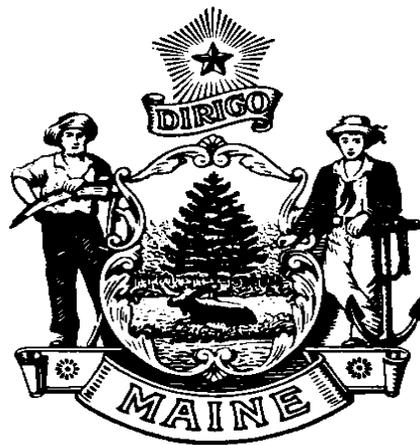


# Rules for the Certification of Family Child Care Providers

**10-148 CMR Chapter 33**

Effective Date: July 1, 2009



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Division of Licensing and Regulatory Services  
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**Purpose.** Rules for the Certification of Family Child Care Providers are promulgated in accordance with 22 M.R.S.A. Chapters 1661 and 1673. These rules describe the minimum requirements for the certification of a family child care provider and the operation of a family child care program, including the infant and toddler care program and the nighttime care program. The rules govern such requirements as the application and inspection procedures, the health, sanitation, and fire safety standards, provider qualifications, children's rights, staff supervision and staffing ratios, and record keeping.

## **Section 1. DEFINITIONS**

- 1.1** "Abuse or neglect" means a threat to a child's health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these, by a person responsible for the child.
- 1.2** "Adult" means a person eighteen (18) years old and over.
- 1.3** "Certificate" means written permission given to a person by the department to operate a Family Child Care Program.
- 1.4** "Corporal punishment" means actions against a child, including, but not limited to:
- 1.4.1** Slapping; striking; shaking; shoving; spanking; pinching; twisting; kicking; biting; ear pulling or ear twisting;
  - 1.4.2** Forcing a child to taste or eat spicy, bitter or otherwise distasteful products for the purpose of discipline;
  - 1.4.3** Spraying with water as a means of controlling behavior;
  - 1.4.4** Placing tape over a child's mouth;
  - 1.4.5** Mechanical restraints, such as tying a child to a chair;
  - 1.4.6** Requiring or forcing a child to take an uncomfortable position such as: squatting; kneeling; standing holding arms outstretched at sides or overhead; bending; or requiring or forcing a child to repeat physical movements; or
  - 1.4.7** Other forms of aggressive contact.
- 1.5** "Department" means the Maine Department of Health and Human Services or DHHS.
- 1.6** "Developmentally appropriate" means suitable for the level of ability, interest and learning style of each child in care.

- 1.7** “Family Child Care Provider (provider)” means the person who has received a certificate from the department to operate a Family Child Care Program. The provider is legally responsible for the operation of the Family Child Care Program. The provider must reside at the residence being operated as a Family Child Care Program.
- 1.8** “Infant” means children ages six (6) weeks to twelve (12) months.
- 1.9** “Legal guardian” means the parent or other person who has legal decision-making authority for the child. See 1.12 below.
- 1.10** “Lifeguard” is a water safety attendant who has a current certificate issued by a lifeguard certifying authority recognized by the department.
- 1.11** “Out-of-Home Investigations Unit (OHI)” means the Division of Licensing and Regulatory Services unit that is responsible for investigating reports of suspected abuse and neglect of children by persons or in facilities subject to licensure or certification, including Family Child Care Providers, pursuant to 22 M.R.S.A. §4088.
- 1.12** “Parent” means the birth or adoptive mother or father, legal guardian or legal custodian of the child. See 1.9 above.
- 1.13** “Person” means any individual, partnership, association, organization, corporation, or trust.
- 1.14** “Pool” means any basin, chamber or tank constructed of impervious material, located either indoors or outdoors containing an artificial body of water for swimming or recreational bathing and having a depth of more than twenty-four inches (24”) at any point.
- 1.15** “Preschool child” means a child age two and a half (2 ½) years to not yet school age 5 years.
- 1.16** “Provider” means certified family child care provider. See Section 1.7 above.
- 1.17** “Relative” means a child’s birth or adoptive mother, father, brother, sister, grandparent, great grandparent, uncle, aunt, niece, nephew, or first cousin.
- 1.18** “Relative by marriage” means a child’s stepmother, stepfather, stepbrother, stepsister, step-grandparent, step-great grandparent and brother or sister of stepparent.
- 1.19** “School-age child” means a child who is at least five (5) years old and under thirteen (13) years old. Four-year-olds who are enrolled in kindergarten and will turn five years old on or before October 15 may be counted as school-age children.

- 1.20** “Staff” means a person, age sixteen (16) or older, who provides care and protection in a Family Child Care Program for a child(ren) under the age of thirteen (13) years.
- 1.21** “Substitute” means a person who temporarily takes the place of any regular provider or staff member who is absent.
- 1.22** “Swimming Pool” means a pool with a depth of more than twenty-four inches (24”) at any point.
- 1.23** “Toddler” means children ages thirteen (13) months through thirty (30) months.
- 1.24** “Volunteer” means a person who helps or provides service in a Family Child Care Program, without pay or other compensation.
- 1.25** "Wading pool" means a pool with a maximum water depth of twenty-four inches (24").
- 1.26** “Waiver” means written permission from the Division of Licensing and Regulatory Services to modify a provision of these rules that is not mandated by statute. See Section 2.23.1
- 1.27** “Water safety attendant” is a person trained in rescue techniques whose job is to watch over swimmers in a wading pool, a swimming pool, or off-site swimming and wading destinations. As required by these rules, appropriately trained water safety attendants include a lifeguard; a person with valid CPR and first aid certificates; and a person who has completed a department-approved basic water course that includes training in non-swimming water rescue techniques.

**Section 2. CERTIFICATION REQUIREMENTS AND PROCEDURES**

- 2.1 Certificate required.** Any person who provides child care in that person's home on a regular basis, for consideration, for three (3) to twelve (12) children under thirteen (13) years of age who are not the children of the provider must have a certificate from the Department of Health and Human Services.
- 2.2 Posting the certificate.** The Certificate and any Notice of Deficiencies must be posted in the Family Child Care where it can be seen and reviewed by the public.
- 2.3 Uncertified providers.** No person or entity shall operate a Family Child Care Program for more than two (2) children, who are unrelated to the provider, without a certificate from the department in force, authorizing such operation.
- 2.4 Responsibility for compliance.** The person applying for the certificate must be responsible for complying with Maine Statutes and rules.
- 2.5 Qualifications of the applicant.** The applicant must demonstrate a willingness and ability to operate and manage the Family Child Care Program with mature judgment, compassionate regard for the best interests of children and consistent compliance with these rules and all relevant laws. In making this determination, the department shall consider each of the following factors to the extent that they are relevant:
- 2.5.1** Record and reputation for honest and lawful conduct in business and personal affairs. The applicant must, as part of the certificate application and renewal process, authorize the department to review the records of professional licensing boards or registers, any criminal record, child protective record, Out-of-Home Investigations Unit record or adult protective record necessary to determine compliance with these rules;
  - 2.5.2** Conduct which demonstrates an understanding of, and compliance with, Rights for Children in Family Child Care Programs (Section 7 of these rules);
  - 2.5.3** Information which relates to the ability or willingness to comply with all applicable laws and rules;
  - 2.5.4** Any information reasonably related to the ability to provide safe and developmentally appropriate child care.
- 2.6 Number of children served.** A Family Child Care Program certificate permits a qualified person to care for three (3) to twelve (12) children between the ages of six (6) weeks old and thirteen (13) years old, according to age groups and staffing requirements detailed in Section 10 of these rules.

**2.6.1** Before August 1, 2008, the children living with the certified provider are not counted in determining the certificate capacity of a Family Child Care Program.

On and after August 1, 2008, children living with the certified provider—who are five (5) years of age and older are not counted in determining the certificate capacity of a Family Child Care Program. Children under 5 years of age are counted in determining the certificate capacity of the Family Child Care Program.

**2.6.2** Children of other staff members or volunteers must be counted in the appropriate age groups when determining the certificate capacity of a Family Child Care Program, when they are in care at the Family Child Care Program.

**2.6.3** All children in care who are younger than thirteen (13) years old must be counted in staff-child ratios.

**2.6.4** In determining the number of children for which a provider is certified, the department shall factor in the needs of children and adults who reside at the residence being operated as a Family Child Care Program.

**2.6.5** The number of children allowed may be restricted by the department when any of the following circumstances are present:

**2.6.5.1** Space is unusually limited or configured;

**2.6.5.2** The provider's ability to care for children is limited;

**2.6.5.3** There is an unusually wide range of ages of the children; or

**2.6.5.4** There is a child or children who may require exceptional amounts of care.

**2.7** **Application required.** The applicant is required to submit a written application for a certificate on a form approved by the department. Only the person applying for the certificate is allowed to complete and submit the application. A certificate must be issued prior to the commencement of operation of a Family Child Care, or the applicant may be subject to sanctions. Incomplete applications on which no action has been taken by the applicant shall be void after sixty (60) days.

**2.7.1** **Nonrefundable fees.** A certification fee must be submitted with the application and renewal. The check must be made payable to the Treasurer, State of Maine, and is non-refundable. Fees for certificate application and renewal shall be established based on an analysis of the department's costs for

issuing the certificate. Fees shall not exceed the cost of issuing certificates. The department shall assess biennial renewal fees.

**2.7.1.1 Application fee.** An application fee for a provisional certificate (Section 4.1) or a temporary certificate (Section 4.4) is \$80.00. Payment of the fee must accompany the application or the application is incomplete.

**2.7.1.2 Renewal fee.** The biennial renewal fee is \$160.00. Payment of the fee must accompany the renewal application or the renewal application is incomplete. Failure to submit a timely renewal application may result in termination of the certificate. The biennial fee is assessed for a full certificate (Section 4.2) or a conditional certificate (Section 4.3).

- 2.8 Age of provider.** A Family Child Care provider must be at least eighteen (18) years old.
- 2.9 Requirement for references.** With the original application, the applicant must include references from three (3) persons who are not relatives or relatives by marriage of the applicant.
- 2.10 Requirement for First Aid and CPR certifications.** Before receiving a Family Child Care certificate, the applicant must receive certification in adult child and infant cardiopulmonary resuscitation (CPR) and First Aid.
- 2.11 Requirement for orientation training.** Before receiving a Family Child Care certificate, the applicant must take part in six (6) hours of approved training in the operation of a Family Child Care Program.
- 2.12 New location requires new application.** Certificates are only valid at the location for which they are issued. If the provider intends to move to a new location, the provider must submit a new application for the new location. A certificate cannot be transferred from one provider to another, or from one location to another.
- 2.13 No person shall care for more children than the certificate allows.** No person shall care for children who are older or younger than the certificate allows. The provider must apply to the department for a revised certificate to change the number of children or the age limits of the children to be cared for in the Family Child Care Program.
- 2.14 One certificate issued per single family homes.** No more than one certificate shall be issued for any property occupied by a single family.
- 2.15 Approval for Foster Homes applying for a Family Child Care Provider certificate.** A person holding a foster care certificate must receive approval from the Office of Child

and Family Services and the Division of Licensing and Regulatory Services before the department will issue a Family Child Care Provider certificate.

