

55-40.1

From CNMI Admin Code

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Subchapter 55-40.1: Child Care Standards Rules and Regulations

Subchapter Authority, History, and Comment

Subchapter Authority: 1 CMC § 2354 (http://www.cnmilaw.org/pdf/cmc_section/T1/2354.pdf); 1 CMC §§ 2371 (http://www.cnmilaw.org/pdf/cmc_section/T1/2371.pdf) - 2380 (http://www.cnmilaw.org/pdf/cmc_section/T1/2380.pdf); 3 CMC §§ 1405(a) (http://www.cnmilaw.org/pdf/cmc_section/T3/1405.pdf) and 1406. (http://www.cnmilaw.org/pdf/cmc_section/T3/1406.pdf)

Subchapter History: Adopted 36 Com. Reg. 34843 (Mar. 28, 2014); Amdts Proposed 35 Com. Reg. 34212 (Aug. 28, 2013); Adopted 25 Com. Reg. 20861 (Aug. 22, 2003); Proposed 25 Com. Reg. 20134 (May 29, 2003).

Commission Comment: 1 CMC § 2351 (http://www.cnmilaw.org/pdf/cmc_section/T1/2351.pdf) creates the Department of Community and Cultural Affairs (DCCA). The Department has certain duties enumerated in 1 CMC § 2353 (http://www.cnmilaw.org/pdf/cmc_section/T1/2353.pdf), including responsibility for youth services. See 1 CMC § 2353(f). (http://www.cnmilaw.org/pdf/cmc_section/T1/2353.pdf) 1 CMC § 2354 (http://www.cnmilaw.org/pdf/cmc_section/T1/2354.pdf) directs DCCA to adopt rules and regulations regarding activities over which the Department has jurisdiction.

1 CMC §§ 2371 (http://www.cnmilaw.org/pdf/cmc_section/T1/2371.pdf) - 2380 (http://www.cnmilaw.org/pdf/cmc_section/T1/2380.pdf) create the Division of Youth Services within DCCA and authorize the Division to provide programs and services to the youth of the Commonwealth.

For a complete history of the authority of DCCA, see the general comment to chapter 55-10.

PL 4-67 (effective Sept. 10, 1985), the "Child Care Standards Act of 1985," codified as amended at 3 CMC § 1401 (http://www.cnmilaw.org/pdf/cmc_section/T3/1401.pdf) - 1409 (http://www.cnmilaw.org/pdf/cmc_section/T3/1409.pdf), provides for the development of comprehensive child care standards and the licensing of day care centers. 3 CMC § 1404 (http://www.cnmilaw.org/pdf/cmc_section/T3/1404.pdf) designates DCCA as the agency responsible for licensing day care facilities and directs DCCA to develop policies, procedures and regulations with regard to day care licensing and operation. See also 3 CMC §§ 1405(a) (http://www.cnmilaw.org/pdf/cmc_section/T3/1405.pdf) and 1406. (http://www.cnmilaw.org/pdf/cmc_section/T3/1406.pdf)

On November 17, 1986, DCCA published proposed "Rules and Regulations Governing the Licensing of CNMI Day Care Facilities." See 8 Com. Reg. 4805 (Nov. 17, 1986). A notice of adoption for the 1986 proposed regulations was never published.

Part 001 - General Provisions

§ 55-40.1-001 Definitions

For the purpose of this subchapter and all sections:

- (a) "Acting director" means a person who assumes the responsibilities of director of the child care facility in the absence of the director.

- (b) "After school care" means child care provided after the close of the regular school day during the academic year, summer and school holidays for children ages four years and nine months and older who are enrolled in public or private elementary schools.

- (c) "Applicant" means the person(s) who is applying for license to operate child care center or group child care center.

- (d) "Approved child development or early childhood training courses" means child development or early childhood courses taken from accredited institutions of higher learning and other agencies or organizations authorized by the department which are automatically accepted. Other courses, workshops, or seminars shall be subject to approval by the department.

- (e) "Before school care" means child care provided before the opening of the regular school day during the academic year for children ages four years and nine months and older who are enrolled in public or private elementary schools.

- (f) "Building code" means the CNMI building code used by the Department of Public Works.

(g) “Caregiver” or “provider” means any person who is responsible for the physical well being, direct care, health, safety, supervision, and guidance of children in child care.

(h) “Child” means any person who has not reached the age of eighteen.

(i) “Child care” means the provision of care for children by persons other than parents or guardians with or without compensation, for less than 24 hours.

(j) “Child Care Advisory Committee” means a group of people appointed by the Secretary, Department of Community and Cultural Affairs, to advise the Department on matters regarding child care, including child care rules.

(k) “Child care aide,” “aide,” or “child care assistant,” means any person who helps the teacher or teacher assistant with all aspects of the planned program.

(l) “Child care center” or “group child care center” means a place maintained by any individual, organization, or agency for the purpose of providing child care to children between ages of 2 and 16. The term child care center shall include day nurseries, nursery school groups, preschool child play groups, parent cooperatives, drop in child care centers, group child care homes, or other similar units operating under any name.

(m) “Child care license” means certificate of approval issued by the Child Care Licensing Program (CCLP), Office of the Secretary, Department of Community & Cultural Affairs authorizing the operation of a specified type of child care facility i.e. day care center, infant care center, group child care center, family home child care, and before and after school programs.

(n) “Child development associate” means any person credentialed by the council for early childhood professional recognition (national association for the education of young children) to assume primary responsibility for a group of young children in a developmental early childhood program.

(o) “Child with a disability” means a child who is medically determined blind, deaf, mental illness, emotionally disturbed, orthopedically, or otherwise chronically disabled.

(p) “Children with special needs” means children with special needs which requires* modification of care or services not regularly available.

(q) “Compliance” means conformity in fulfilling formal or official requirements of all sections of this subchapter.

(r) “Council for Early Childhood Professional Recognition (National Association for the Education of Young Children)” means the agency contracted by the DCCA/CCLP to grant the child development associate credential.

(s) “Critical incident” is a serious life safety or potential life safety incident or concern that poses a danger to the life, health, and/or well being of a child or children at the center/child care home or of a staff member at the center/child care home.

(t) “Criminal records check” means obtaining a police clearance, FBI background check and an examination of local records.

(u) “Demonstration project” means any place providing child care which is operating with special approval of the department for exemptions to specific registration rules.

(v) “Day care” means provisions of care for children with or without charging a fee.

(w) “Department” refers to the Department of Community and Cultural Affairs (DCCA).

(x) “Director,” “principal,” “lead teacher,” or “operator,” means the person at the facility having responsibility for the administration of a child care center and its program.

(y) “Drop in care” means child care where children are permitted to arrive and leave at irregular, non scheduled times during the facility's operating hours.

(z) “Drop in child care center” means a facility, which accepts children for drop in care.

(aa) “Emergency” means an unforeseen combination of circumstances, which calls for immediate action.

(bb) “Facility” means all the physical parts belonging to, or which are a part of, a place in which child care is provided including enclosed areas, lanais, and outdoor areas.

(cc) “Family child care home” or “family child care” means child care in any private home maintained by an individual which provides care to three and no more than six children during any part of a twenty four hour day, and where the relationship of child and family child care provider is not by blood, marriage, or adoption.

(dd) “First aid kit” means the materials and equipment in one location in a suitable container for meeting medical emergencies. A first aid kit shall be of the type approved by the American Red Cross, or the Department of Health Services.

(ee) “Group child care home” means child care provided by any individual in a facility that may be an extended or modified family child care home which provides care to no more than twelve children during any part of a twenty four hour day. Group child care homes are licensed under the rules for group child care centers.

(ff) “Guardian” means a person other than a child's parents who has legal authority over and responsibility for a child.

(gg) “Illness” means a subjective term that shall be defined by each provider with regard to admitting or not admitting sick children to child care.

(hh) “Immunization form” means a printed form made available by the Commonwealth Health Center, department of health or the department of education to record a child's immunizations and health record.

(ii) “Infant” means children who are newborn up to age one (through the twelfth month).

(jj) “Infant nursery” or “infant center” means a center that provides care for children between the age of 6 weeks and 12 months.

(kk) “Irregular” means varying from the typical or normal pattern of the child care center, group child care home, or family care home, or a practice of schedule that varies from the routine or uniform and is not subject to explained or rational variations.

(ll) “Lavatory” means a vessel or basin for washing, which is in conformity with plumbing codes.

(mm) “Local sanitary codes” means the specific rules set up by the Department of Health Services and those promulgated pursuant to the Commonwealth Health and Sanitation Act of 2000.

(nn) “New hire” means a person seeking to be a family child care home provider for the first time in the Commonwealth of the Northern Marianas Islands, either as an applicant or prospective employee of a family child care home.

(oo) “Night care” means child care provided to children who stay at night or overnight at a group child care center, group child care home, or family child care home. Care shall not be provided for twenty four consecutive hours.

(pp) “Panic hardware” means a standard device on doors that permit quick and safe exits upon emergencies (push bars and plates).

(qq) “Primary caregiver” means the individual in the infant and toddler child care center to whom the care of a specific child and family is assigned. Primary care is defined as direct care, primary responses to infant or toddler's physical and emotional needs while in the center and continued interaction with parents concerning the child.

(rr) “Policy” means a principal plan for the management of a child care facility.

(ss) “Provider” any* person whose duties include direct care, supervision, and guidance of children in child care.

(tt) “Provisional license” or “temporary permit” means a temporary license issued at the discretion of the department for a period of three months to any child care facility which is unable to conform to all the rules at the time the license or certificate of child care license is issued.

(uu) “Qualified trainer” means a person who has twelve credits in early childhood or child development or related fields such as human development, psychology, social work, or nursing and a combined total of three years of experience in training adults who work with children or has six credits in early childhood or child development or related fields such as human development, psychology, social work, or nursing, and a combined total of five years of experience in training adults who work with children.

(vv) “Qualified nutrition consultant” means a dietitian or nutritionist who meets the advanced educational requirements for membership in the American Dietetic Association and is eligible for registration; or one who has a master's degree in public health nutrition or nutritional sciences.

(ww) “Rehire” means an applicant or prospective employee of a family child care home who is seeking to operate or be employed in a family child care home following termination of employment of more than six months and who has been out of Commonwealth of Northern Marianas Islands during this break in employment.

(xx) “Rules” means the rules developed by the Child Care Licensing Program, Office of the Secretary, Department of Community and Cultural Affairs to set minimum standards of care and safety for the protection of children in child care.

(yy) “Sanitary codes” means the special rules set up by a sanitation office, the department of health, or a comparable federal agency, which govern aspects of health and safety.

(zz) “Single service utensils” means the supplies or equipment used once to serve food (paper plates cups*, disposable forks).

(aaa) “Staff member” means administrative, child care, clerical, and maintenance personnel who are employed by the child care facility.

(bbb) “Substitute” means a person who serves as a replacement when another caregiver is absent.

(ccc) “Teacher assistant” means any person who works with the guidance of the teacher and director to carry out the program of the center.

(ddd) “Temporary permit” (see provisional license).

(eee) “Toddler” means a child who is twelve to thirty six months of age.

(fff) “Toddler nursery” or “toddler center” means any child care center that provides care for children age 12 months (walking independently) and 36 months.

(ggg) “USDA Child Care Food Program” means the food standards established by the United States Department of Agriculture.

(hhh) “Volunteer” means a person offering services to a child care facility without remuneration, except for reimbursable personal expenses allowed by the caregivers.

* So in original.

History/Comment [Expand]

Part 100 - Rules Governing the Licensing of Day Care Centers, Group Child Care Homes, Family Child Care Homes, and Before and After School Programs

Subpart A - Licensing Procedures

§ 55-40.1-101 Application

- (a) The application to obtain a child care license to operate a day care center, group child care home, family child care home, infant/toddler center, and before and after program(s) shall be made on forms supplied by the Department and shall be completed in a manner prescribed thereon and submitted with the appropriate fee a minimum of sixty calendar days prior to the proposed opening date.
- (b) Applicants shall provide criminal history, background, employment information, and consent to conduct checks as may be required by PL 4-67, as amended by PL 4-69 [3 CMC §§ 1401 (http://www.cnmilaw.org/pdf/cmc_section/T3/1401.pdf) - 1409 (http://www.cnmilaw.org/pdf/cmc_section/T3/1409.pdf)]. Records of such information and consent shall be maintained by the facility and available for inspection by the Department.
- (c) The Department shall conduct employment history, background checks, and criminal history checks on all applicants. Applicant shall maintain accurate records, e.g. employment application, police clearance, and diplomas if any.
- (d) A licensing evaluation will occur only after the Department has received the complete application and appropriate fee.
- (e) Multiple licenses shall be required as follows:
- (1) If a licensee wishes to assume child care responsibility in more than one classification of care, separate application, fees, and licensing evaluation are required for each classification; or
 - (2) If a licensee wishes to operate more than one facility of the same classification but at different locations, a separate application, fee, and evaluation are required for each location.
- (f) There shall be no child facility operated or maintained unless licensed by the Department.

History/Comment [Expand]

§ 55-40.1-105 Fees

(a) The appropriate application fee outlined in this section must be submitted to the Department with the application for a child care license at least sixty calendar days prior to the opening date of the facility.

(b) The appropriate application fee outlined in this section must be submitted to the Department annually, at least sixty calendar days prior to the expiration date of the license, along with a completed continuation declaration.

(c) Following is a schedule of original, annual and renewal fees for all types of child care facilities and agencies:

| Type | Fee |
|---|-------|
| Initial/Renewal (1-6 children) | \$25 |
| Day Care Centers, Group Child Care, Infant/Toddler Care, and Before and after School Programs | |
| Type | Fee |
| Initial / Renewal (5-20 children) | \$75 |
| Initial / Renewal (21-50 children) | \$100 |
| Initial / Renewal (51-100 children) | \$125 |
| Initial / Renewal (101-150 children) | \$150 |
| Initial / Renewal (151-250 children) | \$175 |
| Initial / Renewal (251 or more children) | \$200 |
| Changes to Licenses (capacity and/or number of children) | \$15 |
| Duplicate Licenses | \$10 |
| Annual Listing Fee | \$20 |

History/Comment [Expand]

§ 55-40.1-110 Inspection and Issuance of Child Care Licenses

(a) In exercising its authority to license child care centers or group child care center of any type or renew, suspend, or revoke the certificate of child care licenses, the Department shall review the

qualifications of providers of child care, review the written policies and program provisions, and conduct inspection(s) of the facility or home. Authorized representatives of the Department and parents or guardians of children in care may visit a child care center at any time during the hours of child care operation for purposes of observing, monitoring and inspecting the facilities, activities, staffing, and other aspects of the child care center.

(b) The applicant or licensee shall cooperate with the Department by providing access to its facilities, records, and staff. Failure to comply with reasonable requests may constitute grounds for denial, suspension, or revocation of the child care license.

(c) After the approval of child care license, the licensee shall ensure that the facility has the required employees to operate.

(d) The Department shall request the applicant to terminate the employment of an employee who has a criminal history, employment history, or background, which poses a risk to children in care. Any such request shall be in writing and shall state with specificity those criminal convictions, employment history, or background information, which indicates a risk to children. A due process hearing will be held if requested by the employee.

(1) When the applicant does not terminate the employment of the employee, the applicant shall notify the Department not later than five working days of receipt of the request. The notification shall be in writing and shall state the reasons for the decision;

(2) Refusal to terminate the employment of an employee, when requested under this section, may be grounds for revocation or suspension of a child care license.

(e) The Department shall issue a child care license under the following conditions;

(1) A regular child care license shall be issued if the result of the Department's evaluation indicates compliance with the applicable rules as established by the Department; or

(2) A provisional child care license shall be issued, provided that requested documents shall be met on or before the three months allowed for a regular child license to be issued.

(f) The length of the child care license period shall be as follows:

(1) Regular certificates of child care license shall be valid for one year unless subsequently suspended or revoked. When a regular child care license is issued after provisional certificate, the expiration date of the regular child care license shall be one year from the issuance date of the provisional child care license; or

- (2) Provisional child care license may be issued for no more than three months; and
- (3) Child care license shall be renewed only upon application and upon the Department's approval.

(g) Each child care license shall clearly state the type of program the licensee is permitted to operate, the address and location of the licensee, and the number and types of children who can be cared for at the facility.

(h) The operation of a family child care center without a license is a violation of Child Care Standards Act of 1985 and shall be punishable in accordance with this Act by imprisonment of not more than one year, or a fine of not more than \$2,000 or both.

History/Comment [Expand]

§ 55-40.1-115 Fire and Health Inspections

Prior to the original license being issued, or following the renovation of the facility that would affect the licensing of the facility and at least every 2 years thereafter, all child care facilities except family child care homes must be inspected and obtain an approving inspection report from the Department of Health Services and from the local fire department. A copy of these reports shall be submitted to the Department and a copy must be kept on file at the facility or home. Should the fire inspection not be completed, the facility must advise the Department as to when the inspection should be completed for submission.

