Rulemaking Hearing Rules
of
The Tennessee Department of Human Services
Adult and Family Services Division

Chapter 1240-4-1

Standards for Group Child Care Homes

Amendments

Part 1 of subparagraph (a) of paragraph (1), of Rule 1240-4-1-.03, Staff, is amended by deleting Part 1 in its entirety, and by substituting instead the following language so that, as amended, part 1 shall read as follows:

1. Every staff person, including volunteers, practicum students, and substitutes, shall be physically, mentally, and emotionally capable of performing his/her duties satisfactorily.

(i) Drug Screening for Child Care Vehicle Drivers Upon Reasonable Cause.

(I) The Department, in its sole discretion, may require any individual, who drives or may drive at any time any vehicle transporting children on behalf of the agency or its contractors, to undergo a drug screening test when, in the Department's sole determination, there is reasonable cause to believe that such individual may have an impairment or possible impairment that potentially poses a risk of harm to children in the care of the agency caused by the use, or possession and potential use, of any drug. For purposes of this part, the term "drug" shall include alcohol.

(II) An individual directed to undergo such examinations or screenings may refuse to do so, but will not be permitted to drive a vehicle transporting children in the agency or have any further contact with children in the care of the child care agency until evidence is provided that is satisfactory, in the Department's discretion, to demonstrate that the individual does not represent a risk of harm to the children in the agency's care.

(ii) Safety Plans.

(I) The Department may require, in its sole discretion, the child care agency to enter into a safety plan approved by the Department that prohibits or limits such individual's contact with children in the care of the child care agency pending the outcome of such testing.

(II) The Department may otherwise require, in its sole discretion, that the child care agency enter into a long-term or permanent safety plan that prohibits or limits the driving duties by an individual described in part 1 for, or contact by such individual with, children in the care of the agency.

(III) Failure to adhere to the safety plan shall be grounds for action by the Department against the child care agency's license as permitted by T.C.A. § 71-3-508(c).

(IV) The child care agency, or any individual whose employment status is directly and adversely impacted by a safety plan or by refusal to undergo an examination as directed by the Department may, at any time during the existence of the plan or during the pendency of the directive for an examination, make written request to the Director of Licensing for an intradepartmental review of the safety plan. Such review shall be conducted by the Director or the Director's designee within ten (10) business days of receipt of the written request.

(V) Any individual or child care agency that has received an adverse decision from the intradepartmental review set forth in subpart (IV) above, may appeal such safety plan to the Department by filing a written request for an administrative hearing before the Department's Administrative Procedures Division within ten (10) business days of the Director's decision. The hearing shall be held by the Division within twenty (20) business days of the receipt of the request for an administrative hearing.

(VI) Any safety plan that exceeds ninety (90) days when proposed or that continues for more than ninety (90) days may be appealed by the child care agency to the Child Care Agency Board of Review.

Authority: T.C.A. §§ 4-5-202; 71-3-502(a)(2); 71-3-508(c); Acts 2003, ch. 412, § 2.

Part 2 of subparagraph (c) of paragraph (1) of rule 1240-4-1-.07, Transportation, is amended by adding the following new subparts (ii) and (iii) so that, as amended, subparts (ii) and (iii) shall read as follows:

(ii) Drug Screenings.

(I) Effective August 1, 2003, all persons who are newly employed or assigned by the child care agency or its contractors or by any other person or entity as a driver of any vehicle providing child care transportation for a licensed or approved child care agency, or who are thereafter assigned any such duties under any arrangement, shall have a drug screen within ten (10) days of the assumption of such duties, in accordance with procedures established by the Department.

(II) Effective January 1, 2004, all existing drivers who have been previously assigned by the child care agency or its contractors or by any other person or entity as a driver of any vehicle providing child care transportation for a licensed or approved child care agency, under any arrangement and who have not been tested as required by item (I), shall have a drug screen in accordance with procedures established by the Department.

(III) The child care agency shall immediately review the results of the drug screen upon receipt.

(iii) Upon receipt of a positive drug screen result for a tested individual, the child care agency shall immediately:

(I) Notify the Department and prohibit the individual from any driving duties involving any transportation of children for the child care agency; and

(II) Enter into a safety plan approved by the Department that excludes the individual from driving for the child care agency until the individual passes a drug screen test and is otherwise approved, in writing, by the Department, to provide driving duties involving the transportation of children for the child care agency.

