakdown of the regular child care vehicle.
  3. The Department may, in its discretion, waive the requirements of this paragraph for any child care agencies owned, operated, or under the direction or control of a public agency.
  4. The Department may, in its discretion, waive the requirements of this paragraph if circumstances clearly warrant such an exemption.

(11) Limits on Time Children Are Transported/Transportation Waivers.

- (a) Children shall not spend more than forty-five (45) minutes traveling one way to or from the agency's facility or to or from school; provided, however, this provision is not applicable to field trips.
- (b) If extended transportation beyond the limits in subparagraph (a) is necessary in special circumstances, or as may be required by geographic factors, an individualized plan for each child shall be established and signed by the parent and the child care agency and approved by the Department prior to providing such transportation.

**Authority:** T.C.A. §§4-5-201 et seq., 55-9-601 through 55-9-603, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), and 71-3-502(d)(7)(C)(iii); and 49 C.F.R. §§ 571 et seq. and 49 C.F.R. § 571.208.

**Administrative History:** Original rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-4-1-.12). Repeal and new rule filed June 20, 2006; effective September 3, 2006.

**1240-04-03-.14 EXTENDED CARE.**

- (1) Extended care services may be offered by an agency as an additional component to conventional care services, or the agency may exclusively provide extended care services.
- (2) In order to facilitate the availability of child care services during extended care hours while ensuring the health, safety and welfare of children during such hours, any agency which is licensed to provide child care services during extended care hours shall comply with the following "Extended Care" rules in addition to the rules otherwise contained in this Chapter:
  - (a) Definitions contained in 1240-04-03-.02(22).
  - (b) Supervision as required in 1240-04-03-.06(3)(d) - adult:child ratios.
  - (c) Program 1240-04-03-.09.

(Rule 1240-04-03-.14, continued)

1. Schedule and Routines, paragraph (1)(k);
  2. Television, Videos and Computers, paragraph (2)(e);
  3. Reclining Rest Period, paragraph (4)(a); and
  4. Extended Care, paragraph (8).
- (d) Health and Safety, 1240-04-03-.10.
1. First Aid, paragraph (7)(b);
  2. Emergency Treatment, paragraph (8)(a)(2) and (8)(c); and
  3. Preparation for Emergencies, paragraph (9)(b).
- (e) Food, 1240-04-03-.11, paragraph (1)(a)(6).

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

**Administrative History:** Original rule filed May 26, 1998; effective August 9, 1998. Stay of effective date of repeal and new rule filed July 21, 1998; new effective date August 31, 1998. Stay of effective date filed by the Government Operations Committee of the Tennessee General Assembly on August 28, 1998; new effective date October 31, 1998. Amendment filed October 17, 2001; effective December 31, 2001. Amendment filed November 21, 2002; effective February 4, 2003 (Formerly 1240-4-1-.13). Repeal and new rule filed June 20, 2006; effective September 3, 2006.

#### **1240-04-03-.15 CARE OF CHILDREN WITH SPECIAL NEEDS.**

- (1) When children with disabilities are enrolled, all reasonable and appropriate efforts shall be made to provide each child an equal opportunity to participate in the same program activities as their peers.
- (2) Parents or other appropriate individual identified by the parent shall provide information and, as appropriate, training for caregivers regarding special needs/techniques/emergency measures/etc., as utilized in the child's home to ensure the child's safety and well-being.
- (3) Adaptations to the environment shall be directed toward normalizing the lifestyle of the child by helping the child to become independent and develop self-help skills.
- (4) Behavior management techniques or program activities which would tend to demean or isolate the child are prohibited.
- (5) The agency shall inform parents of any specialized services available from the agency, and if the agency is aware of any specialized services available through third parties, shall additionally inform the parent of such services.
- (6) Efforts to provide specialized services (e.g., speech/hearing therapy, physical therapy, psychological evaluation, or services for the mentally retarded) either directly or by referral, shall be conducted only with written permission by the parent and documented in the child's record. Any information exchange regarding these services that is shared with or received from third parties shall also be documented.
- (7) Emergency Plans.