History/Comment [Expand]

§ 55-40.1-120 Denial, Suspension, Revocation of Child Care License, and Hearings

(a) The conditions for denial, suspension, or revocation of a child care license application and the action to be taken by the Department are as follows:

(1) The Department may deny, suspend, or revoke the child care license, if an applicant or licensee does not comply with the rules of the Department respecting child care facilities;

- (2) The Department shall suspend registration if the violation of the minimum requirement is the first violation of the provider does not warrant revocation;
 - (3) The Department may revoke child care license application if the provider has violated any minimum requirement to such an extent or of a nature that the provider is unfit to be trusted with the care of children, or if the provider's application has been suspended at least once previously;
 - (4) An applicant or licensee whose child care license is about to be denied, suspended, or revoked shall be given written notice by certified or registered mail addressed to the location shown on the child care license application;
 - (5) The notice shall contain a statement of the reasons for the proposed action and shall inform the applicant of the right to appeal the decision to the Office of the Secretary, Department of Community & Cultural Affairs, no later than ten working days after acknowledgment of the notice of the proposed action;
 - (6) The applicant has twenty days from receipt to make a written request for a hearing; the Secretary of the Department shall give written notice to the applicant of a time and place for a hearing before a hearing officer. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the Department as to whether the application or child care license shall be denied, suspended, or revoked; and
 - (7) If no timely written request for a hearing is made, processing of the application shall and or the child care license shall be suspended or revoked as of the termination of the ten day period.
- (b) The immediate suspension of the child care license shall be ordered if conditions exist which the Department determines constitute an imminent danger to the health, welfare, or safety of the children. The Department shall take the following actions:
- (1) Provide the applicant written notice of the order by personal service or by certified or registered mail addressed to the location shown on the child care license application;
 - (2) Provide a statement of the reasons for the suspension in the notice and inform the applicant of the right to petition the Department to reconsider the order not later than ten working days after mailing of the notice;
 - (3) Declare that all operations shall cease as of the date of receipt of the notice, give the applicant reasonable notice upon receiving a written petition, and provide an opportunity for a prompt hearing before a hearing officer with respect to the order of suspension of the child care license application. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the Department as to whether the order of suspension shall be affirmed or reversed; and
 - (4) Notify the parent or legal guardian of each child who is provided care in the family child care home of the suspension or revocation.
 - (5) The Department shall notify the Public School System for any applicant being suspended or revoked

within five working days.

(c) At any hearing provided for by this section, the applicant or licensee may be represented by counsel and has the right to call, examine, and cross examine witnesses. Evidence may be received even though inadmissible under rules of evidence applicable under court procedures. Hearing officer decisions shall be in writing, shall contain findings of fact and conclusions of law, and shall be mailed to the parties to the proceedings by certified or registered mail to the last known address as may be shown in the application, on the child care license, or otherwise. The Administrative Procedure Act [1 CMC §§ 9101 (http://www.cnmilaw.org/pdf/cmc_section/T1/9101.pdf), et seq.] shall also be applicable at any hearing.

History/Comment [Expand]

§ 55-40.1-125 Report of a Critical Incident

Within 24 hours, excluding weekends and holidays, of the occurrence of a critical incident at the facility, the applicant must report in writing to the Department the following critical incidents involving a child in the care of the facility or a staff member on duty:

(a) The death of a child or staff member as a result of an accident, suicide, assault, or any natural cause while at the facility, or while on authorized or unauthorized leave from the facility.

(b) An injury to a child or staff member that requires emergency medical attention by a health care professional or admission to a hospital.

(c) A mandatory reportable illness, as required by the Department of Public Health, of a child or staff member that requires emergency medical attention by a health care professional or admission to a hospital.

(d) Any allegation of physical, sexual, or emotional abuse or neglect to a child that results in reporting to a law enforcement or social services agency.

(e) Any fire that is responded to by a local fire department.

(f) Any major threat to the security of a facility including, but not limited to, a threat to kidnap a child, riots, bomb threats, hostage situations, use of a weapon, or drive by shootings.

(g) A drug or alcohol related incident involving a staff member or a child that requires outside medical or emergency response.

(h) An assault, as defined by law, by a child upon a child, a child upon a staff member, or a staff member upon a child which results in a report to law enforcement.

(i) Felony, theft, or destruction of property by a child while in care at the facility for which law enforcement is notified.

(j) A suicide attempt by a child at the facility, which requires emergency intervention.

History/Comment [Expand]

§ 55-40.1-130 Reporting Child Abuse

(a) A child care facility must require each staff member of the facility to read and sign a statement clearly defining child abuse and neglect pursuant to state law and outlining the staff member's personal responsibility to report all incidents of child abuse or neglect according to state law.

(b) Any caregiver or staff member in a child care facility who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions that would reasonably result in abuse or neglect must be reported within 24 hours or cause a report to be made of such fact to the Division of Youth Services or local law enforcement agency.

(c) At the time of admission the facility must give the child's parent or guardian information that explains how to report suspected child abuse or child neglect.

History/Comment [Expand]

§ 55-40.1-135 Licensing Complaints

Child care facilities must provide written information to parents at the time of admission and staff members at the time of employment on how to file a complaint concerning suspected licensing violations. The information must include the complete name, mailing address, and telephone number of the Department of Community and Cultural Affairs, Office of the Secretary, Child Care Licensing Program.

History/Comment [Expand]

§ 55-40.1-140 Posting of Licensing Information

(a) At all times during the operating hours of the center or home, the center shall post the current child care license in a prominent and conspicuous location easily observable by those entering the facility.

(b) At all times during the operation of a child care center, the center shall post in a prominent and conspicuous location information regarding the procedures for filing a complaint with the Department of Community and Cultural Affairs, Child Care Licensing, including the telephone number and mailing address.

History/Comment [Expand]

§ 55-40.1-145 Confidentiality of Records

(a) The records concerning the applicant of a facility and agencies are open to the public except as provided below.

(b) Anyone wishing to review a record must submit a written request to the Department.

(c) The following documents are confidential and shall not be available for review:

(1) Information identifying children or their families.

(2) Scholastic records, health reports, social or psychological reports.

(3) Personal references requested by the Department.

(4) Reports and records received from other agencies, including police and child protection investigation reports.

History/Comment [Expand]

§ 55-40.1-150 Parental Accessibility

(a) During hours of operation, a facility must allow access to parents and guardians having legal custody of a child in care to those areas of the center that are licensed for child care.

(b) During the hours of operation, the center's most recent licensing, fire department, and health department inspection reports must be accessible to parents and legal guardians of children in care or their designee and to parents and legal guardians considering placing their children in care at the center.

History/Comment [Expand]

§ 55-40.1-155 Perjury Statement

Every application used in the Commonwealth for employment with a child care provider or day care center, shall include the following notice to the applicant:

“Any applicant who knowingly or willfully makes a false statement of any material fact or thing in the application is guilty of perjury and shall be subject to the Penalty for Perjury Act, and, upon conviction thereof, shall be punished accordingly.”

History/Comment [Expand]

Part 200 - Day Care Center & Group Child Care Homes, Before and After School Programs

Subpart A - Administration Requirements

§ 55-40.1-201 Supervision of Children

It is the responsibility of each applicant to provide supervision to all children from the time classes begin at the facility until the time classes are over in the home or at the center. All staff members who are entrusted with supervisory responsibility shall exercise reasonable care in the discharge of supervisory duties. Applicants shall formulate, distribute and explain to the children's parents and guardians procedures regulating children's behavior on the premises accordingly.

History/Comment [Expand]

§ 55-40.1-202 Age of Children in Care

A child care center or group child care home may provide care to children aged two years (twenty four months) and older.

History/Comment [Expand]

§ 55-40.1-204 Statement of Operation Policies

(a) A facility shall have written operation policies. Written policies shall be available to the Department, caregiver staff, and parents or guardians of children for whom care is, or may be, available, and shall cover the following areas:

- (1) Ages of children accepted;
- (2) Maximum number of children permitted by license;
- (3) Specific hours of day, night, holiday, and vacation operation;
- (4) Whether or not meals are served;
- (5) Type of child care services to be offered; e.g. daily routines, language, arts, math, children's progress, communication with parents, educational field trips and show & tell;
- (6) Provisions which may be made for special needs of individual children;
- (7) Admission requirements and enrollment procedures;
- (8) Fees and plan for payment, including fees for different types of service and refund policy;
- (9) Policy and plan for emergency medical care;
- (10) Insurance coverage - each facility shall inform parents or guardians in writing of its policy relating to liability insurance. Should a facility, which has liability insurance at the time of a child's enrollment, subsequently cancel or terminate its liability insurance, it shall provide written notice to each parent or guardian of a child in its center, no later than three working days of the cancellation or termination of its liability insurance coverage;
- (11) Rules concerning personal belongings brought to the facility;
- (12) Transportation arrangements;
- (13) Parental permission for trips and related activities outside the facility;
- (14) Fund raising campaigns children and staff shall not be exploited in activities which would be detrimental to the children or the program;
- (15) Admission of sick or children with disabilities; and
- (16) Other policies, which may be required by the Department.

(b) Written policies and procedures shall be reviewed with each caregiver in the facility.

(c) Written policies shall be made available for review by parents or guardians at the time of enrollment of the infant or toddler.

(d) Written notification of changes in the services offered by the facility shall be provided to the Department, Public School System and to parents or guardians of the children enrolled in the facility at least four weeks prior to the effective date of change.

History/Comment [Expand]

§ 55-40.1-206 Information on Owner or Operator

(a) The name, address, and telephone number of the facility shall be supplied to the Department.

(b) The name, business address, and business telephone number of the persons bearing the responsibility for the child care facility shall be supplied to the Department.

(c) The name, business address, and business telephone number of the persons having specific authority and responsibility for overall administration and the services offered shall be supplied to the Department.

(d) The name of the owner or sponsoring agency (privately owned, church or agency owned, etc.) of the facility shall be supplied to the Department.

History/Comment [Expand]

§ 55-40.1-208 Change in Services

A facility shall notify parents or guardians and the Department of any changes in the child care services it provides as follows:

(a) Written notification of changes in the services offered by the facility shall be provided to the Department and to parents or guardians of children enrolled in the facility; and

(b) Notification of any changes in service shall be made no later than thirty days after the date of the change and shall be included in the facility's operating policies.

History/Comment [Expand]

§ 55-40.1-210 Information and Records on Each Child

(a) Admission procedures shall require that sufficient information and instruction from the parents or guardians be furnished to enable the caregiver to make decisions or act on behalf of the child.

(b) Prior to admission of a child to a facility, the provider shall obtain in writing from the child's parents or guardians the following information:

(1) The child's full legal name, birth date, current address, and preferred names;

(2) The name and address of the parents or guardians who are legally responsible for the child;

(3) Telephone numbers or instructions as to how the parents or guardians may be reached during the hours the child is in the child care center;

(4) The name, address, and telephone number of persons who shall assume responsibility for the child if for some reason the parents or guardians cannot be reached immediately in an emergency;

(5) The names, addresses, and telephone numbers of persons authorized to take the child from the facility; and

(6) Health information concerning the child, as required by §§ 55-40.1-232 and 55-40.1-234.

(c) The information shall be available on facility forms and shall be updated as necessary.

History/Comment [Expand]

§ 55-40.1-212 Disclosure of Information on the Child

(a) Information pertaining to an individual child or parents or guardians of the child shall not be disclosed to persons other than the facility staff, unless the parents or guardians of the child grant written permission for the disclosure or an emergency arises.

(b) The parents or guardians shall be informed in writing of the facility's policy regarding disclosure of information.

(c) The Office of the Attorney General may, by written request obtain disclosure of information required to be kept by the regulations in this subchapter when it appears that a violation of the criminal law may have occurred and such information may reasonably be needed to investigate such an allegation.

History/Comment [Expand]

§ 55-40.1-214 Information and Records on Facility

Written information and records on the facility shall be maintained and made available to the Department. The facility shall maintain current records and information including:

(a) Roster of enrolled children;

(b) Daily attendance records by names of children;

(c) Daily menu; and

(d) Daily schedule of activities.

History/Comment [Expand]

§ 55-40.1-216 Transportation Provisions

When transportation is provided by a facility, children shall be protected by adequate supervision, safety precautions, and liability and medical insurance coverage as follows:

- (a) For transportation to and from school the vehicle and driver shall satisfy all relevant school bus and traffic laws.
- (b) During any field trip or excursion operated or planned by the facility, the staff child ratios as provided in § 55-40.1-228 shall apply; and
- (c) Children shall be instructed in safe transportation conduct as appropriate for age and stage of development.

History/Comment [Expand]

Subpart B - Program Requirements**§ 55-40.1-218 Program Requirements**

The program conducted in the facility shall provide for staff supervision at all times and an environment and experiences, which are aimed at promoting the individual child's physical, intellectual, emotional, and social well being and growth. This shall be done in the following ways:

- (a) The child care director shall provide the Department with a brief written description of the facility's program goals and how the daily activities of the center satisfy the physical, intellectual, emotional, social development, and well being of the child;
- (b) Activities which promote physical development shall include:

- (1) Daily opportunities for running, climbing, and other vigorous physical activities;
 - (2) Varied physical activities; and
 - (3) Opportunities for children to learn about the health, development, and care of the children=s bodies, including exercise, nutrition, and hygiene;
- (c) Programs to promote intellectual development shall:
- (1) Provide that a variety of learning materials are introduced and are available to the children; and
 - (2) Include first hand experiences for children to learn about the world;
 - (3) Reading aloud to children, developing listening and speaking skills, teaching about sounds of spoken language, print books, letters, building children's background knowledge and thinking skills, teaching about numbers and counting and checking children's progress;
- (d) Programs to promote emotional development shall provide that:
- (1) There are opportunities for individual self expression;
 - (2) Each child is recognized as an individual;
 - (3) The child is afforded constructive guidance and the setting of clear cut limits which foster the child's ability to be self disciplined;
 - (4) Each child's personal privacy is respected;
- (e) Providers shall not use:
- (1) Physical punishment; or
 - (2) Methods of influencing behavior which are frightening, humiliating, damaging, or injurious to the child's health or self esteem; and
- (f) Providers respect each child's cultural, ethnic, and family background, as well as the child's primary language or dialect;
- (g) Providers interact with the children in ways which emphasize and foster attitudes of mutual respect between adults and children; and

- (1) Providers behave in ways that help the children develop attitudes of respect for all other persons as individuals and develop an appreciation of cultural and ethnic diversity;
- (2) Children are guided in developing and working out ways of getting along with each other;

- (h) The activities and experiences provided by the program are appropriate to the developmental level of the children;

- (i) The program encourages the development of the children's special interests and abilities;

- (j) The program provides a balance of active and quiet activities; and

- (k) The program shall provide for the self direction of the children by:
 - (1) Affording children opportunities to choose activities according to personal desires and interests and to move from one activity to another;
 - (2) Encouraging children to do things independently; and
 - (3) Providing children opportunities to be involved in decision making about group and individual activities.

History/Comment [Expand]

§ 55-40.1-220 Communication with Parents and Caregivers

Caregivers shall exchange information with parents or guardians about the children as follows:

- (a) Plans shall be made and followed daily with parents or guardians to exchange information about each child; and

- (b) Caregivers shall relay concerns about the health, development, or behavior of the child to the parents or guardians promptly and directly.

(c) Caregivers shall partner with parents and guardians in helping to get the children ready for future school success.

History/Comment [Expand]

§ 55-40.1-222 Program Materials and Equipment

(a) The amount and variety of materials and equipment available and the arrangement and use of the materials and equipment shall be appropriate to the ages of the children in care.

(b) The quantity of materials and equipment shall be sufficient to:

(1) Avoid excessive competition between the children and to avoid long waits, for use of the materials and equipment; and

(2) Provide for a variety of experiences and appeal to the individual interests of the children.

(c) Protected areas where equipment and materials will be used with minimal interference or interruption shall be provided.

(d) Materials shall be kept in good repair and shall be accessible to children. The materials shall be stored in an orderly way and shall be arranged to allow children to select, remove, and replace the materials either independently or with assistance.

(e) Grass, soft media, or other protective measures shall be used under swings, slides, jungle gyms, and other similar outdoor play equipment.

(f) Equipment for both indoor and outdoor play shall allow children to use small and large muscles for imaginative play and creative activities.

(g) Provision for individual storage of children's clothing and personal belongings shall be available.

(h) Storage spaces for play materials and equipment used by the children shall be available.

(i) The following sleeping equipment shall be available:

(1) Individual bed, cot, mat, or rug for each child who rests; and

(2) A clean sheet or cover to be used on the bed, cot, mat, or rug for each child.

History/Comment [Expand]

§ 55-40.1-224 Transition to a New Facility or School Setting

(a) Provision shall be made to assist the child in making the transition from the child care setting to a new child care, a kindergarten, or school setting.

(b) Provision shall be made for cooperation between the caregiver and parents or kindergartens when information is requested which may assist a child to adjust to a new environment as allowed by § 55-40.1-210.

History/Comment [Expand]

Subpart C - Staffing Requirements

§ 55-40.1-226 Staff Training, Experience, and Personal Qualifications

(a) Each caregiver shall be qualified through training, experience, and personal qualities for the age group for which the person works. All child care service staff must annually participate in at least 15 hours of training as approved and monitored by the Child Care Licensing Program.

(b) Staff growth and development shall be encouraged. The director shall make information about workshops, seminars, training sessions, or courses available to all staff and volunteers.

(c) Applicants, employees, and volunteers shall be of reputable and responsible character and shall not have a criminal history record, employment history or background which poses a risk to children in care.

(1) Conviction of a crime involving violence, alcohol or drug abuse, sex offense, offense involving children and any other conviction, the circumstances of which indicate that the applicant or employee may pose a danger to children, are grounds for denial or revocation of a license or a reason to request termination of an employee under § 55-40.1-110(d).