- 2.16 Inspections required.** A representative of the department and a representative of the Maine Department of Public Safety, Office of the State Fire Marshal must conduct inspections of the Family Child Care premises to evaluate compliance with applicable rules before the department issues a certificate.
- 2.17 Determining compliance with these rules.** The department is authorized to determine compliance with these rules.
- 2.18 Right of entry.**
- 2.18.1** The department has the right to enter upon and into the premises of a certified Family Child Care Program pursuant to these rules at any reasonable time, in order to determine the state of compliance with the provisions of these rules and applicable laws.
- 2.18.2** Such right of entry and inspection extends to any premises which the department has reason to believe is being operated or maintained as a Family Child Care Program without a certificate, but no such entry or inspection of a premises shall be made without the permission of the owner or person in charge unless a warrant is first obtained from the court of jurisdiction. See Section 5.1.7.
- 2.19 Application constitutes permission for entry.** An application for a certificate made pursuant to these rules constitutes permission for, and complete compliance in, any entry or inspection of the premises for which the certificate is sought in order to facilitate verification of the information submitted or in connection with such application.
- 2.20 Compliance with the Life Safety Code.** The Family Child Care Program must provide documentation of compliance with applicable provisions of the Life Safety Code adopted by the Maine Department of Public Safety, Office of the State Fire Marshal.
- 2.21 Private water supplies.** If the water used for drinking and cooking purposes is from any source other than an approved public water supply, the applicant must submit a satisfactory water analysis report completed by DHHS, Maine Center for Disease Control and Prevention, Division of Environmental Health, or by another approved laboratory. Water must be tested for, at least, the following: coliform bacteria, nitrate and nitrite nitrogen, fluoride, chloride, hardness, copper, iron, pH, manganese, uranium, and arsenic. If a satisfactory supply cannot be provided, a certificate or renewal of a certificate cannot be issued.

**2.22 Background records check.**

- 2.22.1** The applicant must provide signed release forms permitting the department to obtain criminal history and child protective services information for him or herself, and for each adult member of the household. If any of these persons will be transporting children in care, the applicant must also provide releases for motor vehicle checks.
- 2.22.2** Criminal history reports, motor vehicle reports, Out-of-Home Investigations Unit reports, and child protection reports must be obtained for each individual applicant for a certificate, and for each paid, unpaid, temporary or regular staff member or volunteer in a Family Child Care Program. Criminal history reports, Out-of-Home Investigations Unit reports, and child protection reports must also be obtained for any adult living in or frequenting the Family Child Care premises.

**2.23 Waivers.**

- 2.23.1 Request for waiver.** The department upon written request of a provider or applicant may waive or modify a provision of these rules as long as the provision is not mandated by statute and does not violate the Rights for Children in Family Child Care Programs, Section 7 of these rules. Application for a waiver or modification must be made on forms supplied by the department and must include:
- 2.23.1.1** A statement of the provision for which waiver or modification is requested;
- 2.23.1.2** An explanation of the reasons why the provision cannot be met and why a waiver or modification is being requested; and
- 2.23.1.3** A description of the alternative method proposed for meeting the intent of the provision sought to be waived or modified.
- 2.23.2 Granting a waiver.** The department must respond in writing to a waiver request and must maintain a record of the request and response. If granted, the waiver must be time-limited and must not exceed the term of the certificate. Prior to the expiration of the certificate, if the waiver or modification continues to be necessary, a new application for a waiver or modification must be made.
- 2.23.3 Extension of waiver.** The department may grant an extension when the extension is in the best interest of the children served by the Family Child Care Program.

- 2.23.4 Subject to inspection.** Providers must comply with waivers. Written waivers are subject to the department's inspection authority as set out in these rules.
- 2.23.5 Subject to sanctions.** Written waivers are subject to the department's enforcement authority as set out in these rules.

**Section 3. CERTIFICATE RENEWAL REQUIREMENTS****3.1 Application for renewal of certificate.**

- 3.1.1** At least sixty (60) days prior to the expiration of a certificate to operate a Family Child Care Program, an application and the required biennial fee for a renewal (Section 2.7.1.2) must be submitted to the department on a form supplied by the department, and accompanied by such additional information as may be required.
- 3.1.2** It is the responsibility of the certified provider to make timely application for renewal to the Division of Licensing and Regulatory Services.
- 3.1.3** Failure to submit an application for renewal may result in non-renewal of the Family Child Care certificate.
- 3.1.4** Upon receipt and review of an applications and determination of compliance with the requirements of the Maine Revised Statutes and applicable rules, the department shall renew a certificate for a period of two (2) years, unless the department finds that there are specific and sufficient grounds to either deny the renewal application or to renew the certificate on a temporary or conditional basis.
- 3.1.5** If timely application for renewal is made, the existing certificate shall continue to be valid until a final decision on the renewal application is made by the Division of Licensing and Regulatory Services.

**3.2 State Fire Marshal approval.**

- 3.2.1** As an ongoing condition of certification, the Maine Department of Public Safety, Office of the State Fire Marshal must inspect and approve the Family Child Care premises at least every two (2) years, and send the department a written statement that the Family Child Care premises complies with the applicable fire safety rules.
- 3.2.2** In addition, a fire safety inspection must be done when a heating system is changed, or when major structural changes are made in the premises. The provider is responsible for notifying the department of any such changes.

- 3.3 Private water source.** See also Section 2.21. If the water at the Family Child Care premises does not come from an approved public water supply, the provider must have the water tested each year by DHHS, Maine Center for Disease Control and Prevention, Division of Environmental Health, or another approved laboratory, as follows:

**Section 3 Certificate Renewal Requirements**

- 3.3.1** Annually, water must be tested for, at least, the following: coliform bacteria, nitrate and nitrite nitrogen.
- 3.3.2** Once every five (5) years, water must be tested for, at least the following: coliform bacteria, nitrate and nitrite nitrogen, fluoride, chloride, hardness, copper, iron, pH, manganese, uranium, and arsenic.
- 3.3.3** If a satisfactory supply cannot be provided, a certificate or renewal of a certificate cannot be issued.
- 3.3.4** The provider must ensure that a copy of the written report showing that the water is safe is sent to the Division of Licensing and Regulatory Services.
- 3.4** **Maintaining CPR and First Aid certification.** Providers must maintain certification in basic adult, child, and infant cardiopulmonary resuscitation (CPR) and First Aid.
- 3.5** **Annual training required.** After the first year of operation and each following year, the provider and staff must participate in a minimum of twelve (12) hours of training in child care and early education topics or other topics related to the operation of a Family Child Care Program. The provider must have written proof that the provider and staff completed the training.

**Section 4. TYPES OF CERTIFICATES.** The department issues the following types of certificates:

**4.1 Provisional certificate**

**4.1.1** A provisional certificate is issued by the department to an applicant who meets all of the following:

- 4.1.1.1** Has not previously operated the Family Child Care Program for which the application is made, or has been certified and then moves to a new location, or is certified but has not operated a Family Child Care Program during the term of that certificate;
- 4.1.1.2** Complies with all applicable laws and rules, except those which can only be complied with once children are served by the applicant; and
- 4.1.1.3** Demonstrates the ability to comply with all applicable laws and rules by the end of the provisional certificate term.

**4.1.2** The provisional certificate shall be issued for a minimum period of three (3) months to a maximum of twelve (12) months, as determined necessary by the department.

**4.2 Full certificate**

**4.2.1** A full certificate is issued to an applicant who, in the department's determination, complies with all applicable laws and rules.

**4.2.2** The term of the full certificate shall be established by the department and must be specified on the certificate.

**4.3 Conditional certificate.**

**4.3.1** A conditional certificate may be issued by the department when the certified provider or applicant fails to comply with the applicable law and rules and, in the judgment of the commissioner, the best interest of the public is served by issuing a conditional certificate.

**4.3.2** The department must specify in writing when and what corrections must be made during the term of the conditional certificate.

**4.3.3** A conditional certificate must be issued for a specific period, not to exceed one (1) year or the remaining period of the previous full certificate, whichever the department determines appropriate based on the laws and rules violated.

- 4.4 Temporary certificate.** A temporary certificate may be issued by the department whenever a Family Child Care provider moves to a new location. A temporary certificate is valid until a final decision is made on the application for the new location when both of the following are met:
- 4.4.1** All applicable standards have been met except a requirement that is dependent on the action of an agency of state government, or a contractor of that state agency; and
  - 4.4.2** Through no action by the applicant that causes a significant delay, timely issuance of a provisional or full certificate is delayed by the state agency or contractor.
- 4.5 Inspection for compliance.** Regardless of the term and type of certificate, the department must inspect the certified Family Child Care Program for compliance with applicable laws and rules. The department must make at least one unannounced inspection of a certified Family Child Care Program during the term of the certificate. The inspection must take place between 6 and 18 months after the issuance of the certificate. See also Section 2.23.4.

**Section 5. ENFORCEMENT PROCEDURES****5.1 Operating without a certificate.**

- 5.1.1 Certificate required.** A person, firm, partnership, association, corporation or other entity may not, without first obtaining a certificate, operate as a Family Child Care Program as defined in 22 M.R.S.A. § 8301-A, (1-A), (C).
- 5.1.2 Civil penalties.** A person, firm, partnership, association, corporation or other entity who violates Section 5.1.1 commits a civil violation and is subject to a civil penalty of not less than \$500 nor more than \$10,000 per day. Each day of violation constitutes a separate offense.
- 5.1.3 Injunctive relief.** Notwithstanding any other remedies provided by law, the Office of the Attorney General may seek an injunction to require compliance with the provisions of Section 5.1.1.
- 5.1.4 Enforcement.** The Office of the Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of Section 5.1.1.
- 5.1.5 Jurisdiction.** The District Court has jurisdiction pursuant to the Maine Revised Statutes, Title 4, Section 152 for violations of Section 5.1.1.
- 5.1.6 Burden of proof.** The burden is on the department to prove, by a preponderance of the evidence, that the alleged violations of Section 5.1.1 occurred.
- 5.1.7 Right of entry.** To inspect the premises of a Family Child Care Program that the department knows or believes is being operated without a certificate, the department may enter only with the permission of the provider or person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection. See Section 2.18.2.
- 5.1.8 Administrative inspection warrant.** The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an uncertified Family Child Care Program with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine the state of compliance with Section 5.1.1. Pursuant to the Maine Rules of Civil Procedure, Rule 80E the department's right of entry and inspection may extend to any premises and documents of a person, firm,

partnership, association, corporation or other entity that the department has reason to believe is operating without a certificate.