(Rule 1240-04-03-.15, continued)

- (a) The agency shall have written individualized emergency plans for each disabled child who requires more assistance in emergencies than other children of the same age or in the same group.
  - (b) The emergency plan shall be approved by the Department.
  - (c) The agency shall maintain documentation that the Emergency Plan is practiced monthly.
- (8) Each non-verbal child's daily activities, including, as applicable to the individual child, the time and amount of feeding, elimination, times of diaper changes, sleep patterns, and developmental progress, shall be recorded and shared with the parents daily.
- (9) Diapering of School-age Children with special needs shall be completed as required by Rule 1240-04-03-.10.
- (10) Physical Restraint. In order to avoid an extremely high risk of physical injury or death for children subject to this subchapter 1240-04-03-.15, the child care agency shall not use physical restraint, as defined by rule 1240-04-03-.02(38), unless approved to do so by the Department and in accordance with all of the requirements of this paragraph.
- (a) Least Restrictive Alternative. The agency shall attempt to alleviate the danger to the child by exhausting all methods which are least restrictive to the child's mobility prior to applying a safe-hold restraint on the child, including but not limited to:
    - 1. Calming the child through talking, distraction toward favored activities, and other developmentally appropriate behavior management techniques;
    - 2. Removing any implements which the child is using or could use to self-inflict injury;
    - 3. Physically removing the child to a secured or otherwise less dangerous area; and
    - 4. Physically blocking the child from access to walls, equipment and other materials which the child is using or could use to self-inflict injury.
  - (b) Prior to using physical restraint that has been approved by the Department, the agency shall have developed a clear written policy on the acceptable use of physical restraints that is approved by the Department and which includes, at a minimum, the following:
    - 1. Criteria, including the medical authorization required by these rules, for the identification of specific individual children for whom the use of physical restraints is not prohibited;
    - 2. Criteria for the identification and authorization of specific individual staff to administer the physical restraint;
    - 3. Provisions for the initial and ongoing training of staff authorized to administer physical restraint;
    - 4. Provisions for alternative available methods of behavior management and procedures requiring their use prior to administering physical restraint;
    - 5. Procedures for the immediate notification of the parent after physical restraint is administered; and

(Rule 1240-04-03-.15, continued)

6. Policies and procedures for insuring compliance with all other requirements contained within this paragraph (10).
- (c) The agency shall maintain in the child's health record required by 1240-04-03-.05 a written statement, updated annually and signed by a physician or licensed clinician, which states that the child does not have any medical or physical condition that would contraindicate the use of physical restraint. The agency is prohibited from administering physical restraint on any child whose health record does not contain this current statement.
- (d) The agency shall maintain written documentation, signed by the parent, that the possible use of physical restraint has been discussed and explained in detail with the parent at the time their child is enrolled in the agency.
- (e) Physical restraint shall only be administered by staff members who have completed training approved by the Department on the proper administration of physical restraint.
  1. This training shall be updated annually.
  2. The agency shall maintain documentation of the training in the staff record required by 1240-04-03-.05.
- (f) In order to assure that the child can be checked for signs of distress and to otherwise monitor the appropriate application of the physical restraint, the agency is prohibited from administering physical restraint unless a second (2<sup>nd</sup>) trained staff member is available on the premises to assist.
  1. The second (2<sup>nd</sup>) trained staff member shall be called immediately upon the determination being made that physical restraint will be necessary.
  2. Untrained staff are prohibited from assisting in any manner whatsoever in the administration of the physical restraint.
- (g) Administration of the physical restraint must cease immediately upon the child no longer posing an imminent threat to herself/himself, regardless of whether the child is continuing to exhibit inappropriate or unacceptable behavior.
- (h) Emergency 911 or local emergency services must be contacted for assistance if a child remains uncontrollable and continues to pose a threat to himself/herself after five (5) continuous minutes of restraint have been applied.
- (i) After an incident using physical restraint the agency shall create a written incident report within one (1) business day that is available to the parent and to the Department and which documents:
  1. The date and time the potentially dangerous behavior began;
  2. A description of the means in which the behavior escalated;
  3. All alternative methods which were used to manage the behavior;
  4. The exact methods, including a physical description, used to administer the restraint;
  5. The child's physical appearance and behavior following administration of the restraint; and

(Rule 1240-04-03-.15, continued)

6. The identification of all staff who interacted with the child in any manner whatsoever during this time period and the nature of their interaction.

**Authority:** T.C.A. §§4-5-201 et seq., 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2). **Administrative History:** Original rule filed November 21, 2002; effective February 4, 2003 (Formerly 1240-4-1-.14). Repeal and new rule filed June 20, 2006; effective September 3, 2006.

