

STATE OF MAINE
FAMILY CHILD CARE PROVIDER
LICENSING RULE

10-148 CODE OF MAINE RULES
CHAPTER 33



Maine Department of Health and Human Services
Office of Child and Family Services
11 State House Station
Augusta, Maine 04333-0111

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TABLE OF CONTENTS

SECTION 1. STATEMENT OF PURPOSE AND DEFINITIONS	1
A. Statement of purpose	1
B. Definitions	1
SECTION 2. LICENSING REQUIREMENTS AND PROCEDURES	6
A. Licensing	6
B. Qualifications of the applicant	6
C. Application	7
D. Comprehensive background check	8
E. Waivers	8
F. Type and term of a license	8
G. Administration	9
SECTION 3. FEES	13
A. Fees	13
B. Change in license	13
SECTION 4. INSPECTIONS AND INVESTIGATIONS	14
A. Inspections	14
B. Right of entry	14
C. Elements of an inspection	14
D. Inspection report	14
E. Investigations	15
SECTION 5. RECORD MANAGEMENT AND RETENTION	16
A. Record management	16
B. Falsification of records	16
C. Inspection of records	16
D. Child records	16
E. Personnel records	17
F. Household members	18
G. Record of overcapacity	18
H. Code compliance	18
SECTION 6. REPORTING REQUIREMENTS	19
A. Provider changes	19
B. Mandatory report of suspected child abuse and/or neglect	19
C. Reporting adverse drinking water results to the Department	19
D. Reporting wastewater failure	19
E. Reporting legal actions	19
F. Other notifications	20
G. Department action on report	20
SECTION 7. STAFF-CHILD RATIOS, SUPERVISION, AND QUALIFICATIONS	21
A. Children under six weeks of age	21
B. Children of providers and staff members	21
C. Staff-Child ratios	21

D. Supervision.....	21
E. Crisis plan.....	22
F. Personnel qualifications.....	22
SECTION 8. TRAINING.....	24
A. Orientation training.....	24
B. Ongoing training.....	24
SECTION 9. CHILD GUIDANCE.....	26
A. Positive methods of child guidance.....	26
B. Consistent and reasonable application of program rules.....	26
C. Constructive methods of guidance.....	26
D. Detrimental practices.....	26
SECTION 10. RIGHTS OF CHILDREN AND PARENTS.....	28
A. Right of children.....	28
B. Right of parents and legal guardians of children receiving child care from provider.....	28
SECTION 11. REPORTING CHILD ABUSE OR NEGLECT.....	29
A. Requirement to report child abuse or neglect.....	29
B. Provider requirement to inform.....	29
C. Written instruction provided.....	29
D. Hotline number posted.....	29
SECTION 12. HEALTH AND MEDICAL.....	30
A. Immunization.....	30
B. Evaluation requirements.....	30
C. Health care consultation.....	30
D. Health monitoring.....	30
E. Dismissal of children due to illness.....	31
F. Illness, serious injury, incidents and accidents.....	31
G. First aid.....	31
H. Medication administration.....	31
I. Handwashing.....	32
J. Prevention of exposure to blood and body fluids.....	32
K. Emergency procedures.....	32
SECTION 13. DRINKING AND WASTEWATER.....	33
A. Drinking water.....	33
B. Ongoing annual water tests for providers with wells.....	33
C. Five-year water tests for providers with wells.....	33
D. Bottled water agreements.....	33
E. Water and sewer.....	33
SECTION 14. ENVIRONMENT AND SAFETY.....	34
A. General condition of the building and surrounding premises.....	34
B. Outdoor playtime and indoor activities.....	35
C. Satisfactory lead levels.....	35
D. Carbon monoxide.....	35
E. Building temperature.....	36

F. Lighting and ventilation.....	36
G. Minimum usable space.....	36
H. Outdoor play areas.....	36
I. Weapons.....	37
J. Materials, toys and equipment.....	37
K. Furnishings.....	38
L. Cribs, cots and bedding.....	38
M. Toilet facilities.....	39
N. Diapering/toileting.....	39
O. Pets.....	40
P. Fire evacuation drills.....	40
Q. Emergency preparedness plan.....	40
SECTION 15. SWIMMING AND WADING.....	42
A. Policies and procedures regarding water activities and safety procedures.....	42
B. Parental permission.....	42
C. Surfaces.....	42
D. Minimum training and certification required for water activities.....	42
E. Cleanliness.....	42
F. Pool accessibility.....	43
G. Emergency preparedness and drills.....	43
H. Staff-Child ratios during water activities.....	43
I. Swimming pools.....	43
J. Off-site pools or natural bodies of water.....	43
K. Non – Swimmers.....	44
SECTION 16. FOOD AND KITCHEN FACILITIES.....	45
A. Well-balanced meals and snacks.....	45
B. Handwashing.....	45
C. Allergies.....	45
D. Provider responsibilities.....	45
E. Food storage.....	45
F. Food preparation.....	46
G. Equipment and utensils.....	46
H. Kitchen facilities.....	46
SECTION 17. TRANSPORTATION.....	48
A. Driver requirements.....	48
B. Vehicle capacity not to be exceeded.....	48
C. Safety in vehicles.....	48
D. Field trips.....	48
SECTION 18. INFANT/TODDLER CARE.....	50
A. Additional rules for providers serving infants and toddlers.....	50
B. Promoting developmental needs.....	50
C. Feeding.....	50
D. Napping/resting.....	51

SECTION 19. NIGHTTIME CARE	52
A. Additional rules for nighttime care.....	52
B. Individualized care.....	52
C. Rooms used for sleeping or napping.....	52
D. Beds and bedding.....	52
E. Supervision while sleeping.....	52
SECTION 20. ENFORCEMENT, SUBSEQUENT REAPPLICATION AND APPEALS	53
A. Department’s authority to enforce compliance.....	53
B. Directed plan of action.....	53
C. Restrictions.....	53
D. Administrative fines.....	53
E. Conditional license.....	54
F. Suspension of a license.....	54
G. Referral to the Office of the Attorney General.....	54
H. Refusal to issue or renew a license.....	54
I. Revocation.....	54
J. Void.....	54
K. Right to information regarding deficiencies.....	54
L. Consent agreement.....	55
M. Limitation on reapplication after denial or revocation of license.....	55
N. Subsequent application for a full license.....	55
O. Full certification after deficiencies corrected.....	55
P. Right to appeal.....	55
REGULATORY HISTORY	57

10-148 C.M.R. Ch. 33

**Department of Health and Human Services
Office of Child and Family Services**

FAMILY CHILD CARE PROVIDER LICENSING RULE

SUMMARY STATEMENT

This rule is established to govern the licensing of family Child care providers in the State of Maine, and to protect the health, safety, and welfare of the Children served.

AUTHORITY

This rule is promulgated under the authority of 22 M.R.S. Ch. 1661, 1663, and 1673.

EFFECTIVE DATE

May 27, 2021

SECTION 1. STATEMENT OF PURPOSE AND DEFINITIONS

- A. Statement of Purpose.** The purpose of this rule is to establish licensing standards for Family Child Care Providers. This rule is promulgated in accordance with 22 M.R.S., Chapters 1661, 1663 and 1673 and describes the minimum requirements for the licensing and operation of Family Child Care Providers. The rule supports childcare services that meet Children’s psychosocial and developmental needs, while providing a safe, healthy and secure environment.

NOTICE OF MAJOR SUBSTANTIVE PROVISIONALLY ADOPTED PARTS OF THIS RULE

The Maine Legislature has designated parts of this rule as major substantive, per 22 M.R.S. §§8302-A(2)(G) -(K) and 8303-A (1). Other sections are designated as routine technical, per 22M.R.S. §§7702-B, 7703, 7802, 8301-A and 8302-A (2) (A)-(F). Each section will be designated as routine technical or major substantive throughout this rule, by shading: Major Substantive parts of the rule are shaded to differentiate them from routine technical parts.

Routine technical provisions of the rule are effective upon the effective date of this rule. The major substantive rule provisions have been provisionally adopted and are not legally effective pursuant to 5 M.R.S. § 8072(8). But NOTE: The Department has adopted the major substantive provisions of this rule on an emergency basis in a separate rulemaking on May 27, 2021, and those emergency provisions are effective as of the effective date of the emergency rule.

- B. Definitions.** As used in this rule, unless the context otherwise indicates, the following terms have the following meanings:
1. **Abuse or Neglect** means a threat to a Child’s health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these, by a person responsible for the Child.
 2. **Accident** means an Incident that results in damage or creates observable injuries (scratch, bite mark, scraped knee, first aid given, etc.).
 3. **Adult** means a person 18 years of age and over.
 4. **Applicant** means any person applying for a License under these Rules.
 5. **Attendance Record** means a list of the names of Children who are physically present each day.
 6. **Bio-contaminants** are living organisms (such as bacteria, enzymes, fungi, viruses) or their products that can be hazardous to animal or human health if inhaled, swallowed, or otherwise absorbed into the body.
 7. **Certified Lifeguard** means a person who holds a current certificate in life saving techniques issued by a qualified instructor from a recognized organization upon successful completion of a live training.
 8. **Child or Children** means a person or persons under the age of 13.
 9. **Clean** means to remove dirt, debris, and bodily fluids by scrubbing and washing with a detergent solution and rinsing with water.
 10. **Consent Agreement** means a written set of stipulations that a Provider must follow as a condition of licensure.

11. **Critical Violation** means that a requirement within this rule was not met by a provider and may result in serious injury to a Child. A critical violation, if not corrected by the measures described in Section 20 of this rule, may result in an administrative fine of \$250 per critical violation. Critical violations are indicated in this rule by a text box next to each applicable rule provision, as shown at left.
12. **Days** means calendar days, unless otherwise stated.
13. **Department** means the unit within the Department of Health and Human Services with the responsibility for conducting inspections and issuing Licenses, unless otherwise specified within this rule.
14. **Developmentally Appropriate** means actions, environment, equipment, supplies, communications, interactions, or activities that are based on the individual physical, emotional, social, and cognitive needs of each Child in care.
15. **Discipline** means teaching Children about expectations, guidelines and principles, to maintain safety, foster sound judgement, and develop and maintain self-discipline.
16. **Family Child Care Provider** means a person who provides child care in that person's home on a regular basis, for consideration, for 3 to 12 Children under 13 years of age who are not the Children of the Provider or who are not residing in the Provider's home.
17. **Finding** means a decision reached by an Out of Home Investigator based on the facts and evidence gathered during an Investigation to support a decision that a person responsible for a Child has, by a preponderance of the evidence, abused or neglected a Child.
18. **Field Trip** means any excursion off the Premises of the Provider.
19. **Hazardous Material** means any item or agent (biological, chemical, radiological, and/or physical), which has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors.
20. **Household Member** means any person residing in the home of an Applicant or Provider.
21. **Immediate Danger** means a situation in which the provider's non-compliance with one or more sections of this rule has caused, or is likely to cause, harm or impairment to a Child, and there continues to be an immediate risk of harm or impairment unless immediate corrective action is taken.
22. **Immediate Jeopardy** means a situation in which the provider's non-compliance with one or more sections of this rule has caused, or is likely to cause, serious injury or death of a Child, and there continues to be an immediate risk of serious injury or death of a Child unless immediate corrective action is taken.
23. **Incident** means a noteworthy occurrence, including but not limited to, an aggressive outburst, allegations of inappropriate conduct by a provider, inappropriate Child sexual behavior, unusual event, observations of changes in behavior, or a disclosure of Abuse or Neglect from a Child or parent.
24. **Infant** means a Child aged six weeks to 12 months.

- 25. Investigation** means a systematic course of interviews, record reviews, and observations conducted for the purposes of determining the presence of Child Abuse or Neglect, and/or violations of this rule.
- 26. Legal Guardian** means the person or agency who is legally authorized to act on behalf of a Child. For the purpose of this rule, the term Parent includes a Legal Guardian.
- 27. License** means written permission, whether provisional, temporary, conditional, or full, by the Department that authorizes the Provider to operate. For purposes of this rule, License has the same meaning as “certification” in 22 MRS §8301-A.
- 28. Licensed Capacity** means the number and ages of Children, specified on the License, allowed to be on the Premises at any one time.
- 29. License-Exempt** means an individual who provides care and supervision for a maximum of two Children who are not the Children of the provider or who are not residing in the provider’s home, on any given day, for consideration. To be License-exempt, a provider must comply with 22 M.R.S. §8302-B.
- 30. Lock** means to fasten a mechanism operated by a key, a combination, or other mechanism that is attached to a hasp or a completely enclosed box or safe that prevents access to weapons, Pools, Medications, cleaning supplies and other toxins, liquor, and confidential records.
- 31. Lockdown** means a condition of remaining locked, and potentially hidden, inside the Provider’s home when it is unsafe to leave the facility or be outdoors during an emergency situation.
- 32. Mandated Reporter** means a person who is required by law to report reasonable suspicions of Abuse or Neglect.
- 33. Medication** means a drug prescribed for a Child by a Licensed health care practitioner and non-prescription medicines.
- 34. Natural Body of Water** means an ocean, lake, pond, river, reservoir, quarry, spring, stream, and wading area that may be used for recreational water activities.
- 35. Night-time Care** means compensated childcare provided between the hours of 12 a.m. and 6 a.m.
- 36. Non-swimmer** means a Staff Member or Child who cannot swim 25 feet on their stomach, 25 feet on their back, and tread water for 1 minute.
- 37. Out-of-Home Investigations Team (OOH Team)** means the unit that is responsible for investigating reports of suspected Abuse or Neglect of Children by person(s) or in facilities subject to licensure pursuant to 22 M.R.S. §§ 8351-8358.
- 38. Parent** means a birth or adoptive father or mother. For the purpose of this rule, Parent includes a Legal Guardian.
- 39. Plan of Action** means a written plan prepared by the Provider with the Department at the time of inspection or a written plan prepared by the Provider and submitted to the Department. A Plan of Action includes the specific procedures, methods, changes to be enacted by the Provider to correct all areas of noncompliance. A Plan of Action also includes the timeframes by which the provider will come back into compliance.