- 5.1.9 Noninterference.** An owner or person in charge of an uncertified Family Child Care Program may not interfere with or prohibit the interviewing by the department of residents or consumers of family child care services.
- 5.1.10 Violation of injunction.** A person, firm, partnership, association, corporation or other entity that violates the terms of an injunction issued under Section 5.1 must pay to the State a fine of not less than \$500 nor more than \$10,000 for each violation. Each day of violation constitutes a separate offense. In an action brought by the Office of the Attorney General against a person, firm, partnership, association, corporation or other entity for violating the terms of an injunction under this Section, the District Court may make the necessary orders or judgments regarding violation of the terms of the injunction.
- 5.2 Notice of refusal to issue or renew a certificate.** When an applicant or provider fails to comply with applicable laws and rules, the department may refuse to issue or renew the certificate. The notice of a refusal to issue or renew and a statement indicating the reasons for refusal must be formulated in writing and mailed to the applicant or provider.
- 5.3 Conditional certificate, refusal to issue certificate, and suspension or revocation of certificate.**
- 5.3.1 Conditional certificate.** If, at the expiration of a full or provisional certificate or during the term of a full certificate, the provider fails to comply with applicable laws and rules and, in the judgment of the commissioner, the best interest of the public would be served, the department may issue a conditional certificate, or change a full certificate to a conditional certificate. Failure by the conditional provider to meet the conditions specified by the department permits the department to void the conditional certificate or refuse to issue a full certificate. The conditional certificate is void when the department delivers in-hand or by certified mail a written notice to the provider stating that the conditional certificate is void or, if the provider cannot be reached for service in-hand or by certified mail, leaves written notice thereof at the Family Child Care Program.
- 5.3.2 Refusal to issue a certificate.** The department shall refuse to issue a certificate to the applicant identified in the application if it finds any representation made in the application to be materially incorrect or insufficient, or if it finds that the applicant does not meet all requirements of law and rules.
- 5.3.3 Suspension or revocation of a certificate.** The department may suspend or revoke a certificate for violation of applicable laws and rules; for committing,

permitting, aiding or abetting any illegal practices in the operation of the program or for conduct or practices detrimental to the welfare of children participating in the program.

**5.3.3.1 Emergency suspension.** Whenever, upon investigation, conditions are found which, in the opinion of the department, immediately endanger the health or safety of children attending the Family Child Care Program, the department may petition the District Court for an emergency suspension pursuant to Title 4 M.R.S.A. § 184(6).

**5.3.3.2 Administrative suspension.** Whenever conditions exist that immediately jeopardize the health and safety of children, the Commissioner of the department of Health and Human Services may issue an order of closure, which suspends the Family Child Care certificate for up to ten (10) days, pending further investigation or prior to obtaining an order of emergency suspension from the court. The department shall require that an order of closure be posted at the premises of the Family Child Care Program and made public as it determines to be most appropriate for parents and other potential customers.

**5.4 Limitation on reapplication after denial or revocation of certificate.** Pursuant to 22 M.R.S.A. § 7802(6), the following time limit applies to a reapplication after denial or revocation of certificate.

**5.4.1** When a Family Child Care Provider certificate has been denied or revoked on one occasion, the applicant or provider may not reapply for a Family Child Care Provider certificate for a period of one year from the effective date of the denial or revocation decision if not appealed or, if appealed, from the effective date of the commissioner's final decision or the reviewing court's order, whichever is later.

**5.4.2** If a Family Child Care Provider certificate has been denied or revoked on two (2) occasions, the applicant or provider may not reapply for a Family Child Care Provider certificate for a period of two (2) years from the effective date of the second denial or revocation decision if the decision is not appealed or, if appealed, from the effective date of the commissioner's final decision or the reviewing court's order, whichever is later.

**5.4.3** If a Family Child Care Provider certificate has been denied or revoked on three (3) occasions, the applicant or provider may not receive another Family Child Care Provider certificate for the care of children.

**5.5 Intermediate sanctions.**

- 5.5.1 Grounds for intermediate sanctions.** The following circumstances shall be grounds for the imposition of intermediate sanctions:
- 5.5.1.1** Operation of a Family Child Care Program without a certificate; or
  - 5.5.1.2** Impeding or interfering with the enforcement of laws or rules governing the certification of a Family Child Care Provider, or giving false information in connection with the enforcement of such laws and rules; or
  - 5.5.1.3** Failure to comply with the Rights for Children in Family Child Care Programs, Section 7 of these rules.
- 5.5.2 Intermediate sanctions.** The department is authorized to impose one or more of the following intermediate sanctions when any of the circumstances listed in Section 5.5.1 of these rules are present and the department determines that a sanction is necessary and appropriate to ensure compliance with certification rules to protect the children in a Family Child Care Program or the general public:
- 5.5.2.1** The Family Child Care Program may be directed to stop all new admissions until the department determines that corrective action has been taken.
  - 5.5.2.2** The department may impose a financial penalty upon a Family Child Care Program.
- 5.6 Financial penalties.** The amount of a penalty to be imposed must be calculated as follows:
- 5.6.1** Operation of a Family Child Care Program without a certificate: not less than \$500 nor more than \$10,000 per day. Each day constitutes a separate offense.
  - 5.6.2** Impeding, interfering, or giving false information in connection with the enforcement of laws or rules governing certification: A penalty not less than \$500 nor more than \$10,000 per incident may be adjudged. Each incident constitutes a separate offense.
  - 5.6.3** Violation of rules governing staff-to-child ratios outlined in these rules is a violation for which a penalty not to exceed \$500.00 per incident or \$500.00 per number of children above the limitation set by rule, or both, may be adjudged.

- 5.6.4** Violation of rules governing records disclosure and confidentiality outlined in these rules is a violation for which a penalty not to exceed \$500.00 per incident may be adjudged.
- 5.6.5** Violation of the Rights for Children in Family Child Care Programs, Section 7. A penalty not less than \$500 nor more than \$10,000 per incident may be adjudged. Each incident constitutes a separate offense.
- 5.7 Assessment of Penalties issued.** If the department assesses financial penalties, an Assessment of Penalties will be issued.
- 5.7.1** The Assessment must describe each violation found to have been committed by the Family Child Care Program, the rule or law that has been violated and any scheduled amount of time corresponding to that violation.
- 5.7.2** If the provider does not contest the imposition or amount of the penalty, the provider must pay the department within thirty (30) days of receipt of the Assessment of Penalties.
- 5.7.3** If the provider disagrees with the imposition or amount of the penalty, the provider must notify the department, in writing, stating the nature of the disagreement, within ten (10) working days of receipt of the Assessment of Penalties.
- 5.7.3.1** Within 10 days of receipt of the provider's statement of disagreement, the department must schedule an informal conference to resolve the dispute.
- 5.7.3.2** The department must issue a written decision within 10 days of the informal conference.
- 5.7.3.3** If the provider is dissatisfied with the written informal conference decision, an administrative hearing may be requested in accordance with Section 5.11.
- 5.8 Payment of penalties.** A Family Child Care provider who is unable to immediately pay penalties may apply to the department for a delay in payment or installment payments.
- 5.8.1** In order to have the payment delayed or paid in installments, a provider must supply sufficient written information to the department to demonstrate that immediate full payment of the total amount due would result in the interruption of the provision of necessary services to children.

- 5.8.2** The department is authorized to determine whether a provider has supplied sufficient information. The department must issue a written decision within 10 days of receipt of the provider's request for the payment to be delayed or paid in installments.
- 5.9 Order of Correction.** The department may issue an Order of Correction for violations of substantive rules or other chronic noncompliance. The order must be posted in public view in the Family Child Care premises until deficiencies are corrected.
- 5.9.1 Notification.** The department must inform parents, referral and funding sources of action(s) taken pursuant to Section 5.9. The department must also inform parents, referral and funding sources when corrections are made and when providers return to a full certificate.
- 5.9.2 Full certification after deficiencies corrected.** An application for a full certificate may be considered by the department only when the deficiencies identified by the department have been corrected.
- 5.10 Subsequent application for a full certificate.** Subject to Section 5.4, after any of the following actions, a subsequent application for a full certificate may be considered by the department when the deficiencies identified by the department at the time the action was taken have been corrected:
- 5.10.1** Issuance or voiding of a conditional certificate;
- 5.10.2** Refusal to issue or renew a full certificate;
- 5.10.3** Revocation or suspension of a full certificate; or
- 5.10.4** Refusal to issue a provisional certificate.
- 5.11 Appeal procedure.**
- 5.11.1 Request a hearing.** A person aggrieved by the department's decision to take any of the actions in Section 5.11.2, or to impose any of the sanctions in Section 5 of this rule, may request an administrative hearing to refute the basis of the department's decision, as provided by the Maine Administrative Procedure Act, Title 5, Chapter 375. Administrative hearings will be held in conformity with the department's Administrative Hearing Regulations.
- 5.11.2 In writing before deadline.** A request for a hearing must be made, in writing, to the Assistant Director, Community Services Programs, Division of Licensing and Regulatory Services, Department of Health and Human Services, 11 State House Station, Augusta, Maine 04333, and must specify the reason for the

appeal. A request must be mailed within ten (10) working days from receipt of the department's decision to:

- 5.11.2.1**    Issue a conditional certificate;
- 5.11.2.2**    Amend or modify a certificate;
- 5.11.2.3**    Void a conditional certificate;
- 5.11.2.4**    Refuse to issue or renew a full certificate;
- 5.11.2.5**    Refuse to issue a provisional certificate; or
- 5.11.2.6**    Impose a fine.