(2) Type of criminal offense, when it occurred and evidence of rehabilitation may be considered in determining whether the criminal history record poses a risk to the health, safety or well being of children in care.

(3) An employment history indicating violence, alcohol or drug abuse and any other violation of employer rule or policy, the circumstances of which indicate that the applicant or employee may pose a danger to children, may be grounds for denial or revocation of a license or a reason to request termination of an employee under § 55-40.1-110(d).

(4) Background information which shows that the individual has been identified as and substantiated to be the perpetrator of child abuse or neglect may be a basis for denial or revocation of a license or a reason to request termination of an employee under § 55-40.1-110(d).

(d) Directors, teachers, teachers assistant*, and aides employed in a licensed facility shall be required to have adequate minimum qualifications for the type of staff position occupied.

(e) The age requirements for staff shall be as follows:

(1) All staff in positions other than child care aide, volunteer, or maintenance personnel shall be at least eighteen years old; and

(2) A child care aide shall be at least sixteen years old to be counted in the staff child ratio.

(f) The director of a facility licensed for six or more children shall have the following qualifications:

(1) A bachelor's degree from an accredited college or university preferably with courses in early childhood education, child development, or related fields, and two years of experience working with children; or

(2) Combination of two years of college education or child development associate certification and four years of experience in work with children; and

(3) In either case, at least one year of experience shall be with children of the appropriate age for the child care center being directed.

(g) A teacher shall meet one of the following qualifications:

(1) A degree in child development or early childhood education from an accredited college or university, and six months working experience in an early childhood program; or

(2) Post secondary credential in child development associate program or organized two year (sixty credit) college program and certificate in early childhood education, plus one year supervised teaching experience in an early childhood program; or

(3) Baccalaureate (bachelor's degree) in elementary education from an accredited college or university plus six months working in an early childhood program, plus six credit semester or equivalent approved child development or early childhood training courses, (may be included as part of bachelors of arts or bachelors of science degree); or

(4) Baccalaureate (bachelor's degree) in any field from an accredited college or university plus six months working in an early childhood program, plus twelve credits--semester or equivalent approved child development or early childhood training courses, (may be included as part of bachelor of arts or bachelor of science degree).

(h) An assistant teacher shall meet one of the following qualifications:

(1) Post secondary credential in child development associate program or associate of arts degree and certificate in early childhood education, and six months experience working in an early childhood program; or

(2) Two years (sixty credits) of post secondary education plus six months working in an early childhood program and nine credits--semester equivalent approved child development or early childhood training courses.

(i) Waivers for teacher or assistant teacher positions may be granted by the Department if there are no qualified applicants available for the position, provided:

(1) The position vacancy has been advertised in the classified ad section of the largest newspaper in the county*;

(2) The prospective employee meets the requirement for the next lower position;

(3) There is a written plan presented to the Department's division administrator on the steps to be taken to bring the employee up to the proper qualifications for the position; and

(4) Approval for a waiver has been received prior to the hiring of the non qualified teacher or assistant

teacher.

(j) A child care aide shall meet one of the following qualifications:

- (1) High school vocational child care training course; or
- (2) Orientation training course in the center.

(k) Volunteers shall:

- (1) Participate in an orientation to the program; or
- (2) Be a participant in a high school program which includes child care training; and
- (3) Meet the requirements of regular staff members to be counted in the staff child ratio.

(l) Temporary hires shall meet qualifications of positions for which hired.

(m) Substitutes for teachers and assistant teachers shall be at least eighteen years of age and shall have participated in an orientation program of the facility. The center's director shall closely supervise the curriculum, lesson plans, and daily activities assigned to the substitute.

(n) Substitutes for director shall meet qualifications for director.

(o) Substitutes for aides shall meet the qualifications of an aide.

(p) Substitutes may be granted an extension to serve in the same position for more than ten consecutive days upon consultation with and approval of the Department.

* So in original.

History/Comment [Expand]

§ 55-40.1-228 Staff child Ratio

(a) The staff child ratio shall be met and maintained by all facilities.

(b) The staff child ratio shall be in writing and shall be made available to the Department. Distribution of staff may include a team comprised of teacher, teacher assistant, and child care aides. The staff members shall be on site and shall be assigned to a group of children to be included in the staff child ratio. Custodians, cooks, and bus drivers shall not be counted in the staff child ratio when performing regular duties.

(c) The director may teach and may be counted in the staff child ratio as follows:

(1) In a center with less than fifty children, the director may teach and may be counted in the staff child ratio; and

(2) In a center with fifty or more children the director may teach but shall not be included in the staff child ratio.

(i) Exception may be made and the director may be included in the staff child ratio in cases of emergency or in special situations. In any case this inclusion in the staff child ratio may not exceed ten hours per week.

(ii) Exception may be made and the director of a child care center, full day only, may be included in the staff child ratio during the first and last hours of the regular operational day.

(d) The following staff child ratio shall be implemented:

Ratio Chart I

| Age | Number of Children Per Staff Member |
|-------------------|--|
| 0 under 24 mos. | Not Permitted |
| 2 year olds | 7 or less |
| 3 year olds | 7 or less |
| 4 year olds | 10 or less |
| 5 years and older | 10 or less |

(1) Unless specific instructional curriculum and related provisions specify mixing the ages and excepting nap time, the number of children assigned to a staff member shall be determined by the age of the youngest child in the group.

(2) In those facilities in which an instructional curriculum as well as classroom environment and teacher training specifically require mixing the ages, the number of children per staff member shall be determined by the average of the staff child ratios according to the chart above. Such provision shall not apply to more than three hours of mixed instructional time during any operational day for the same child or group of children.

(3) During nap time or night care when children of various ages are mixed together:

(i) The number of children per staff member shall be determined by the average of the staff child ratios according to the chart above;

(ii) Non teaching staff members at the center may be included in the staff ratios.

(4) Children ages two years eight month or older, who are enrolled in the center on or between September and December 31 of any year and whose birthdays fall on or between these dates may be considered part of the next older age group when determining staff ratios.

(e) The following chart reflects minimum requirements for the grouping of children of a certain age in units so that one unit of two year olds will be eight children, one unit of three year olds will be twelve children, one unit of four year olds will be sixteen children. One teacher shall be mandated for the first unit, three or more units require the addition of an assistant teacher plus aides as needed to meet the ratio.

Ratio Chart II

Minimum Staff Employment Sequence

| Age of Children | No. of Children | Teacher | Teacher Assistant | Aide | Total Staff |
|-----------------|-----------------|---------|-------------------|------|-------------|
| 2 year olds | 1-7 | 1 | | | 1 |
| | 8-15 | 1 | | 1 | 2 |
| | 16-23 | 1 | 1 | 1 | 3 |
| | 24-31 | 1 | 1 | 2 | 4 |
| | 32-39 | 2 | 1 | 2 | 5 |
| | 40-47 | 2 | 2 | 2 | 6 |
| | 48-55 | 2 | 2 | 3 | 7 |

Ratio Chart II

Minimum Staff Employment Sequence

| Age of Children | No. of Children | Teacher | Teacher Assistant | Aide | Total Staff |
|-----------------|-----------------|---------|-------------------|------|-------------|
| 3 year olds | 1-7 | 1 | | | 1 |
| | 8-15 | 1 | | 1 | 2 |
| | 16-23 | 1 | 1 | 1 | 3 |
| | 24-31 | 1 | 1 | 2 | 4 |
| | 32-39 | 2 | 1 | 2 | 5 |
| | 40-47 | 2 | 2 | 2 | 6 |
| | 48-55 | 2 | 2 | 3 | 7 |

Ratio Chart II

Minimum Staff Employment Sequence

| Age of Children | No. of Children | Teacher | Teacher Assistant | Aide | Total Staff |
|-----------------|-----------------|---------|-------------------|------|-------------|
| 4 year olds | 1-10 | 1 | | | 1 |
| | 11-21 | 1 | | 1 | 2 |
| | 22-32 | 1 | 1 | 1 | 3 |
| | 33-43 | 1 | 1 | 2 | 4 |
| | 44-54 | 2 | 1 | 2 | 5 |
| | 55-65 | 2 | 1 | 3 | 6 |
| | 66-76 | 2 | 2 | 3 | 7 |

Ratio Chart II

Minimum Staff Employment Sequence

| Age of Children | No. of Children | Teacher | Teacher Assistant | Aide | Total Staff |
|------------------|-----------------|---------|-------------------|------|-------------|
| 5 years or older | 1-10 | 1 | | | 1 |

| | | | | |
|-------|---|---|---|----|
| 11-21 | 1 | | 1 | 2 |
| 22-32 | 1 | 1 | 1 | 3 |
| 33-43 | 1 | 1 | 2 | 4 |
| 44-54 | 1 | 1 | 2 | 5* |
| 55-65 | 1 | 1 | 3 | 6* |

*So in original; see 25 Com. Reg. at 20889 (Aug. 22, 2003).

(f) Exception: During the first and last hours of the regular operational day the staffing sequence may be adjusted so that the director, a teacher, or assistant teacher may be counted as fulfilling any position in this ratio chart.

History/Comment [Expand]

Subpart D - Health Standards for Children

§ 55-40.1-230 Health Consultation Provisions

All child care centers and child care homes shall have one of the following provisions for health consultation to assist in developing health policies and in keeping them current:

(a) The child care center and group child care homes shall have on file written evidence that an arrangement has been made with a physician in private practice to provide consultation, and that this arrangement is satisfactory with parents of the children;

(b) The child care center has made a contractual arrangement with a private physician or non profit health organization in the community to provide health care for children in the program;

(c) There is already a procedure existing in the community for the provision of health consultation service and arrangements have been made for use of these services; or

(d) The child care centers or group child care homes shall have a health advisory group that may serve in such a capacity.

History/Comment [Expand]

§ 55-40.1-232 Evidence of Child's Health

(a) The child care facility shall obtain from the parent(s) or guardian(s), a health record of the child that complies with the provisions of this section, which relate to the school entry examination requirements for tuberculosis clearance, immunization, and physical examination.

(1) Written evidence of a physical clearance obtained within two months of admission to the facility;

(2) Written evidence that the infant or toddler has received a tuberculin test indicating that the infant or toddler is free from tuberculosis in a communicable form; and

(3) Initial and continuous written evidence that immunizations are current; or

(4) A written statement from a licensed physician certifying that the physical condition of the infant or toddler is such that immunizations would endanger the infant or toddler's life or health; or

(5) A written statement from a parent or guardian requesting exemption from the required immunizations on the grounds that such immunizations conflict with the parent or guardian's bona fide religious tenets and practices.

(b) The facility shall have in writing:

(1) The name, address, and telephone number of a physician or health resource that shall be called in case of emergency; and

(2) Permission of the parent or guardian to call the physician or health resource, or another source of care if the parent or guardian cannot be reached in the case of a health emergency.

(c) The records of the child in the program shall include pertinent information about health status, developmental progress, and any special needs and efforts necessary to meet these needs.

History/Comment [Expand]

§ 55-40.1-234 Emergency Care Provisions

Every facility shall have the following provisions for emergency care of children requiring treatment at a hospital or clinic away from the child care setting and for care of children who become ill after arrival:

(a) The facility shall have one of the following written policies which indicate that:

(1) The responsible individual in the child care setting, director, child care provider, or health trained caregiver, has obtained the name of the nearest hospital or clinic where such care may be provided and has obtained written permission from each parent or guardian to provide emergency care for the child;

(2) The facility's health consultant has made arrangements for emergency coverage, and written permission from each parent or guardian shall be on file in the child care setting; or

(3) Health care shall be provided in the child care setting, and the written permission from the parent or guardian covering all aspects of healthcare shall be on file in the child care setting.

(b) An adult shall accompany a child to the source of emergency care. The adult shall stay with the child until the parent or parent's designee assumes responsibility for the child's care. The selection of the adult shall not compromise the supervision of the other children in the program; and

(c) Physical arrangements for children who become ill after arrival at the facility shall be taken care of and be placed at the resting area away from other children. The parents or guardians shall be notified for alternative arrangements.

History/Comment [Expand]

§ 55-40.1-236 First Aid and Rescue Breathing

(a) There shall be at least one adult caregiver with a current certificate in first aid and rescue breathing at the facility when children are present.

(b) A first aid kit shall be available at the facility at all times.

History/Comment [Expand]

§ 55-40.1-238 Admission of Ill Children

(a) When health policies of the facility allow ill children to be admitted or to remain in the facility, medical consultation shall be available regarding special care and medication. When medication prescribed by a physician is administered in the facility:

(1) The medication shall be kept in the original container bearing the prescription label which shows the date filled, the physician's directions for use, and the child's name;

(2) Medication shall be kept out of reach of children and shall be returned to parents or guardians when no longer in use; and

(3) There shall be an authorization signed by the parent or guardian for the administration of medication by the facility.

(b) Both the provider and the parents or guardians shall be familiar with special policies of the facility relevant to ill children. Special policies regarding illnesses shall be explained to the parent or guardian at the time of enrollment of the child.

(c) Provisions shall be made to allow the facility's medical consultant and the child's regular source of health care to communicate in order to preserve continuity and consistency of care.

(d) The child care facility shall have, in writing, the name, address, and telephone number of a physician or health resource that shall be called in case of emergency. Written permission of the parent or guardian to call upon the physician or health resource, or another responsible source of care, if the parent or guardian cannot be reached, shall be required.

(e) The facility shall, in consultation with its health consultant, establish a re admission policy for children who have been absent because of illness.

History/Comment [Expand]

§ 55-40.1-240 Non admission of Ill Children

If children with illness are not allowed admission into a group child care center or a group child care home, this policy shall be clearly stated in writing and made known to parent or guardian at the time of enrollment.

History/Comment [Expand]

§ 55-40.1-242 Admission of Children with Disabilities

(a) When children with a disability are admitted into a group child care center or group child care home, the facility shall provide for the special needs of each child.

(b) The disabled child shall be admitted only after consultation with the child's source of health care and the program's health consultant occurs. The consultation shall include written recommendations to cover the child's educational plan in the facility.

(c) If the child's health care source considers it advisable, the staff of the program shall receive training related to the nature of the child's disability and the child's potential for growth and development.

(d) Where the nature of the child's handicap or the number of handicapped children in the program necessitates added care, staff and equipment shall be available to cover these requirements.

History/Comment [Expand]

§ 55-40.1-244 Daily Nutritional Needs

(a) Meals and snacks of a quantity to supplement food served at home shall be available to meet the daily nutritional needs of the child. Foods related to the cultural and ethnic background of the children in the program and locality shall be part of meal planning.

(b) The child care facility shall have access to nutritional information provided by a qualified nutritionist, dietitian, or other community resources approved by the department of health.

(c) To the extent possible, information provided by parents or guardians concerning the child's eating habits, food preferences, or special needs shall be considered in child care feeding schedules and menus. Children shall be encouraged but shall not be required to eat the food offered by the facility.

(d) In a facility providing meal service, the minimum meal components and food amounts required by the United States Department of Agriculture (USDA) child care food program shall be met. The facility shall offer and provide the following combination of meals and snacks for children in care:

(1) Two to four hours one snack;

(2) Four to eight hours one snack or breakfast and lunch or supper;

(3) Eight hours or more one snack or breakfast and lunch or

supper and one additional snack (unless the eight hours or more extend into the evening hours when the child may be asleep);

(4) When two snacks are required as in subsection (d)(3) above, at least one of those snacks shall include the provision and offering of milk or its calcium equivalent; and

(5) Local ethnic foods may be added or substituted for quantity (for allowable food reimbursement, facilities shall consult with the USDA).

(e) In a facility where parents or guardians are allowed to provide food (i.e. sack lunches or snacks) the facility, in addition to food the child brings, shall provide the minimum amounts required by the USDA child care food program by offering and providing children in care:

(1) Four to eight hours - morning snack or breakfast or afternoon snack;

(2) Eight hours or more - morning snack or breakfast and afternoon snack (unless the eight hours or more extend into the evening hours when the child may be asleep);

(3) When two snacks are required as in subsection (e)(2) above, at least one of those snacks shall include the provision and offering of milk or its calcium equivalent; and

(4) Local ethnic foods may be added or substituted for quantity (for allowable food reimbursement, facilities shall consult with the USDA).

(f) Children shall not be offered food to which they are allergic or, to which they object for religious reasons. Provision shall be made to secure such information from the parent or guardian and that the facility shall arrange for nutritious substitute foods.

(g) School aged children in after school care for two to four hours shall be offered a nutritious snack which may be provided by the facility or brought from home.

(h) Food shall not be used as a punishment or reward.

(i) A qualified nutrition consultant engaged by the center or provided by an appropriate community resource shall review the facility's food service annually.

History/Comment [Expand]

§ 55-40.1-246 Drinking Water Provisions

There shall be drinking fountains or another device or system whereby drinking water shall be readily accessible to all children. The Rules and Regulations Governing Schools and Child Care Facilities [NMIAC, title 140, subchapter 20.4] promulgated by the Department of Health pursuant to the Commonwealth Environmental Health and Sanitation Act of 2000 shall apply as well.