- 40. Premises** means the home of the Provider, and all parts of contiguous real estate, including, but not limited to, lands, private ways, and any buildings or structures, which the Provider occupies, or has direct or indirect control or interest, even though Children may not be served in all parts of the contiguous real estate.
- 41. Preschool Child** means a Child aged three to five years old.
- 42. Provider** means a Family Child Care Provider.
- 43. Provider Letter of Eligibility** means a letter sent by the Department to the individual who is the subject of the comprehensive background check that reports eligibility status exclusively and does not reveal specific disqualifying information or any confidential information regarding the individual.
- 44. Orientation** means training or education required before an individual can serve in a specific position.
- 45. Repeat Violation** means a violation of a specific licensing rule provision for which the program has been previously cited.
- 46. Rest and Relaxation** means quiet, undirected time. This may include reading, napping, or other quiet individual activities appropriate to the age of the Children.
- 47. Risk** means the likelihood that a Child may experience some form of harm, injury, or Abuse or Neglect based on factors and/or circumstances to which that Child has been exposed.
- 48. School-age Child** means a Child who is at least five years old and under 13 years old.
- 49. Serious Injury** means:
- a.** An injury or illness which requires medical attention from physician or other medical personnel, including, but not limited to, an emergency room visit and/or hospitalization, including those that are the result of an accident involving transportation to or from a facility sponsored event; or
 - b.** Any illness which is a notifiable condition, as identified by the Department at <https://www1.maine.gov/dhhs/mecdc/infectious-disease/epi/disease-reporting/documents/notifiable-list.pdf>.
- 50. Shelter-in-Place** means to remain inside the Provider's home during an emergency situation, when circumstances indicate that it is unsafe to leave the home.
- 51. Staff Member** means an individual not related to all Children for whom childcare services are provided who is employed by a Provider for compensation (including independent contractors) whose activities involve the care or supervision of Children or who otherwise have unsupervised access to Children who are cared for or supervised by a Provider.
- 52. Staff Member Letter of Eligibility** means a letter sent by the Department to the individual who is subject to the comprehensive background check (including Household Members, age 18 and older) that reports eligibility status, provides basis for determination when ineligible, and provides information regarding the individual's right to appeal.

- 53. Swimming Pool** means any water-filled container, located indoors or outdoors, for swimming or recreational activity, and having a depth of more than twenty-four inches (24”) at any point.
- 54. Toddler** means a Child aged 13 months through 36 months.
- 55. Toxic Substance** means any chemical or mixture that may be harmful to the environment and to human health if inhaled, swallowed, or absorbed through the skin, including but not limited to alcohol, cleaning supplies, pesticides, and solvents.
- 56. Universal Safety Precautions** means an approach to infection control where all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.
- 57. Waiver** means written permission from the Department to modify a provision of this rule.
- 58. Wading Pool** means a Pool with a water level maintained at 24 inches or less and that is no more than 4 feet in diameter. This Pool does not require a filter and may not contain chemically treated water.
- 59. Wading Pool Attendant** is a person who holds a valid Adult and pediatric First Aid and CPR certificate and is responsible for supervision of Children in a Wading Pool as defined above.
- 60. Water Activities** means the use of splashing Pools, Wading Pools, and Swimming Pools with or without slides, and other similar bodies of water including ponds, rivers, and the ocean, excluding water tables and sprinklers.
- 61. Water Safety Attendant** means a person assigned to watch over Children participating in water activities who has completed a Department-approved basic water safety course that includes training in non-swimming rescue techniques within the last three years.

SECTION 2. LICENSING REQUIREMENTS AND PROCEDURES

A. Licensing

1. No person may provide child care for more than two (2) Children who are not the Children of the Provider, or who are not residing in the person's home, without a License from the Department in force, authorizing such operation, in accordance with 22 M.R.S. § 8301-A (3).
2. The Provider must post the following, where easily seen, on the Premises:
 - a. The current License issued by the Department;
 - b. The results of the most recent inspection, showing any violations of this rule;
 - c. Any enforcement actions, including a Directed Plan of Action or a conditional License; and
 - d. Any notices or correspondence required by the Department to be posted, including but not limited to water test results or any lead hazard assessment.
3. The Department will post inspection reports to a website available to the general public, for a running period of three years.
4. Licenses are only effective at the Premises for which they are issued. If the Provider moves to another location, a new License must be issued prior to operation.
 - a. A License may not be transferred from one Provider to another, from one location to another, or from one owner to another.
 - b. In the event of an unanticipated occurrence, such as a fire, that renders an approved location uninhabitable, a Provider may provide services in an alternative location upon approval by the Department, in accordance with the Department of Health and Human Services' Child Care Emergency Plan, Version 1.3, November 6, 2018.
 - c. The alternative location must also be approved by the State Fire Marshal's Office or provider's local fire department prior to the provision of childcare services.
5. No Provider shall care for more Children than their Licensed Capacity. Providers must only care for Children within the age range of the License issued and within the proper staff-Child ratios for those age ranges.
 - a. Changes in capacity or age range may be made at the discretion of the Department, and when necessary, with the approval of the local code enforcement and the State Fire Marshal's Office.
 - b. The License may be amended or reissued to increase or decrease the number of Children allowed or to change the age range of Children that may be cared for by the Provider.
6. Buildings on the same Premises as the Applicant's residence may be issued a Family Child Care License.

B. Qualifications of the Applicant. The Applicant must demonstrate their willingness and ability to operate and manage the Family Child Care with mature judgment, compassionate regard for the best interests of Children and consistent compliance with these regulations and all relevant laws.

C. Application

- 1.** Application for an initial License must be made to the Department of Health and Human Services, on forms furnished by the Department, and the fee required in Section 3 of this Rule must be included.
 - a.** The check must be made payable to the Treasurer, State of Maine, and is non-refundable.
 - b.** Incomplete applications on which no action has been taken by the Applicant shall be void after sixty (60) Days.
 - c.** A License must be issued before a Provider can begin providing day care to Children.
- 2.** At least sixty (60) Days prior to the expiration of a License, the Provider must submit an application and the required fee for renewal to the Department on a form supplied by the Department, accompanied by all additional information as may be required. It is the responsibility of the Provider to make timely application for renewal.
- 3.** Upon receipt and review of applications and determination of compliance with relevant law, the Department shall renew such License for a period of two (2) years, unless it finds that there are specific and sufficient grounds either for denial of the application for renewal or for renewal of the License on a temporary or conditional basis.
- 4.** If timely application for renewal is made, the existing License shall continue until a final decision on the renewal is made.
- 5.** The Applicant must complete Department-approved training as required by Section 8 of this rule.
- 6.** No License shall be issued to an Applicant holding a License to provide foster care for Children without prior approval from the Department.
- 7.** All other Licenses for businesses in the home must be reported to the Department at the time of application, or prior to opening a new business.
- 8.** The Provider must comply with the requirements of the State Fire Marshal's Office, Department of Public Safety.
 - a.** The Department must receive a written statement, furnished bi-annually by the State Fire Marshal's Office, indicating that the Provider has complied with the requirements of the Commissioner of Public Safety's applicable fire safety rules.
 - b.** No License may be issued until the Provider passes a satisfactory inspection for fire safety and fire protection.
 - c.** The Provider must obtain approval from the Maine Department of Public Safety, Office of the State Fire Marshal or designee, which specifically notes where childcare may be provided (basements, specific rooms within property, and second or higher floors, including any restrictions on the ages of Children).
 - d.** An additional fire safety inspection must be done when a heating system is changed, when major structural changes are made in the Premises, and prior to use of new rooms on the Premises. The Provider is responsible for notifying the Department of any changes that require inspection 10 days prior to installation.

9. The Provider must establish and maintain compliance with all corrections, restrictions, or conditions specified by the Maine Department of Public Safety, Office of the State Fire Marshal or designee in the Plan of Correction resulting from identified deficiencies in the course of the fire safety inspection, within the time frames identified.
10. The Provider must secure, in writing, the approval of the landlord for any rented or leased space for use by the Family Child Care Provider.

D. Comprehensive Background check. Providers, Staff Members and Household Members over the age of 18 must comply with all provisions pursuant 10-148 C.M.R Ch. 34 Child Care Provider Background Check Licensing Rule.

1. When disqualifying information is found in any of the registries, repositories, and databases required for the background check for a Provider or Household Member or if that Provider or Household Member is otherwise ineligible because they refuse to consent to a background check or knowingly make materially false statements in connection with such a background check, no License shall be issued to that Provider.
2. No Provider shall employ a Staff Member who has not furnished a Provider Letter of Eligibility indicating that the Staff Member is eligible, nor allow any individual known by the Provider to be ineligible under this Rule to have access to any Child in the Provider's care.

E. Waivers. The Department may waive or modify any provision(s) of this rule, unless the provision is mandated by State or Federal statute, as provided in Section 20 of this Rule.

F. Type and term of a License. The type and term of a License issued by the Department must comply with the provisions of this rule.

1. A provisional License shall be issued by the Department to an Applicant who meets all the following applicable criteria, in accordance with 22 M.R.S. § 7802(A):
 - a. Has not previously operated a Family Child Care Provider in Maine, or has relocated to a new property, or has closed a program and is reopening;
 - b. Complies with all applicable laws and rules for a provisional License; and
 - c. Demonstrates the ability to comply with all applicable laws and rules for a full License.
 - d. A written provisional License may be issued for a term of no less than three (3) months and no more than 12 months.
2. A full License shall be issued by the Department to an Applicant who complies with the requirements set out in this rule. A full License shall be issued for a term of two (2) years.
3. A written conditional License may be issued when the Department determines that the Provider has failed to comply with applicable rules and laws. The conditional License must specify the corrections that must be made and the deadline for making each correction.
 - a. A conditional License shall be issued for a specific term not to exceed twelve (12) months, or the remaining portion of the term of the previous full License, whichever the Department determines appropriate based on the violations set out in the Directed Plan of Action.

4. When a Provider plans a move to a new location, the Provider must submit an application for a License for the new location. A temporary License may be issued by the Department for the new location when:
 - a. All applicable requirements set out in this rule have been met, except an inspection or other action by a state agency or a contractor of that agency that is required by this rule is delayed; and
 - b. No action or inaction by the Applicant caused a significant delay by that state agency or a contractor of that agency.
 - c. A temporary License shall be issued for a specific term, not to exceed six months.