**Section 6.      OPERATION OF FAMILY CHILD CARE PROGRAM****6.1      Procedures**

- 6.1.1      Minimum age of child.** A child must be at least six (6) weeks old, as verified by a birth certificate, to be accepted by the Family Child Care Program.
- 6.1.2      Availability of rules.** The provider must keep a copy of the *Rules for the Certification of Family Child Care Providers* on the premises and must give a copy to parents and anyone else who wants to place a child in that Family Child Care Program.
- 6.1.3      Local, state and federal laws.** The provider must comply with all local, state and federal laws and rules pertaining to the operation of a Family Child Care Program.
- 6.1.4      Maintaining records.** The provider must maintain personnel records and children's records as required by these rules.
- 6.1.5      Reporting legal actions.** Within 10 days of receipt of notice of criminal or civil proceedings, the provider must report, in writing, to the department any legal proceeding brought against the provider or any person employed by, or volunteering at, the Family Child Care Program, or residing on the premises, if such proceedings:
- 6.1.5.1**      arise out of circumstances related to the care of children in the Family Child Care Program or
  - 6.1.5.2**      may affect the continued operation of the Family Child Care Program or
  - 6.1.5.3**      call into question the suitability of the provider, staff members or volunteers to care for children.
- 6.1.6      Notification of intent to close.** The provider must provide written notification of closure and expected date of closure of the Family Child Care Program to the department.
- 6.1.7      Notification for physical plant changes.** The provider must give written notification to the department for any changes to the heating system, any structural alterations or any plans to use existing space on the Family Child Care premises that has not been inspected and approved. This includes any physical or structural changes in the building(s) or on the grounds such as but

not limited to remodeling, renovations, or installation of a swimming pool or wading pool.

## **6.2      Parent involvement**

- 6.2.1      Visits.** The provider must allow parents to visit and observe any time during the hours of operation.
- 6.2.2      Off-site activities.** The provider must get written permission from parents before taking children on activities away from the Family Child Care premises.
- 6.2.3      Telephone.** The space where child care is being provided must have a working telephone during the hours of operation.
- 6.2.4      Responsibility to advise regarding high risk activities.** The provider must advise a child's parent prior to allowing the child to participate in any high risk activity, such as swimming, horseback riding or trampoline. The provider must obtain written authorization from the parent for the child to participate in a high risk activity. The statement must describe all types of high risk activities offered, and the authorization must be updated at least annually and must list the child's name, type of activity, location of activity, parent's signature and date. For swimming or wading activities, the statement must describe the child's swimming ability.

## **6.3      Admission**

- 6.3.1      Pre-admission visits.** The provider shall encourage parents to visit the Family Child Care Program prior to admission.
- 6.3.2      Admission policy.** Family Child Care Programs must adopt a written description of admission policies and criteria that must include:
- 6.3.2.1      Age range;**
  - 6.3.2.2      Services offered;**
  - 6.3.2.3      Fees (if any) including charges for late pick-up of children;**
  - 6.3.2.4      Vacation policy;**
  - 6.3.2.5      Terms of any contract or placement agreements; and**
  - 6.3.2.6      Hours of operation.**

- 6.3.3 Maintaining immunization records.** The provider must maintain immunization records for enrolled infants, toddlers, and preschool children according to the Day Care Immunization Standards developed by the Maine Center for Disease Control and Prevention. (See Section 13 of these rules). [http://www.maine.gov/dhhs/boh/ddc/\\_immunization/school\\_requirements.html](http://www.maine.gov/dhhs/boh/ddc/_immunization/school_requirements.html)
- 6.3.4 Asking about a child's needs.** Prior to admission, the provider must ask the parents about the child's needs and make a record of any special requirements or suggestions that may be helpful to the provider.
- 6.3.5 Compliance with ADA.** The provider must be in compliance with applicable provisions of the Americans with Disabilities Act of 1990 (ADA), as set forth in 28 C.F.R. Part 36, revised as of July 1, 2007. Compliance with ADA accessibility standards includes but is not limited to the following:
- 6.3.5.1** The provider cannot require parents of children with physical, emotional or mental disabilities to furnish the Family Child Care provider with information pertaining to the child's disabilities, but the provider is encouraged to ask pertinent developmental questions about all children prior to entrance to ensure appropriate and successful programming.
- 6.3.5.2** A provider must ensure that all staff are adequately trained and/or have sufficient experience to meet the needs of all children for whom they are responsible.
- 6.4 Confidentiality**
- 6.4.1** Information about children in care (or formerly in care) and services provided to them by the Family Child Care Program must be kept confidential and shall be disclosed only upon written authorization of a child's parent, except as otherwise specified by law.
- 6.4.2** Information about children in care (or formerly in care) must be shared with the department upon request.
- 6.4.3** Personnel records must be kept confidential but must be provided to the department upon request according to Maine Statute.

**Section 7. RIGHTS FOR CHILDREN IN FAMILY CHILD CARE PROGRAMS**

- 7.1 Right to freedom from abuse and neglect.** Children must be free from mental, verbal, physical or sexual abuse, neglect and exploitation.
- 7.2 Right to confidentiality.** Children's records and information kept by the Family Child Care Program are confidential. Family Child Care Programs must follow the rules regarding confidentiality as outlined in Section 6.4 of these rules.
- 7.3 Right to freedom from harmful actions or practices.** Each child has the right to freedom from harmful actions or practices that are detrimental to a child's welfare and from practices that are potentially harmful to the child.
- 7.4 Right to a safe and healthy environment.** Each child has a right to an environment that complies with the health and safety standards in these rules.
- 7.5 Right to be free from discrimination.** A child must be provided child care without regard to race, age, national origin, religion, disability, sex or family composition.
- 7.6 Right to consideration and respect.** Children must be treated with dignity, consideration and respect in full recognition of their individuality. This includes the use of developmentally appropriate practices by the Family Child Care Program.
- 7.7 Right to be informed of services provided by the Family Child Care Program.** A child's parent must be fully informed of items or services that are included in the rate paid for children attending the Family Child Care Program.
- 7.8 Right to information regarding the Family Child Care Program's deficiencies.** A child's parent has the right to be fully informed of findings of a certification review conducted by the Division of Licensing and Regulatory Services. The Family Child Care provider must inform a child's parent that the certification review results are public information and available for examination upon request. Parents must be notified in a timely manner by the Family Child Care provider of any actions proposed or taken against the Family Child Care Program by the department, including but not limited to, decisions to issue a conditional certificate, refusal to renew a certificate or imposition of fines or other sanctions.
- 7.9 Right to a service plan.** Each child has the right to expect the provider to assist the child in implementing a reasonable plan of service developed with community or state agencies.
- 7.10 Right to a variety of appropriate activities, materials and equipment.** Each child has a right to a variety of activities, materials and equipment that meets the child's interests and capabilities.

**7.11 Mandatory report of rights violations.**

- 7.11.1** Any person or professional who provides health care, social services or mental health services or who administers a Family Child Care Program who reasonably believes that these rules pertaining to the rights of children in a Family Child Care Program have been violated, must report this information to the Division of Licensing and Regulatory Services.
- 7.11.2** Any person reporting suspected abuse and neglect must report this information to Child Protective Intake Services, 1-800-452-1999, TTY 1-800-963-9490 which is staffed 24 hours a day, 7 days a week, pursuant to Title 22 M.R.S.A. §4011-A and Section 7 of these rules.
- 7.11.3** Documentation that a report has been made must be maintained by the Family Child Care Program.

**7.12 Reasonable modifications and accommodations.** To afford individuals with disabilities the opportunity to participate in a Family Child Care Program, the program must act as follows:

- 7.12.1** The Family Child Care provider must make reasonable modifications to program policies and practices to include children and parents with disabilities, unless to do so would be a fundamental alteration of the program.
- 7.12.2** The Family Child Care provider must make the premises accessible to people with disabilities.
- 7.12.2.1** Existing Family Child Care Programs must remove any barriers when the removal can be readily achieved by the Family Child Care Program. If existing barriers can be easily removed without much difficulty or expense, providers must remove those barriers immediately even if there are no children with disabilities currently enrolled in the program (rearranging tables, chairs or other furniture are examples of readily achievable barrier removal).
- 7.12.2.2** Newly constructed Family Child Care buildings and any altered portions of existing Family Child Care buildings must be fully accessible.

**Section 8. CHILD'S RECORD**

- 8.1 Completed at time of admission and maintained.** A record must be completed at the time of admission and maintained by the Family Child Care provider on each child in care and must include the following:
- 8.1.1** Name, birth date, street address and mailing address of the child;
  - 8.1.2** Name, street address, mailing address and telephone number of parents;
  - 8.1.3** Places of employment of parents, if employed;
  - 8.1.4** The telephone number, street address and mailing address of employers;
  - 8.1.5** A method of contacting the parents while the child is in care;
  - 8.1.6** If possible, the name, address and telephone number of a person other than the parents, to contact in case the parents cannot be reached in an emergency;
  - 8.1.7** Dates of enrollment and termination;
  - 8.1.8** Record of immunizations on infants, toddlers, and preschoolers (See Section 13);
  - 8.1.9** Name, address and telephone number of the child's physician and dentist if available;
  - 8.1.10** Written authorization to obtain emergency medical care;
  - 8.1.11** Names of persons who are permitted by the parents to remove the child from the Family Child Care premises;
  - 8.1.12** Allergies and other health conditions, if known;
  - 8.1.13** A record of injuries sustained by the child while in the care of the Family Child Care Program, including significant changes in appearance and/or hygiene, or significant changes in behavior (such as: increased aggression, withdrawal, sexual acting out, or prolonged tantrums);
  - 8.1.14** Special needs, if any; and
  - 8.1.15** Written permission from each child's parent for the child to participate in swimming or wading activities if swimming or wading is provided.

- 8.2 Same-day record of accidents, injuries, and sudden illnesses.** The provider must record on the same day it happens any accidents, injuries, sudden illnesses, or other incidents that occur while the child is in care.
- 8.3 Record of daily attendance.** The provider must keep a record of daily attendance.
- 8.4 Record kept for 6 months after child leaves care.** The child's records must be kept for a minimum of six (6) months after the child leaves care.

**Section 9. PERSONNEL****9.1 Provider and staff requirements for Family Child Care Programs**

- 9.1.1** The Family Child Care provider, staff and volunteers must be emotionally stable and mature, able to exercise good judgment in the handling of children and must not engage in any action or practice that may be detrimental to the welfare of the children (See Section 9.1.2).
- 9.1.2** Actions or practices that may be detrimental to the welfare of children or that are potentially harmful to children are strictly prohibited. Such actions or practices as defined by the department include but are not limited to the following:
- 9.1.2.1** Corporal punishment (as defined in Section 1.4 of these rules);
  - 9.1.2.2** Use of a stick or other instrument in disciplining a child;
  - 9.1.2.3** Sexual abuse;
  - 9.1.2.4** Lack of supervision;
  - 9.1.2.5** Neglect in any form;
  - 9.1.2.6** Withholding food or drink;
  - 9.1.2.7** Derogatory remarks to or about children or parents;
  - 9.1.2.8** Name calling;
  - 9.1.2.9** Shaming or embarrassing;
  - 9.1.2.10** Unusual confinement; or
  - 9.1.2.11** Rough handling.
- 9.1.3** A staff member who is certified in basic adult, child, and infant First Aid and cardiopulmonary resuscitation (CPR) must be present at all times while child care is being provided.
- 9.1.4** A staff or volunteer providing child care must be at least sixteen (16) years old.
- 9.1.5** No alcohol, tobacco or scheduled drugs (except appropriately prescribed drugs) shall be consumed during the hours of operation.