History/Comment [Expand]

§ 55-40.1-248 Integration of Mental Health Concepts

Mental health aspects of each child's development shall be integrated into the program as follows:

(a) At least one parent, guardian, foster parent, or social worker shall be interviewed by a designee prior to a child's admission to the facility. The personal interview shall be conducted to secure pertinent information on the child's overall development and behavior and to acquaint the parent or guardian with the facility's program and policies;

(b) The facility shall provide its staff with annual orientation to state or other mental health services for children, or otherwise familiarize its staff with consultative and clinical services and programs for early identification of social, emotional, intellectual, and behavioral problems of children; and

(c) The facility shall refer parents or guardians to sources of professional consultation in mental health upon the parents' or guardians' request or upon the recommendation of the facility's staff.

History/Comment [Expand]

§ 55-40.1-249 Hand Washing Policy for Children

(a) The facility shall have a written policy that specifies when hand washing is required for children, defines the hand washing procedure, and provides continuous monitoring to assure that the hand washing procedure is followed.

(b) The hand washing policy for children shall require that hand washing is done:

(1) Before drinking;

(2) Before and after meals;

(3) Before handling clean utensils;

(4) After going to the bathroom;

(5) After contact with body secretions – e.g., mucus, saliva, or drainage from wounds; and

(6) After outdoor play.

(c) Children who self-feed in any manner shall have their hands washed with soap and water before and after eating and after toileting.

(d) Hand washing may be done with cold water and drying hands may be done with disposable paper towels or an individual hand towel that will be taken home from laundry at the end of each day.

(e) Liquid soap should be used and placed in a pump dispenser and shall be replaced or cleaned as necessary.

History/Comment [Expand]

Subpart E - Health Standards for Staff

§ 55-40.1-250 Providers' Health Standards

Evidence that providers are free from health problems which would have a harmful effect on the children or would interfere with effective functioning shall be maintained at the child care facility as follows:

(a) The results of employment physical examinations and health permit of each person employed in the center and each volunteer who serves ten or more hours per week shall be on file at the facility;

(b) Written evidence that each member of a child care center staff or volunteer is free from communicable tuberculosis as a result of a negative tuberculin skin test or a satisfactory chest x ray taken within six months before beginning child care shall be on file at the facility. The tests shall be repeated in compliance with the rules of the department of health;

(c) Each caregiver with an identified health problem shall provide the facility with a written statement from a physician that the caregiver is able to care for young children;

(d) The facility shall have provisions for substitution of staff who are too ill to function effectively or who present a serious health hazard to others in the facility;

(e) Group child care home caregivers providing care in a residence shall have on file with the Department written evidence that each member of the household, even though the member may not be a caregiver, is free from communicable tuberculosis. Upon request of the Department, additional reports with reference to the health of the other members of the household shall be made available to the Department; and

(f) When volunteers provide direct care of ten hours or more per week, the volunteers shall be subject to the same requirements for health and personal habits as the provider.

History/Comment [Expand]

§ 55-40.1-251 Hand Washing Policy for Staff

(a) The facility shall have a written policy that specifies when hand washing is required for staff, defines the hand washing procedure, and provides continuous monitoring to assure that the hand washing procedure is carried out.

(b) The hand washing policy for staff shall require that hand washing is done:

- (1) Before eating, drinking, or smoking;
- (2) Before handling clean utensils and equipment;
- (3) Before handling food;
- (4) Before and after assisting or training the child in feeding and in toileting;
- (5) After going to the bathroom;
- (6) After contact with body secretion – e.g., blood, urine, feces, mucus, saliva, or drainage from wounds;
- (7) After handling soiled diapers, clothes, equipment, or menstrual pads;
- (8) After removing disposable gloves; and
- (9) After smoking.

(c) Staff should wash hands with soap and running water.

(d) Hand washing may be done with cold water and drying hands may be done with disposable paper towels or an individual hand towel that will be taken home for washing at the end of each day.

(e) Liquid soap in a pumped dispenser should be used which shall be replaced or cleaned as necessary.

History/Comment [Expand]

§ 55-40.1-252 Personal Health Habits of Staff

(a) The personal health habits of all providers shall not interfere with the protection of the health of the children as follows:

(b) The facility shall have written policies, which have been developed with the assistance of the facility's health consultant and which minimally require that:

(1) Staff with a fever, other symptoms of illness, or an altered physical or mental state, shall not be allowed to work;

(2) Staff with visible skin conditions, such as lesions, boils, or dermatitis, shall not prepare or serve food or handle utensils and feeding equipment;

(3) Staff's appearance shall reflect good grooming habits and personal hygiene, including clean and neat hair and nails, appropriate clothing, and good oral hygiene;

(4) Smoking shall not be allowed in the presence of the infants and toddlers; nor in any parts of the building, which are used for child care, during the hours of child care operation;

(5) Alcoholic beverages and detrimental drugs shall not be consumed or maintained at the facility during hours of operation; and

(6) Staff shall take appropriate measures to manage stress by maintaining good mental and physical health.

(c) In service training shall be provided to staff on various aspects of personal health care and healthy

lifestyle, such as care of head lice (ukus), impetigo, viral infections, risk factors, and stress management.

(d) Volunteers shall be subject to the same requirements for health and personal health habits as the care giving staff.

History/Comment [Expand]

Subpart F - Environmental Health Standards

§ 55-40.1-254 Disaster Plan for Emergencies

Each facility shall have a disaster plan to cover emergencies such as fire, flood, or natural disaster. The plan shall include:

(a) A written plan which shall be approved by the fire inspector, the health consultant, or the Red Cross, and which shall be practiced at regular intervals;

(b) Posting the plan in a prominent place in the facility; and

(c) Installing an underwriters laboratory listed fire warning device or system in each facility. Written evidence that the device or system has been inspected and approved by a fire inspector shall be on file at the facility.

History/Comment [Expand]

§ 55-40.1-256 Accidental Injury Precautions

The facility shall ensure that the child care program staff minimize the risk of accidental injury in the following manner:

- (a) Child care activities and premises shall take precautions not to expose children to situations which may be hazardous to the particular age or capacity of the child;
- (b) The program shall help children to increase awareness of safety practices and accident hazards and to teach the children how to avoid such hazards; and
- (c) Accident prevention practices and polities shall be available in writing. The practices and policies shall be reviewed annually and the staff shall become familiar with the policies and practices.

History/Comment [Expand]

§ 55-40.1-258 Environmental Hazards

The indoor and outdoor premises of a child care facility shall be free of environmental hazards, shall be clean and comfortable, and shall provide for adequate space to meet the needs of the children as follows:

- (a) The facility shall be protected against rodents and insects;
- (b) The outdoor space shall be fenced or shall have natural barriers to deter children from getting into unsafe areas;
- (c) There shall be no open drainage ditches, wells, or holes into which children may fall;
- (d) Drainage shall be adequate to prevent stagnant pools of water from accumulating;

- (e) Garbage and trash shall be stored in covered containers out of reach of the children and shall be removed frequently;
- (f) Open fireplaces shall not be used. Floor heaters and all heating elements including hot water pipes shall be insulated or installed in a manner which makes the pipes inaccessible to children;
- (g) Floor space shall be arranged to provide areas for active play, quiet rest, and individual activities;
- (h) Furniture, equipment, and toys shall be sturdily constructed, without sharp edges, and shall present minimal hazards to children;
- (i) Lead based paint shall not be used on surfaces accessible to children. Professional assistance shall be requested during routine inspections;
- (j) Poisonous plants shall be out of reach of children on the premises;
- (k) Pets, animals, and fowl shall be maintained in a safe and sanitary manner at all times; and
- (l) If a lodging house, boarding house, or any other business conflicts with the regular operation of the child care facility, the lodging house, the boarding house, or other business shall not be conducted at the facility.

History/Comment [Expand]

§ 55-40.1-260 Water Supply

The Rules and Regulations Governing Schools and Child Care Facilities [NMIAC, title 140, subchapter 20.4] promulgated by the Department of Health pursuant to the Commonwealth Environmental Health and Sanitation Act of 2000 shall apply.

History/Comment [Expand]

§ 55-40.1-262 Toilet and Lavatory Facilities

(a) The Rules and Regulations Governing Schools and Child Care Facilities [NMIAC, title 140, subchapter 20.4] promulgated by the Department of Health pursuant to the Commonwealth Environmental Health and Sanitation Act of 2000 shall apply as well;

(b) If toilet training chairs are provided for use by children, the toilet training chairs shall be emptied promptly and sanitized after use;

(c) Lavatories shall be provided in quantities commensurate with toilet facilities. Hot water temperatures shall not exceed 100 degrees Fahrenheit, 38 degrees Celsius, at outlets accessible to children; and

(d) Toilet facilities shall be child sized, or safe, sturdy step stools shall be provided to allow standard sized toilets and lavatories to be used.

History/Comment [Expand]

§ 55-40.1-264 Food Preparation

Food preparation shall be carried out in a kitchen with proper equipment and cleanup facilities required for the number of children in care as follows:

(a) All dishwashing shall be performed in a sanitary manner. A domestic dishwasher shall be acceptable, but if it is not available, the dishes shall be washed and rinsed in a sanitizing solution;

(b) In a facility caring for less than thirteen children, a family kitchen in good repair, separate from other rooms, shall be available;

(c) In a child care facility caring for thirteen or more children, where food is prepared on the premises, adequate sized equipment for the size of the program shall be available. An approved dishwasher or a three compartment sink shall be used. Both the dishwasher and the three-compartment sink shall require approval by the Department of Health;

(d) When food is prepared off the premises and is transported to the child care facility from a licensed preparation source, the foods shall be kept in a safe and sanitary condition;

(e) When single service utensils are used, the utensils shall be stored and handled in a sanitary manner and discarded after a single use; and

(f) Cooking utensils used in food preparation and service shall be cleaned stored in a sanitary manner.

History/Comment [Expand]

§ 55-40.1-266 Food Protection

Food protection shall be carried out as follows:

(a) Policies and practices shall be developed and carried out in a manner that insures that all food is protected from contamination during storage, preparation, and service; and

(b) Food protection policies shall comply with accepted practices of local sanitary codes and shall be adapted to fit the needs of the program except as indicated in the rules in this subchapter.

History/Comment [Expand]

§ 55-40.1-268 Cleaning of Premises

(a) All necessary cleaning equipment shall be available on the premises and a plan for regular cleaning shall be established to protect the health of the children and provider.

(b) Toys, tabletops, furniture, and other similar equipment used by children shall be washed daily. Plain soap and water shall be an adequate cleansing agent.

History/Comment [Expand]

§ 55-40.1-270 Public Beaches, Swimming Activities and Wading Pools

(a) When swimming or wading pools are part of the facility, equipment, or program, swimming pools shall be constructed, maintained, and operated in accordance with building and health rules.

(b) When swimming or wading activities are included in the child care program, the following safety practices shall be observed:

(1) A certified lifeguard, who may be the provider, shall be on duty at all times when swimming pools are in use;

(2) Wading pools less than twenty four inches at the deepest part shall be exempt from the requirements of subsection (b)(1). However, children shall be personally attended by a responsible adult at all times;

(3) Wading pools exempt under subsection (b)(2) shall be emptied immediately after each use; and

(4) Legible safety rules for the use of all types of pools shall be posted in a conspicuous location and read and reviewed at regular intervals by the provider responsible for the care of children.

History/Comment [Expand]

Subpart G - Physical Facilities Standards

§ 55-40.1-272 Building Codes and Space Requirements

- (a) Child care facilities shall conform to the zoning, building, electrical, and plumbing codes of the county or political subdivision in which the facility is located and to state rules as may be applicable to the facility.
- (b) The facility shall:
- (1) Be located in a safe and sanitary area;
 - (2) Have a sunny exposure and be well lighted and ventilated; and
 - (3) Be located in a reasonably quiet area or employ suitable noise control devices to limit noise exterior to the child care operation.
- (c) All buildings, building appurtenances, outdoor space, equipment, and all other parts of the facility shall be kept repaired, safe, and sanitary at all times.
- (d) The space requirements, enclosed areas, and outdoor areas, of the facility shall be as follows:

Standards for Space Requirements

- (1) Enclosed Areas:
- (i) Daytime Care: There shall be thirty five square feet per child of unencumbered instructional or play area exclusive of bathrooms, kitchens, cupboard space, and hallways. The thirty five square feet per child requirement shall be a general area definition of the square footage of the entire center, not describing the square footage of each classroom. Lanai area may be counted for not more than thirty percent of required area.
 - (ii) Nighttime Care: In rooms used for sleeping, there shall be fifty square feet per child exclusive of lanai area.
 - (iii) Requirements During Naptime: All child care facilities shall meet the following requirements for naptime:
 - (A) A selection of toys for quiet activities shall be available;
 - (B) Comfortable individual beds or cots that may be cleaned and sanitized shall be available or supplied

by parents;

(C) Individual beds or cots shall be placed at least three feet apart or have a solid barrier between each bedding; and

(D) Lighting levels should be appropriate for napping and specific activities including naptime, but must allow for children to be visible at all times.

(2) Outdoor Areas:

(i) For all Child Care Service providers who have a valid license as of April 30, 2013, the facilities must have a designated area for outdoor play. At a minimum, this designated outdoor area shall be equal to 33% of the facility's maximum child capacity multiplied by 75 square feet per child.

Example: If the facility's maximum child capacity is 12 children, the outdoor area requirement would be based on 4 children (33% of 12). Each of these 4 children must have 75 square feet. Thus, the facility's total outdoor area requirement would be calculated as: $4 \times 75 = 300$ sq. ft.

(ii) For all Child Care Service providers that are licensed after April 30, 2013, the square footage for the outside areas shall be a general area requirement related to total child capacity and not limited or qualified by the number of children outside at any one time.

(A) 720 square feet for 6 children plus 70 square feet per child thereafter up through 10.

(B) 1,065 square feet for 11 children plus 65 square feet per child thereafter up through 30.

(C) 2,360 square feet for 31 children plus 60 square feet per child thereafter up through 50.

(D) 3,555 square feet for 51 children plus 55 square feet per child thereafter up through 100.

(E) 6,295 square feet for 101 children plus 45 square feet per child thereafter.

(e) The facility shall be equipped with toilets and lavatories as follows:

| Number of Children | Minimum Toilets | Minimum Lavatory(ies) |
|---------------------------|------------------------|------------------------------|
| 1-12 | 1 | 1 |
| 13-30 | 2 | 2 |
| 31-45 | 3 | 3 |
| 46-60 | 4 | 4 |
| 61-75 | 5 | 5 |
| 76-90 | 6 | 6 |

| | | |
|---------|----|----|
| 91-105 | 7 | 7 |
| 106-120 | 8 | 8 |
| 121-135 | 9 | 9 |
| 136-150 | 10 | 10 |
| 151-165 | 11 | 11 |
| 166-180 | 12 | 12 |
| 181-195 | 13 | 13 |
| 196-210 | 14 | 14 |
| 211-225 | 15 | 15 |

History/Comment [Expand]

Subpart H - Program Modifications

§ 55-40.1-274 Program Modifications for Drop in Care

(a) All requirements set forth in this section shall be met by the facility.

(b) A child care center offering drop in care shall be prepared to adjust its staffing to meet the program modifications which result when drop in care is provided.

(c) Children receiving drop in care shall be cared for in separate areas or groups.

(d) If a center serves both drop in children and children who attend regularly, the grouping of the children and the program shall be planned so that the needs of both groups are met.

(e) The facility shall have the following information in writing:

(1) The ages of children accepted for drop in care;

(2) The procedures for admittance and release of drop in children; and

(3) Arrangements for staffing and separate activities for drop in children.

History/Comment [Expand]

§ 55-40.1-276 Program Modifications for Night Care

A child care facility offering night care shall meet the requirements of this subchapter in addition to the following requirements:

(a) In consultation with parents, special attention shall be given by the caregiver to provide for a transition into night care;

(b) A selection of toys for quiet activities shall be available;

(c) Comfortable beds or cots, complete bedding and night clothes shall be available or supplied by the parents;

(d) Beds shall be placed at least three feet apart;

(e) Staff shall be available to assist children during eating and pre bedtime hours and during the morning period when dressing. During sleeping hours, staff shall be within listening distance to provide for the needs of children and to respond to an emergency;

(f) A child shall not sleep in a building detached from the main facility; and

(g) Night care facilities shall include at least one shower, bathtub, or bathing facility for the children.

History/Comment [Expand]

Part 300 - Family Child Care Homes

Subpart A - Administration Requirements

§ 55-40.1-301 Number and Age of Children in Care

(a) A family child care home shall provide care for no more than six children at the same time.

(b) No more than two children under twenty four months of age shall be permitted in the family child care home at the same time. Should there be additional adult help in the home, there may be up to four children under twenty four months of age.

(c) Restrictions as to the number of children permitted shall be made in certain conditions as identified in § 55-40.1-330: staff child ratio.

History/Comment [Expand]

§ 55-40.1-302 Certain Provider's Children Not Included

The following provider's* children are not included in this total:

(a) Children six years of age or older; and

(b) Children under six years of age who are in school or attending a child care facility, such as a child care center, more than six hours per day.

* So in original.