#### **1240-04-03-.16 SICK CHILD CARE.**

- (1) Scope of Services. Agencies that provide sick child care as either an exclusive service or as a component of an existing child care service must, in addition to the rules contained in this Chapter, comply with the rules contained in this subchapter 1240-04-03-.16. Any conflict between the provisions of subchapter 1240-04-03-.16 and subchapters 1240-04-03-.01 through 1240-04-03-.15, inclusive, shall be resolved by reference to the requirements contained in this subchapter 1240-04-03-.16.
- (2) Statement of Agency Services, Policies and Procedures.
  - (a) An applicant for a license to operate a child care agency providing sick child care services shall submit a written statement to the Department, in the form and manner directed by the Department, which provides the following information:
    1. If sick child care services will be operated in the same facility as non-sick child care, the child care agency's provisions for maintaining the physical and operational separation of the sick child care and non-sick child care services;
    2. A description of the types of sick care child care services that are to be offered to children and, as applicable, to parents/family;
    3. Ages of children to be served;
    4. Types of illnesses/symptoms that will be served and types that will be excluded;
    5. Admission requirements and enrollment procedures not included in the agency's Statement of Purpose as required by 1240-04-03-.05;
    6. Hours of operation;
    7. Plans for feeding children as appropriate to each child's age and illness;
    8. Procedures for cleaning, sanitizing and infection control;
    9. Staff training plan;
    10. Methods of daily care including record keeping, reports;
    11. Policy, procedures, and staff training plan for emergency medical care; and
    12. Procedures for staff communication with parent and health care providers.
  - (b) After being licensed, if a licensee wishes to change the scope or type of service offered to children and families, an amended statement shall be filed with the Department for approval prior to implementation.
- (3) Medical Protocols.

(Rule 1240-04-03-.16, continued)

- (a) The sick care agency management shall develop a medical protocol for specific illness groups in accordance with best practices and the requirements of these rules, and otherwise review and update agency policies in accordance with such best practices. Medical protocol and policies shall be developed in consultation with a licensed family, internal medicine or pediatric physician, or a licensed nurse practitioner/clinician with specialization in family or pediatric medicine.
  - (b) The responsible physician or nurse must review and provide an updated, signed, approval of such protocols at least annually, and at any time that the agency changes its scope of services. In addition, the physician or nurse must otherwise be available on an ongoing basis for medical consultation.
- (4) Admission and Enrollment Requirements.
- (a) Children must be at least six (6) weeks of age and no more than twelve (12) years of age for admission to the sick child care agency.
  - (b) Children between the ages of six (6) weeks and six (6) months with a fever of 101 to 102 degrees Fahrenheit (F) shall not be admitted until a written statement is provided from a licensed physician or nurse practitioner/clinician which states that it is acceptable for the infant to attend the sick child care agency.
  - (c) Children with any of the following symptoms shall not be accepted for care:
    - 1. Temperature greater than 103 degrees Fahrenheit (F) and unresponsive to medication;
    - 2. Neck pain or stiffness;
    - 3. Exhibiting confusion;
    - 4. Unequal pupils;
    - 5. Dehydration;
    - 6. Undiagnosed non-clear eye discharge;
    - 7. Untreated TB;
    - 8. Excessive, persistent crying;
    - 9. Head trauma with vomiting;
    - 10. Severe or persistent pain;
    - 11. Contagious stages of pertussis, measles, mumps, rubella, diphtheria, chicken pox, mumps, hepatitis B, unless such child is isolated from other children in a contagious room with its own exterior entrance and ventilation system; provided, however, that children with chicken pox and mumps shall not be cared for simultaneously in the same contagious room;
    - 12. Untreated lice, scabies, pinworm, ringworm unless the child can be isolated from other children;
    - 13. Rapid or labored breathing;

(Rule 1240-04-03-.16, continued)