**9.2 Reporting requirements**

**9.2.1** The provider or applicant must report to the department information about the following circumstances, which may have occurred either in or outside the State of Maine, regarding the provider or applicant and other persons living or employed at the residence being operated as a Family Child Care Program, or regarding any individuals who may have contact with the children in care:

**9.2.1.1** Arrests, indictments, or convictions for sexual or violent crimes involving children or adults, or any illegal acts involving children, whether prosecuted or not. Any prior convictions for any of these crimes or illegal acts must be reported;

**9.2.1.2** Any physical, mental health or substance abuse problems that would interfere with one's ability to perform one's duties safely;

**9.2.1.3** Any arrest, indictment, or conviction for operating under the influence of intoxicants or with an excessive blood-alcohol level (OUI), or for any other activity involving substance abuse. Any prior convictions for OUI or other activity involving substance abuse within the last six years must be reported;

**9.2.1.4** Whether Child Protective Services or the Out-of-Home Investigations Unit of the Division of Licensing and Regulatory Services has ever investigated the provider or applicant or other individuals who may have contact with the children in care for allegations of child abuse or neglect;

**9.2.1.5** Any prior conditional certificate, certificate suspension, denial of an application, fine, or revocation of a child or adult care certificate, license or other approval issued to the provider or applicant;

**9.2.1.6** The removal of children from the provider's or applicant's care or custody by court order;

**9.2.1.7** Any Protection from Abuse Order or any other Order that makes a finding of domestic abuse or family violence;

**9.2.1.8** Any other information regarding the provider's or applicant's circumstances or treatment of children which may enable the department to determine whether there is a present threat to the health, safety and welfare of children, and;

- 9.2.1.9** The provider or applicant must submit information concerning required background records checks, as detailed in Section 2.22 of these rules.

### **9.3 Evaluation requirements**

- 9.3.1** When the department has reasonable cause to believe that the provider, the applicant, or a person employed or living in the Family Child Care premises may have a problem that would make the individual unable to provide safe care for children, the department may request that the provider or applicant provide the department with a report from a qualified professional or appropriate officials. This report must include an evaluation of the person's ability to safely care for children.
- 9.3.2** No person shall be required to undergo a physical examination or other evaluation if the individual states in writing that it is contrary to the individual's religious teachings and practice.
- 9.3.3** The department shall determine whether sufficient evidence exists to ensure that the provider or applicant can safely care for children.

**Section 10. STAFFING REQUIREMENTS**

**10.1 Staff-child ratios**

**10.1.1** (Chart A) One provider, working alone, may care for:

**10.1.1.1** 4 infants and toddlers, or

**10.1.1.2** 3 infants and toddlers plus 3 preschool children, plus 2 school-age children.

**10.1.1.3** 8 preschool children plus 2 school-age children, or

**10.1.1.4** 12 school-age children.

<b>Chart A - ONE PROVIDER, WORKING ALONE</b>							
Children (ages defined in Section 1)	Section 10.1.1.1	Section 10.1.1.2	Section 10.1.1.3	Section 10.1.1.4	Section 10.1.3		
					OR	OR	OR
a. infants and toddlers (6 weeks – 30 months)	4	3	0	0	3	3	3
b. preschool (2 1/2 - 5 yrs and not kindergarten eligible)	0	3	8	0	2	1	0
c. school-age (5 - 12 years)	0	2	2	12	3	4	5

- 10.1.2** (Chart B) Additional staff must be present in order to increase enrollment, according to the following staff-child ratios:

<b>Chart B - PROVIDER WORKING WITH ADDITIONAL STAFF</b>		
Children (ages defined in Section 1)	One Additional Staff Person	Two Additional Staff Persons
a. infants and toddlers (6 weeks – 30 months)	8	12
b. preschool through school age (2 1/2 - 12 yrs)	12	12
c. school-age (5 - 12 years)	12	12
d. infant through school-age (6 weeks – 12 yrs)	12 total no more than 6 infants and toddlers	12 total no more than 9 infants and toddlers

- 10.1.3** Older children may fill younger children's spaces but younger children may not fill older children's spaces (Chart A).
- 10.1.4** Before August 1, 2008, the children living with the provider are not counted in determining the staff-child ratio. (See Section 2.6.1)
- On and after August 1, 2008, children living with the provider who are five (5) years of age and older are not counted in determining the staff-child ratio. Children under 5 years of age are counted in the staff-child ratio. (See Section 2.6.1)
- 10.1.5** Children of staff, who are not the provider, must be counted in the appropriate age groups when in care at the Family Child Care Program, when determining the staff-child ratio.
- 10.1.6** Providers shall not be penalized if they exceed their certified capacity, only when the following conditions exist:
- 10.1.6.1** Unpredictable circumstances, not under the provider's control. Examples are bad weather, lateness of the parent, or emergency school closings. Proper supervision, as defined in Section 10.2 of these rules, must be maintained. Procedures for managing such events must be explained in the written emergency plan.
- 10.1.6.2** Regularly occurring transition times (shift changes, end of school day), as long as the staff-child ratio is maintained and there is adequate space.

This provision is limited to no more than two (2) children over certified capacity, and the time must not exceed one hour total per day.

- 10.1.7** Providers must record when and why capacity is exceeded, and specify the number of children involved.

## **10.2 Supervision**

- 10.2.1** Providers or staff must have knowledge of and accountability for the activity and whereabouts of each child in care, the ability to see or hear all children at all times and to provide prompt intervention when needed.
- 10.2.2** When only one provider or staff member is present or when staff-child ratios are exceeded there must be a practical written plan for obtaining help in an emergency.
- 10.2.3** Staff or volunteers who are at least 16 years old and under 18 years old, must be under the direct supervision (within sight or sound) of a staff member who is age 18 or older.
- 10.2.4** Sound monitors alone must not be considered as an acceptable form of supervision.
- 10.2.5** Staff must be awake during hours of operation.

- 10.3 Staff training.** A provider must ensure that each staff person receives a minimum of twelve (12) hours of ongoing training per year. This training must be documented in the personnel records. First Aid and cardiopulmonary resuscitation (CPR) training shall not be counted as part of the twelve (12) hours.

- 10.4 Staff, volunteers and substitutes.** The provider is responsible for ensuring that all staff, volunteers and substitutes are familiar with the operation of the Family Child Care Program, to enable them to carry out their assigned tasks. Personnel must read, understand, and meet the requirements of these *Rules for the Certification of Family Child Care Providers*.

**Section 11. MATERIALS, EQUIPMENT AND ACTIVITIES**

**11.1 Toys and play equipment.** The provider must supply toys and equipment for indoor and outdoor play appropriate to the age, ability and number of children. Materials provided and used shall include a selection from the following areas:

**11.1.1** For infants, a variety of toys, music and books designed to stimulate curiosity, small and large muscle development, hand-eye coordination, and the senses of sight, sound and touch;

**11.1.2** For toddlers and preschool children, sufficient variety to offer activities in the following areas:

**11.1.2.1** blocks;

**11.1.2.2** housekeeping and dress-up;

**11.1.2.3** books and language;

**11.1.2.4** arts and crafts;

**11.1.2.5** puzzles, games and manipulatives;

**11.1.2.6** sensory activities (such as sand and water);

**11.1.2.7** science and nature;

**11.1.2.8** music; and

**11.1.2.9** toys, equipment and space that encourage gross motor development.

**11.2 Indoor and outdoor activities**

**11.2.1** Children in attendance for more than four (4) consecutive hours must have an opportunity for a rest of one (1) hour or longer according to the age and needs of the child.

**11.2.2** All children shall spend a minimum of thirty (30) minutes out-of-doors for each morning session and each afternoon session of three and one half (3 ½) hours or more, weather permitting. Indoor gross motor activity must be substituted when weather does not permit outdoor time.

- 11.2.3** Television, video viewing or use of the computer must be educational and age appropriate. Alternative activities for children must be made available during these times.
- 11.2.4** Activities must be developmentally appropriate.
- 11.2.5** Toileting must take place based upon individual needs.
- 11.3 Materials and equipment for children.** Materials and equipment must be appropriate for children enrolled, including those with special needs.
- 11.4 Extra clothing and diapering supplies.** The provider serving infants, toddlers, and preschool age children must have access to extra children's clothing and diapering supplies in the event that such items become soiled or damaged during the activities of the day.
- 11.5 Swimming and wading activities.** (See also Section 14.8)
- 11.5.1 Policies regarding swimming and wading activities and safety procedures.** The Family Child Care Provider must develop policies and procedures regarding swimming and wading activities. Policies and procedures must include all swimming or wading activities that take place on the Family Child Care premises and swimming or wading activities that take place away from the Family Child Care premises, e.g., at a public swimming pool or beach.
- 11.5.2 Emergency Plan.** The Family Child Care Provider must include a written emergency plan related to any swimming or wading activities, regardless of where they are conducted. This plan must be available to all staff. The plan must cover procedures for medical emergencies, chemical emergencies and severe weather.
- 11.5.3 Emergency procedures.** For Family Child Care Providers with swimming pools on the premises, staff must be familiar with emergency procedures, the use of safety equipment and emergency contacts.
- 11.5.3.1** Children must be reminded of the emergency procedures regularly.
- 11.5.3.2** Emergency drills. For Family Child Care Providers with pools on the premises, swimming pool emergency drills must be conducted at least once a month in any month during which the pool is used. These drills must be conducted according to policies and procedures that are posted in the swimming area. The provider must keep a

written record of the type, date, time and duration of the training and drills.