G. Administration.

1. The Provider must have a readily accessible copy of this rule on the Premises and must make it available to any person upon request.
2. The Provider must allow a Child's Parents/Legal Guardians unlimited access to visit the Child, to observe the program at any time that the Child is present and provide opportunities to participate in activities.
 - a. The Provider must exchange information with the Child's Parents/Legal Guardians about the Child on a frequency appropriate for the age and development of the Child.
 - b. The Provider must advise a Child's Parents/Legal Guardians prior to taking Children on Field Trips and must require the Parents/Legal Guardian's written permission.
 - c. The Provider must be directly accessible to a Child's Parents/Legal Guardians by telephone at all times when Children are present.
 - d. The Provider must advise a Child's Parents/Legal Guardians prior to allowing the Child to participate in any high-risk activity; for example, swimming, horseback riding or using a trampoline.
3. The provider must encourage Parents/Legal Guardians to visit the Family Child Care Provider prior to admission.
4. A copy of the Provider handbook will be made available to all Parents or Legal Guardians at the time of enrollment. The handbook must contain, at a minimum:
 - a. Ages of Children served;
 - b. Hours of operation and daily schedule;
 - c. Numbers of Children served;
 - d. Specific focus if applicable, such as educational focus, religious focus, Montessori, after-school, summer recreation, teaching site, etc.;
 - e. Opportunities for Parent/Legal Guardian involvement;
 - f. A description of the Child guidance methods used by Staff Members;

- g.** Services offered, such as: basic childcare, care for Children with special needs, part-time care, Infant/toddler care, pre-school care, school-age care, etc.;
 - h.** Fees (if any) including charges for late pick-up of Children;
 - i.** Vacation policy;
 - j.** Terms of any contract or placement agreements;
 - k.** The rights of Children;
 - l.** Emergency procedures and relocation information;
 - m.** Incident reporting and mandatory reporting of Child Abuse or Neglect;
 - n.** Expulsion and suspension practices;
 - o.** Management of communicable illnesses;
 - p.** Medication administration;
 - q.** Annual calendar of closure dates (if applicable);
 - r.** Resources available for developmental screenings; and
 - s.** Reporting of Child death and serious injury.
- 5.** A Family Child Care Provider must ensure that all Staff Members are adequately trained and/or have sufficient experience to meet the needs of all Children for whom they are responsible, as the need presents.
- 6.** Except as provided by law, confidential information may not be released without a court order or a written release from the Parent or Legal Guardian of the Child about whom the confidential information has been requested. The following information is confidential:
- a.** All Child records.
 - b.** All personnel records, which must be provided to the Department upon request.
 - c.** Information that identifies, directly or indirectly, a referent, complainant, or reporter of suspected Child Abuse or Neglect, and/or licensing rule violations.
 - d.** Information about Children in care (or formerly in care). This information may be disclosed only upon written authorization of a Child's Legal Guardian, except as otherwise specified by law, and must be shared with the Department and Child placing agencies licensed pursuant to 22 MRS Chapter 1671, upon request.
- 7.** The Provider must maintain a staff manual that addresses the following:
- a.** Policies and their implementation. This must include, at a minimum, policies for the following:
 - i.** Mandated reporting,

- ii.** Child guidance,
 - iii.** Child illness,
 - iv.** Fire drill procedures,
 - v.** Emergency and disaster procedures,
 - vi.** Staff Member qualifications and training,
 - vii.** Supervision of Staff Members/interns
 - viii.** Reporting licensing violations,
 - ix.** Inclusionary practices for Children with disabilities,
 - x.** Safe sleep policy,
 - xi.** Serious injury and Child death reporting,
 - xii.** Expulsion and suspension prevention,
 - xiii.** Interpretation for English Language Learners,
 - xiv.** Release of Children, and
 - xv.** Transportation of Children (if applicable).
- 8.** The Provider must adopt a written policy for handling all suspected instances of Child Abuse or Neglect in accordance with Maine statute. Written policy must include, but is not limited to, the following:
- a.** Internal notification procedure of suspected Abuse or Neglect,
 - b.** Conditions that require internal notification of the Provider,
 - c.** The requirement that any suspicion of Abuse or Neglect must be immediately shared with the Provider,
 - d.** The requirement that suspected Child Abuse or Neglect must be immediately reported upon suspicion to Child Protective Intake hotline,
 - e.** Identification of personnel responsible for contacting the Child Protective Intake hotline,
 - f.** Protocol to notify all relevant parties (Parents, Staff Members, interns, or Household Members) that suspected Child Abuse or Neglect has been reported to Child Protective Intake,
 - g.** Completion of Incident reports, including: the details of the allegation or suspicion, the date Child Protective Intake was called, which Staff Members and/or interns were notified the report was filed, and whether or not the Parent/Legal Guardian were notified of the allegation, and
 - h.** Parental notification, including the determination of how and what information will be shared with a Parent/Legal Guardian when Child Protective Intake has been contacted.

- 10.** The Provider must develop a written policy to follow if an allegation of Child Abuse or Neglect is made against the Provider, any Staff Member, or Household Member in the Provider's home. The written policy must include but is not limited to the following:
 - a.** Prevention measures to protect providers from potential allegations;
 - b.** Conditions of continued employment and access to Children during the course of an investigation by the Department;
 - c.** Grounds for termination;
 - d.** The requirement to report suspected Child Abuse or Neglect occurring at any location in accordance with statute; and
 - e.** Parental notification.
- 11.** The Provider must be responsible for the Provider's daily operation in compliance with this rule. If the Provider is not present, an equally qualified Staff Member must be designated to be in charge and be given authority to administer the program in compliance with this rule.
- 12.** The Provider must register for Maine's Quality Rating and Improvement System.

SECTION 3. FEES**A. Fees.**

1. A licensing fee must be submitted with each application for a License, as directed by the Department.
2. Fees for licensing are non-refundable.
3. Fees for License application and renewal will be established based on an analysis of the Department's costs for issuing the License. Fees will not exceed the cost of issuing Licenses.
4. Failure to submit a timely renewal application will result in the expiration of the License.
5. The check must be made payable to the Treasurer, State of Maine.
6. The application fee for provisional License is \$80.00.
7. The application fee for a temporary License is \$10.00.
8. The application fee for a full License or its biennial renewal is \$160.00.

- B. Change in License.** The fee to issue a revised License is \$10.00. An application to revise a License is required when an Applicant seeks to increase the capacity of the License or the Applicant requests approval for construction, or a heating system requires replacement.

SECTION 4. INSPECTIONS AND INVESTIGATIONS

- A. Inspections.** The Department generally conducts unannounced site inspections. The Department may conduct more frequent inspections at its discretion based on the Provider's compliance with this rule. Routine inspections occur at the following times:
1. Upon application and within the first few months of licensure,
 2. Annually, after the date of initial licensure,
 3. When the Provider has requested a change in License;
 4. To investigate a complaint of rule violation, or an allegation of suspected Abuse or Neglect;
 5. For determining compliance with a Directed Plan of Action, or to determine whether cited deficiencies have been corrected.
- B. Right of entry.** The Department may enter upon the Premises of an individual reported to be operating without a License, pursuant to 22 M.R.S. §7702-B (7).
1. The Department and a duly designated officer or employee of the Department have the right to enter upon and into the Premises of an unlicensed person providing childcare in their home with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E, by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine the state of compliance with this section. Pursuant to the Maine Rules of Civil Procedure, Rule 80E the Department's right of entry and inspection may extend to any Premises and documents of a person, firm, partnership, association, corporation or other entity that the Department has reason to believe is operating without a License.
 2. An unlicensed owner or person in charge of providing childcare in their home may not interfere with, or prohibit, the interviewing of consumers of childcare services by the Department.
- C. Elements of an inspection.** In order to determine compliance with this rule, the Provider must provide access to all records and any part of the Premises occupied or used by Children.
1. The Department may speak with Children, Parents, Providers, and Staff Members during inspections.
 2. The Department may photograph any part of the Premises or make a photographic record of documents. The Department will provide copies of photographs upon request.
- D. Inspection report.** The Department will document all violations of this rule on an inspection report and will explain any violation noted at the time of inspection. The Provider may correct violations at the time of inspection. All violations corrected on-site shall be noted on the inspection report. The Provider and the Department shall sign the inspection report at the exit interview. The Department will supply the Provider with a copy of the inspection report at the time of inspection.
1. The Provider and the Department shall determine a Plan of Action to include timelines for correction for any violations that cannot be corrected at the time of inspection. If the Plan of Action cannot be determined at the time of inspection, the Plan of Action must be established by the Provider and the Department within five business days of the inspection.

2. Following the inspection, the Provider must demonstrate compliance with this written Plan of Action. Failure to comply with the Plan of Action will result in further enforcement action by the Department as provided for in this Rule, including but not limited to the Department issuing a Directed Plan of Action.

E. Investigations. The Department will respond to reports from any person alleging violation(s) of licensing regulations or Child Abuse or Neglect.

1. The Provider and Staff Members must cooperate in all aspects of the Investigation of allegations of Abuse or Neglect, in accordance with 22 M.R.S. Ch. 1674. Cooperation includes but is not limited to the following:
 - a. Providers may not prevent Department staff from privately interviewing Staff Members, interns, or Household Members;
 - b. Allowing private interviews with Children, and notifying Parents, except where such notification is not in the best interest of the Child in accordance with 22 M.R.S. 354(2)(F)(2);
 - c. Providing contact information for families of Children enrolled at the Department's request;
 - d. Providing access to all Child records;
 - e. Providing access to all records of current and former Staff Members, interns, or Household Members, including access to timecards and other payroll materials upon request;
 - f. Providing access to all Incident and Accident report records; and
 - g. Allowing access to all parts of the Premises, including spaces not used for childcare.
2. The provider must not retaliate against any reporter or his/her representative for filing a complaint. Any rule violations noted as a result of a complaint investigation will be provided to the Provider in writing.

SECTION 5. RECORD MANAGEMENT AND RETENTION**A. Record management.** Providers must comply with the following:

1. Maintain a separate file for each Staff Member and Child served. These records must be retained for a minimum of three years after the Child leaves care or the Staff Member leaves employment. Child and Personnel records must be available for inspection by the Department.
2. All Attendance Records must include date, year, start and end time of daily attendance. The list must be available for inspection by the Department and be kept on site for three years.
3. Record of actual hours worked and break times in which the Provider or Staff Members are not in a caregiving capacity and are not counted in the staff to child ratio. This record must be available for inspection by the Department and be kept on site for three years.
4. Maintain a separate record of all reports of alleged Child Abuse or Neglect made in accordance with 22 MRS §4011-A.
5. A record of fire drills for the preceding three years must be available for inspection by the Department of Health and Human Services, the Department of Public Safety, State Fire Marshal's Office, and local fire inspectors.
6. A record of rabies vaccinations for all pets on the Premises.
7. Providers that offer swimming and wading activities must keep a written record of the type, date, time and duration of the water safety emergency procedures training and drills required in Section 15 of this Rule.
8. Providers must draft and follow a records management and retention policy, which must include provisions for access to Child records by Legal Guardians.
7. Providers must maintain clean, readable records in an orderly, accessible format.

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B. Falsification of records. Falsification of records is a Class D crime under 17-A MRS § 453 and may result in action by the Department.**C. Inspection of records.** Records must be made available for inspection by Providers and Staff Members upon request by the Department.**D. Child records.** Child records must be updated annually and maintained in an organized fashion.

1. A record must be completed at the time of admission and maintained on the Premises for each Child in care (including relatives) and must include:
 - a. Name, birth date, street address and mailing address of the Child;
 - b. Name, street address, mailing address and telephone number of Parent(s) or Legal Guardian(s);
 - c. Places of employment of Parent(s) or Legal Guardian(s), if employed;
 - d. The current telephone number of Parent(s)' or Legal Guardian(s)' employers;
 - e. A method of contacting the Parent(s) or Legal Guardian(s) while the Child is in care;

f. The name, street address and telephone number of a person other than the Parent(s) or Legal Guardian(s) to contact in case the Parent(s) cannot be reached in an emergency;

g. Copy of financial agreement with Parent(s) or Legal Guardian(s);

h. Dates of enrollment and termination;

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i. Record of immunizations must be on file for every Child attending the child care;

j. Names and telephone numbers of the Child's physician and family dentist. If there is no identified family doctor or dentist, it must be noted on the Child record form;

k. Signed authorization to dispense Medication, if applicable;

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l. Signed authorization to obtain emergency medical care;

m. Names of persons who are permitted by the Parent(s) or Legal Guardian(s) to remove the Child from the Provider's Premises;

n. A same-day record of all injuries, including serious injuries, Accidents, and Incidents or emergencies which reflects the time and date of verbal or written notification of Parent or Legal Guardian. The signature of the Parent or Legal Guardian must be obtained on the Incident report within 48 hours of the event;

o. Written record of significant changes in appearance and/or hygiene upon arrival, or significant changes in behavior (such as: increased aggression, withdrawal, sexual acting out, and/or prolonged tantrums) and other health conditions, if known;

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p. Known allergies and other health conditions, including related health plans as needed,

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q. Any relevant documentation of medical necessity (for example, sleeping in a non-horizontal position), if applicable;

r. Signed acknowledgement by the Parent or Legal Guardian that the Provider handbook has been received and read;

s. Signed permission for use or distribution of images or personal information of the Child on any publications, social media, or promotional materials;

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t. Signed permission from the Child's Parents before allowing the Child to participate in any high-risk activity, including but not limited to swimming, horseback riding and using a trampoline. The permission must be updated at least annually, and indicate the type and location of activity;

u. Written permission from the Parent/Legal Guardian for use of sunscreen; and

v. Signed permission to transport the Child, if applicable.

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2. Providers must place a written explanation in the Child's record explaining why any required information is missing.

E. Personnel records. A personnel record must be kept for all Staff Members.

1. Personnel records must be stored in a confidential location.

2. The personnel record must contain:

- a.** Name, current street and mailing address, birth date and current telephone number;
- b.** Documentation of training,
- c.** Dates of employment and termination of Staff Members. Reasons for termination must be kept in the personnel record for a minimum of one year;
- d.** A statement signed and dated by each Staff Member certifying that the most current licensing rule has been read and understood;
- e.** A statement signed and dated by each Staff Member, certifying that the Provider's personnel policies, admission policies, and Parent handbook have been read and understood;
- f.** Documentation of any disciplinary action;
- g.** Documentation of completed background checks in the form of a Provider Letter of Eligibility, issued by the Department, that specifies the Staff Member is Eligible for employment.

3. The Provider must document all orientation and training of all Staff Members by proof of completion from a qualified on-line or in-person source.

- F. Household members.** Documentation of a background check in the form of a Provider or Staff Member Letter of Eligibility must be available for licensing review for anyone who is 18 years of age or older and resides on the Premises, or who has unsupervised access to Children who are cared for or supervised by the Provider.
- G. Record of overcapacity.** The Provider must record for the Department the times, reasons and numbers of Children involved when more than 12 Children are cared for as provided in Section 7 of this Rule.
- H. Code compliance.** The Provider must maintain, and provide to the Department on request, documentation that indicates that the Provider complies with local codes and ordinances, including zoning, or a statement from the locality that no approval is required.