Authority: T.C.A. § 4-5-202; § 71-3-502(a)(2); § 71-3-508(c); Acts 2003, ch. 412, § 2.

Part 5 of subparagraph (c) of paragraph (1) of Rule 1240-4-1-.07, Transportation, is amended by deleting part 5 in its entirety and by substituting instead the following new language, so that, as amended, part 5 shall read as follows:

5. Emergency Aid Training.

(i) All persons responsible, or who may in the course of their duties become responsible at any time, for the transportation of children shall hold current certification in Infant/Pediatric Cardiopulmonary Resuscitation (CPR) from the American Red Cross, the American Heart Association, or other certifying organization, as recognized by the Department.

(ii) Effective July 1, 2004, all persons responsible, or who may in the course of their duties become responsible at any time, for the transportation of children shall complete a first aid course sponsored or approved by the American Red Cross, or other first aid course, as recognized by the Department.

Authority: T.C.A. §§ 4-5-202; 71-3-502(a)(2).

Subparagraphs (b) and (c) of paragraph (2) of Rule 1240-4-1-.07, Transportation, is amended by deleting subparagraphs (b) and (c) in their entireties and by substituting instead the following new language, so that, as amended, subparagraphs (b) and (c) shall read as follows:

(b) The child care agency shall maintain, and shall require providers of transportation services for children under contract to the agency or under the agency's direction or control to maintain, documentation that designated child care, contractor, or other entity staff perform daily the following inspections, followed by any necessary repairs or other appropriate actions, before beginning transportation of children for the child care agency:

1. A visual inspection of the vehicle's tires for wear and adequate pressure;

2. A visual inspection for working headlights and taillights, signals, mirrors, wiper blades and dash gauges;

3. An inspection for properly functioning child and driver restraints;

4. An inspection for properly functioning doors and windows;

5. An inspection for the presence of safety equipment required by these rules or any other provisions of law or regulations, and repair or replacement as necessary based upon visual evidence of the need do so;

6. A determination that the vehicle has adequate fuel; and

7. An inspection for, and cleaning of, debris from the vehicle's interior.

(c) The child care agency shall maintain, and shall require providers of transportation services for children under contract to the agency or under the agency's direction or control to maintain, documentation that the vehicles used to transport children receive regular inspections and maintenance by a certified mechanic in accordance with the maintenance schedule recommended by the vehicle manufacturer, and, in addition shall have the following vehicle equipment certified as inspected at least every four thousand (4,000) miles if not covered by, and/or serviced in accordance with the manufacturer's maintenance schedule:

1. Brakes;

2. Steering;

3. Oil levels, coolant, brake, windshield washer and transmission fluids;

4. Hoses and belts.

Authority: T.C.A. §§ 4-5-202; 71-3-502(a)(2).

Subparagraph (h) of paragraph (2) of rule 1240-4-1-.07, Transportation, is amended by deleting subparagraph (h) in its entirety and by substituting instead the following new language, so that, as amended, subparagraph (h) shall read as follows:

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

1. Effective January 1, 2007 all vehicles that the child care agency operates, for which it contracts, or which are otherwise under its direction or control, that are designed to carry ten (10) or more passengers must conform to all Federal Motor Vehicle Safety Standards (FMVSS) governing either "large" school buses or "small" school buses, as applicable, in accordance with the provisions of the FMVSS described in 49 Code of Federal Regulations Part 571, or as such Part may be amended.

2. Effective January 1, 2007, if buses in either the "large" or "small" classes of school buses under the FMVSS are used, they must have factory-installed passenger restraint anchorages and passenger restraints that are suitable for use in transporting children of any age who are to be transported on either a "large" or "small" school bus.

3. The requirements of this subparagraph (h) do not apply to vehicles used exclusively for the provision of occasional field trips.

Authority: T.C.A. §§ 4-5-202; 71-3-502(a)(2).

Paragraph (4) of rule 1240-4-1-.07, Transportation, is amended by deleting paragraph (4) in its entirety and by substituting instead the following language, so that, as amended, paragraph (4) shall read as follows:

(4) Child Safety Restraints.