- 11.5.4 Pool safety rules.** For Family Child Care Providers with pools on the premises, legible safety rules for the use of swimming pools must be posted in a conspicuous location, and must be read and reviewed weekly by each staff member responsible for the supervision of children.
- 11.5.5 Basic water safety instruction for children.** Before initially entering the pool, all children must be instructed on all water safety measures.
- 11.5.6 Safety checklist.** For Family Child Care Providers with swimming pools on the premises, a checklist must be completed on any day on which a pool activity occurs. The checklist will be supplied by the department, and must be signed by the individual responsible for swimming or wading activities on that day.
- 11.5.7 Water safety attendant on duty.** The Family Child Care Provider must have an appropriately trained water safety attendant, as required by these rules, present at all times during swim instruction or other swimming or wading activity.
- 11.5.7.1 Swimming pools.** For swimming pools, the water safety attendant must be on duty. The water safety attendant must have completed within the past three (3) years a department-approved basic water safety course that includes training in non-swimming water rescue techniques. A copy of the current training certificate must be on file in the Family Child Care Program. In a pool that is more than four (4) deep at any point, if a non-swimming rescue is not feasible, then a lifeguard must be on duty.
- 11.5.7.2 Wading pools.** For wading pools, the water safety attendant must be on duty. The water safety attendant must hold a valid CPR certificate and a valid first aid certificate.
- 11.5.7.3 Off-site activities.** For swimming and wading activities away from the Family Child Care premises, the Family Child Care Provider must provide an adequate number of water safety attendants, including lifeguards, as required by these rules, if the wading pool, swimming pool, beach, lake or water park operator does not.

- 11.5.8 Constant supervision.** Staff must directly supervise children at all times. Children must be within sight **and** sound of staff.
- 11.5.9 Staff-to-child ratios.** The staff-to-child ratio must be maintained at all times.
- 11.5.9.1** If the pool is more than four (4) feet deep at any point, only adults who can swim may be counted in the staff-to-child ratios.
- 11.5.9.2** For swimming pools, water safety attendants, including lifeguards, and swimming instructors do not count toward staff-to-child ratios. Water safety attendants, including lifeguards, must be stationed outside and next to the swimming pool. See exception at 11.5.9.3 below.
- 11.5.9.3 Exception.** If three (3) or fewer children are in the swimming pool and the water safety attendant is stationed outside and next to the swimming pool, the water safety attendant may count toward the staff-to-child ratio.
- 11.5.9.4** Wading pools. For wading pools, water safety attendants may count toward staff-to-child ratios.
- 11.5.10 Identification of non-swimmers.** All non-swimmers must be clearly identified as non-swimmers in a way that is visually and easily recognized by water safety attendants and staff. Commonly used identifiers are specified bathing suits or caps, wristbands or colored zinc-oxide sun block. Personal flotation devices of any kind must not be used as identifiers.
- 11.5.11 Approved flotation devices.** All non-swimmers, when in water over their waists, must be protected by a Coast Guard approved flotation device properly fitted for age and weight, except during swim instruction programs.
- 11.5.12 Training for Family Child Care Providers.** Providers must take a department-approved basic water safety course that includes training in non-swimming water rescue techniques.
- 11.6 Use of lakes and ponds.** For the use of lakes and ponds, away from the family child care premises, the family child care provider must comply with all applicable sections of these rules, including the following:
- 11.6.1 Parental permission.** Prior to allowing a child to participate in water activities in lakes and ponds, the family child care provider must have written permission from the parent or legal guardian. The department-approved

parental permission form shall describe the water activities offered at lakes and ponds, the child's swimming ability and shall include the child's name, location of the lake or pond, the parent's signature and date. At least annually, the written parental permission form must be updated, signed and dated by the parent or legal guardian. The signed and dated parental permission form must be placed in the file maintained by the family child care provider for each child's records.

- 11.6.2 Parental notice that no lifeguard is on duty.** A family child care provider that offers lake and pond activities when there is no lifeguard on duty must give a department-approved written notice to each child's parent or legal guardian that there will be no lifeguard on duty at lakes and ponds.
- 11.6.3 Water safety plan.** The family child care provider must have a written water safety plan for water activities at lakes and ponds that includes the following:
- 11.6.3.1** The same staff-to-child ratios for swimming pools in Section X (E) (9) of these rules, apply to water activities at lakes and ponds.
  - 11.6.3.2** When no lifeguard is on duty, no fewer than 2 staff persons who are at least 18 years of age must be present at all times during water activities at lakes and ponds. When there is a lifeguard on duty at the lake or pond, the requirements of Section X (E) (9) of these rules apply.
  - 11.6.3.3** Whether there is a lifeguard on duty or not, at all times during water activities at lakes and ponds at least one staff person present at the lake or pond must be an appropriately trained water safety attendant. When there is no lifeguard on duty, the appropriately trained water safety attendant is a person who has completed a department-approved basic water safety course that includes training in non-swimming rescue techniques. At no time do these rules require that a lifeguard be on duty at lakes and ponds during water activities.
  - 11.6.3.4** Whether there is a lifeguard on duty or not at the lake or pond, prior to any child entering the water, the family child care provider must ensure that a barrier, such as a roped-off area with buoys, is in place that limits the swimming area in the lake or pond to an area that is no wider than 16 feet across at any point and partitions off a part of the water that is no deeper than 4 feet at any point.

- 11.6.3.5** When there is no lifeguard on duty at the lake or pond, all children 8 years of age and younger must wear a Coast Guard-approved flotation device, properly fitted for age and weight, in the water at all times, except during swim instruction programs. When there is a lifeguard on duty at the lake or pond, the requirements of Sections X (E) (10) and (11) of these rules apply.
- 11.6.3.6** When there is no lifeguard on duty at the lake or pond, all children over 8 years of age must wear a Coast Guard-approved flotation device, properly fitted for age and weight, in the water at all times unless the child has taken swimming lessons and can demonstrate the ability to swim. During swim instruction programs the child does not need to wear a flotation device. When there is a lifeguard on duty at the lake or pond, the requirements of Sections X (E) (10) and (11) of these rules apply.

**Section 12. CHILD GUIDANCE, MANAGEMENT AND DISCIPLINE**

- 12.1 Child guidance must meet the needs of each child.** Staff must use positive methods of child guidance which encourage self-control, self-direction, self-esteem and cooperation. Child guidance and management must meet the needs of each child.
- 12.2 Rules, expectations and limits must be clear and consistent.** A child must not be expected to do more than the child's understanding and ability allow.
- 12.3 Constructive methods of guidance.** The Family Child Care Program must use only constructive methods of guidance. This may include, but is not limited to, interventions such as conflict resolution, encouraging the use of language skills, redirecting, providing choices, positive reinforcement, recognition of a child's strengths, and allowance for individual differences.
- 12.4 Actions that might be harmful to children are strictly forbidden.** No child shall be subjected to an action or practice detrimental to the welfare of children as defined by the department in Section 9.1.2.
- 12.4.1** Corporal punishment as defined in Section 1.4 in these rules is strictly prohibited.
- 12.4.2** Shaming and embarrassing must not be used.
- 12.4.3** The withholding of food, drink or rest must not be used as punishment or threat of punishment.
- 12.4.4** No child shall be forced to eat or drink against the child's will.
- 12.4.5** No child shall be punished for soiling, wetting or not using the toilet.
- 12.4.6** No child shall be subjected to cruel or severe punishment, humiliation, verbal abuse or unusual confinement.
- 12.4.7** The withholding of any adaptive equipment that would result in loss of a child's independence must not be used.

**Section 13. HEALTH/MEDICAL****13.1 Immunization**

**13.1.1 Certificate of Immunization for children.** To ensure proper medical treatment is determined and given in the event of a disease outbreak or public health emergency, immunization records must be maintained.

**13.1.1.1** For each child who is not attending public or private school, the provider must have on file, within thirty (30) days of the child's first admission to the Family Child Care Program, a Certificate of Immunization which clearly documents each child's present immunization status based on the required Day Care Immunization Standards of the Maine Center for Disease Control and Prevention.

**13.1.1.2** The record must include the dates of immunization (month/day/year) and vaccine type.

**13.1.2 Exemption to immunization.** No child may be required to be immunized:

**13.1.2.1** if the child's parent states in writing an opposition to immunization because of a sincere religious belief or for philosophical reasons, or

**13.1.2.2** if the child's physician submits documentation that such immunization is medically inadvisable.

**13.1.2.3** In the event of a disease outbreak, a child not immunized for religious, philosophical or medical reasons must be excluded from the Family Child Care Program until the outbreak no longer exists or until the child receives the necessary immunization.

**13.1.3 Documentation of exemptions to immunization.** The provider must maintain a list of children and staff exempted for religious, philosophical or medical reasons.

**13.1.4 Blood test: proof of immunity.** A blood test documenting immunity to measles, mumps, rubella and varicella (chickenpox) may be provided as proof of immunity. Evidence of the blood test must be placed in the child's record and updated in a timely manner.

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- 13.1.5 Immunization records.** The provider must make immunization records available to the Maine Department of Health and Human Services, Center for Disease Control and Prevention upon request.
- 13.2 Accidents and sudden illness.** The provider must immediately notify the child's parent of any serious illness, injury, or accident involving the child. If the parent is not available at the time of emergency, the provider must notify an adult designated by the parent. For any serious illness or injury, the provider must seek appropriate medical attention.
- 13.3 Medication administration.**
- 13.3.1** The provider must give a child prescription medication only when the provider has a written, signed and dated order from either a parent or a physician.
- 13.3.2** The provider must only give medication prescribed for the specified child, according to the label instructions on the original container.
- 13.3.3** The provider must not give any nonprescription medications to a child without written permission from the parent. Verbal permission is allowed in emergencies if the provider makes a written note and then gets written permission from the parent as soon as possible.
- 13.3.4** The provider must keep a written record, noting each time a prescription and nonprescription medication is given to a child.
- 13.4 First Aid kit and manual.** The provider must have a First Aid kit and a current First Aid manual. The type and quantity of supplies are to be determined by current guidelines of the American Red Cross or other recognized health organization.

**Section 14. ENVIRONMENT AND SAFETY****14.1 General condition of the Family Child Care building and surrounding premises.**

**14.1.1** The Family Child Care building and surrounding premises must show evidence of routine maintenance. Repair of wear and tear must be made in a timely fashion.

**14.1.2** The Family Child Care provider must take immediate steps to correct any condition in the physical building or on the premises, which poses a danger to children's life, health or safety.

**14.2 Sanitation, health and safety.** To ensure the health and safety of the children, the Family Child Care Program's toys, and equipment must be kept clean and in safe working order.

**14.3 Buildings, space, furnishings, and equipment.**

**14.3.1 Indoor space requirement.** The Family Child Care Program must provide a minimum area of thirty-five (35) square feet of usable indoor space per child. The allowed area includes moveable furniture used by children, but not storage cabinets. Space that is not used by children cannot be counted in the square footage. Areas not counted as usable space include, but are not limited to, bathrooms and closets.