History/Comment [Expand]

§ 55-40.1-304 Statement of Operation Policies

(a) A family child care home shall have written operation policies. Family child care home policies shall include:

- (1) Ages of children accepted;
- (2) Maximum number of children permitted by certificate of child care licensing program;
- (3) Specific hours of day, night, holiday, and vacation operation;
- (4) Whether or not meals are served;
- (5) Fees and the plan for payment, including fees for different types of child care services and refund policy;
- (6) Policy and plan for emergency medical care;
- (7) Insurance coverage provider shall inform parents or guardians in writing of its policy regarding liability insurance; should a facility, which has liability insurance coverage, cancel or terminate its coverage, it shall provide written notice to each parent or guardian of a child in its facility not later than five working days of the cancellation or termination of its coverage.
- (8) Transportation arrangements;
- (9) Parental permission for trips and related activities outside the facility;
- (10) Policy regarding admission or* sick, moderately sick, or handicapped children; and
- (11) Other policies which may be required by the Department.

*So in original; probably should be "of."

(b) The provider shall review the policies with each parent or guardian at the time of enrollment of a child.

History/Comment [Expand]

§ 55-40.1-306 Information on Owner or Operator

- (a) The name, address, and telephone number of the facility shall be provided to the Department.
- (b) The name of any sponsoring agency shall be provided to the Department.

History/Comment [Expand]

§ 55-40.1-308 Change in Services

A facility shall notify parents or guardians, Public School System and the Department of Community and Cultural Affairs of any changes in the child care services it provides. Notification of any changes in service shall be made no later than thirty days after the date of the change and shall be included in the facility's operating policies.

History/Comment [Expand]

§ 55-40.1-310 Information and Records on Each Child

- (a) Admission procedures shall require that sufficient information and instruction from the parents or guardians be furnished to enable the provider to make decisions or act on behalf of the child.
- (b) Prior to admission of a child to a facility, the provider shall obtain the following information from the child's parents or guardians;
 - (1) The child's full legal name, birth date, current address, and preferred names;
 - (2) The name and home address of the parents or guardians who are legally responsible for the child;

(3) Telephone numbers or instructions as to how the parents or guardians may be reached during the hours the child is in the facility;

(4) Health information concerning the child, as required by subpart E.

(c) The information shall be maintained in writing and shall be updated as necessary.

History/Comment [Expand]

§ 55-40.1-312 Disclosure of Information on the Child

Information pertaining to an individual child or parents or guardians of the child shall not be disclosed to persons other than the facility personnel unless the parents or guardians of the child grant written permission for the disclosure or an emergency arises.

History/Comment [Expand]

§ 55-40.1-314 Information and Records on Facility

Written information and records on the facility shall be maintained and made available to the Department. Current records and information, shall include:

(a) Roster of enrolled children; and

(b) Daily attendance record by names of children.

History/Comment [Expand]

§ 55-40.1-316 Transportation Provisions

When transportation is provided by a facility, children shall be protected by adequate supervision and safety precautions as follows:

- (a) The vehicle and driver providing transportation shall be in compliance with all relevant motor vehicle laws;
- (b) No more than six children under the age of six years shall be transported when only one adult is in the vehicle;
- (c) Children shall be instructed in safe transportation conduct as appropriate for age and stage of development; and
- (d) All children under three years of age shall be in federally approved child safety seats. All other children and adults shall be secured by seat belts at all times when driving.
- (e) Children shall not be allowed to ride in the back of pick up trucks.

History/Comment [Expand]

Subpart B - Program Requirements**§ 55-40.1-318 Program Provisions**

There shall be a provider or a responsible adult, designated by the provider, supervising the children at all times. The provider or responsible adult shall always be within sight or hearing distance to provide for the needs of the children and to respond to an emergency. The program shall also provide an environment and experiences that are aimed at promoting the individual child's physical, intellectual, emotional, and social well being and growth. This shall be done in the following ways:

(a) Activities which promote physical development shall include:

- (1) Daily opportunities for running, climbing, and other vigorous and varied physical activities; and
- (2) Opportunities for children to learn about the health, and care of the their bodies, to include exercise, nutrition, and hygiene;

(b) Programs to promote intellectual development shall:

- (1) Provide that a variety of learning materials are introduced and are available to the children; and
- (2) Include first hand experiences for children to learn about the world;

(c) Programs to promote emotional development shall provide that:

- (1) There are opportunities for individual self expression;
- (2) Each child is recognized as an individual;
- (3) The child is afforded constructive guidance and the setting of clear cut limits which foster the child's own ability to be self disciplined;
- (4) Each child's personal privacy is respected;
- (5) Providers shall not use:
 - (i) Physical punishment, or
 - (ii) Methods of influencing behavior which are frightening, humiliating, injurious, or damaging to the child's health or self esteem; and
- (6) Providers respect each child's cultural, ethnic, and family background, as well as the child's primary language or dialect;

(d) Programs to promote social development shall provide that:

- (1) Children are guided in learning to get along with each other;
- (2) Providers interact with children in ways which promote mutual respect between adults and children; and
- (3) Providers behave in ways which help the children develop attitudes of respect for all other persons as individuals and develop an appreciation of ethnic and cultural diversity;

(e) The activities and experiences provided by the program shall be appropriate to the developmental level of the children;

(f) The program shall encourage the development of the children's special interests and abilities;

(g) The program shall provide a balance of active and quiet activities; and

(h) The program shall provide for the self direction of the children by:

(1) Affording children opportunities to choose activities according to personal desires and interests and to move from one activity to another,

(2) Encouraging children to do things independently; and

(3) Providing children opportunities to be involved in decision making about group and individual activities.

History/Comment [Expand]

§ 55-40.1-320 Communication with Parents and Guardians

Caregivers shall exchange information with parents or guardians about the children as follows:

(a) Plans shall be made and followed with parents or guardians for any information about each child; and

(b) Caregivers shall relay concerns about the health, or behavior of the child to the parents or guardians promptly and directly.

History/Comment [Expand]

§ 55-40.1-322 Program Materials and Equipment

- (a) The amount and variety of materials and equipment available and the arrangement and use of the materials and equipment shall be appropriate to the ages of the children in care.
- (b) The quantity of materials and equipment shall be sufficient to:
- (1) Avoid excessive competition between the children and to avoid long waits for use of the materials and equipment; and
 - (2) Provide to the individual interests of the children.
- (c) Protected areas where equipment and materials will be used with minimal interference or interruption shall be provided.
- (d) Materials shall be stored in orderly way, shall be kept in good repair, and shall be accessible to children. The materials shall be arranged to allow children to select, remove, and replace the materials either independently or with assistance.
- (e) Grass, soft media, or other protective measures shall be used under swings, slides, jungle gyms, and other similar outdoor play equipment.
- (f) Equipment for both indoor and outdoor play shall allow children to use small and large muscles for imaginative play and creative activities.
- (g) Provision for individual storage of children's clothing and personal belongings shall be available.
- (h) Storage space for play materials and equipment used by the children shall be made available.
- (i) The following sleeping equipment shall be available:

- (1) Individual bed, crib, cot, mat, or rug for each child who rests; and
- (2) A clean sheet or cover to be used on the bed, crib, cot, mat, or rug for each child.

History/Comment [Expand]

§ 55-40.1-324 Transition to a New Facility or School Setting

- (a) Provision shall be made to assist the child in making the transition from the child care setting to a new child care, a kindergarten, or school setting.
- (b) Provision shall be made for cooperation between the caregiver and parents, guardians, or kindergartens when information is requested which may assist a child to adjust to a new environment as allowed by § 55-40.1-310.

History/Comment [Expand]

Subpart C - Staffing Requirements

§ 55-40.1-326 Staff Training, Experience, and Personal Qualifications

- (a) Each provider shall be qualified through training experience, and personal qualities for the age group with which the person works.
- (b) All providers other than volunteers assisting providers shall be at least eighteen years old.
- (c) Written references from two of the following categories of persons shall be submitted to the Department with an application;
 - (1) A neighbor or personal friend;

- (2) A person in a professional capacity such as a teacher, doctor, minister, or social worker,
- (3) The parent of any child who has previously been in the provider=s care, if applicable.

(d) Applicants, employees and volunteers shall be of reputable and responsible character and shall not have a criminal history record, employment history, or background which poses a risk to children in care.

(1) Conviction of a crime involving violence, alcohol or drug abuse, sex offense, offense involving children, and any other conviction, the circumstance of which indicate that the applicant or employee may pose a danger to children, are grounds for denial or revocation of a certificate of child care license or a reason to request termination of an employee under § 55-40.1-110(d);

(2) The type of criminal offense, when it occurred, and evidence of rehabilitation shall be considered in determining whether the criminal history record poses a risk to the health, safety, or well being of children in care;

(3) An employment history indicating violence, alcohol or drug abuse, and any other violation of an employer's rule or policy, the circumstances of which indicate that the applicant or employee may pose a danger to children, may be grounds for denial or revocation of a certificate of child care license or a reason to request termination of an employee under § 55-40.1-110(d);

(4) Background information which shows that the individual has been identified as and substantiated to be the perpetrator of child abuse or neglect may be a basis for denial or revocation of a certificate of child care license or a reason to request termination of an employee under § 55-40.1-110(d).

History/Comment [Expand]

§ 55-40.1-328 Disclosure of Information on the Child

(a) Information pertaining to an individual child or parents or guardians of the child shall not be disclosed to persons other than the facility staff, unless the parents or guardians of the child grant written permission for the disclosure or an emergency arises.

(b) The parents or guardians shall be informed in writing of the facility's policy regarding disclosure of information.

(c) The Office of the Attorney General may, by written request obtain disclosure of information required to be kept by the regulations in this subchapter when it appears that a violation of the criminal law may have occurred and such information may reasonably be needed to investigate such an allegation.

History/Comment [Expand]

§ 55-40.1-330 Staff child Ratio

(a) A family child care home shall provide care for no more than six children at the same time. The following provider's children are not included in this total:

(1) Children six years of age or older, and

(2) Children under six years of age who are in school or attending a child care facility, such as a child care center, more than six hours per day.

(b) No more than two children under eighteen months of age shall be permitted in the family child care home at the same time. Should there be additional adult help in the home, there may be up to four children under eighteen months of age.

(c) Restrictions as to the number of children permitted shall be made under the following conditions:

(1) Space is unusually limited;

(2) Provider has personal or physical limitations;

(3) There is an unusually wide range of ages of the children; or

(4) There are handicapped children requiring unusual amounts of special care.

(d) The provider shall provide the Department with the name, address, and telephone number of at least two substitutes for the provider, such as another family child care provider, a neighbor, or a hired person, who will be called in an emergency or other times when the regular provider is unable to provide care. A background check shall be administered before hiring and assignments are done on all substitutes.

History/Comment [Expand]

Subpart D - Health Standards for Children

§ 55-40.1-332 Health Consultation Provisions

The facility shall make provision for health consultation to assist in developing health policies and keeping the policies current. The provider shall contact a local health resource for consultation in setting up and maintaining health standards.

History/Comment [Expand]

§ 55-40.1-334 Evidence of Child's Health

(a) The child care facility shall require and obtain from the parent or guardian of each child entering child care a completed department of education form 14 or any comparable writing which shall include the following:

- (1) Child's record of immunizations;
- (2) Evidence of the child's good health; and
- (3) Signature of a physician or health agency, signed within one year prior to admission.

(b) School aged children in before or after school care only, who satisfy health requirements for enrollment in school, are not required to furnish the material specified in subsection (a) above.

History/Comment [Expand]

§ 55-40.1-336 Emergency Care Provisions

Every facility shall have the following provisions for emergency care of children requiring treatment at a hospital or clinic away from the child care setting and for care of children who become ill after arrival:

(a) The provider shall obtain the name of a physician or nearest hospital or clinic where care can be provided to the child;

(b) The provider shall obtain written permission from the parents or guardians to allow the child to receive emergency care;

(c) An adult shall accompany a child to the source of emergency care. The adult shall stay with the child until the parent or parent=s designee assumes responsibility for the child's care. The selection of the adult shall not compromise the supervision of the other children in the program; and

(d) Physical arrangements for children who become ill after arrival at the facility shall be available for the care of the child until parents or guardians can be notified to provide alternative arrangements.

History/Comment [Expand]

§ 55-40.1-338 First Aid and Rescue Breathing

(a) There shall be at least one adult provider who is trained in observation of symptoms of illness and with a current certificate in first aid and rescue breathing. A current certificate means a certificate which is less than three years old.

(b) The provider may be trained through a community health aide program or a program developed or endorsed by the American Red Cross, Department of Public Health, or nursing or medical agency in the community.

(c) A first aid kit shall be available in the child care setting at all times.

History/Comment [Expand]

§ 55-40.1-340 Admission of Ill Children

(a) When health policies of the facility allow ill children to be admitted or to remain in the facility, medical consultation shall be available regarding special care and medication.

(b) When medication prescribed by a physician is administered at the facility:

(1) The medication shall be kept in the original container bearing the prescription label which shows a current date, the physician's directions for use, and the child's name; and

(2) Medication shall be kept out of the reach of the children and shall be returned to parents or guardians when no longer in use.

(c) When over the counter medication is recommended by the child or family's doctor, medication shall be administered at the facility as directed by the doctor or parent or guardian in writing.

(d) Both the provider and the parents or guardians shall be familiar with special policies of the facility relevant to ill children. Special policies regarding illnesses are to be explained to the parent or guardian at the time of enrollment of the child.

(e) The facility shall, in consultation with its health consultant, establish a re admission policy for children who have been absent because of illness.

History/Comment [Expand]

§ 55-40.1-342 Admission of Children with Disabilities

(a) When children with disabilities are admitted into a family child care home, the facility shall provide for the special needs of each child.

(b) The disabled child shall be admitted only after consultation with the child's source of health care, the parent or guardian, and the provider occurs. The consultation shall include written recommendations from the health source to cover the child's special needs or to define the child's capacities and limitations.

(c) If the child's health care source considers it advisable, the provider shall receive training related to the nature of the child's disability and the child's potential for growth and development.

(d) Where the nature of the child's disability or the number of disabled children in the program necessitates added care, additional adults and equipment shall be available to cover these requirements.

History/Comment [Expand]

§ 55-40.1-344 Daily Nutritional Needs

(a) To the extent possible, information provided by parents or preferences, or special needs shall be considered in child care feeding schedules and menus. A child shall be encouraged but shall not be required to eat the food offered at the home.

(b) The home shall have access to nutritional information provided by a qualified nutritionist, dietitian, or other community resource approved by the Department of Health.

(c) In a home providing meal service, the minimum meal components and food amounts required by the United States Department of Agriculture (USDA) child care food program shall be met. The home shall offer and provide the following combination of meals and snacks for children in care:

(1) Two to four hours - one snack;

(2) Four to eight hours - one snack or breakfast and lunch or supper;

(3) Eight hours or more one snack or breakfast and lunch or supper and one additional snack (unless the eight hours or more extend into the evening hours when the child may be asleep);

(4) When two snacks are required as in subsection (c)(3) above, at least one of those snacks shall include the provision and offering of milk or its calcium equivalent; and

(5) Local ethnic foods may be added or substituted for quantity (for allowable food reimbursement, provider shall consult with the USDA).

(d) In a home where parents or guardians are allowed to provide food (i.e. sack lunches or snacks) the home, in addition to food the child brings, shall meet the minimum amounts required by the USDA child care food program by offering and providing children in care;

(1) Four to eight hours morning snack or breakfast or afternoon snack;

(2) Eight hours or more morning snack or breakfast and afternoon snack. (unless the eight hours or more extend into the evening hours when the child may be asleep);

(3) When two snacks are required as in subsection (d)(2) above, at least one of those snacks shall include the provision and offering of milk or its calcium equivalent; and

(4) Local ethnic foods may be added or substituted for quantity (for allowable food reimbursement, facilities shall consult with the USDA).

(e) Children shall not be offered foods to which they are allergic or, for religious reasons.* Provision shall be made to secure such information from the parent or guardians, and arrangement shall be made for nutritious substitute foods.

*So in original.

(f) Infants shall be personally attended while being fed.

(1) Infants unable to hold bottles shall have bottles held, not propped, by the caregiver.

(2) Parents or guardians may assume full responsibility for the infants' diet.

(g) School aged children in before or after school care for two or more hours shall be offered a nutritious snack which may be provided by the facility or brought from home.

(h) Food shall not be used as a punishment or reward.

History/Comment [Expand]

§ 55-40.1-346 Drinking Water Provisions

Water suitable for drinking shall be accessible to all children. The Rules and Regulations Governing Schools and Child Care Facilities [NMIAC, title 140, subchapter 20.4] promulgated by the Department of Health Services pursuant to the Commonwealth Environmental Health and Sanitation Act of 2000 shall also apply.

History/Comment [Expand]

§ 55-40.1-348 Integration of Mental Health Concepts

Mental health aspects of each child's development shall be integrated into the program as follows:

(a) At least one parent and a guardian, shall be interviewed prior to a child's admission to the facility. The personal interview shall be conducted to secure pertinent information on the child's overall development and behavior and to acquaint the parent or guardian with the facility's program and policies;

(b) The facility shall provide its staff with annual orientation to state or other mental health services for children, or otherwise familiarize its staff with consultative and clinical services and programs for early identification of social, emotional, intellectual, and behavioral problems of children; and

(c) The facility shall refer parents or guardians to sources of professional consultation in mental health upon the parents' or guardians' request or upon the recommendation of the facility's staff.

History/Comment [Expand]

Subpart E - Health Standards for Provider and Others in the Home

§ 55-40.1-350 Hand Washing

(a) The facility shall have a written policy that specifies when hand washing is required for staff and children, defines hand washing procedure, and provides continuing monitoring to assure that the hand washing procedure is carried out.