14. Undiagnosed rash;
  15. Persistent vomiting and/or severe diarrhea; and
  16. Other conditions as determined by the nurse or medical consultant.
- (d) All children shall be evaluated by the Registered Nurse prior to admission and upon arrival each day.
- (5) Children's Records.
- (a) The records required by this paragraph shall be maintained in an organized manner on-site at the center and made available to the Department upon request.
  - (b) A care plan shall be developed and updated daily for each child. The care plan shall be completed with the assistance of the child's parent and shall be verified by the parent's signature and date on the plan.
  - (c) A chart shall be maintained for each sick child in care.
  - (d) The following records must be obtained prior to enrolling the child and must additionally be updated annually, or as changes occur:
    1. A current information form which includes the child's name, date of birth, name of parents, child's and parents' home addresses, parents' business addresses, home and work phone numbers, work hours, social history, and the name and address (home and business or school) of a responsible person to contact in an emergency if parent cannot be located promptly. This information shall be updated annually, or as changes occur;
    2. Name, address, and telephone number of a physician to call in case of an emergency;
    3. Written consent of parent regarding emergency medical care;
    4. A child release plan stating to whom the child shall be released and procedures for allowing the refusal to release children to anyone whose behavior may place the children at immediate risk;
    5. Daily attendance records for each child to include time in and time out;
    6. Child's care plan;
    7. Physical assessment;
    8. History of illness;
    9. Admission form;
    10. Medication permission form;
    11. Immunization record; and
    12. Daily health record, including activities, vital signs, intake, output, and administration of medication.

(Rule 1240-04-03-.16, continued)

(6) Staff.

- (a) A Registered Nurse with at least one (1) year of pediatric experience shall be present at all times that sick children are in care.
- (b) In agencies that exclusively provide sick child care, the director shall not be required to meet the provisions set forth in 1240-04-03-.07(4) if:
  - 1. The director holds a BSN; and
  - 2. At least one (1) full-time caregiver has a minimum of four (4) years of experience in early childhood and/or education.
- (c) At least fifty percent (50%) of caregivers shall have at least one (1) year experience in early childhood care and/or education.
- (d) All staff must have current pediatric CPR and First Aid certification.
- (e) Within the first two (2) weeks of employment all staff shall receive training in the following areas:
  - 1. A general overview of the agency's medical protocols;
  - 2. General infection control procedures, including handwashing, handling of contaminated items/universal precautions, use of sanitizers, food handling, and washing and disinfecting toys;
  - 3. Care of children with common mild childhood illnesses;
  - 4. Recognition and documentation of illness signs and symptoms;
  - 5. Proper temperature monitoring methods;
  - 6. Nutrition for ill children;
  - 7. Communication with parents of ill children;
  - 8. When and how to call for medical assistance;
  - 9. Notification to the local public health department of communicable diseases;
  - 10. Emergency procedures;
  - 11. The child abuse reporting requirements set forth in subchapter 1240-04-03-.10(18) of these rules;
  - 12. Developmentally appropriate activities for children who are ill; and
  - 13. Staff members who are responsible, or who may in the course of their duties become responsible, for the care of infants shall additionally complete training on the SIDS requirements set forth in subchapter 1240-04-03-.06(4) of these rules.
- (f) Each director and caregiver shall have at least six (6) clock hours of continuing education annually which is recognized by the Department, three (3) hours of which

(Rule 1240-04-03-.16, continued)

shall relate to the care of ill children and the prevention and control of communicable disease.

- (g) After the first year of employment:
  1. All staff shall annually receive a general refresher overview of the agency's medical protocols.
  2. Any staff member who cares for infants or may in the course of their duties become responsible for the care of infants shall additionally annually complete refresher training on the SIDS requirements set forth in section 1240-04-03-.06(4) of these rules.

(7) Grouping of Adults and Children.

- (a) The adult:child ratios and maximum group sizes contained in the following charts shall be maintained at all times.

Chart 1: Children three (3) months through twenty-three (23) months

Ratio	Maximum Group Size
1:3	9

Chart 2: Children twenty-four (24) months to twelve (12) years

Ratio	Maximum Group Size
1:4	12

- (b) In a multi-age grouping the adult:child ratio and maximum group size shall be determined based upon the requirement for the youngest aged child in the group. Exception: Children under sixteen (16) months may not be grouped with children age three (3) years and above.
- (c) Children shall additionally be grouped based upon the type of illness:
  1. Children with respiratory illnesses, gastrointestinal illnesses and non-infectious illnesses shall be cared for in a separate room from each other; and
  2. Children shall otherwise be separated in accordance with the agency's medical protocols.
- (d) Children who begin their day in a sick child care center shall remain there throughout the day and shall not be permitted to return to any other part of the child care center or to any other child care center.
- (e) Staff may care for well children on the same day that they care for sick children only if all of the following conditions are met:
  1. Prior to exiting the sick child center and entering the well child center the staff shall follow handwashing and all other sanitation requirements in compliance with these rules and the agency's medical protocols; and

(Rule 1240-04-03-.16, continued)