**14.3.2 Heating, temperature.** The temperature of the space used by the children must be maintained at a safe and comfortable level for the children.

**14.3.2.1** A minimum temperature of at least sixty-eight (68) degrees measured within two (2) feet of the floor must be maintained in children's playrooms during the heating season.

**14.3.2.2** Heating units must be safeguarded in a manner to prevent injuries and burns.

**14.3.2.3** If indoor temperatures exceed 82 degrees Fahrenheit, then measures must be taken to cool the children.

**14.3.3 Lighting.**

**14.3.3.1** Every room used by children must be properly lighted.

**13.3.3.2** Natural light is required in any room used by children for more than four hours per day.

**14.3.4 Ventilation.**

**14.3.4.1** All indoor space used by children must be adequately ventilated.

**14.3.4.2** Doors and windows used for ventilation must be equipped with securely fastened screens.

**14.3.5 General safety.**

**14.3.5.1** Stairs used by children must be equipped with solidly mounted handrails.

**14.3.5.2** Stairs must be enclosed by walls or railings. Stairs in areas used by infants, toddlers and preschool age children must be protected by a gate or door.

**14.3.5.3** Electrical outlets in areas used by infants, toddlers and preschool children must be protected by safety caps, plugs or other means.

**14.3.5.4** Family Child Care Providers must comply with laws and rules about the use of lead-based paint on toys, furniture or any interior or exterior surfaces, defined by the Lead Poisoning Control Act (Title 22 M.R.S.A. §1314 *et seq.*).

**14.3.5.5** The Family Child Care Program must have an annual screening as prescribed in 22 M.R.S.A. § 1314 *et seq.* for potential lead hazards. A Family Child Care Program is exempt from this screening if:

**14.3.5.5.1** the building was constructed in 1978 or later;

**14.3.5.5.2** the building has been certified as *lead-safe* within the previous twelve (12) months, by a lead inspector licensed by the Department of Environmental Protection;

**14.3.5.5.3** the building has been certified as *lead-free*; by a lead inspector licensed by the

Department of Environmental Protection;  
or

**14.3.5.5.4** the building does not serve any children under six (6) years of age.

**14.3.5.6** Any medications, cleaning supplies, toxic substances, matches, lighters, power tools, and other items dangerous to children must be kept where children cannot see or reach them.

**14.3.5.7** Children are not allowed to be near power equipment while it is being operated.

**14.3.5.8** Firearms must be kept unloaded and, along with any other weapons, must be locked up to prevent contact by children. Ammunition must be locked in a separate location from weapons.

**14.3.5.9** Smoking is prohibited on the premises when children are present. This includes all indoor and outdoor areas used by the Family Child Care Program where children may be present.

**14.3.5.10** Strings and cords (e.g. those that are part of a toy or those that are found on window shades) long enough to encircle a child's neck (six [6] inches or more) must not be accessible to children.

**14.3.6 Furnishings for napping.**

**14.3.6.1** A separate mat, bed or cot, with a blanket or sleeping bag, must be assigned to each child in care for longer than four (4) hours per session. All bedding must be cleaned before being used by another child. Bedding must be cleaned as needed or at least weekly.

**14.3.6.2** A crib or playpen must be provided for each child up to eighteen (18) months old.

**14.3.6.3** No crib or playpen shall be used for sleeping by more than one child at a time.

**14.3.6.4** There must be adequate walking space between beds, mats and cribs.

**14.3.7 Toilet facilities.**

**14.3.7.1** A step, low platform or other means must be placed next to toilets and wash basins, for children who need help reaching and using them.

**14.3.7.2** Either disposable paper products, or clean, individually assigned wash cloths and towels may be used.

**14.3.7.3** Washing and toilet facilities must have both hot and cold running water and soap.

**14.3.7.4** The Family Child Care Program must provide a means of maintaining a water temperature of 120° Fahrenheit or less in faucets available for use by children.

**14.4 Outdoor play area.**

**14.4.1 Access to outdoor play area.** The Family Child Care Program must have access to an outdoor play area with sufficient space for safe play for all children. Children must have regular time for outdoor play.

**14.4.2 Location of play areas.** The play area must not be located near hazardous areas, (such as busy streets, wells, open water) unless protected by either natural boundaries or fencing.

**14.4.3 Supervision of play area.** The provider or a staff person must supervise the children when they are using the play area.

**14.4.4 Safe equipment.** Equipment must be firmly secured, clean, and in proper repair. When necessary, padding or other shock-absorbing material (such as wood mulch, wood chips or fine, loose sand of sufficient depth) must be used to protect children in case of a fall.

**14.4.5 Sand boxes.** Sand boxes must be kept repaired and sanitary.

**14.4.6 Safe outdoor play equipment.** Outdoor play equipment must be safely constructed and of a size suitable to the age and needs of all children. Play equipment, including pools, must be adequately spaced apart to prevent injuries.

- 14.4.7 Sun and shade.** Outdoor play areas must provide both shade and sun.
- 14.5 Fire evacuation drills.**
- 14.5.1 Monthly fire drills.** Fire evacuation drills must be conducted at least once a month for all children and adults present using at least two (2) means of exit.
- 14.5.2 Posted fire drill procedures.** Fire drills must be conducted according to policies and procedures that are posted in each room utilized by children.
- 14.5.3 Record of fire drills.** A record of drills must be available for inspection by the Maine Department of Public Safety, Office of the State Fire Marshal and local fire inspectors.
- 14.6 Animals.** When animals are on the premises, the provider must ensure that staff supervision is adequate to protect the safety of the children and animals. There must be proof of rabies vaccinations for household dogs and cats. Pets must not present a danger to children or guests. The premises must be free of pet odors and waste must be disposed of regularly. All indoor and outdoor areas used by children must be free from pet waste.
- 14.7 Local codes and ordinances.** The Family Child Care Program must maintain, and provide to the department on request, documentation that indicates that the Family Child Care Program complies with local codes and ordinances, including zoning.
- 14.8 Swimming Pools** (See also Section 11.5)
- 14.8.1 Swimming pool cleanliness.** Swimming or wading pools must be emptied and cleaned daily or equipped with a filtration and/or treatment system.
- 14.8.1.1** The water in a swimming pool must have sufficient clarity. The bottom must be clearly visible in the deepest part of the pool.
- 14.8.2 Swimming pools when not in use.** Swimming or wading pools must be emptied or removed from play areas when not in use or must be otherwise protected by fencing or suitable barriers to prevent children from gaining access without staff approval and supervision.
- 14.8.2.1** All in-ground pools located in areas accessible to the children must be fenced. The fence must be at least four (4) feet in height and secured with a locked gate.
- 14.8.2.2** All above-ground pools must have non-climbable sidewalls that are at least four feet high or must be enclosed with a

fence in accordance with Section 14.8.2.1 (above) of these rules. When the pool is not in use, steps must be removed from the pool or otherwise made inaccessible to prevent unsupervised access by children.

- 14.8.3 Emergency telephone.** All pools must have an accessible emergency telephone located in the pool area. The telephone must be able to dial directly for emergency assistance.

**Section 15. FOOD AND KITCHEN FACILITIES****15.1 Meals and snacks**

- 15.1.1 Well-balanced meals and snacks.** The provider must serve well-balanced meals and snacks.
- 15.1.2 New foods.** The provider and staff may encourage children to try new foods, but no child shall be forced to eat anything they do not want.
- 15.1.3 Food supplied from outside the Family Child Care Program.** Box/bag lunches or other food supplied from outside the Family Child Care Program must be kept refrigerated if required.
- 15.1.4 Food storage.** All food must be stored in a manner to prevent spoilage, and kept hot or cold, as required.
- 15.1.5 Formula and breast milk must be properly labeled and stored.** Formula and breast milk must be labeled with the child's name, dated, and stored in the refrigerator.
- 15.1.6 Use of formula or breast milk.** Formula supplied by the provider must be made from commercially-prepared products. Breast milk or specialized dietary formulas may be used when needed and supplied by the child's parents.
- 15.1.7 Hand washing.** Staff must ensure that all adults and all children wash their hands immediately before and after eating snacks and meals. Hand washing must be done with soap and running water, when available.
- 15.1.8 Supervision at mealtime.** Staff must closely supervise children during mealtimes.

**15.2 Kitchen facilities**

- 15.2.1 Kitchen area.** Kitchen areas-must be well-lighted, clean and orderly.
- 15.2.2 Clean surfaces.** All surfaces where food is prepared and served must be washed before and after use.
- 15.2.3 Staff hand washing.** Staff must wash their hands both before and after handling food.

- 15.2.4 Cleaning dishes.** Dishes must be washed in an automatic dishwasher or thoroughly hand-washed in warm soapy water and rinsed in hot water.
- 15.2.5 Use of paper products.** Paper products shall be used only once and must be thrown away immediately after use.
- 15.2.6 Refrigerator temperature.** Refrigerators must be kept at a temperature not to exceed forty-one degrees (41°) Fahrenheit. A thermometer must be kept in the refrigerator at all times.
- 15.2.7 Freezer temperature.** Freezers must be kept at a temperature not to exceed zero (0°) Fahrenheit. A thermometer must be kept in the freezer at all times.

**Section 16. TRANSPORTATION**

**16.1 Driver requirements.** A person assigned by the provider to drive children under care must have the proper license to drive the class of motor vehicle being used.

**16.2 Vehicle requirements**

**16.2.1 Back seat.** All children age twelve (12) and under must ride in the back seat.

**16.2.2 No child left alone in vehicle.** The staff must not leave a child alone in a motor vehicle.

**16.2.3 Safety in moving vehicles.** Children must be seated with seat belts fastened or in child safety seats as required by State law, while the vehicle is in motion.

**16.2.4 Seat belt.** The driver must wear a seat belt.

**16.2.5 One seat belt per child.** The buckling of more than one child in a single seat is prohibited.

**16.2.6 Adult-to-child ratios in vehicles.** There must be one adult present for up to six preschool children transported. Additional preschool children must be supervised according to staff-child ratios specified in Section 10 of these rules. One adult must be in the vehicle for every three non-ambulatory children.