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SECTION 6. REPORTING REQUIREMENTS

A. Provider changes. Providers must notify the Department in writing of any of the following changes or occurrences within 24 hours of occurrence. Unless otherwise indicated, the written report must be made to the Provider’s Licensing Specialist:

1. Extended or permanent closure and expected date of closure;
2. Any changes to the heating system, any structural alterations, or any plans to use existing space in the facility that has not been inspected and approved. This includes any physical or structural changes in the building(s) or on the grounds such as but not limited to remodeling, renovations, playground modifications, or installation of a swimming Pool;
3. Any changes in phone numbers or email contact information.

B. Mandatory report of suspected Abuse or Neglect. Any provider suspecting Abuse or Neglect must immediately report this information to Child Protective Intake Services, 1-800-452-1999, TTY 1-800-963-9490 which is staffed 24 hours a day, 7 days a week.

1. The provider must maintain documentation, not maintained in the Child’s record, that a report has been made.
2. All reporting of suspected Child Abuse or Neglect, and serious injuries of a Child who is under six months of age or otherwise non-ambulatory, must comply with 22 MRS §4011-A.

C. Reporting adverse drinking water results to the Department. Providers required to test well water as provided in Section 13 of this rule must report any unsatisfactory water quality levels to Children’s Licensing and Investigation Services within the Department within 24 hours of receiving the result.

D. Reporting wastewater failure. The Provider must notify the Department and the local plumbing inspector if the wastewater disposal system fails to operate properly.

E. Reporting legal actions. The Provider must report, in writing, to the Department any of the following legal proceedings brought against the Provider, Staff Member, or Adult residing on the Premises within 24 hours:

1. Any proceeding that arises out of circumstances related to the care of Children by the Provider or Staff Member.
2. Any proceeding that could affect the continued operation of the child care.
3. Arrests, indictments, or convictions for sexual or violent crimes involving Children or Adults, or any illegal acts involving Children, whether prosecuted or not.
4. Any arrest, indictment or conviction for operating under the influence of intoxicants or with an excessive blood-alcohol level (OUI), or for any other activity involving substance abuse.
5. Investigation by Child Protective Services.
6. The removal of Children from the Provider’s care or custody by court order.
7. Any protection from abuse order or any other order that makes a Finding of domestic abuse or family violence.

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8. In addition to notifying the Department in writing about any of the above legal proceedings, the Provider must furnish the Department with written releases permitting the Department to obtain information regarding any of the above legal proceedings from any source.

F. Other notifications. The Provider must notify the Department of the following within 24 hours of occurrence:

1. All Child deaths and serious injuries that require medical care by a licensed medical provider, following notification of emergency medical personnel and the Child's Parents/Legal Guardians;
2. Any Child Abuse or Neglect allegations naming any Provider or Staff Member associated with the Provider, in addition to the immediate report to Child Protective Intake required in Section 6(B) above;
3. Child to Child sexual behavior, intentional exposure, or intentional contact;
4. Any violation of this rule designated as a critical violation;
5. Any violations of the Children's rights listed in Section 10 of this rule; or
6. Any anticipated change of location, including a temporary relocation due to an emergency that rendered the Licensed location temporarily uninhabitable. If relocating permanently, the Provider must notify the Department and submit an application for licensure of the new location. The Provider may not operate as a Family Child Care until the Department issues a new License for the new location.

G. Department action on report. In deciding what action to take on a License under the foregoing circumstances, the Department shall determine whether the Provider has presented sufficient evidence to indicate that the problems which resulted in any of the above have been adequately resolved such that the Provider will be in compliance with these Rules.

SECTION 7. STAFF-CHILD RATIOS, SUPERVISION, AND QUALIFICATIONS

A. Children under six weeks of age. No Child under six weeks of age, as verified by a birth certificate, other than the Provider’s own Children may be cared for by the Provider.

B. Children of Providers and Staff Members.

1. Children of Staff Members must be counted in the appropriate age groups and in determining staff-Child ratios when in care with the Provider, except as provided for in section 7(C)(2)(b) below.
2. Children living with the Provider who are over four years of age are not counted in determining the staff-Child ratio. Children living with the Provider under four years of age are counted in the staff-Child ratio.
3. All Children in care other than Children identified in Section 7(B)(2) above who are younger than 13 years old must be counted in staff-Child ratios.
4. In determining the number of Children for which a Provider is Licensed, the Department may factor in the needs of Children and Adults who reside in the home. The number of Children allowed may be restricted by the Department when any of the following circumstances are present:
 - a. Space is limited or unusually configured;
 - b. The Provider has physical limitations that would impact the Provider’s ability to safely care for, supervise or respond to the needs of children in care; or
 - c. There is a Child or Children who require exceptional amounts of care due to a health or other condition.

C. Staff-Child ratios.

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1. The number of Children present must not exceed Licensed Capacity.

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2. The maximum number of Children to be assigned per Staff Member must be as follows:

a. Ratio requirements:

CHILD AGES	STAFF-CHILD RATIO		
All Children 6 weeks to 2 years old	1 Provider: 4 Children	2 Providers: 8 Children	3 Providers: 12 Children
All Children 2 to 5 years old	1 Provider: 8 Children	2 Providers: 12 Children	Not applicable
All Children over 5 years old	1 Provider:12 Children	Not applicable	Not applicable
Mixed ages	1 Provider: 3 Children under 2 years old + 3 Children 2 to 5 years old + 2 Children over 5 years old, or 8 Children 2 to 5 years old + 2 Children over 5 years old.	2 Providers: 6 Children under 2 years old + 6 Children over 2 years old.	3 Providers: 12 Children (No more than 9 Children may be under 2 years of age).

b. Older Children may fill younger Children’s spaces, but younger Children may not fill older Children’s spaces.

3. Capacity may only be exceeded when the following conditions exist: family emergencies or emergency school closings.
 - a. Planned school closures are considered predictable circumstances and, therefore, capacity may not be exceeded.
 - b. Proper supervision and ratios, as defined in this rule, must be maintained. Procedures for managing such events must be explained in the written emergency plan and the reasons for exceeding capacity must be documented on the Attendance Record.
 - c. Special events occurring at the Provider location must provide supervision in accordance with this rule. A Child attending a special event in the care of a Parent or Legal Guardian will not be included in staff-Child ratios. Special events occurring outside of typical hours and days of operation are not subject to this rule.

D. Supervision.

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1. Children must be supervised at all times by Provider or a Staff Member. The Provider or Staff Member must be present and interacting, intervening, providing direction, feedback and assistance at all times.
 - a. Providers must have knowledge of the activity and whereabouts of each Child in care.
 - i. A Provider or Staff Member must be able to see or hear all Children at all times and be able to provide prompt intervention when needed.
 - ii. A Provider or Staff Member must be physically present outside when Children under the age of eight are outdoors.
 - iii. If Children over the age of eight are outside, and a Provider or Staff Member is not physically present, the play area must be enclosed by fencing.

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2. During napping and/or sleeping hours, the Provider or Staff Member must be awake and supervising all Children, and Child-staff ratios must be maintained. Dimmed, but adequate, lighting to allow visual supervision of all Children must be maintained at all times.
3. Monitors providing both video and audio may be considered as an acceptable form of supervision during quiet indoor activities.
4. The Provider or a Staff Member must attend to a Child crying or crying out.

E. Crisis plan. The Provider must develop and follow a written plan for obtaining help in an emergency when only one provider is present, or when staff-Child ratios are exceeded.

F. Personnel Qualifications. Staff Members must be at least 16 years of age. Any Staff Member under the age of 18 must be supervised by another Staff Member who is 18 years of age or older.

1. The Provider and All Staff Members must have a high school diploma or equivalent, be attending high school, or be enrolled in a General Educational Development (GED) or HISET (High School Equivalency Test) preparation program.

2. Staff Members responsible for, or assisting with, the care of Children must exercise good judgment in the handling of Children, demonstrate consistent compliance with this rule and all relevant laws, and must not engage in any action or practice detrimental to the welfare of the Children.
3. Providers must be able to perform their assigned tasks and meet all Staff Member requirements in this rule. No alcohol, tobacco, recreational marijuana, or illegal drugs may be consumed while on duty. Prescribed drugs or certified Medications that do not impair the ability of the provider to care for Children are allowed.
4. Either the Provider or at least one Staff Member must satisfy the following qualifications:
 - a. Be at least 18 years of age and hold a current certification in Adult and pediatric first aid and Cardio-Pulmonary Resuscitation (CPR); and
 - b. Have completed at least 6 hours of pre-licensing training in healthy, safe environments; Child development; observation and assessment; developmentally appropriate practice; guidance; relationships with families; individual and cultural diversity; children with special needs, business, and professional development; or childcare practices.
5. Staff Members must be properly immunized and provide documentation of immunizations to the Provider.
6. Providers must be properly immunized and have the immunization record readily accessible for inspection by the Department.

SECTION 8. TRAINING

A. Orientation training. Except when another time period is indicated, all Staff Members must receive training in the following areas within the first ninety days of service:

1. Fire drill procedures, disaster procedures, and all other emergency procedures. This training must be completed within the first week of service.
2. This Rule;
3. The Provider's policies and procedures;
4. Prevention of Sudden Infant Death Syndrome (SIDS) or Sudden Unexplained Infant Death (SUID), Shaken Baby Syndrome, and safe sleep practices;
5. Administration of Medication and Parental consent (providers may not administer Medication until training has occurred);
6. Prevention of and response to food and allergy emergencies;
7. Building and physical premise safety;
8. Communicable diseases, infectious disease prevention and control, Universal Safety Precautions and Blood Borne Pathogens;
9. Handling and storage of Hazardous Material and disposal of Bio-contaminants;
10. Transportation of Children (if the individual will be responsible for the transportation of Children; required biannually thereafter);
11. Adult and pediatric first aid with hands-on skills demonstration;
12. Adult and pediatric Cardio-Pulmonary Resuscitation (CPR) with hands-on skills demonstration;
13. Mandated Reporter Training.

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B. Ongoing Training. All Providers must ensure the appropriate number of hours of ongoing training for themselves and Staff Members. Twelve hours of training is required annually. All Providers and Staff Members must register with Maine's Professional Development Network.

1. Annual training must include a review of health and safety topics.
2. Ongoing training must include Department-approved Mandated Reporter retraining at least once every four years.
3. All training, including Adult and Pediatric First Aid and CPR certification hours, will be counted toward the requirement for the year it was completed.
4. The calculation of training hours per year must be based upon the date of issuance of the License.
5. Required training for new Staff Members will be prorated based on months of employment.

6. In order to count towards the required number of training hours per year, training must reflect current research and best practices relating to skills necessary for the childcare workforce to meet developmental milestones of Children and be appropriate for the population of Children served by the Provider. Training topics may include but are not limited to, healthy, safe environments; Child development; observation and assessment; developmentally appropriate practice; guidance; relationships with families; individual and cultural diversity; children with special needs, business, and professional development; or childcare practices.

SECTION 9. CHILD GUIDANCE

- A. Positive methods of Child guidance.** Providers and Staff Members must use positive methods of Child guidance which encourage self-control, self-direction, self-esteem, communication of wants and needs, and cooperation with others. Child guidance must meet the individual needs of each Child.
- B. Consistent and reasonable application of program rules.** Rules, expectations and limits must be clearly and consistently applied and carried out in a manner that reflects a Child's developmental ability.
- C. Constructive methods of guidance.** The Provider and Staff Members must use only constructive methods of guidance. This may include, but is not limited to, interventions such as:
1. Conflict resolution,
 2. Encouraging the use of language skills,
 3. Redirecting,
 4. Providing choices,
 5. Using praise or positive reinforcement,
 6. Recognizing a Child's strengths,
 7. Allowing Children to take supervised breaks away from the group when needed,
 8. Reminding Children of expectations using positive, clear language,
 9. Teaching self-regulation,
 10. Modeling appropriate behavior, and
 11. Allowing for individual differences.
- D. Detrimental practices.** Actions that have a reasonable likelihood to be harmful to Children are strictly prohibited. The Provider must ensure that no Child is subjected to an action or practice detrimental to the welfare of Children, including, but not limited to:
1. Corporal punishment. Corporal punishment means physical actions harmful to a Child's body, including, but not limited to, the following
 - a. Slapping, striking, shaking, shoving, spanking, pinching, twisting, kicking, biting, ear pulling or ear twisting;
 - b. Forcing a Child to taste or eat spicy, bitter or otherwise distasteful products for the purpose of Discipline;
 - c. Spraying with water as a means of controlling behavior;
 - d. Placing tape over a Child's mouth;
 - e. Mechanical restraints, such as tying a Child to a chair;

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- f.** Requiring or forcing a Child to take an uncomfortable position such as: squatting, kneeling, standing and holding arms outstretched at sides or overhead, bending, or requiring or forcing a Child to repeat physical movements; or
- 2.** Other forms of aggressive contact harmful to a Child's body. Cruel or severe punishment, humiliation, or verbal abuse, including but not limited to:
- a.** Shaming and embarrassing;
 - b.** Punishing for soiling, wetting or not using the toilet; or
 - c.** Humiliating or verbally abusing a Child in any other way.
- 3.** Withholding food, drink, rest or outdoor playtime as punishment or threat of punishment, or being forced to eat or drink against the Child's will;
- 4.** Exposing a Child to profane language, depictions of violence, use of illicit drugs or sexual content;
- 5.** Requiring a Child to be silent or inactive as a disciplinary measure for a period exceeding that Child's age in minutes;
- 6.** Unusual confinement, including but not limited to developmentally inappropriate use of high chairs, play yards, cribs or leaving a Child unattended in any room;
- 7.** Withholding any adaptive equipment that would result in loss of a Child's independence;
- 8.** Using physical restraints, unless trained, and with the review and approval of a Licensed clinician;
- 9.** Lack of supervision;
- 10.** Derogatory remarks to or about Children or Parents; or
- 11.** Rough handling.