(b) Hand washing policy for staff shall require that hand washing is done. Smoking should not be taking place on premises at all times.

(1) Before eating, drinking, or smoking;

(2) Before handling clean utensils or equipment;

(3) Before handling food;

(4) Before and after assisting or training the child in feeding and in toileting;

(5) After going to the bathroom;

(6) After contact with body secretions, i.e., blood, urine, faces*, mucus, saliva, or drainage from wounds;

(7) After handling soiled diapers, clothes, equipment, or menstrual pads;

(8) After removing disposable gloves; and

(9) After smoking.

(c) Infants and toddlers, who self feed in any manner, shall have their hands washed with soap and water before and after eating and after toileting.

(d) Hand washing does not require hot water and may be done with cold water and plain soap and use of disposable paper towels for drying hands.

(e) If bar soap is used, it shall be kept on racks that allow for water drainage. If liquid soap is used, the dispenser shall be replaced or cleaned, as necessary.

* So in original.

History/Comment [Expand]

§ 55-40.1-352 Provider's Health Standards

Evidence that providers are free from health problems which would have a harmful effect on the children or which would interfere with effective functioning shall be maintained at the child care home as follows:

- (a) The provider shall have a written report of a physical examination given within one year prior to beginning family child care which indicates the provider is in adequate physical health to care for children and a health permit issued by the Department of Public Health as required in the Commonwealth Environmental Health and Sanitation Act of 2000;
- (b) Any other person living in the home shall have a written report of a physical examination on file which was obtained within one year prior to the provider beginning child care or prior to the person's occupancy in the home. For school aged children, this requirement is fulfilled by meeting the rules for school attendance;
- (c) Written evidence that each adult in the home is free from communicable tuberculosis as a result of a negative tuberculin skin test or a satisfactory chest x ray taken within two years before beginning child care shall be on file at the facility. The tests shall be repeated in compliance with day care rules; and
- (d) When volunteers provide direct child care of ten hours or more per week, the volunteers shall be subject to the same requirements for health and personal habits as the provider.

History/Comment [Expand]

§ 55-40.1-354 Personal Health Habits of Provider

The personal health habits of all providers shall not interfere with the protection of the health of the children as follows:

- (a) The use of medications other than over the counter medication is permitted only when authorized by a physician;
- (b) The provider shall inform parents or guardians if any member of the household smokes; and
- (c) Alcoholic beverages shall be stored out of the reach of children and shall not be consumed during hours of the facility's child care operation.

History/Comment [Expand]

Subpart F - Environmental Health Standards

§ 55-40.1-356 Disaster Plan for Emergencies

Each facility shall have a disaster plan to cover emergencies such as fire, flood, or natural disaster and shall be posted on the wall for everyone to see. The plan shall include:

- (a) An exit plan for disasters that is practiced at regular intervals;
- (b) Informing parents or guardians of the plans at the time of enrollment; and
- (c) Installing an underwriters laboratory listed fire warning device or system in each stairway or hall in the facility.

History/Comment [Expand]

§ 55-40.1-358 Accidental Injury, Precautions

The provider shall ensure that the child care program and premises minimize the risk of accidental injury in the following manner:

(a) Ensuring that child care activities and premises do not expose children to situations which may be hazardous to the particular age or capacity of the child; and

(b) Helping increase the children's awareness of safety practices and accident hazards, and helping the children to learn how to avoid such hazards.

History/Comment [Expand]

§ 55-40.1-360 Environmental Hazards

The premises, both indoor and outdoor, in which a child care program is carried out shall be free of environmental hazards, shall be clean and comfortable, and shall provide for adequate space to meet the needs of the children as follows:

(a) The provider shall control rodents and insects;

(b) The outdoor space shall be fenced or shall have natural barriers or other protective conditions to deter children from getting into unsafe areas;

(c) There shall be no open drainage ditches, wells, or holes into which children may fall;

(d) Drainage shall be adequate to prevent stagnant pools of water from accumulating;

- (e) Garbage and trash shall be stored in covered containers out of reach of the children and shall be removed frequently enough to avoid creating a health hazard or nuisances;
- (f) Poisons, drugs, harmful chemicals, and other dangerous articles such as cleaning fluid, matches, firearms, and tools shall be kept in a safe location, out of reach of children;
- (g) All rooms used for child care shall be lighted and ventilated;
- (h) Open fireplaces shall not be used. Floor heaters and all heating elements including hot water pipes shall be insulated or installed in a manner which makes the pipes inaccessible to children;
- (i) Floor space shall be arranged to provide areas for active play, quiet rest, and individual activities;
- (j) Furniture, equipment, and toys shall be sturdily constructed, without sharp edges, and shall present minimal hazards to children;
- (k) Lead based paint shall not be used on surfaces accessible to children. Professional assistance shall be requested during routine inspections to ensure that lead based paint does not exist at all in the facility.
- (l) Provision shall be made to eliminate the hazard of electrical outlets;
- (m) Poisonous plants shall be kept out of the reach of children;
- (n) Pets, animals, and fowl shall be maintained in a safe and sanitary manner at all times; and
- (o) If a lodging house, boarding house, or other business conflicts with child care hours and responsibilities, the lodging house, the boarding house, or other business shall not be operated on the premises of the child care home.

History/Comment [Expand]

§ 55-40.1-362 Water Supply

The Rules and Regulations Governing Schools and Child Care Facilities [NMIAC, title 140, subchapter 20.4] promulgated by the Department of Health pursuant to the Commonwealth Environmental Health and Sanitation Act of 2000 shall apply to this section.

History/Comment [Expand]

§ 55-40.1-364 Toilet and Lavatory Facilities

The Rules and Regulations Governing Schools and Child Care Facilities [NMIAC, title 140, subchapter 20.4] promulgated by the Department of Health pursuant to the Commonwealth Environmental Health and Sanitation Act of 2000 shall apply.

- (a) If toilet training chairs are provided for use by children, the toilet training chairs shall be emptied promptly and sanitized after use;
- (b) Small children shall be assisted in washing to prevent accidental scalding;
- (c) Safe, sturdy step stools shall be provided to allow the use of standard sized toilets and lavatories; and
- (d) Children shall not share towels, toothbrushes, combs, and other necessary toilet articles.

History/Comment [Expand]

§ 55-40.1-366 Food Preparation and Protection

Food preparation and protection shall be carried out in a kitchen with proper equipment and cleanup facilities required for the number of children in care as follows:

- (a) All food shall be protected from contamination during storage, preparation, and service; and
- (b) All dishwashing shall be performed in a sanitary manner;
- (c) An adequate number of eating and drinking utensils shall be available for each child;
- (d) When single service utensils are used, the utensils shall be stored and handled in a sanitary manner and discarded after a single use; and
- (e) Cooking utensils used in food preparation and service shall be cleaned and stored in sanitary manner.
- (f) Food protection policies shall comply with accepted practices of local sanitary codes and shall be adapted to fit the needs of the program except as indicated in the rules in this subchapter.

History/Comment [Expand]

§ 55-40.1-368 Cleaning of Premises

- (a) All necessary cleaning equipment shall be available on the premises and provisions shall be made for regular cleaning of the premises to protect the health of the children and provider.
- (b) Storage of cleaning material shall be in a secured area which is inaccessible to the children.

(c) There shall be a plan for regular cleaning of toys, table tops, furniture, and other similar equipment used by the children.

(d) The Rules and Regulations Governing Schools and Child Care Facilities [NMIAC, title 140, subchapter 20.4] promulgated by the Department of Health pursuant to the Commonwealth Environmental Health and Sanitation Act of 2000 shall also apply.

History/Comment [Expand]

§ 55-40.1-370 Swimming Activities and Wading Pools

(a) When swimming or wading pools are part of the facility, equipment, or program, the swimming pools shall be constructed, maintained, and operated in accordance with building and health rules.

(b) When swimming or wading activities are included in the child care program, the following safety practices shall be observed:

(1) A certified lifeguard, who may be the provider, shall be on duty at all times when swimming pools are in use;

(2) Wading pools less than twenty four inches at the deepest part shall be exempt from the requirements of this section. However, children shall be personally attended by a responsible adult at all times and the wading pools shall be emptied immediately after each use; and

(3) Legible safety rules for the use of all types of pools, excepting for wading pools, shall be posted in a conspicuous location and read and reviewed at regular intervals by the provider responsible for the care of the children.

History/Comment [Expand]

Subpart G - Physical Facility Standards

§ 55-40.1-372 Building Codes and Space Requirements

Child care facilities shall conform to the zoning, building, electrical, and plumbing codes of the county in which the facility is located, to state rules as may be applicable to the facility, and the following:

(a) The Department shall be notified of changes or renovations in the home;

(b) Space requirements shall be as follows:

(1) For daytime care, there shall be a minimum of thirty five square feet of indoor area per child, excluding bathrooms, closets, and hallways. Covered lanai area may be counted for not more than thirty per cent of the required area;

(2) For nighttime care, each room used for sleeping purposes for children in care shall have a minimum of fifty square feet per child, excluding kitchen, bathroom, closets, halls, and lanai area; and

(3) For outdoor space, there shall be easy accessibility to adequate outdoor space and in all cases, a minimum of one hundred fifty square feet. For children twelve months or older there shall be a minimum of seventy five square feet per child; and

(c) All parts of the building, building appurtenances, outdoor space, equipment, and all other parts of the facility shall be kept repaired, safe, and sanitary at all times.

History/Comment [Expand]

Subpart H - Program Modifications**§ 55-40.1-374 Program Modifications for Drop in Care**

(a) All requirements set forth in this subchapter shall be met by the provider except for § 55-40.1-301 and § 55-40.1-334.

(b) A family child care home offering drop in care shall be prepared to adjust its staffing to meet the

program modifications which result when drop in care is provided.

(c) Children receiving drop in care shall be cared for in separate areas or groups.

(d) If a center serves both drop in children and children who attend regularly, the grouping of the children and the program shall be planned so that the needs of both groups are met.

History/Comment [Expand]

§ 55-40.1-376 Program Modifications for Night Care

A child care facility offering night care shall meet the requirements of this subchapter in addition to the following requirements:

(a) In consultation with parents, special attention shall be given to provide for a transition into night care;

(b) Toys for quiet activities shall be available;

(c) Comfortable beds or cots, complete with bedding, and night clothes shall be available or supplied by the parents;

(d) The provider shall be available to assist children during eating and pre bedtime hours and during the morning period when dressing. During sleeping hours, the provider shall always be within hearing distance to provide for the needs of children and to respond to an emergency;

(e) A child shall not sleep in a building detached from the main facility; and

(f) Night care facilities shall include at least one shower, bathtub, or bathing facility for young children.

History/Comment [Expand]

Part 400 - Infant and Toddler Child Care Centers

Subpart A - Administration Requirements

§ 55-40.1-401 Age of Children in Care

An infant and toddler center shall provide care to children age six weeks and under 24 months.

History/Comment [Expand]

§ 55-40.1-402 Statement of Operation Policies

The facility shall have written operation policies which cover the following areas:

- (a) Admission requirements and enrollment procedures;
- (b) Ages of children accepted;
- (c) Maximum number of children permitted by license;
- (d) Specific hours of day, night, holiday, and vacation operation;
- (e) Type of child care services provided; e.g. daily routines, language, arts, math, children=s progress,

communication with parents, show & tell and educational field trips;

(f) Whether the facility provides meals and snacks for the infant or toddler, or parents are to provide the meals and snacks;

(g) Fees and the plan for payment, including fees for different types of services and refund policy;

(h) Insurance coverage each facility shall inform parents or guardians in writing of its policy regarding liability insurance; should a facility which has liability insurance coverage cancel or terminate its coverage, it shall provide written notice to the parent or guardian of each child in its facility no later than seven working days of the cancellation or termination of its coverage;

(i) Rules concerning personal belongings brought to the facility;

(j) Transportation arrangements and written parental permission for trips and related activities outside the facility, if applicable;

(k) Provisions which may be made for special needs of individual children;

(l) Policy and plan for emergency medical care;

(m) Admission and care of sick or children with disabilities;

(n) Statement of policy on administering medication;

(o) Statement of policy and procedures for provision and management of diapers and other infant and toddler supplies;

(p) Statement of procedures regarding sanitation practices;

(q) Statement of grievance procedures;

(r) Fund raising campaigns - children and staff shall not be exploited in activities which would be detrimental to the children or the program; and

(s) Other policies or procedures which may be required by the Department.

(1) Written policies and procedures shall be reviewed with each caregiver in the facility.

(2) Written policies shall be made available for review by parents or guardians at the time of enrollment of the infant or toddler.

(3) Written notification of changes in the services offered by the facility shall be provided to the Department, Public School System and to parents or guardians of the children enrolled in the facility at least four weeks prior to the effective date of change.

History/Comment [Expand]

§ 55-40.1-404 Information on Owner or Operator

(a) The name, address, and telephone number of the facility shall be supplied to the Department.

(b) The name, business address, and business telephone number of the persons having authority over and responsibility for the overall administration and services shall be supplied to the Department.

(c) The name of the owner or sponsoring agency (privately owned, church, or agency owned, etc.) of the facility shall be supplied to the Department.

History/Comment [Expand]

§ 55-40.1-406 Change in Services

A facility shall notify parents or guardians and the Department of any changes in the day care services it provides as follows:

(a) Written notification of changes in the services offered by the facility shall be provided to the Department and to parents and guardians of children enrolled in the facility; and

(b) Notification of any changes in service shall be made no later than thirty days after the date of the change and shall be included in the facility's operating policies.

History/Comment [Expand]

§ 55-40.1-408 Information and Records on Each Child

(a) Admission procedures shall require that sufficient information and instruction from the parents or guardians be obtained to enable the caregiver to make decisions or act on behalf of the child.

(b) Prior to the admission of a child to a facility, the provider shall obtain in writing from the child's parents or guardians the following information:

(1) The child's full legal name, birth date, current address, and preferred names;

(2) The names and addresses of the parents or guardians who are legally responsible for the child;

(3) Telephone numbers or instructions as to how the parents or guardians may be reached during the hours the child is in the facility;

(4) The name, address, and telephone number of person who shall assume responsibility for the child if for some reason the parent or guardian cannot be reached immediately in an emergency;

(5) The names, addresses, and telephone numbers of persons authorized to take the child from the facility; and

(6) The immunization status and child history, as required (by CMC, div. 2, ch. 1, § 2101 (http://www.cnmilaw.org/pdf/cmc_section/T3/2101.pdf) through § 2107 (http://www.cnmilaw.org/pdf/cmc_section/T3/2107.pdf)) shall be available on facility file and shall be updated periodically.

History/Comment [Expand]

§ 55-40.1-410 Disclosure of Information on the Child

(a) Information pertaining to an individual child or parents or guardians of the child shall not be disclosed to persons other than the facility staff, unless the parents or guardians of the child grant written permission for the disclosure or an emergency arises.

(b) The parents or guardians shall be informed in writing of the facility's policy regarding disclosure of information.

(c) The Office of the Attorney General may, by written request obtain disclosure of information required to be kept by the regulations in this subchapter when it appears that a violation of the criminal law may have occurred and such information may reasonably be needed to investigate such an allegation.

History/Comment [Expand]

§ 55-40.1-412 Information and Records on Facility

Written information and records on the facility shall be maintained and made available to the Department. The facility shall maintain current records and information including:

(a) Roster of enrolled children;

(b) Daily attendance records by names of children;

(c) Daily plan for feeding the children;

(d) Daily schedule of activities; and

(e) A list of staff members, including each staff member's position or title, training, experiences, health records, references, and employment checks.

History/Comment [Expand]

§ 55-40.1-414 Transportation Provisions

Infants and toddlers transported in vehicles by center staff, either to and from the center or for center program activities, shall be secured by approved car seats or restraints. Facility shall also comply with the requirements as stated in subpart C.

History/Comment [Expand]

Subpart B - Program Requirements

§ 55-40.1-416 Program Provisions

(a) The program conducted in the facility shall provide for supervision of the infants and toddlers at all times and an environment and experiences which are developmentally appropriate and which promote the infant or toddler's physical, emotional, intellectual, and social well physical, emotional, intellectual, and social well being and the growth and integrity of the family unit.

(b) The director of the facility shall provide the Department with a brief written description of the facility's program goals and activities, which shall include the following:

(1) Provisions for the promotion of physical development, which shall include:

(i) Varied, developmentally appropriate physical activities; and

(ii) Opportunities for the infants and toddlers to learn about the health, development, and care of their bodies including exercise, safety, nutrition, and hygiene, as appropriate to their age (six weeks 24 months);

(2) Provisions for the promotion of emotional development, which shall include:

(i) Staff recognition of the special difficulties of infant and toddler separations and assistance to families, infants, and toddlers to make the transition from home to facility as gently as possible, such as a phased in orientation process to allow infants and toddlers to experience limited amounts of time at the facility before becoming fully integrated;

(ii) Assignment of each infant or toddler to a primary caregiver who shall be responsible for care the majority of the time;

(iii) Prompt response by all caregivers to an infant or toddler's physical and emotional needs, i.e., feeding, diapering, holding, touching, and eye contact;

(iv) Recognition and care of each infant or toddler as an individual with opportunities for individual choices, self expression, and some personal privacy;

(v) Provision of constructive guidance and the setting of clearly defined limits which foster the infant or toddler's ability to be self disciplined, as appropriate to their age and development;

(vi) Prohibition of use of:

(A) Physical punishment; and

(B) Methods of influencing behavior which are frightening, humiliating, damaging, or injurious to the infant or toddler's health or self esteem; and

(vii) Respect for each infant or toddler's cultural, ethnic, and family background, as well as the child's primary language or dialect;

(3) Provisions for the promotion of intellectual development, which shall include:

(i) Offering of frequent, but paced, personal, verbal, and physical interaction between caregiver and infant or toddler as part of the daily routine;

(ii) Availability of a variety of learning materials, which staff helps children to use; and

(iii) Hands on experiences, including both familiar and new activities, to enable the infant or toddler to learn about themselves and the world; and

(4) Provisions for the promotion of social development, which shall include:

(i) Caregiver behavior and interactions which emphasize and foster attitudes of mutual respect between

adults and children and between children; and

(ii) Guidance to infants and toddlers to enable them to develop and work out ways of getting along with each other, including an appreciation of cultural and ethnic diversity, as appropriate to the infant or toddler's level of understanding.