**16.2.7 No weapons.** Weapons must not be carried in any vehicle in which children are riding.

**16.2.8 Child safety seats.** The following standards must be met regarding the use of car safety seats:

	<b>INFANTS</b>	<b>TODDLER</b>	<b>YOUNG CHILDREN</b> (up to 8 years old)
<b>WEIGHT</b>	Birth to 1 year and up to 22 lbs.	Over 1 year and over 20 lbs up to 40 lbs.	Over 40 lbs.- up to 80 lbs.
<b>TYPE of SEAT</b>	Infant only or rear-facing convertible	Convertible / Forward-facing	Belt positioning booster seat
<b>SEAT POSITION</b>	Rear-facing only	Forward-facing	Forward-facing

<b>ALWAYS MAKE SURE:</b>	Children birth to one year and up to 22 pounds in rear-facing seats  Harness straps at or below shoulder level	Harness straps should be at or above shoulders  Most seats require top slot for forward-facing	Belt positioning booster seats must be used with both lap and shoulder belt.  Make sure the lap belt fits low and tight across the lap/upper thigh area and the shoulder belt fits snug crossing the chest and shoulder to avoid abdominal injuries
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**16.2.9**     **Limitations of vehicle requirements.** The vehicle requirements above shall not apply to vehicles not operated by the Family Child Care provider or staff, such as school buses, taxis and vehicles operated by parents or public transportation agencies.

**Section 17. CHILD ABUSE AND NEGLECT**

- 17.1 Abuse and Neglect in the Family Child Care Program.** The provider must ensure that staff, volunteers and persons living on the premises or frequenting the Family Child Care Program do not abuse or neglect the children in any way, including physical, sexual, or emotional abuse.
- 17.2 Reporting requirement.** The provider and all child care personnel (staff) are required to report to the Department of Health and Human Services when there is reasonable cause to suspect abuse or neglect of a child under the age of eighteen (18). The Family Child Care provider must inform all child care personnel of their status and responsibility as mandated reporters of suspected abuse or neglect of a child.
- 17.3 Department's telephone available.** The provider must ensure that the telephone number of the department's Child Protective Intake Unit is readily available to the Family Child Care staff. [See Section 7.11.2]

**Section 18. INFANT and TODDLER CARE****18.1 General standards.**

- 18.1.1 Size of toys, food or other objects.** Infants and toddlers must not be allowed to use toys or objects which could be swallowed or cause choking. Foods that are choking hazards due to the size, shape or texture must not be served to infants and toddlers.
- 18.1.2 Individualized rest times.** Each child must be given appropriate rest time, according to the child's age and other needs.
- 18.1.3 Individualized patterns.** Each infant or toddler must be allowed to form and follow the child's own pattern of sleeping, resting and waking periods.
- 18.1.4 Changing positions.** Each infant or toddler's position must be changed at least each half hour, when the child is awake.
- 18.1.5 Variety of activities.** The provider must ensure that infants and toddlers are given a variety of activities to promote proper muscle development, consistent with approved training in developmental needs.
- 18.1.6 Outdoor time for infants and toddlers.** Infants and toddlers must spend time outdoors daily when weather permits.
- 18.1.7 Feeding.**
- 18.1.7.1** Staff must thoroughly wash the hands of all infants and toddlers before all feedings.
- 18.1.7.2** Formula must be temperature tested prior to feeding.
- 18.1.7.3** The feeding schedule must meet the infant's needs and not just according to the hour.
- 18.1.7.4** The provider or staff must hold non-ambulatory infants in their arms for bottle-feeding.
- 18.1.7.5** A chair or table used for feeding infants and toddlers must be designed to prevent the child from slipping or falling.
- 18.1.7.6** Dishes and nursing bottles used must be made of unbreakable material.

**18.1.7.7** If breast milk or formula is to be warmed, bottles must be placed in a pan of hot (not boiling) water for no longer than five (5) minutes, after which the bottle must be shaken well and the milk temperature tested before feeding. Bottles of formula or breast milk must never be warmed in a microwave oven.

**18.1.8 Diapering**

**18.1.8.1** Children must be checked frequently for wet or soiled diapers and other clothing, and must be washed and changed as soon as needed.

**18.1.8.2** Wet or soiled disposable diapers must be placed in a lined, lidded container, separate from other trash or garbage and separate from play or food-preparation areas.

**18.1.8.3** Diapering must be done on a changing table or washable vinyl mat which is cleaned and sanitized after each use or has a disposable single-use covering.

**18.1.8.4** The changing table or mat must not be located in the kitchen or food preparation area.

**18.1.8.5** Staff must wash their hands and the child's hands with soap and warm water after each diaper change.

**18.1.8.6** Cloth diapers may be used only when the child has a medical reason that does not permit the use of disposable diapers (such as allergic reactions). The child's health care provider must document the medical reason. The documentation must be placed in the Family Child Care Provider's file. Family Child Care Providers using cloth diapers must comply with diapering guidelines approved by the Division of Licensing and Regulatory Services. See the National Association for the Education of Young Children Standard 5.A.08.

<http://www.naeyc.org/academy/standards/standard5/standard5A.asp>

**18.1.8.7** All containers of soiled cloth or disposable diapers must be removed daily from the child care areas.

**18.1.9 Toilet training**

**18.1.9.1** The provider must work with parents to determine the best toileting practice for each child.

**18.1.9.2** Toileting practices must be developed by the parents and staff, and must be based on the individual needs of the child.

**18.1.9.3** Potty chair receptacles must be emptied, rinsed, and sanitized after each use.

**18.1.10 Napping and resting.** Infants must be placed on their backs for sleeping, unless contraindicated by a physician. Placing children on their abdomens for sleeping must be avoided, unless specifically instructed by the child's physician to do so. Sleeping infants must be checked at least every thirty (30) minutes.

**Section 19. NIGHTTIME CARE**

**19.1 Additional rules for nighttime care.** A Family Child Care provider receiving children for night care must comply with the requirements in this section, in addition to other sections in the *Rules for the Certification of Family Child Care Providers*.

- 19.1.1 Individualized care.** Special effort must be made by the Family Child Care provider to individualize care at a child's bedtime and awakening. The parents must be consulted concerning a child's particular behavior patterns at bedtime and awakening.
- 19.1.2 Provider to be awake.** The provider must be awake and alert to the needs of children.
- 19.1.3 Rooms above the first floor.** A room above the first floor may be used for sleeping or napping if the room has two (2) exits with one exit leading directly to the outside with means to safely reach the ground level.
- 19.1.4 A crib or bed for each child.** A provider who offers nighttime care must have a safe and sturdy crib for each infant, and a safe and sturdy bed or cot with mattress and a pillow for each older child.
- 19.1.5 Bunk beds.** The top level of bunk beds must not be used for children below nine (9) years of age.
- 19.1.6 Water-beds.** Waterbeds must not be used for children under thirty-six (36) months of age.
- 19.1.7 Clean linens.** When linens become soiled, they must be changed. Protective mattress covers must be used and washed at least weekly. Sheets must be changed weekly, between use by different children, or more frequently if needed.
- 19.1.8 Wet beds.** No child shall be allowed to sleep in a wet bed.
- 19.1.9 Space between beds.** Beds arranged side by side must be at least two (2) feet apart.
- 19.1.10 Safe Crib.** Infants under thirteen (13) months of age must sleep only in federally approved cribs. Cots, pillows, mats, futons, or cushions must not be used for infants under thirteen (13) months of age.
- 19.1.11 Sharing sleeping rooms.** If children in care over the age of four (4) share a sleeping room with persons who are over age four (4), the provider must have

written approval from the parent of each child involved. A child six (6) years of age or older, must not be in a room shared with another child of the opposite sex nor with any adult.

- 19.1.12 Separate sleeping and dressing areas.** Separate sleeping and dressing areas must be provided for school-age boys and girls.
- 19.1.13 Adequate lighting.** There must be a night light or other mechanism to illuminate hallways leading to stairs and restrooms.
- 19.1.14 Safe evacuation plan.** There must be a plan for evacuating children to safety in case of fire or emergency.
- 19.1.15 Smoke detectors.** Operating, properly mounted, smoke detection equipment must be available on all floors where-children sleep. Wired smoke detection equipment must be U.L. (Underwriters Laboratories) approved.
- 19.1.16 Meals and snacks.** The Family Child Care Program must serve meals and snacks that supplement food served at the child's home as prescribed in Section 15.1 of these rules.
- 19.1.16.1** An evening meal that meets nutritional requirements must be served at a regular time each evening and must be available to children who may arrive without having first eaten.
- 19.1.16.2** A bedtime snack must be served, unless contraindicated by parents or physician.
- 19.1.16.3** Children who remain overnight and go to school directly from the Family Child Care Program must have breakfast, including juice or fruit, unless they are receiving breakfast at school.
- 19.1.17 Drinking water.** Drinking water must be available to children during the night.
- 19.1.18 Bathing**
- 19.1.18.1** Bathing facilities must be available.
- 19.1.18.2** Children must not take baths together or share the same bath water.

- 19.1.18.3** The provider must give each child a shower, tub, or sponge bath in a manner agreed upon between the parent and the provider.
- 19.1.18.4** Tubs or showers must be cleaned after each use.
- 19.1.18.5** Children must be given fresh washcloths and towels.
- 19.1.18.6** No child under five (5) years of age shall be left unattended while in the bathtub.
- 19.1.18.7** Privacy must be ensured for school age children.
- 19.1.19 Toilet articles.** Each child must have individual toilet articles such as comb, toothbrush, towel, and washcloth.
- 19.1.20 Appropriate, comfortable sleepwear.** In preparation for sleep, the child must be dressed in appropriate, comfortable sleep-wear as agreed to by the parent of the child.
- 19.1.21 Extra sleep-wear.** A complete set of clean sleep-wear must be available in the event that a change is necessary.
- 19.1.22 Fire drills for nighttime care.** Fire evacuation drills must be conducted at least once a month for all children and adults present using at least two (2) means of exit. Nighttime fire evacuation drills while children are sleeping must be conducted.
- 19.1.23 Limitations for overnight care.** If working alone, a Family Child Care provider must be limited to operating either a daytime child-care program or an overnight child care program but not both. A provider may operate both a day-time program and an overnight program if additional staff is used.

**STATUTORY AUTHORITY**

22 M.R.S.A. § 42 (1)

22 M.R.S.A. § 7702-A (3)

22 M.R.S.A. Chapter 1673

22-A M.R.S.A. § 205 (2)

**EFFECTIVE DATE:**

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

**AMENDED:**

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

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

June 20, 2007 - filing 2007-259 (EMERGENCY major substantive)

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

**AMENDED:**

September\_, 2008 -filing 2008-383 (Section 11.6 use of lakes and ponds)

**AMENDED:**

May 7, 2009 - filing 2009-\_\_\_ as “Rules for the Certification of Family Child Care Providers”