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SECTION 10. RIGHTS OF CHILDREN AND PARENTS

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- A. Rights of children.** Children receiving childcare from Providers have the following rights.
1. Children must be free from emotional, physical, sexual abuse, neglect and exploitation.
 2. Each Child has the right to freedom from harmful actions or practices that are detrimental to the Child's welfare, and to practices that are potentially harmful to the Child.
 3. Each Child has a right to an environment that meets the health and safety standards in this rule.
 4. Each Child must be provided childcare services without regard to race, age, national origin, religion, disability, sex or family composition.
 5. Children must be treated with dignity, consideration and respect in full recognition of their individuality. This includes the use of Developmentally Appropriate practices by the Provider and Staff Members.
 6. Each Child has the right to the implementation of any plan of service that has been developed for that Child in conjunction with community or state agencies by the Provider.
 7. Each Child has a right to Developmentally Appropriate activities, materials, and equipment.
 8. Children with disabilities have the right to reasonable modifications to Provider policies and practices.
- B. Rights of parents and legal guardians of children receiving child care from Providers.**
1. A Child's Parent or Legal Guardian must be fully informed of items or services which are included in the rate they pay for childcare services.
 2. A Child's Parent or Legal Guardian has the right to be fully informed of findings of the most recent inspection conducted by the Department. The Provider must inform Children's Parents or Legal Guardians that the licensing inspection results are public information and inspection results must be posted in a prominent place on the Premises.
 3. Parents or Legal Guardians must be notified by the Provider within two business days of any actions taken against the Provider by the Department, including but not limited to, decisions to issue conditional Licenses, refusal to renew a License, or to impose fines or other sanctions.

SECTION 11. REPORTING CHILD ABUSE OR NEGLECT

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- A. Requirement to report child abuse or neglect.** Every Provider or Staff Member must immediately contact the Department of Health and Human Service's Child Protective Intake hotline (800-452-1999) when they suspect Child Abuse or Neglect.
- B. Provider requirement to inform.** The Provider must inform all Staff Members during orientation of their status as Mandated Reporters and their responsibility to report to the Department of Health and Human Services whenever there is reasonable cause to suspect Abuse or Neglect of a Child, and comply with ongoing Mandated Reporter training for all Staff Members as provided in Section 8 of this Rule.
- C. Written instruction provided.** Staff members must receive written instructions regarding Child Abuse or Neglect reporting that contains a summary of the State of Maine Child abuse reporting statute and a statement that they will not be discharged or disciplined solely because they have made a Child Abuse or Neglect report.
- D. Hotline number posted.** The Provider must ensure that the telephone number of the Department's Child Protective Intake hotline is posted in a readily accessible central location on the Premises.

SECTION 12. HEALTH AND MEDICAL

A. Immunization. Immunization records must be maintained to ensure proper medical treatment is determined and given in the event of a disease outbreak or public health emergency.

1. All Children in care must meet the following requirements:

- a.** The Provider must have a current record of immunization on file for each child, which clearly documents each child's present immunization status based on the Department's Day Care Immunization Standards (available at <http://www.maine.gov/dhhs/mecdc/infectious-disease/immunization/family/> and published in September 2019), within 30 days of the child's first admission to the child care and updated as needed thereafter or,
- b.** A blood test documenting immunity to measles, mumps, rubella and varicella (chickenpox), placed in the Child's record and updated in a timely manner.
- c.** No Child may be required to be immunized if religious, philosophical or medical reasons are documented. Effective September 1, 2021, exemption from immunization requirements are limited to medical reasons. The Child's physician, nurse practitioner, or physician assistant must provide documentation that immunization is medically inadvisable.

2. Unimmunized Children, Provider and Staff Members. The Family Child Care Provider must maintain a list of all unimmunized persons, regardless of age. In the event of a disease outbreak as defined by CDC reporting standards, a Child not immunized must be excluded from the Family Child Care in accordance with CDC guidance or until the Child receives the necessary immunization or proof of immunity is on record.

3. Immunization records. The Family Child Care Provider must make immunization records available to the Department of Health and Human Services, Maine Center for Disease Control and Prevention, upon request.

B. Evaluation requirements. When the Department has reasonable cause to believe that an Applicant, Provider or Staff Member may be unable to provide safe care for Children, the Department may request a report from a qualified professional or an appropriate official that includes the evaluator's determination of the person's ability to safely care for Children.

1. A physical examination or other evaluation is not required if the Applicant, Provider, or Staff Member states in writing that it is contrary to the person's religious teachings and practice.

2. If the Applicant, Provider, or Staff Member refuses to be evaluated, the Department shall determine whether sufficient evidence exists to ensure that the person can safely care for Children.

C. Health care consultation.

1. The Provider must have a manual of written guidelines for the prevention and control of communicable diseases and other appropriate health practices for childcare.

2. The Provider must ensure that the manual be available to and read by all Staff Members.

D. Health monitoring. The Provider must observe Children in care each day at the time of arrival and throughout the Child's stay for obvious signs of illness such as fever, diarrhea, vomiting, or skin rashes. In the event of an apparent illness of a Child, the Provider must comply with the guidance in the manual described in Section 14(C)(1) below.

When a Provider knows or suspects that a Child has contracted a notifiable disease or condition, the Provider must notify the Maine Center for Disease Control and Prevention (MECDC). The Provider must notify the MECDC immediately by phone for Category 1 conditions, and within 48 hours for Category 2 conditions. MECDC contacts: Phone: 1-800-821-5821 (24 hours a day); FAX: 1-800-293-7534 (24 hours a day); or TTY: Maine relay 711 (24 hours a day). For a list of Category 1 and 2 notifiable diseases and conditions, see 10-144 CMR Chapter 258, Rules for the Control of Notifiable Conditions, Chapter 2(I). <http://www.maine.gov/sos/cec/rules/10/144/144c258.doc>

E. Dismissal of children due to illness. When a Child becomes ill, but does not require immediate medical help, the provider must determine if the Child should be sent home. The provider must notify the Parent/Legal Guardian of the Child who has symptoms that require exclusion.

F. Illness, serious injury, incidents, and accidents.

1. The Provider or a Staff Member must immediately notify the Child's Parent or Legal Guardian of any illness, serious injury, or Incident involving their Child. An Adult designated by the Parent or Legal Guardian must be notified immediately should the Parent or Legal Guardian be unavailable.
2. The Provider must document all Accidents, injuries, Incidents, or emergencies in the Child's record on the day of the occurrence and the Parent or Legal Guardian must review and sign the document within two business days.

G. First aid. The Provider must have a first aid kit and a current first aid manual.

1. A complete first-aid kit must be readily available to the Provider during all Field Trips, and while transporting Children. A complete first aid kit includes, but is not limited to, adhesive tape, band aids, gauze pads, gauze roller bandage, disposable gloves, instant cold pack, scissors, tweezers, thermometer, CPR mask, and antiseptic wipes. The first aid kit must not contain any expired materials.
2. The first aid kit must be kept in a clean and sanitary condition, be stored in an easily accessible, designated location known to all providers, and be kept out of the reach of Children.

H. Medication administration. A Provider may give a Child prescription medication only when the Provider has written, signed, and dated permission from a Parent.

1. The Provider must only give Medication prescribed for the specified Child, according to the label instructions on the original container.
2. The Provider must not give any nonprescription Medications to a Child without written permission from the Parent. Telephone, text, or email permission is allowed in emergencies, if the provider documents giving the Medication and obtains written permission from the Parent as soon as possible.
3. The provider must keep a written record, noting each time a prescription and nonprescription Medication is given to a Child.
4. All Medications, refrigerated or non-refrigerated, must be:
 - a. Completely inaccessible to Children,
 - b. Stored at the proper temperature, and

c. Discarded upon expiration.

I. Handwashing. Handwashing must be done with soap and running water. The provider must ensure that all Adults and all Children wash their hands in at least the following circumstances:

1. Immediately before and after eating snacks and meals, including washing the hands of all Infants and toddlers before all feedings;
2. After each diaper change or toileting;
3. Before and after handling food; and
4. Before and after administering Medication.

J. Prevention of exposure to blood and body fluids. The Provider must take measures to prevent exposure to blood and other potentially infectious fluids, which may include use of disposable gloves. When touching blood, body fluids, secretions, excretions, mucous membranes, or non-intact skin, providers must:

1. Wash their hands after contact, even if gloves are worn;
2. Ensure safe waste management by immediately discarding contaminated single use items; and
3. Immediately Clean and disinfect surfaces and reusable equipment.

K. Emergency procedures. Providers must have a procedure for responding to situations when an immediate emergency medical response is required. Staff-Child ratio must be maintained during all medical emergencies. Staff Members may be called in as necessary to maintain the required ratio. Every Staff Member must be trained to manage an emergency until emergency medical care becomes available.

SECTION 13. DRINKING AND WASTEWATER

A. Drinking water. A Provider must provide documentation of water safe for drinking by staff and Children in care. If a satisfactory supply cannot be provided, a License or renewal of a License may not be issued.

1. Applicants serving drinking water from their own well must demonstrate satisfactory water quality by testing for the following contaminants by a Maine-certified laboratory:
 - a. Fluoride,
 - b. Uranium,
 - c. Arsenic,
 - d. First-draw Lead sample,
 - e. Nitrates, and
 - f. Total coliform bacteria.
2. Applicants serving water from a municipal public water system must demonstrate satisfactory water quality by collecting and testing one first-draw lead sample prior to receiving a License. The sample container must be from a Maine-certified laboratory and consist of a one-liter capacity.

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B. Ongoing annual water tests for providers with wells. Providers serving water from their own well must test their water annually for coliform bacteria and nitrates. Samples must be analyzed and results reported by a Maine-certified laboratory. Providers must maintain water quality reports for Department inspection.

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C. Five-year water tests for providers with wells. In addition to the annual testing required by Section 13(B) above, Providers serving water from their own wells must test their water every five years for at least the following contaminants: fluoride, uranium, first-draw lead sample and arsenic.

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D. Bottled water agreements. If the Provider chooses to use and serve bottled water due to the presence of one or more of the contaminants listed in Section 13 (A)(1) (a)-(e) above, then the Provider may operate under a written bottled water agreement with the Department. Under this agreement, the Provider must:

1. Use bottled water for all consumption and food preparation;
2. Provide written notification to Parents of enrolled and prospective Children that the Provider is required to use bottled water for all consumption and food preparation;
3. Post the agreement where it can be readily seen by Parents; and
4. Continue to conduct annual water testing in accordance with Section 13(B) of this rule.

E. Water and Sewer. During all hours of operation, water supply and sewage disposal must comply with 10-144 C.M.R. Ch. 231, 241.

1. When the sewage disposal system fails to meet this standard, the Provider must close.
2. The Provider may resume operation when the sewage disposal system is properly operating.

SECTION 14. ENVIRONMENT AND SAFETY

A. General condition of the building and surrounding Premises. A Provider must take immediate steps to correct any condition in the physical building or on the Premises, which poses a danger to Children's life, health or safety.

1. Stairs used by Children must be equipped with solidly mounted handrails.
2. Stairs must be enclosed by walls or railings. Stairs in areas used by Infants, toddlers and preschool Children must be protected by a gate or door.
3. Electrical outlets in areas used by Infants, toddlers and preschool Children must be protected by safety caps, plugs, tamper-resistant outlets, or other means.
4. Any Medications, Toxic Substances, Hazardous Materials, and other items dangerous to Children such as matches, lighters, fireworks, and power tools must be kept where Children cannot access them.
5. Smoking is prohibited on the Premises when Children are present.
6. Strings and cords long enough to encircle a Child's neck (six inches or more) must not be accessible to Children unless the Child is engaged in a recreational or educational activity with an Adult.
7. Equipment with an electrical cord must be anchored to the wall to prevent falling, or the cord must be inaccessible to Infants, toddlers and preschool Children.
8. The Provider must have a phone in working condition on the Premises.
9. A Provider may Lock the main entrance of their home and/or the Premises to prevent access from the exterior, provided that the door can be freely opened from the interior and there is a means to inform the Provider of the arrival of Parents/Legal Guardians or other visitors.
10. Toys and equipment must be kept clean and in safe working order.
11. The fall zone under and around all indoor play equipment which would buffer a fall from a height of more than 29 inches must be covered with shock-absorbing mats or materials which extend at least 39 inches beyond the outside edge of the equipment in all directions. If the play structure exceeds 48 inches in height, the shock absorbing mat must be at least two inches thick.
12. Furnishings, other heavy items, and/or items that could easily tip over or are unstable must be secured to the wall or floor.
13. The provider must Clean surfaces daily in all areas where Children are present. Cleaning products must not be used in close proximity to Children and adequate ventilation must be maintained during use.
14. Children are not allowed to be near power equipment while it is being operated and power equipment must be stored out of reach or have safeguards to prevent any Child from being injured when not in use.
15. Provider's purses, bags, Medications and other belongings must be inaccessible to Children.
16. All entrances and exits must be clear for evacuation at all times.