(c) The program shall provide a balance of active and quiet activities and shall recognize the infants and toddlers= need for uninterrupted sleep.

(d) In drop in centers, every effort shall be made to place an infant or toddler, who uses the center frequently, with the same caregiver.

(e) The program shall provide information on and access to parenting resources (i.e., bulletin boards, classes, resource libraries, handouts).

History/Comment [Expand]

§ 55-40.1-418 Communication Between Parents and Caregivers

(a) Centers shall obtain from the parent or guardian a description of the infant's or toddler's daily routine and behavior patterns prior to enrollment;

(b) Centers shall develop and follow a plan for regular contact with parents or guardians to exchange information about the infant's or toddler's needs and development; and

(c) Caregivers shall relay information and concerns about the health, development, or behavior of the infant or toddler, as well as positive experiences, directly to the parents or guardians on the day of the major change, symptom, or event.

History/Comment [Expand]

§ 55-40.1-420 Program Materials and Equipment

- (a) The amount and variety of materials and equipment available and the arrangement and use of the materials and equipment shall be developmentally appropriate to the infants and toddlers in care.
- (b) The quantity of materials and equipment shall be sufficient to:
- (1) Avoid excessive competition among the children and long waits for use of the materials and equipment; and
 - (2) Provide for a variety of experiences and appeal to the individual interests of the infants and toddlers.
- (c) Protected areas where equipment and materials will be used with minimal interference or interruption shall be provided.
- (d) Materials and equipment shall be kept clean and in good repair, stored in an orderly way, and arranged to allow children to select, remove, and replace the materials and equipment either independently or with assistance, as appropriate to their age and development.
- (e) Grass, soft media, or other protective measures shall be used under swings, slides, jungle gyms, and other similar outdoor play equipment.
- (f) Equipment for both indoor and outdoor play shall allow children to use small and large muscles for imaginative play and creative activities.
- (g) The following shall be available:
- (1) Individual provisions for safe, undisturbed sleep such as, crib, cot, or mat;
 - (2) Clean bedding for each infant and toddler;
 - (3) High chairs, safety seats, or size appropriate low seating for individual feeding;
 - (4) Adequate padding for safe floor play;
 - (5) Rocking or comfortable chair for infant and toddler feeding and comforting; and

(6) Individual storage spaces for children's clothing and personal belongings.

History/Comment [Expand]

§ 55-40.1-422 Transition to a New Facility

(a) Facility shall have a written policy to assist the infant or toddler in making a transition from the child care setting to a new type of care by communicating what will happen at the infant's or toddler's level of awareness or understanding.

(b) Provision shall be made for cooperation between caregiver and parents or other caregivers, when information is requested to assist an infant or toddler to adjust to a new environment.

History/Comment [Expand]

Subpart C - Staffing Requirements

§ 55-40.1-424 Staff Training, Experience, and Personal Qualifications

(a) Each care giving staff shall be qualified through training, experience, and personal qualities for the age group with which the person works.

(b) Staff growth and development shall be encouraged. The director shall make information about workshops, seminars, training sessions, or other courses available to all staff and volunteers.

(c) Applicants, employees and volunteers shall be of reputable and responsible character and shall not have a criminal history record, employment history, or background, which poses a risk to the infants and toddlers in care.

(1) Conviction of a crime involving children, violence, alcohol or drug abuse, sex offense, or any other offense, the circumstances of which indicate that the applicant or employee may pose a danger to children, is grounds for denial or revocation of a license or a reason to request termination of an employee.

(2) Type of criminal offense, when it occurred, and evidence of rehabilitation shall be considered in determining whether the criminal history record poses a risk to the health, safety, or well being of children in care.

(3) An employment history indicating violence, alcohol or drug abuse, and any other violation of employer rule or policy, the circumstances of which indicate that the applicant or employee may pose a danger to children, may be grounds for denial or revocation of a license or a reason to request termination of an employee.

(d) The director of an infant and toddler center shall have:

(1) A bachelor's degree in early childhood education (ECE), child development (CD), or related field from an accredited college or university, including in all cases, thirty hours of course work in infant and toddler development from an accredited teacher training institute or program and twelve months full time experience working with children under thirty six months of age in a licensed group care setting; or

(2) Two years of college education in ECE or CD or related field, including in all cases, thirty hours of course work in infant and toddler development from an accredited teacher training institute or program, and, twenty four months full time experience working with children under thirty six months of age in a licensed group care setting.

(e) A lead caregiver shall have:

(1) A bachelor's degree in ECE or CD or related fields, e.g., maternal child health nursing, or human development, and, twelve months full time experience working with children under thirty six months of age in a licensed group care setting, and, twelve credits approved ECE or CD training courses (may be part of the bachelor's degree) including thirty hours course work in infant and toddler development from an accredited teacher training institute or program; or

(2) A high school diploma, or its equivalent and credential in child development associate program, and, twenty four months full time experience working with children under five years of age in a licensed group care setting of which twelve months shall have been with children under thirty six months of age, and, twelve credits approved ECE or CD training courses, including thirty hours of course work in infant toddler development from an accredited teacher training institute or program; or

(3) Two years of college, preferably in ECE or CD or related fields, and, twenty four months full time experience working with children under five years of age in a licensed group care setting of which twelve months shall have been with children under thirty six months of age, twelve credits approved ECE or CD training courses including thirty hour course work in infant and toddler development from an accredited teacher training institute.

(f) A caregiver shall have:

(1) A high school diploma or its equivalent, and, twelve months full time experience working with children under thirty six months of age in a licensed group care setting, and, twelve credits approved ECE or CD training courses including thirty hours of course work in infant and toddler development from an accredited teacher training institute or program; or

(2) A high school diploma or its equivalent, and, twenty four months of full time experience working with children under thirty six months of age in a licensed group care setting, and, thirty hours of course work in infant and toddler development from an accredited teacher training institute or program; or

(3) No high school diploma, and, thirty six months full time experience working with children under thirty six months of age in a licensed group setting, and, thirty hours of course work in infant and toddler development from an accredited teacher training institute or program.

(g) A child care aide shall have:

(1) A high school vocational child care training course; or

(2) An orientation training in the center.

(h) A twelve month non renewable waiver may be granted to new hires, rehires, and current staff in director, lead caregiver, or caregiver positions, who meet all other requirements except the thirty hours course work in infant and toddler development from an accredited teacher training institute or program, to complete this required course work while concurrently serving in the capacity of the facility's director, leader caregiver, or caregiver.

(i) All staff members required to complete the thirty hours of course work in infant and toddler development from an accredited teacher training institute or program, as stipulated in subsections (d) through (f), shall, within two years of completion of this course work, obtain fifteen additional hours of course work in infant and toddler development from an accredited teacher training institute or program.

(j) The age requirements for staff shall be as follows:

(1) Child care aide, volunteer, or maintenance personnel shall be at least eighteen years old, in order to be counted in the staff child ratio.

(k) Volunteers shall:

- (1) Participate in an orientation to the program; or
- (2) Be a participant in a high school program which includes training in infant and toddler care; and
- (3) Meet the requirements of regular staff members to be counted in the staff child ratio.

(1) Temporary hires shall meet qualifications of positions for which hired.

(m) Substitutes for lead caregivers and caregivers shall be at least eighteen years of age and shall have participated in an orientation program of the facility, and the curriculum, lesson plans, and daily activities assigned to the substitute shall be closely supervised by the center's director.

(n) Substitutes for director shall meet the qualifications of a caregiver and shall have worked in the facility for at least six months.

(o) Substitutes for aides shall meet the qualifications of an aide.

(p) Substitutes may be granted an extension to serve in the same position for more than ten consecutive days upon consultation with and approval of the Department.

History/Comment [Expand]

§ 55-40.1-426 Staff child Ratio and Group Size

(a) The staff child ratio and group size shall be met and maintained by the facility during all hours of operation.

(b) The staff child ratio shall be in writing and shall be available to the Department.

(c) The staff member shall be on site and shall be regularly assigned to a particular group of children to be included in the staff child ratio.

(d) The director may serve as a caregiver, and shall not be included in the staff child ratio, only when total infant and toddler facility size does not exceed sixteen. In an infant and toddler program with more than sixteen children, the director may serve, as a caregiver shall not be included in the staff child ratio.

(1) Exception may be made and the director may be included in the staff child ratio in cases of emergency or in special situations. In any case this inclusion in the staff child ratio may not exceed ten hours per week.

(2) Exception may be made and the director of only those facilities which operate full day may be included in the staff child ratio during the first hour and the last hour of the regular operational day.

(e) Custodians, cooks, and bus drivers shall not be counted in the staff child ratio when performing regular duties.

(f) The following staff child ratios and group size shall be used in infant and toddler programs:

| | Maximum Group Size Permitted | | | |
|----------------------|------------------------------|-----|-----|-----|
| Ages of children | 6 | 8 | 10 | 12 |
| (1) 6 wk – 12 mos. | 1:3 | 1:4 | | |
| (2) 12 mo. – 24 mos. | 1:3 | 1:4 | 1:5 | 1:6 |
| (3) 18 mo. -36 mos. | 1:3 | 1:4 | 1:5 | 1:6 |

(g) Group size refers to the specific number of children assigned to specific staff who occupy an individual classroom or well defined physical space within a larger room; when groups are assigned space within a larger room, there shall be room dividers to ensure that children stay within their assigned group area and to keep the noise level down.

(h) The ratios and group sizes in the table above shall apply, as stated, only to homogenous age groups.

(i) Multi age grouping is both permissible and desirable; however, the following requirements and restrictions apply:

(1) Children who are between the ages of six weeks to eighteen months can be grouped together; when this occurs, the ratio and group size shall be those required for the youngest child in the group according to the table above; or

(2) Children who are between the ages of six months to thirty-six months can be grouped together; when this occurs, the ratio and group size shall be those required for the youngest child in the group according to the table above; or

(3) In multi age groups, the ratio and group size shall not exceed the ratio and group size for that of one age group higher than the youngest child in the group, and two thirds of the children must be in the oldest age group.

(j) Under no circumstances shall there be more than two children under three months of age in any group.

(k) Children with disabilities shall be admitted. The quality of care of the entire group shall continue and reasonable attempts shall be made to meet their needs.

History/Comment [Expand]

§ 55-40.1-428 Staffing Patterns

(a) There shall always be a minimum of two caregiver staff in the center when children are in care.

(b) When only one staff is required to supervise the children, as based on the staff child ratio, the second caregiver shall be readily accessible and available to the caregiver who is supervising the children.

(c) For every group, there shall always be one staff who meets the qualifications of a lead caregiver or caregiver.

(d) When the group size requires three staff, there shall minimally be one staff who meets the qualifications of a lead caregiver and one who meets the qualifications of a caregiver.

(e) These staffing patterns shall be maintained at all times, excepting for the first hour and the last hour of the operational day when a caregiver can act in the position of a lead caregiver.

History/Comment [Expand]

Subpart D - Health Standards for Infants and Toddlers

§ 55-40.1-430 Health Policies and Consultation Provisions

All programs shall have one of the following provisions for health consultation to assist in developing health policies and in keeping them current:

- (a) The facility shall have on file written evidence that an arrangement has been made with a physician in private practice to provide consultation;
- (b) The facility has made a contractual arrangement with a private physician or non profit health organization in the community to provide health care to the infants and toddlers in the program;
- (c) There is already a procedure existing in the community for the provision of health consultation service, and arrangements have been made for the use of this service; or
- (d) The infant and toddler program has a health advisory group that may serve in such a capacity.

History/Comment [Expand]

§ 55-40.1-432 Evidence of Child's Health

- (a) The child care facility shall obtain from the parent(s) or guardian(s), a health record of the child that complies with the provisions of this section. Which* relate to the school entry examination requirements for tuberculosis clearance, immunization, and physical examination.
 - (1) Written evidence of a physical clearance obtained within two months of admission to the facility;
 - (2) Written evidence that the infant or toddler has received a tuberculin test indicating that the infant or toddler is free from tuberculosis in a communicable form; and

- (3) Initial and continuous written evidence that immunizations are current; or
- (4) A written statement from a licensed physician certifying that the physical condition of the infant or toddler is such that immunizations would endanger the infant or toddler's life or health; or
- (5) A written statement from a parent or guardian requesting exemption from the required immunizations on the grounds that such immunizations conflict with the parent or guardian's bona fide religious tenets and practices.

(b) The facility shall have in writing:

- (1) The name, address, and telephone number of a physician or health resource that shall be called in case of emergency; and
- (2) Permission of the parent or guardian to call the physician or health resource, or another source of care if the parent or guardian cannot be reached in the case of a health emergency.

(c) The records of the child in the program shall include pertinent information about health status, developmental progress, and any special needs and efforts necessary to meet these needs.

* So in original.

History/Comment [Expand]

§ 55-40.1-434 Emergency Care Provisions

(a) Every center shall have provisions for emergency care of an infant or toddler requiring treatment and for care of children who become ill after arrival, as follows:

- (1) The responsible individual in the child care center, i.e. director, caregiver or health trained staff, has obtained the name of the nearest hospital or clinic where such care may be provided and has obtained written permission from each parent or guardian to provide emergency care to the infant or toddler at the hospital or clinic; or
- (2) The facility's health consultant has made arrangements for emergency coverage, and written permission from each parent or guardian for use of this alternative emergency coverage for their infant or toddler shall be on file at the facility.

(3) If health care is provided in the child care facility, the facility shall have on file a written permission from each parent or guardian covering all aspects of health care which is provided at the facility.

(b) An adult shall accompany the infant or toddler to the source of emergency care. The adult shall stay with the infant or toddler until the parent or parent's designee assumes responsibility for the child's care. The selection of the adult shall not compromise the supervision of the other infants and toddlers in the program.

(c) Physical arrangements for infants and toddlers, who become ill after arrival at the facility, shall be available for their care until parents or guardians can be notified to provide alternative arrangements.

History/Comment [Expand]

§ 55-40.1-436 First Aid and Rescue Breathing

(a) At all times during the operational day when children are in care, there shall be at least one adult caregiver present, who has been instructed in the observation of symptoms of illness in infants and toddlers and who has a current (less than three years old), certificate in first aid.

(b) A first aid kit, as defined by the facility's health consultant for their facility, shall be available at the facility at all times. Guidelines for a first aid kit, as developed by the state Department of Health Services, to assist a child care facility in assembling a first aid kit.

(c) There shall be at least one adult care giver with a current certificate in first aid at the facility when children are present.

History/Comment [Expand]

§ 55-40.1-438 Admission of Ill Infants and Toddlers

(a) Acutely ill infants and toddlers shall not be permitted to attend child care programs. Acutely ill is defined as temperature above 99 degrees (auxiliary) 100 degrees (oral), and 101 degrees (rectal) and other symptoms, such as vomiting, diarrhea, undiagnosed general rash, contagious disease, severe cough, or difficulty in breathing.

(b) When health policies of the facility allow ill infants or toddlers to be admitted to, or to remain in the facility, medical consultation shall be available regarding special care and medication.

(c) When medication prescribed by a physician is administered in the facility:

(1) The medication shall be kept in the original container bearing the prescription label, which shows the infant's or toddler's name, a current date, and the physician's directions for use;

(2) Medication shall be stored:

(i) In a refrigerator, if refrigeration is required; medication shall be separated from food by being enclosed in a covered container; or

(ii) In a cool, dry, dark, and secured enclosure, which is inaccessible to the infants and toddlers, if refrigeration is not required.

(3) Medication shall be returned to parents or guardians when no longer in use; and

(4) There shall be an authorization signed by the parent or guardian for the facility staff to administer medication.

(d) When over the counter medication is recommended by the infant's or toddler's doctor, parent, or guardian, medication shall be administered at the facility as directed in writing by the doctor, parent, or guardian.

(e) Both the care giving staff and the parents or guardians shall be familiar with policies of the facility relevant to ill infants and toddler.

(f) The facility shall, in consultation with its health consultant, establish a re admission policy for children who have been absent because of illness.