(a) The provisions of this paragraph (4) shall apply to any vehicle used to transport children as of the effective date of these rules, unless stated otherwise by the rule. Any vehicle whether:

1. A passenger car;

2. A stock or custom van or sport utility vehicle;

3. A school bus classified as a "small" or "large" bus as required in FMVSS contained in 49 Code of Federal Regulations Part 571; or

4. Any other vehicle must be properly equipped with the child passenger restraints required by subparagraphs (c)—(f) below and must comply with all other provisions of this paragraph (4).

(b) Children under four (4) years of age shall never be placed in the front seat of the vehicle.

(c) Children who weigh less than twenty pounds (20 lbs.) shall be placed to face the rear of the vehicle. Children who weigh twenty pounds (20 lbs.) or more shall be placed to face the front of the vehicle unless the special needs of a disabled child otherwise require the child to face the rear of the vehicle.

(d) Children who weigh less than forty pounds (40 lbs.) shall be restrained in a Federally-approved child restraint device in accordance with the child restraint device manufacturer's instructions. The child restraint device shall be secured to the vehicle in accordance with the child restraint device manufacturer's instructions.

(e) Children Between Forty Pounds (40 lbs.) and Eighty Pounds (80lbs.).

1. Children who weigh between forty pounds (40 lbs.) and eighty pounds (80 lbs.) may be restrained in a belt-positioning booster seat (BPBS) that has been secured in accordance with the vehicle and restraint manufacturers' instructions. BPBS devices shall always be secured to the vehicle in accordance with the vehicle and the restraint device manufacturer's instructions. If, however, a BPBS restraint device is not used, the child shall be restrained in both a lap belt and a shoulder belt if available in the vehicle. If a lap and shoulder belt restraint system is not available in the vehicle, the child shall be restrained by a lap belt.

2. Effective January 1, 2007, children who weigh between forty pounds (40 lbs.) and eighty pounds (80 lbs.) shall be restrained in a belt-positioning booster seat (BPBS) in accordance with the BPBS manufacturer's instructions. BPBS devices shall always be secured to the vehicle in accordance with the vehicle and the restraint device manufacturer's instructions.

(f) Children Weighing More Than Eighty (80 lbs.) or Who are Taller Than Four Feet Nine Inches (4'9").

1. Children who weigh more than eighty pounds (80 lbs.) or who are taller than four feet nine inches (4'9") may be restrained in an adult lap belt and shoulder belt that has been secured in accordance with the vehicle manufacturer's instructions. If, however, an adult lap belt and shoulder belt is not used, the child shall be restrained by a lap belt.

2. Effective January 1, 2007, children who weigh more than eighty pounds (80 lbs.) or who are taller than four feet nine inches (4'9") shall be restrained in an adult lap belt and shoulder belt in accordance with the vehicle manufacturer's instructions.

(g) Passenger air bags shall remain turned off unless an adult or a child fifteen (15) years of age or older is riding in the front passenger seat of the vehicle.

(h) No child shall ride on the floor of a vehicle and no child shall be placed with another child in the same restraint device.

(i) Notwithstanding the provisions of this paragraph (4), until January 1, 2007, children of school-age (in kindergarten or any grade level above) shall not be required to use child restraints when being transported in school buses classified in the "large" category under FMVSS.

Authority: T.C.A. §§ 4-5-202; 71-3-502(a)(2).

Legal Contact or Party who will approve final copy:

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Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:

Anne Turner, Director
Adult and Child Care Licensing
Tennessee Department of Human Services

Virginia T. Lodge
Commissioner
Tennessee Department of Human Services

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services on the 23rd day of September, 2003.

Further, I certify that the provisions of TCA § 4-5-222 have been fully complied with, that these rules are properly presented for filing, a notice of rulemaking hearing was filed in the Department of State on the 27th day of June, 2003 and such notice of rulemaking hearing having been published in the July 15, 2003 issue of the Tennessee Administrative Register, and such rulemaking hearings having been conducted pursuant thereto on the 2nd, 4 th and 8th of September 2003.

William B. Russell
General Counsel
Tennessee Department of Human Services

Subscribed and sworn to before me this the 23rd day of September, 2003.

Notary Public

My Commission Expires
August 20, 2006

My commission expires on the ____ day of _____, _____.

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Paul G. Summers
Attorney General and Reporter

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 29 day of Sept., 2003 and will become effective on the 13 day of Nov., 2003.

Riley C. Darnell
Secretary of State

By: _____

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