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17. Providers must empty trash, recycling, and compost containers and remove the contents from childcare space when the containers are filled, or sooner if contents create an odor or a health risk.

B. Outdoor playtime and indoor activities.

1. Children in attendance for more than four hours and over the age of 12 months shall have a minimum of 60 minutes of active play outdoors daily. Infants must go outside at least once daily.
2. When weather presents a risk to Children in accordance with Child Care Weather Watch and the Air Quality Index as provided below, gross motor activity will be substituted for outdoor time.
3. Provider must monitor the local weather and follow the recommendations of the Department's Child Care Weather Watch, which can be accessed at <https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/documents/ocfs/childrens-licensing-and-investigation/documents/WeatherWatch.pdf>
4. Provider must monitor the local air quality index as reported by the United States Environmental Protection Agency, which can be accessed at <https://www.airnow.gov/>. If the air quality index is "Unhealthy for Sensitive Groups" (USG) or higher, Children must be kept indoors.
5. Television, video viewing, and/or use of the computer or hand-held electronic devices shall be educational, age appropriate, and limited to ninety minutes or less per day. Alternative activities for children must be made available during these times

C. Satisfactory lead levels. Providers must comply with 22 MRS Ch. 252, Lead Poisoning Control Act, regarding the use of lead-based paint on toys, furniture, or any interior or exterior surfaces.

1. Providers will have an annual screening for potential lead hazards due to chipped and/or peeling paint.
2. A Provider will be exempt from this screening if:
 - a. The building was constructed in 1978 or later;
 - b. The building has been certified as having no lead hazards and no lead-based paint within the previous 12 months;
 - c. Lead-safe status has been maintained by a re-evaluation performed 6 months after the initial lead-safe certification and annually thereafter by a lead inspector or risk assessor; or
 - d. The Provider does not serve any Children under six years of age.
3. A lead inspection performed by a Maine certified lead inspector or risk assessor must be completed if the screening indicates the potential of exposure to lead paint.
4. If evidence of lead-based paint is found in a home built prior to 1978, the Provider must provide written notification to the Parents of all Children in care and prospective families of the possibility of exposure to lead paint. The Provider must maintain in each Child's record a written acknowledgement of receipt of the notification required above.
5. All remediation of lead paint and dust must be done following lead-safe work practices in compliance with 10-144 CMR Ch. 292, Rules Relating to the Lead Poisoning Control Act.

D. Carbon monoxide. Providers must be equipped with a working carbon monoxide detection system.

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1. Equipment may be individual electric (plug-in or hardwire) or battery-operated carbon monoxide detectors that are certified by Underwriters Laboratories LLC(UL-Listed); or an electronic carbon monoxide detection system connected to an electronic alarm/smoke detection system that is UL-Listed.
2. At least one carbon monoxide detector must be installed on every level of the home and the detector(s) must be installed in compliance with the Maine Department of Public Safety, Office of the State Fire Marshal or designee's instructions.

E. Building temperature.

1. A minimum temperature of at least 65° Fahrenheit measured within two feet of the floor must be maintained in spaces occupied by Children.
2. If indoor temperatures exceed 82° Fahrenheit, then Providers must use methods to cool the space when occupied by Children.
3. Air conditioners, electric fans, and heaters must be mounted and anchored out of all Children's reach or have safeguards that keep any Child from being injured.
4. Portable electric space heaters must be approved by the Maine Department of Public Safety, Office of the State Fire Marshal or designee. Heating units must be shielded in a manner to prevent injuries and burns and be installed and operated in accordance with the manufacturer's specifications.

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F. Lighting and Ventilation.

1. Every room used by Children must be properly lighted to allow safe movement through the space. Natural light is required in any room used by Children for more than four hours per day.
2. All indoor space used by Children must be adequately ventilated.
 - a. Windows should be open when outside temperature and air quality allow.
 - b. Doors and windows used for ventilation must be equipped with securely fastened screens.
 - c. The Provider must resolve any damp conditions which result in visible mold, mildew, or musty odors before Children may occupy the space.

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G. Minimum Usable Space. The Provider must provide a minimum net area of thirty-five (35) square feet of usable space per Child. Areas not to be calculated as usable space include hallways, cubbies, door swings, closets, supply cabinets, and bathrooms.

H. Outdoor play areas. The facility must have access to an outdoor play area, with sufficient space for safe play for all Children, with drainage that prevents standing water.

1. Where hazardous conditions exist in the outdoor play area, the Children must be protected from those conditions by fencing or other appropriate barriers.
 - a. Hazardous conditions include, but are not limited to, roads, any bodies of water, active railroad tracks, sharp inclines or embankments, or any other dangerous area.
 - b. Fencing should be a minimum of 48 inches high. Any fully enclosed area must have at least one gate, which is secured with a Childproof latching mechanism.

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c. There must be an exit from the playground other than through a building.

2. Outdoor active play equipment must be arranged to allow providers to maintain line of sight supervision of Children at all times.

3. Appropriately fitted helmets must be worn for all activities when head injury risks are present (e.g. bicycles, scooters, rollerblades, skateboards, snowboard, and/or power wheels).

4. Equipment that exceeds 36 inches in height at the climbable or standing surface shall have energy-absorbing materials beneath it.

a. Energy-absorbing materials include loose fill materials such as playground wood chips, pea gravel, rubber tiles or mats, or sand.

b. Energy-absorbing material must extend beyond the equipment in all directions to prevent injury in the event of a fall.

c. If using loose-fill energy-absorbing materials, all swings, climbers, and slides must have a sufficient amount of energy-absorbing materials to prevent injury, based upon equipment height.

d. Concrete or asphalt must not be used.

5. A variety of equipment suitable for the age and needs of all Children in care must be available. Climbers, swings and slides must be firmly secured, clean, in proper repair and safely constructed; and located at a sufficient distance to prevent injury from any hard surfaces, including poles, fences, sheds and other play equipment.

6. The play area must be free of hazards and visually inspected by a Provider daily, prior to Children having access to the area.

7. Sandboxes or sand piles must be maintained in a safe and sanitary condition.

8. Outdoor play areas must provide shade. The provider shall ensure sun safety for Children by limiting sun exposure when UV rays are strongest, wearing hats, or applying sunscreen (unless directed otherwise by the Child's Parent). Infants younger than six months must stay out of direct sunlight, and a Provider may not apply sunscreen to an Infant unless the Child's Parent provides a physician's recommendation. Written documentation from the physician must be stored in the Child's file.

I. Weapons. Firearms, hunting knives, bows and arrows, and other weapons kept on the Premises must remain in a Locked case, closet, or cabinet inaccessible to Children during all hours of operation.

1. Firearms must be kept unloaded. Ammunition must be Locked in a separate location from weapons.

J. Materials, toys and equipment. Materials, toys, and equipment must be Developmentally Appropriate for Children enrolled.

1. Infants: A sufficient variety of toys, music and books designed to stimulate curiosity, small and large muscle development, hand-eye coordination, and the senses of sight, sound and touch.

2. Toddlers and preschool Children: A sufficient variety to offer activities in each of the following areas: blocks, dramatic play, language and literacy, arts and crafts, games and manipulatives (such as pegboards and puzzles), sensory activities (such as sand and water), science and nature, and music.

3. School-age Children: A sufficient variety to offer activities in each of the following areas: books and language, arts and crafts, games, science and nature, and music.
4. Toys and equipment that have been recalled through the manufacturer or the United States Consumer Product Safety Commission (CPSC) must be removed from the Premises, repaired, or replaced based on the recall information available.
5. The Provider must have access to extra Children's clothing, in the event that clothes become soiled, damaged, or were not provided for the activities of the day.

K. Furnishings. The Provider must be furnished to meet the needs of the Children served.

1. Easily accessible and individual space must be made available for Children's outside clothing and personal possessions.
2. The Provider must assign each Child his/her own toilet articles (toothbrush, brush, comb, etc.) and personal items (towel, drinking glass) when the use of such is offered.
3. When bathing facilities are available:
 - a. Children must not take baths together or share the same bath water;
 - b. Tubs or showers must be Cleaned before being used by a different Child;
 - c. Children must be given clean washcloths and towels; and
 - d. No Child under five years of age shall be left unattended while in the bathtub or shower.

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L. Cribs, cots, and bedding.

1. A crib or play yard that meets Consumer Product Safety Commission (CPSC) safety standards, available at <https://www.cpsc.gov/s3fs-public/5023.pdf>, must be provided for each Child up to 18 months of age.
 - a. No crib or play yard may be used for sleeping by more than one Child at a time.
 - b. Double or multi-decked cribs are prohibited.
 - c. Mats must be waterproof or washable.
 - d. Each crib must be equipped with a waterproof, firm, snug fitting mattress which is positioned within two finger widths on all sides of the crib frame. Each play yard must be used with the original mattress or a replacement specified by the manufacturer.
 - e. Devices of any type that restrict the movements of Children must not be used in cribs.
 - f. Toys including mobiles and other types of play equipment that is designed to be attached to any part of the crib must not be used.
2. Bassinets that meet CPSC safety standards may be used for Infants up to five months of age, within appropriate weight limits. A provider may not use a bassinet for an Infant who can independently lift their chest off the sleep surface.

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3. Cribs, bassinets and play yards for Infants less than 12 months old must not include soft or loose bedding including, but not limited to: bumper pads, pillows, quilts, comforters, blankets, sleep positioning devices, bibs or stuffed toys. Appropriately fitted arms-free wearable blankets are permitted.
 - a. Cots, mats, play yards, bassinets, and cribs used by any Infant or toddler must be Cleaned and sanitized between use by different Children, when contaminated, or at a minimum of once per week.
 - b. All crib, bassinet, and play yard mattresses must be covered by a snugly fitted sheet.
 - c. Cribs, cots, beds, mats, or play yards used for sleeping must be spaced at least 2 feet apart or separated by a solid divider on one side.
4. A separate mat, bed or cot, with a blanket or sleeping bag, must be assigned to each Child under the age of five in care for longer than four hours. All bedding must be cleaned before being used by another Child. Bedding must be cleaned as needed, or at least weekly.
 - a. Blankets, sleeping bags, bedding, cots, and mats must be stored in a manner which ensures that sleeping surfaces are not touching or must be washed and disinfected before re-use if stored in a manner that allows sleeping surfaces to touch during storage.
 - b. Sheets must be washed or changed before being used by another Child. Sheets and all wearable blankets must be laundered as needed, but no less than weekly.

M. Toilet facilities. Washing and toilet facilities with both hot and cold running water and soap must be provided.

1. A step, low platform, or other means must be placed next to toilets and wash basins, for Children who need help reaching and using them.
2. Providers must not exceed a water temperature of 120° Fahrenheit in taps available for use by Children.
3. Either disposable paper products, or clean, individually assigned wash cloths and towels may be used. Individually assigned washcloths and towels must be laundered daily.

N. Diapering/toileting.

1. Children must be checked at a minimum of every two (2) hours for wet or soiled diapers and clothing, and must be changed as soon as possible
2. Wet or soiled disposable diapers must be placed in a lined, lidded container, separate from other trash or garbage and separate from play or food-preparation areas, or individually bagged and tied within a lidded shared garbage container.
3. Diapering must be done on a changing table or washable vinyl mat which is Cleaned after each use or which has a disposable single-use covering.
4. The changing table or mat must not be located in the kitchen or food preparation area.
5. Staff must wash their hands and the Child's hands with soap and running water after each diaper change.

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6. For Children using cloth diapers, the diaper must have a clean, absorbent inner lining completely contained within an outer covering made of waterproof material that prevents the escape of feces and urine.
 - a. Both the diaper and the outer covering must be changed as a unit.
 - b. Cloth diapers and clothing that are soiled by urine or feces must be immediately placed in a clean sealable bag or container (without rinsing, shaking, or dumping) and sent home that day for laundering.
 - c. This sealable bag or container must be stored out of reach of Children.
7. The Provider must collaborate with families to determine the best toileting practice based on the needs of each Child.
8. Potty chair receptacles must be emptied immediately after each use, rinsed, and sanitized in a sink not used for food preparation.
9. Potty chair receptacles may not be used in a food preparation area.