2. Prior to exiting the well child center and entering the sick child center the staff shall follow handwashing and all other sanitation requirements in compliance with these rules and the agency's medical protocols.
- (f) Staff caring for sick children must not prepare food for well children or enter the kitchen used to prepare food for well children.
- (8) Equipment.
    - (a) Furnishings, objects, and equipment must be maintained in good repair, and cleaned and sanitized daily and as needed.
    - (b) Separate rest equipment shall be available to each child in attendance.
  - (9) Program.
    - (a) The licensee providing sick child care pursuant to this subchapter shall develop, maintain, and implement a written plan to ensure the provision of a variety of indoor activities designed to meet the needs of mildly ill children. Such activities shall include, but are not limited to:
      1. Quiet and active play;
      2. Rest and relaxation;
      3. Eating;
      4. Toileting;
      5. Individual attention; and
      6. Children being comforted by care providers.
    - (b) Outdoor play is prohibited.
    - (c) Transportation provided by the agency is prohibited.
    - (d) Children shall be allowed to rest/nap as desired. Children shall have access at all times to rest/nap areas without distraction or disturbance from other activities.
    - (e) Drinking water and other fluids consistent with the child's condition shall be available at all times.
    - (f) All medications shall be kept locked and the key shall be available only to personnel authorized to administer medication; provided, however, that medications requiring emergency administration, including, but not limited to, asthma inhalers and EpiPens, may be kept in an unlocked location which is inaccessible to children.
  - (10) Infection Control.
    - (a) Only disposable diapers shall be used for children using diapers.
    - (b) Diapering practices outlined in subchapter 1240-04-03-.10 shall be followed.
    - (c) Drinking fountains are prohibited.

(Rule 1240-04-03-.16, continued)

- (d) If meals and snacks are served, disposable cups, plates, utensils, and napkins shall be used.
  - (e) Only liquid soap from a dispenser is allowed.
  - (f) Carpet is prohibited.
  - (g) Walls and floors in rooms where sick care is provided and all linens, furnishings objects, and equipment used by or with sick children must be cleaned and disinfected a minimum of daily and more often as needed.
  - (h) Toys handled by a child shall be cleaned with soap and water, then sanitized before handling by another child.
  - (i) All handled toys shall be sanitized at the end of each day.
  - (j) Non-washable toys shall not be provided. If such toys are brought from home (for example, a stuffed animal which would require machine washing for proper sanitation) they must be limited to personal use articles that are not shared between children.
- (11) Physical Facilities.
- (a) No furnishings, toys, or materials shall be shared.
  - (b) The physical space designated for sick child care shall not be used by children or staff from any other component of the center when sick children are in care; provided, however, unless otherwise restricted pursuant to rule 1240-04-03-.16(11)(m) below, staff and children may enter and exit the sick care facility through the non-sick care facility.
  - (c) Rooms shall be separated by a floor to ceiling wall or separate structure.
  - (d) There shall be no shared space, furnishings, fixtures, toys, supplies, or equipment if the facility serves both sick and well children.
  - (e) The use of potty chairs is prohibited.
  - (f) There shall be a minimum of fifty (50) sq. feet of usable play space per child, not including cribs, large pieces of furniture, restrooms, halls, kitchen, or office space, with a minimum of three (3) feet between cots/beds.
  - (g) Rest rooms, sinks for toileting/diapering and food preparation areas used for sick care must be separate from those used for well children.
  - (h) Rest rooms shall have a minimum of one (1) toilet per ten (10) children.
  - (i) A washer and a dryer shall be provided on site or the licensee shall contract with a laundry service to wash smocks, linens, shoulder cloths, scrubs and other non-disposable clothing and linens.
  - (j) Rooms shall be designed to allow separate areas for resting and sleeping.
  - (k) Telephones shall be located for ready access by staff in every child care area or an intercom system shall be provided to communicate with staff.

(Rule 1240-04-03-.16, continued)

- (l) A program providing only sick child care shall not be required to have outdoor play space or equipment.
  
- (m) Contagious Room.
  - 1. No child who requires separation in a contagious room may be enrolled unless authorized by the agency's medical protocols and a contagious room is provided for the care of a child in that condition.
  
  - 2. The contagious room must be located in a separate room with its own entrance from the outside, and must additionally contain a separate toilet and handwashing facilities, separate toys and equipment, and a separate ventilation/air system.

**Authority:** T.C.A. §§ 4-5-201 et seq.; 71-1-105(5); 71-3-501 et seq.; 71-3-502(a)(2). **Administrative History:** Original rule filed June 20, 2006; effective September 3, 2006.