History/Comment [Expand]

§ 55-40.1-440 Admission of Infants and Toddlers with Disabilities

- (a) When infants and toddlers with disabilities are admitted to a facility, the facility shall provide for the special needs of each infant or toddler.
- (b) The disabled infant or toddler shall be admitted upon consultation between the infant's or toddler's source of health care and the program's health consultant. The consultation shall include written recommendations to cover the child's special needs or to define the child's participation in the program.
- (c) If the infant(s) or toddler(s) health care source considers it advisable, the staff of the program shall receive training related to the nature of the child's disability before the infant or toddler is admitted to the facility.
- (d) Where the nature of the infant(s) or toddler(s) disability or the number of disabled children in the program necessitates added care, staff and equipment shall be available to cover these requirements.

History/Comment [Expand]

§ 55-40.1-442 Daily Nutritional Needs

- (a) Meals and snacks of a quantity to complement food served at home shall be provided by the parent, guardian, or facility to meet the daily nutritional needs of the infant or toddler.
- (b) In a facility providing meal service, the facility shall ensure that the minimum meal components and food amounts as required by the United States Department of Agriculture (USDA) Child Care Food Program.
- (c) In a facility, where parents or guardians are allowed to provide food for their own child (i.e., formula or other foods for meals or snacks), the facility, in addition to food the child brings, shall provide the minimum amounts required by the USDA Child Care Food Program, by offering and providing children in care:

- (1) Four to eight hours morning snack or breakfast or afternoon snack;
 - (2) Eight hours or more morning snack or breakfast and afternoon snack, unless the eight hours or more extend into the evening hours when the children may be asleep.
- (d) For children twelve to thirty six months of age, when two snacks are required, at least one of the snacks shall include the provision and offering of milk (or the individual child's formula) or its calcium equivalent.
- (e) Infants and toddlers shall not be offered foods to which they are allergic or, for religious reasons.* Provisions shall be made to secure such information from the parent(s) or guardian(s) and agreement shall be made for nutritious substitute foods.
- *So in original.
- (f) Signs of food sensitivity or allergy shall be reported to the parent or guardian on the day this has been observed.
- (g) Infants and toddlers shall be encouraged but shall not be required to eat the food offered by the facility, as follows:
- (1) Caregiver shall be alert to and consider individual infant and toddler cues in determining amounts of food provided;
 - (2) When solid foods are introduced, they shall be carefully selected and added one at a time with a few days span between each new addition; and
 - (3) Food textures shall be adjusted to accommodate the individual child's chewing ability, as well as preferences.
- (h) Infants and toddlers shall not be offered foods which pose safety hazards, e.g. hot dogs, coin sized foods, grapes, etc.
- (i) Food shall not be used as a punishment or reward.

(j) Infants and toddlers shall be personally attended while being fed.

(1) Infants being bottle fed shall have bottle held by the caregiver, not propped; and

(2) Parents or guardians may assume full responsibility for the infant's or toddler's diet.

(k) The facility's food service shall be approved and reviewed annually by a qualified nutrition consultant engaged by the facility or by the Department of Health Services.

(l) The facility shall have access to nutritional information provided by a qualified nutritionist, dietitian, or other community resources approved by the Department of Health.

(m) The facility shall make special handling for those children who may be getting breast feeding.

History/Comment [Expand]

§ 55-40.1-444 Drinking Water Provisions

Drinking water shall be offered to infants and toddlers throughout the day in sanitized bottles and cups.

History/Comment [Expand]

§ 55-40.1-446 Integration of Mental Health Concepts

Mental health aspects of infant and toddler development shall be integrated into the program as follows:

(a) At least one parent, guardian, foster parent, or social worker shall be interviewed prior to an infant's or toddler's admission to the facility. The personal interview shall be conducted to secure pertinent information on the infant's or toddler's overall development and behavior and to acquaint the parent or guardian with the facility's program and policies;

(b) The facility shall provide its staff with annual orientation to state or other mental health services for infants and toddlers, or otherwise familiarize its staff with consultative and clinical services and programs for early identification of social, emotional, intellectual, and behavioral problems of infants and toddlers; and

(c) The facility shall refer parents or guardians to sources of professional consultation in mental health upon the parents' or guardians' request or upon the recommendation of the facility's staff.

History/Comment [Expand]

Subpart E - Health Standards for Staff

§ 55-40.1-448 Staff Health Standards

(a) Evidence that staff is free from health problems, which would have a harmful effect on the infants and toddlers or which would interfere with effective functioning, shall be available at the facility as follows:

(1) The facility shall have on file the results of an employment physical examination for each person employed in the facility and each volunteer who serves ten or more hours per week. These examinations shall have been taken within a year of beginning employment or volunteer service.

(2) Written evidence that each employed staff and volunteer of an infant and toddler child care facility is free from communicable tuberculosis as a result of a negative tuberculin skin test or a satisfactory chest x ray taken within six months before beginning child care employment shall be on file at the facility. The tests shall be repeated in compliance with administrative rules of the Department of Health; and

(3) Each caregiving staff with an identified health problem shall provide the facility with a written statement from a physician that the caregiving staff is able to care for infants and toddlers.

(b) The facility shall have provisions for substitution of staff that is too ill to function effectively or who presents a serious health hazard to others in the facility.

History/Comment [Expand]

§ 55-40.1-450 Personal Health Habits of Staff

(a) The facility shall have written policies, which have been developed with the assistance of the facility's health consultant and which minimally require that:

- (1) Staff with a fever, other symptoms of illness, or an altered physical or mental state, shall not be allowed to work;
- (2) Staff with visible skin conditions, such as lesions, boils, or dermatitis, shall not prepare or serve food or handle utensils and feeding equipment;
- (3) Staff's appearance shall reflect good grooming habits and personal hygiene, including clean and neat hair and nails, appropriate clothing, and good oral hygiene;
- (4) Smoking shall not be allowed in the presence of the infants and toddlers, nor in any parts of the building, which are used for child care, during the hours of child care operation;
- (5) Alcoholic beverages and detrimental drugs shall not be consumed or maintained at the facility during hours of operation; and
- (6) Staff shall take appropriate measures to manage stress by maintaining good mental and physical health.

(b) In service training shall be provided to staff on various aspects of personal health care and healthy lifestyle, such as care of head lice (ukus), impetigo, viral infections, risk factors, and stress management.

(c) Volunteers shall be subject to the same requirements for health and personal health habits as the caregiving staff.

History/Comment [Expand]

Subpart F - Sanitation Standards**§ 55-40.1-452 Handling of Diapers, Training Pants, Linen and Toys**

(a) Diapers, training pants, gloves and linen shall be handled in the following manner:

(1) When disposable diapers are used, soiled diapers shall be placed in a plastic bag or a plastic lined receptacle;

(2) When cloth diapers or training pants are used, diapers or training pants soiled with stool shall not be washed at the center; after the stool has been emptied into the toilet, using disposable plastic gloves, the diaper or training pants shall be put in a sealed plastic bag to be picked up by the child's parent or guardian at the end of the day;

(3) When dealing with blood, sanitary/disposable gloves shall be worn at all times when administering aide to a child;

(4) Sheets, diapers, and training pants soiled with blood, body fluids, or waste shall be handled as little as possible to prevent contamination of the area and of the staff handling the linen; and

(5) Soiled sheets, diapers, and training pants, which are transported to a laundry area outside of the facility, shall be placed in plastic bags while being transported from the child care facility to the laundry.

(b) Toys shall be provided and handled in the following ways:

(1) Each of the designated groups shall be provided with developmentally appropriate toys;

(2) Toys shall not be shared between different groups of children, such as between infants and toddlers;

(3) Only washable toys shall be used for infants and toddlers in diapers or training pants; and

(4) Toys shall be washed or sanitized daily.

History/Comment [Expand]

§ 55-40.1-454 Hand Washing

(a) The facility shall have a written policy that specifies when handwashing is required for staff and children, defines handwashing procedure, and provides continuing monitoring to assure that the handwashing procedure is carried out.

(b) Handwashing policy for staff shall require that handwashing is done, smoking should not be taking place on premises at all times.

- (1) Before eating, drinking, or smoking;
 - (2) Before handling clean utensils or equipment;
 - (3) Before handling food;
 - (4) Before and after assisting or training the child in feeding and in toileting;
 - (5) After going to the bathroom;
 - (6) After contact with body secretions, i.e., blood, urine, faces*, mucus, saliva, or drainage from wounds;
 - (7) After handling soiled diapers, clothes, equipment, or menstrual pads;
 - (8) After removing disposable gloves; and
 - (9) After smoking.
- (c) Infants and toddlers, who self feed in any manner, shall have their hands washed with soap and water before and after eating and after toileting.
- (d)(1) Handwashing does not require hot water and may be done with cold water and plain soap and use of disposable paper towels for drying hands.
- (2) If bar soap is used, it shall be kept on racks that allow for water drainage. If liquid soap is used, the dispenser shall be replaced or cleaned, as necessary.

* So in original.

History/Comment [Expand]

§ 55-40.1-456 Housekeeping

(a) Facilities shall have written policies for the routine cleaning and maintenance of the facility. These policies shall specify the type of disinfectant and cleaning agent used, method for cleaning, schedule for cleaning, storage of cleaning material and utensils, disposal of soiled items or spilled body fluids, and cleaning of equipment.

(b) Storage of cleaning material shall be in a secured area which is inaccessible to the infants and toddlers.

History/Comment [Expand]

Subpart G - Environmental Health Standards

§ 55-40.1-458 Disaster Plan for Emergencies

Each facility shall have a disaster plan to cover emergencies such as fire, flood, or natural disaster. The plan shall include:

(a) A written plan which shall be approved by the fire inspector, the health consultant, or the Red Cross, and which shall be practiced at regular intervals;

(b) Posting the plan in a prominent place in the facility; and

(c) Installing an underwriters laboratory listed fire warning device or system in each facility. Written evidence that the device or system has been inspected and approved by a fire inspector shall be on file at the facility.

History/Comment [Expand]

§ 55-40.1-460 Accidental Injury Precautions

The provider shall ensure that the child care program staff minimize the risk of accidental injury in the following manner:

(a) Ensuring that child care activities and premises do not expose children to situations which may be hazardous to the particular age or capacity of the child; and

(b) Helping increase the children's awareness of safety practices and accident hazards, and helping the children to learn how to avoid such hazards.

History/Comment [Expand]

§ 55-40.1-462 Environmental Hazards

The premises, both indoor and outdoor, in which a child care program is carried out shall be free of environmental hazards, shall be clean and comfortable, and shall provide for adequate space to meet the needs of the children as follows:

(a) The provider shall control rodents and insects;

(b) The outdoor space shall be fenced or shall have natural barriers or other protective conditions to deter children from getting into unsafe areas;

(c) There shall be no open drainage ditches, wells, or holes into which children may fall;

(d) Drainage shall be adequate to prevent stagnant pools of water from accumulating;

(e) Garbage and trash shall be stored in covered containers out of reach of the children and shall be removed frequently enough to avoid creating a health hazard or nuisances;

(f) Poisons, drugs, harmful chemicals, and other dangerous articles such as cleaning fluid, matches, firearms, and tools shall be kept in a safe location, out of reach of children;

- (g) All rooms used for child care shall be lighted and ventilated;
- (h) Open fireplaces shall not be used. Floor heaters and all heating elements including hot water pipes shall be insulated or installed in a manner which makes the pipes inaccessible to children;
- (i) Floor space shall be arranged to provide areas for active play, quiet rest, and individual activities;
- (j) Furniture, equipment, and toys shall be sturdily constructed, without sharp edges, and shall present minimal hazards to children;
- (k) Lead based paint shall not be used on surfaces accessible to children. Professional assistance shall be requested during routine inspections to ensure that lead paint does not exist at all in the facility;
- (l) Provision shall be made to eliminate the hazard of electrical outlets;
- (m) Poisonous plants shall be kept out of the reach of children; and
- (n) Pets, animals, and fowl shall be maintained in a safe and sanitary manner at all times.

History/Comment [Expand]

§ 55-40.1-464 Water Supply

The Rules and Regulations Governing Schools and Child Care Facilities [NMIAC, title 140, subchapter 20.4] promulgated by the Department of Health pursuant to the Commonwealth Environmental Health and Sanitation Act of 2000 shall apply to this section.

History/Comment [Expand]

§ 55-40.1-466 Toilet and Lavatory Facilities

The Rules and Regulations Governing Schools and Child Care Facilities [NMIAC, title 140, subchapter 20.4] promulgated by the Department of Health pursuant to the Commonwealth Environmental Health and Sanitation Act of 2000 shall apply.

- (a) If toilet training chairs are provided for use by children, the toilet training chairs shall be emptied promptly and sanitized after use;
- (b) Small children shall be assisted in washing to prevent accidental scalding;
- (c) Safe, sturdy step stools shall be provided to allow the use of standard sized toilets and lavatories; and
- (d) Children shall not share towels, toothbrushes, combs, and other necessary toilet articles.

History/Comment [Expand]

§ 55-40.1-468 Food Preparation and Protection

- (a) Food preparation and protection shall be carried out in a kitchen with proper equipment and cleanup facilities required for the number of children in care as follows:
 - (1) All food shall be protected from contamination during storage, preparation, and service; and
 - (2) All dishwashing shall be performed in a sanitary manner;
 - (3) An adequate number of eating and drinking utensils shall be available for each child;
 - (4) When single service utensils are used, the utensils shall be stored and handled in a sanitary manner and discarded after a single use; and

(5) Cooking utensils used in food preparation and service shall be cleaned and stored in sanitary manner.

(b) Food protection policies shall comply with accepted practices of local sanitary codes and shall be adapted to fit the needs of the program except as indicated in the rules in this subchapter.

(c) Refrigeration shall be available for infant and toddler programs.

History/Comment [Expand]

Subpart H - Physical Facility Standards

§ 55-40.1-470 Building Codes and Space Requirements

(a) Child care facilities shall conform to the zoning, building, electrical, plumbing, and fire codes of the county or political subdivision in which the facility is located and to state the rules as maybe applicable to the facility.

(b) The facility shall:

(1) Be located in a safe and reasonably quiet area or employ suitable noise control devices to limit exterior noises to the child care operation;

(2) Have a sunny exposure and be well lighted and ventilated; and

(3) Keep all buildings, building appurtenances, outdoor space, equipment, and all other parts of the facility repaired, safe, and sanitary at all times.

(c) The program areas specifically designated for infants and toddlers, both indoors and outdoors, shall be separated by permanent structural walls, fences, or other barriers in order to:

(1) Protect the younger children from traffic and high activity levels of older age groups;

(2) Minimize congestion and noise pollution; and

(3) Avoid staff specifically assigned to infant and toddler care from being pulled from infant and toddler programs and into other areas at any time.

(d) The space requirements for enclosed areas are as follows:

(1) For daytime care:

(i) There shall be thirty five square feet per child of unencumbered instructional or play area exclusive of bathrooms, kitchens, cupboard space, hallways, and spaces consumed by cribs and playpens;

(ii) The thirty five square feet per child requirement can be based on the general square footage area of the entire center, not necessarily based on the square footage of each classroom; and

(iii) Lanai area, which has both a roof and finished flooring, may be counted for up to thirty percent of the required enclosed area; and

(2) For nighttime care, there shall be fifty square feet per child, exclusive of lanai area, in rooms which are used for sleeping.

(e) The space requirements for outdoor areas are as follows:

(1) The center shall maintain, or have access to, an outdoor play area of at least seventy five square feet for each child using the outdoor area at any one time; and

(2) Lanai area, when not included in the required enclosed area space, may be counted for up to thirty percent of the required outdoor space.

(f) The facility shall be equipped with toilets and lavatories as follows:

| Number of Children | Minimum Toilets | Minimum Lavatory(ies) |
|---------------------------|------------------------|------------------------------|
| 1-12 | 1 | 1 |
| 13-30 | 2 | 2 |
| 31-45 | 3 | 3 |
| 46-60 | 4 | 4 |
| 61-75 | 5 | 5 |

History/Comment [Expand]

Subpart I - Program Modifications

§ 55-40.1-472 Program Modifications for Drop-in Care

(a) All requirements set forth in this subchapter shall be met by the provider except for § 55-40.1-401 and § 55-40.1-432. The infant and toddler child care does offer drop in care and shall be prepared to adjust its staffing to meet the program modifications which remit when drop in care is provided.

(b) Infants and toddlers child care centers does offer drop in care and shall be prepared to adjust its staffing to meet the program modifications which result when drop in care is provided.

(c) Infants and toddlers receiving drop in care shall be cared for in separate areas or groups from the other infants and toddlers who attend the program regularly.

(d) If a facility serves both drop in children and children who attend regularly, the grouping of the children and the program shall be planned so that the needs of both groups are met.

History/Comment [Expand]

§ 55-40.1-474 Program Modifications for Night Care

A child care facility offering night care shall meet the requirements of this subchapter and the following additional requirements:

(a) In consultation with parents, special attention shall be given by the caregiver to provide for a transition into night care;

(b) A selection of developmentally appropriate toys for quiet activities shall be available;

- (c) Comfortable cribs, beds or cots, complete bedding and night clothes shall be available or supplied by the parents;
- (d) Cribs or beds shall be placed at least three feet apart;
- (e) Staff shall be available to assist the infants and toddlers, as required by their age and developmental level, during eating and pre bedtime hours and during the morning period when dressing;
- (f) During sleeping hours, staff shall be within hearing distance to provide for the needs of infants and toddlers and to respond immediately in emergency;
- (g) An infant or toddler shall not sleep in a building detached from the main facility; and
- (h) Night care facilities shall include at least one shower, bathtub, or bathing facility for the infants and toddlers.

History/Comment [Expand]

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