O. Pets.

1. Pets must not present a danger to Children.
2. The Premises must be free of pet or other animal waste and the interior of the home must be free of pet waste odors.
3. Pet waste boxes must not be kept in food preparation or food service areas and must be covered so that Children cannot come into contact with pet waste.
4. All pets must be vaccinated against rabies, and a record of each pet's vaccination must be retained as provided in section 5 of this Rule.

P. Fire evacuation drills

1. Fire evacuation drills must be conducted at least once a month for all Children and Adults present using at least two (2) means of exit. A record of all fire evacuation drills must be maintained as provided for in section 5 of this Rule.
2. Fire drills must be conducted according to policies and procedures that are posted in each room utilized by Children.
3. Smoke detectors must be used, when possible, to execute the fire drills.

Q. Emergency preparedness plan. Providers must have a written emergency preparedness plan in the event of a fire, natural disaster, or other threatening situation that may pose a health or safety hazard to the Children. Providers and Staff Members must review the emergency preparedness plan annually and update as needed. Providers must retain the updated copy of the plan for evacuation and provide details of the emergency relocation procedures to each Parent or Legal Guardian of the Child at the time of the Child's enrollment with the Provider and whenever the plan is updated.

1. The plan must provide for the following:
 - a. Evacuation, including a designated relocation site and evacuation route;

- b.** Lockdown of the residence and/or shelter-in-place;
 - c.** Procedures for notifying Parents/Legal Guardians;
 - d.** Procedures to address the needs of individual Children including Children with special needs;
 - e.** Coordination with local emergency management officials; and
 - f.** Guidelines for the continuation of Child care in the period following the emergency or disaster.
- 2.** The Provider must conduct an evacuation drill at least twice a year and the dates must be recorded and be available for review.
 - 3.** All Staff Members must be trained in and familiar with the emergency preparedness plan.

SECTION 15. SWIMMING AND WADING

- A. Policies regarding water activities and safety procedures.** Direct supervision of Children is required at all times, by providers in close physical proximity to allow intervention and within sight and sound of all Children in the swimming or wading activity area.
1. A Provider that offers swimming or wading activities must develop policies and procedures regarding swimming and wading activities and safety procedures.
 2. Policies and procedures must cover all swimming or wading activities that take place on or away from the Premises, e.g., at a public swimming Pool or beach.
 3. Policies and procedures must include a written emergency plan related to any swimming or wading activities, regardless of where they are conducted. The plan must be available to all staff. The plan must cover procedures for medical emergencies, chemical emergencies, drowning, severe weather and frequent verification that all Children are safe.
- B. Parental permission.** Prior to allowing a Child to participate in water activities, the Provider must have written permission from the Parent or Legal Guardian. At least annually, the written Parental permission form must be updated, signed and dated by the Parent or Legal Guardian. The signed and dated Parental permission form must be placed in the file maintained by the Provider for each Child's records. The Parental permission form must include:
1. The Child's name and date of birth;
 2. The water activities offered;
 3. The Child's swimming ability;
 4. Location of the water activities;
 5. The presence or absence of a Certified Lifeguard; and
 6. The Parent's signature and date.
- C. Surfaces.** All water play equipment must be positioned on grass or energy absorbing material during use.
- D. Minimum training and certification required for water activities.** The Provider must have appropriately trained water attendant(s), as defined by this rule, present at all times during all swimming or wading activities.
1. Wading Pools. Children must not be allowed to enter a Wading Pool without supervision by a Wading Pool Attendant.
 2. Swimming Pools. Children must not be allowed to enter any swimming Pool deeper or wider than a Wading Pool without supervision by a Water Safety Attendant.
- E. Cleanliness.** Swimming Pools must have sufficient clarity. The bottom must be clearly visible in the deepest part of the Pool. Swimming Pools must be equipped with a filtration and/or treatment system. Wading Pools must be Cleaned and emptied daily, and as needed in response to the presence of contaminants.

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F. Pool accessibility.

1. All Wading Pools must be emptied when not in use.
2. Hot tubs must be protected by fencing or Locked barriers to prevent access by Children.
3. All in-ground Swimming Pools located in areas accessible to Children must be fenced. The fence must be at least four feet in height and secured with a Locked gate.
4. All above-ground Swimming Pools must have non-climbable sidewalls that are at least four feet high or must be enclosed with a fence at least four feet in height and secured with a Locked gate. When the Pool is not in use, steps must be removed from the Swimming Pool or otherwise protected to prevent unsupervised access.

G. Emergency preparedness and drills.

1. All Pools must have an accessible emergency telephone located in the Pool area. The telephone must be able to dial directly for emergency assistance.
2. Water activity emergency drills must be conducted at least once a month in any month during which the water activity participation occurs. These drills must be conducted according to policies and procedures, which include the use of safety equipment, Child evacuation, routine methods of ensuring all Children are present, and emergency contacts.
3. The facility must keep a written record of the type, date, time and duration of the training and drills.

H. Staff-Child ratios during water activities. Staff-Child ratios must be maintained at all times during swimming and wading.

1. Wading Pool attendants may count toward staff-Child ratios. Water safety attendants, Certified Lifeguards, and swimming instructors do not count toward staff-Child ratios. Water safety attendants and Certified Lifeguards must be stationed outside and next to the swimming Pool.
2. When three or fewer Children are in the swimming Pool, a water safety attendant may be included in staff-Child ratios. The water safety attendant must be solely responsible for supervision of the Children in the swimming Pool.
3. If the Pool is more than four feet deep at any point, only providers who are able to swim may be counted in the staff-Child ratios.

I. Swimming pools. Providers with swimming Pools on the Premises must be familiar with emergency procedures, the use of safety equipment and emergency contacts.

1. Providers must complete a safety checklist on any day which a swimming activity occurs. A checklist will be supplied by the Department and must be signed by the individual responsible for swimming activities on that day.
2. Legible safety rules for the use of swimming Pools must be posted in a conspicuous location and must be read and reviewed weekly by each Staff Member responsible for the supervision of Children.

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J. Off-site Pools or natural bodies of water. For water activities away from the Premises, regardless of whether a Certified Lifeguard is on duty, the Provider must provide one water safety attendant.

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1. Certified Lifeguards must not be counted as water safety attendants.
2. Water activities in natural bodies of water must be limited to a specific area established by the Provider by visual barriers on land and in the water.
3. Water safety attendants must not be counted in staff-Child ratios. Additional staff must be present to complete staff-Child ratio requirements.
4. A Provider that offers water activities at natural bodies of water or in Pools over 24” deep must give written notice to each Child’s Parent or Legal Guardian that there will be no Certified Lifeguard on duty.
5. At least two Staff Members who are 18 years of age or older must be present at all times during water activities at natural bodies of water.

K. Non – swimmers. All Non-swimmers must be clearly identified as Non-swimmers in a way that is visually and easily recognized by Providers, Staff Members, water safety attendants and Certified Lifeguards as applicable.

SECTION 16. FOOD AND KITCHEN FACILITIES

- A. Well-balanced meals and snacks.** Meals and snacks provided by the Provider must be nutritious and well-balanced. Each meal (breakfast, lunch, and dinner) and snack provided by the Provider must include items such as proteins, dairy products, fruits and vegetables, water and whole grains.
1. Drinking water must be available to the Children at all times.
 2. A variety of snacks that are nourishing and include items such as dairy products, fruit, water, vegetables, and whole grains must be served.
 3. Milk, water, or a milk substitute must be offered to Children at all meals and snacks.
 4. Portions of food served must be suited to the Child's age and appetite.
 5. Providers may encourage Children to try new foods, but no Child shall be forced to eat anything they do not want.
 6. Unhealthy foods such as convenience food, fast food, and processed foods must be limited to special occasions such as holiday celebrations and birthday parties. Soda must not be served at any time.
 7. Only 4 to 6 ounces of 100% juice without added sugars may be served to children over 12 months of age, not more than once daily.
 8. Children must be allowed time to eat their food, not be rushed during the meal or snack time, and must be seated. Children must not be allowed to play, watch television, or use electronic devices during meal or snack time.
- B. Handwashing.** All Adults and all Children must wash their hands immediately prior to preparing or consuming snacks and meals.
- C. Allergies.** Documentation regarding Children's food allergies/food intolerance as verified by a physician must be readily accessible and reviewed by all Staff Members responsible for food preparation and distribution. Food must be prepared according to a written plan for each Child with a food allergy or food intolerance. The plan must be reviewed and updated as the Child's needs change and at a minimum of once a year.
- D. Provider Responsibilities**
1. Providers or Staff Members who are ill must not work in the food preparation area. Providers or Staff Members with open sores that cannot be covered must not handle or prepare food.
 2. Children may be allowed in meal preparation areas only when under the direct supervision of a Provider and there is no danger of injury from kitchen equipment.
 3. Children must be within sight and sound of the Provider during meal and snack times.
 4. Any food served to one Child must not be re-served to another Child.
- E. Food Storage**
1. All contaminated, spoiled, or expired foods must be disposed of promptly. Swelled, rusted, dented, or leaky canned food or drink must not be consumed and must be disposed of promptly.

2. All perishable food must be kept at the appropriate temperature.
3. Refrigerators must be kept at a temperature not to exceed 40° Fahrenheit. A thermometer must be kept in the refrigerator at all times.
4. Freezers must be kept at a temperature not to exceed 0° Fahrenheit. A thermometer must be kept in the freezer at all times.
5. Food stored in the refrigerator must be stored in a manner that permits free circulation of cool air. All foods must be covered.
6. Box/bag lunches or other food supplied from outside the Provider must be kept refrigerated if required.

F. Food Preparation

1. Frozen foods must be thawed in the refrigerator or under cold running water. Frozen foods defrosted in the microwave oven must be immediately served or prepared for service.
2. Fresh fruits and vegetables must be thoroughly washed before use.
3. Food, if heated, must be served to Children only after contents have been mixed, stirred, and temperature checked to prevent scalding.

G. Equipment and Utensils

1. All food preparation and eating surfaces must be Cleaned before and after use.
2. Dishes and utensils must be washed in an automatic dishwasher or thoroughly washed in warm soapy water and rinsed in hot water.
3. Paper products must have a single use and must be disposed of immediately after use.
4. Single-service utensils must be used only once.

H. Kitchen facilities

1. Kitchen areas must be well-lighted, clean, sanitary, and orderly.
2. The food preparation area must not be used for other activities when food or drink is being prepared or served.
3. All hot foods and liquids must be out of Children's reach. A staff person who is cooking or drinking a hot beverage must not hold Children.
4. Proper sinks with plumbing and hot and cold water under pressure approved by the local permitting authority must be available in all rooms where food or drink is prepared, or utensils are washed. Bathrooms are not to be used for preparing foods, cleaning bottles for Infants, or washing dishes.
5. Surfaces coming into contact with food or drink must be easily cleanable, uncluttered, and in good repair.

6. Kitchen facilities must be maintained in a sanitary condition free of insects, rodents, and other contaminants. All utensils, equipment, and food must be stored in a clean, dry place free from insects, rodents, and other contamination and must be handled in such a manner as to prevent contamination.
7. The refrigerator must be maintained in a clean and sanitary fashion, free from mold and spills.

SECTION 17. TRANSPORTATION

A. Driver requirements. Any person driving Children receiving Child care from a Provider must have the proper license to drive the class of motor vehicle being used, annually submit a signed release authorizing the Department to check the records of the Bureau of Motor Vehicles, receive a qualifying result pursuant to the Bureau of Motor Vehicle Check, and complete Department-approved training for transportation of Children prior to driving Children and at least every two years thereafter.

1. The following offenses disqualify a person from driving Children receiving childcare from a Provider, whenever committed:

- a. Motor vehicle violation resulting in death,
- b. Aggravated refusing to stop for a law enforcement officer,
- c. Criminal homicide in operation of a motor vehicle.

2. The following offenses disqualify a person from driving Children receiving childcare from a Provider if committed within the last five years:

- a. Criminal OUI,
- b. Operating while license is suspended or revoked,
- c. Driving to endanger,
- d. Refusing to stop for a law enforcement officer,
- e. Criminal speeding

B. Vehicle capacity not to be exceeded. The number of persons transported in any vehicle must not exceed the seating capacity of the vehicle, except in the event of emergency evacuation and relocation to a previously established relocation site.

C. Safety in vehicles.

- 1. No Child will be permitted in any vehicle without Adult supervision.
- 2. Children must be seated with seat belts fastened or in Child safety seats in accordance with 29-A M.R.S. § 2081.
- 3. The vehicle requirements above shall not apply to vehicles not operated by the Provider, such as school buses, taxis, and/or public transportation agencies.
- 4. Children being transported on a school bus that are under the age of 4 must be in Child safety seats in accordance with 29-A M.R.S. § 2081.
- 5. Weapons must not be transported in any vehicle in which Children are riding.

D. Field Trips

- 1. Providers must have measures in place to account for all Children at all times.
- 2. Children must be accounted for when leaving and re-entering the Premises, and a head count should be performed periodically during a Field Trip.

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SECTION 18. INFANT/TODDLER CARE

A. Additional rules for providers serving infants and toddlers. In addition to the preceding rules, a Provider serving Children ages six weeks to 36 months must also comply with this section.

B. Promoting developmental needs. The developmental needs of Infants and Toddlers must be promoted in the following ways:

1. The provider must ensure that Infants and Toddlers are given a variety of activities to promote proper development in all areas of learning, consistent with each Child’s developmental needs.
2. Each Child must be allowed to form and follow his or her own pattern of sleeping, resting, and waking periods;
3. Infants and Toddlers must not be allowed to use toys or objects which could be swallowed or cause choking. Foods that are choking hazards due to the size, shape or texture must not be served to Infants and toddlers;
4. Each Infant’s position must be changed every 30 minutes, when the Child is awake;
5. Infants must be offered supervised tummy time / floor time daily;
6. Use of Infant equipment to include, but not limited to bouncers, jumpers, and swings must be limited to 30 minutes at a time.

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C. Feeding

1. Breast milk must be labeled with the Child’s name, dated, and stored or discarded in accordance with the table below.

Storage Location and Temperatures			
Type of Breast Milk:	Countertop	Refrigerator	Freezer
	77°F (25°C) or colder (room temperature)	40°F (4°C)	0°F (-18°C) or colder
Freshly Expressed or Pumped	Up to 4 Hours	Up to 4 Days	Within 6 months is best Up to 12 months is acceptable
Thawed, Previously Frozen	1–2 Hours	Up to 1 Day (24 hours)	NEVER refreeze breast milk after it has been thawed
Leftover from a Feeding	If the Infant did not finish the bottle, use within 2 hours after the Infant is finished feeding.		

2. Formula must be made from commercially prepared products. Homemade formula solutions are prohibited.
3. Formula and breast milk must be labeled with the Child’s name and date.
4. Use prepared Infant formula within 2 hours of preparation and within 1 hour from when feeding begins. If the prepared Infant formula is not used within 2 hours, immediately store the bottle in the refrigerator and use it within 24 hours.
5. The feeding schedule amount and type must meet the Infant’s needs.
6. Providers must hold Infants who are not independently bottle-feeding in their arms for feeding.

7. Children who are independently bottle-feeding must be in a seated position within reach of a Provider.
8. If breast milk or formula is to be warmed, bottles must be placed in hot (not boiling) water for no longer than five minutes, after which the bottle must be shaken well, and the temperature tested before feeding. Bottles of formula or breast milk must never be warmed in a microwave oven.
9. A chair or table used for feeding Infants and Toddlers must be designed to prevent the Child from slipping or falling.
10. Dishes and bottles used for feeding must be made of unbreakable material or sheathed in material that prevents shattering and may not contain bisphenol A (BPA).
11. Parents must be immediately informed if a Child is accidentally fed another Child's breast milk. Providers must have information available regarding follow-up testing and sharing results.

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D. Napping/Resting. The Provider must observe the provisions of Section 14 (L) of this rule, and:

1. Infants must be placed on their backs in an approved bassinet, crib, or play yard for sleeping, unless the Child's Parent provides a physician's recommendation. The written documentation from the physician must be in the Child's file.
2. Each Infant/Toddler must be allowed to follow his/her own sleep/rest pattern, unless specific written documentation from the physician is in the Child's file.
3. Bibs and garments with ties or hoods must be removed before placing an Infant in the crib to sleep.
4. Swaddling of Infants and Toddlers is prohibited.
5. Sleeping Infants must be checked in person at least every 30 minutes.
6. Cribs, cots, and play yards may only be used by one Child at a time.

SECTION 19. NIGHTTIME CARE

- A. Additional rules for nighttime care.** A Provider that offers Nighttime Care must comply with the requirements in this section, in addition to all other sections of this Rule.
- B. Individualized care.** Special effort must be made by the Provider and Staff Members to individualize care at a Child's bedtime and awakening.
- C. Rooms used for sleeping or napping.** All rooms occupied for sleeping or napping must be approved by the State Fire Marshal's Office.
- 1.** A room above the first floor may be used for sleeping or napping if the room has two exits, with one exit leading directly to the outside, with means to safely reach the ground level.
- 2.** The Provider must have written approval from the Parent of each Child in care to share a sleeping room with another person. School age Children must be provided with gender-specific sleeping and private dressing areas.
- D. Beds and bedding.** A Provider who offers nighttime care must have a safe and sturdy crib for each Infant, and a safe and sturdy bed or cot with mattress and a pillow for each older Child.
- 1.** The top level of bunk beds must have a safety rail.
- 2.** Waterbeds must not be used for Children under 36 months of age.
- 3.** Sheets must be changed weekly, between use by different Children, or more frequently if needed. No Child may be allowed to sleep in a wet bed.
- 4.** Beds arranged side by side must be at least two feet apart.
- 5.** Cribs for Infants must comply with Section 14 of this rule.
- 6.** Mats may not be used for sleeping overnight.
- E. Supervision while sleeping.** Sleeping Children must be within the Provider's hearing, which may include the use of an audio and/or visual monitor.

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SECTION 20. ENFORCEMENT, SUBSEQUENT REAPPLICATION AND APPEALS

- A. Department's authority to enforce compliance.** The Department may direct any Provider to correct any violations in a manner, and within a time frame, that the Department determines is appropriate to ensure compliance with this rule or to protect the health and safety of Children.
1. The Department may take one or more of the following measures, at any appropriate level, to address violations of this rule or applicable statutes.
 2. Enforcement actions are not required to be sequential, as presented in this rule.
 3. The Department may waive or modify any provision(s) of this rule, unless the provision is mandated by State or Federal statute.
 - a. The Applicant must state, in writing, that an alternative method will comply with the intent of the rule for which the waiver is sought.
 - b. If approved, the waiver will be limited to the term of the License.
 - c. Extensions will only be granted where the best interest of the Child(ren) is served.
- B. Directed plan of action.** The Department may issue a Directed Plan of Action for noncompliance with this rule.
1. The Directed Plan of Action will specify the actions that must be completed in order to comply with this rule, along with a timeline for each action.
 2. Failure to complete or comply with a Directed Plan of Action may result in further enforcement action, up to and including the revocation of a License.
- C. Restrictions.** The Department may require the following:
1. To stop all new admissions until the Department determines that the Provider has corrected all violations.
 2. To reduce the capacity of the Provider until the Department determines that the Provider has corrected all violations.
- D. Administrative fines.** The Department may assess administrative fines in accordance with the schedule of fines outlined in this rule, if the Provider fails to comply with applicable laws and/or this rule.
1. An administrative fine may be assessed for a violation that constituted noncompliance with State statute or this rule.
 2. An administrative fine is issued via a Notice of Fine. The notice will describe each violation, the rule or statute that has been violated and any scheduled amount of administrative fine corresponding to that violation.
 3. The Department has established the following schedule of administrative fines for Providers failing to correct violations by the Department's timeline pursuant to 22 MRS §7702-A:
 - a. Non-critical violation: \$100.00 per violation.
 - b. Critical violation: \$250.00 per violation.

4. The Department may assess administrative fines up to \$500.00 per inspection.
 5. Providers are required to pay the Department the amount of the administrative fine within 30 Days of receipt of the notice of fine. If the Provider has not paid the total fines due before License renewal, then the License renewal application will be denied.
 6. Imposing an administrative fine is not deemed, in any way, to extend any deadline for compliance.
- E. Conditional license.** The Department may issue a conditional License, in accordance with 22 MRS §7802(1)(C). The notice of conditional License will include a Directed Plan of Action.
- F. Suspension of a license.** The Department may suspend or seek to suspend a License as follows:
1. The Department's Commissioner may suspend a License on an administrative basis by issuing an order of closure when conditions are found which, in the opinion of the Department, immediately jeopardize the health and safety of Children.
 2. The order of closure may last for up to ten Days in accordance with 22 M.R.S. § 8301-A (5), pending further Investigation or prior to obtaining an order of emergency suspension from the court.
 3. The Department may seek an emergency suspension in accordance with 4 M.R.S. § 184 when conditions are found which, in the opinion of the Department, immediately endanger the health or safety of Children.
- G. Referral to the Office of the Attorney General.** A Provider with violations may be referred to the Office of the Attorney General for appropriate civil action.
1. The Department may pursue civil fines in accordance with 22 M.R.S. §§ 7702-A and 7702-B, or any other relevant section of the Maine Revised Statutes.
 2. The Department may seek injunctive relief to require compliance, in accordance with 22 M.R.S. §8301-A (7).
- H. Refusal to issue or renew a License.** The Department may refuse to issue or renew a License when a Provider fails to comply with applicable laws and rules.
- I. Revocation.** The Department may revoke a full or temporary License for violation of applicable laws and rules for committing, permitting, aiding or abetting any illegal practices in the operation of a Family Child Care Provider or for conduct, or practices detrimental to the welfare of Children receiving childcare services from the Provider in accordance with 22 M.R.S. §7802(3)(D).
- J. Void.** The Department may void a conditional License when the Provider fails to comply with the conditions of the License.
- K. Right to information regarding the Provider's deficiencies.** A Child's Parent or Legal Guardian has the right to be fully informed of a program's licensing history. Parents and Legal Guardians must be notified in a timely manner, by the Provider, of any actions taken against the Provider by the Department, including but not limited to, issuance of a Directed Plan of Action, issuance of a conditional License, refusal to renew a License, the imposition of fines, or other sanctions.
- L. Consent Agreement.** The Department may issue a Consent Agreement in lieu of another formal sanction. If the Consent Agreement is not followed the Department may take further licensing action.

- M. Limitation on reapplication after denial or revocation of a license.** The following time limits apply to a reapplication after denial or revocation of a License.
1. When a License has been denied or revoked on one occasion, the Applicant or Provider may not reapply for a License for a period of one year from the effective date of the denial or revocation decision if not appealed or, if appealed, from the effective date of the commissioner's final decision or the reviewing court's order, whichever is later.
 2. If a License has been denied or revoked on two occasions, the Applicant or provider may not reapply for a License for a period of two years from the effective date of the second denial or revocation decision if the decision is not appealed or, if appealed, from the effective date of the commissioner's final decision or the reviewing court's order, whichever is later.
 3. If a License has been denied or revoked on three occasions, the Applicant or provider may not receive another License for the care of Children.
- N. Subsequent application for a full license.** A subsequent application for a full License may be considered by the Department after any of the following actions, when the deficiencies identified by the Department at the time the action was taken have been corrected:
1. Issuance or voiding of a conditional License;
 2. Amendment or modification of a License;
 3. Refusal to issue or renew a full License;
 4. Revocation or suspension of a full License; or
 5. Refusal to issue a provisional License.
- O. Full licensure after deficiencies corrected.** An application for a full License may be considered by the Department only when the deficiencies identified by the Department have been corrected.
- P. Right to appeal.** Appeals by a Provider are limited to appeals contending that a decision by the Department misapplies applicable laws, procedures or rules.
1. The Provider must request an administrative hearing in accordance with the instructions provided in any action taken by the Department that is subject to the right of appeal.
 - a. The request must state the specific issue(s) being appealed.
 - b. The request must be made within 30 Days of receipt of notice of an action subject to the right of appeal.
 - c. The following actions are subject to the right of appeal:
 - i. Issuance of a conditional License;
 - ii. Amendment or modification of a License, including reduction in Licensed Capacity or cessation of new admissions, when required by the Department;
 - iii. Voiding of a conditional License;
 - iv. Refusal to issue or renew a full License;

- v. Administrative fines; or
 - vi. The denial of a waiver request.
- d.** Actions subject to the right to appeal shall be stayed until the Department makes a final agency decision, unless the License is suspended under Section 20(F)(1) or (2).
2. The hearing will be conducted pursuant to the Department's Administrative Hearings Regulations at 10-144 C.M.R. Ch. 1.
 3. An aggrieved party may appeal the Department's final agency action to Superior Court.

REGULATORY HISTORY

EFFECTIVE DATE:

July 1, 1998 – as “Home Day Care Provider Rules”

AMENDED:

August 1, 2006 – filing 2006-228 as “Rules for Family Child Care Providers”

June 1, 2007 - filing 2007-191 (EMERGENCY major substantive)

August 14, 2007 - filing 2007-331 (EMERGENCY major substantive)

June 1, 2008 - filing 2008-235 (EMERGENCY routine technical following Resolve 2007 c. 199)

August 27, 2008 - filing 2008-383 (routine technical following Resolve 2007 c. 199)

July 1, 2009 - filing 2009-207 (final adoption, major substantive)

REPEALED AND REPLACED:

September 20, 2017 – filing 2017-148 as 10-144 CMR Ch. 33, Family Child Care Provider Licensing Rule replaced 10-148 CMR Ch. 33, Rule Relating to the Certification of Family Child Care Providers (EMERGENCY major substantive and routine technical)

AMENDED:

July 5, 2018 – filing 2018-105 (Final adoption, major substantive)

NOTICE OF MAJOR SUBSTANTIVE PARTS OF THIS RULE

The Maine Legislature has designated parts of this rule as major substantive, per 22 M.R.S. §§8302-A(2)(G) -(J) and 8303-A (1). Other sections are designated as routine technical, per 22 M.R.S. §§7702-B, 7703, 7802, 8301-A and 8302-A (2) (A)-(F).