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Sequence Number: 07-03-16  
 Notice ID(s): 2538-2541  
 File Date: 7/1/16

# Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

<b>Agency/Board/Commission:</b>	Tennessee Department of Human Services
<b>Division:</b>	Adult and Family Services
<b>Contact Person:</b>	Nicole Armstrong
<b>Address:</b>	Office of General Counsel Citizens Plaza Building, 15 <sup>th</sup> Floor 400 Deaderick Street Nashville, Tennessee, 37243-1403
<b>Phone:</b>	615-313-4731
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

<b>ADA Contact:</b>	Jeffrey Blackshear
<b>Address:</b>	Office of General Counsel Citizens Plaza Building, 15 <sup>th</sup> Floor 400 Deaderick Street Nashville, Tennessee 37243-1403
<b>Phone:</b>	615-313-4731
<b>Email:</b>	Jeffrey.Blackshear@tn.gov

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	Tennessee Tower Building, Conference Room M – 3rd Floor		
Address 2:	312 Rosa L. Parks Ave.		
City:	Nashville		
Zip:	37243		
Hearing Date :	Wednesday, August 24, 2016		
Hearing Time:	9:00 – 10:30 a.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	Tennessee Tower Building, Conference Room M – 3rd Floor		
Address 2:	312 Rosa L. Parks Ave.		
City:	Nashville		
Zip:	37243		
Hearing Date :	Wednesday, August 24, 2016		
Hearing Time:	5:30 – 7:00 p.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	One Commerce Square Building, Conference Room B – 5th Floor		
Address 2:	40 South Main St.		
City:	Memphis		
Zip:	38103		
Hearing Date :	Wednesday, August 24, 2016		
Hearing Time:	9:00 – 10:30 a.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	One Commerce Square Building, Conference Room B – 5th Floor	
Address 2:	40 South Main St.	
City:	Memphis	
Zip:	38103	
Hearing Date :	Wednesday, August 24, 2016	
Hearing Time:	5:30 – 7:00 p.m.	<input checked="" type="checkbox"/> CST/CDT <input type="checkbox"/> EST/EDT

Address 1:	Pellissippi State Community College, Training Room – 3rd Floor	
Address 2:	7201 Strawberry Plains Blvd.	
City:	Knoxville	
Zip:	37914	
Hearing Date :	Wednesday, August 24, 2016	
Hearing Time:	10:00 – 11:30 a.m.	<input type="checkbox"/> CST/CDT <input checked="" type="checkbox"/> EST/EDT

Address 1:	Pellissippi State Community College, Training Room – 3rd Floor	
Address 2:	7201 Strawberry Plains Blvd.	
City:	Knoxville	
Zip:	37914	
Hearing Date :	Wednesday, August 24, 2016	
Hearing Time:	6:30 – 8:00 p.m.	<input type="checkbox"/> CST/CDT <input checked="" type="checkbox"/> EST/EDT

Address 1:	Riverfront Building, Conference Room – 2nd Floor	
Address 2:	1301 Riverfront Pkwy	
City:	Chattanooga	
Zip:	37402	
Hearing Date :	Wednesday, August 24, 2016	
Hearing Time:	10:00 – 11:30 a.m.	<input type="checkbox"/> CST/CDT <input checked="" type="checkbox"/> EST/EDT

Address 1:	Riverfront Building, Conference Room – 2nd Floor	
Address 2:	1301 Riverfront Pkwy	
City:	Chattanooga	
Zip:	37402	
Hearing Date :	Wednesday, August 24, 2016	
Hearing Time:	6:30 – 8:00 p.m. (EST)	<input type="checkbox"/> CST/CDT <input checked="" type="checkbox"/> EST/EDT

**Additional Hearing Information:**

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**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
1240-04-01	Standards for Group Child Care Homes
Rule Number	Rule Title
1240-04-01-.02	Ownership and Administration
1240-04-01-.03	Staff
1240-04-01-.06	Health and Safety

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<b>Chapter Number</b>	<b>Chapter Title</b>
1240-04-02	Licensure Rules for Drop-In Child Care Centers
<b>Rule Number</b>	<b>Rule Title</b>
1240-04-02-.04	Ownership, Organization and Administration
1240-04-02-.05	Staff Requirements

<b>Chapter Number</b>	<b>Chapter Title</b>
1240-04-03	Licensure Rules for Child Care Centers
<b>Rule Number</b>	<b>Rule Title</b>
1240-04-03-.05	Ownership, Organization, and Administration
1240-04-03-.07	Staff

<b>Chapter Number</b>	<b>Chapter Title</b>
1240-04-04	Standards for Family Child Care Homes
<b>Rule Number</b>	<b>Rule Title</b>
1240-04-04-.02	Ownership and Administration
1240-04-04-.03	Staff
1240-04-04-.06	Health and Safety

Chapter 1240-04-01  
Standards for Group Child Care Homes  
**TRAINING REQUIREMENTS**

Amendments

Rule 1240-04-01-.02 Ownership and Administration is amended by deleting subparagraph (b) under paragraph (2) in its entirety, and substituting instead the following language; and, so that, as amended, paragraph (2), shall read as follows:

(2) Policies

- (a) A new primary caregiver shall complete in the presence of the Licensing Counselor the "Checklist of Services" or write out a Statement of Purpose.
- (b) A group child care home shall have written policies that include/address, at a minimum:
  1. Services offered;
  2. Written parental permission for observation of children by non-child care agency staff;
  3. Provision for children's individual needs;
  4. The home's admission policies and enrollment procedures;
  5. Rates;

6. Fees charged, including late fees (if applicable) and plan for payment;
7. Behavior management techniques;
8. Hours of operation;
9. Inclement weather;
10. Emergency policy;
11. Whether the environment is smoke free;
12. Meal service policy;
13. Handling of children's personal belongings;
14. If the agency provides transportation for children in the agency's care, the written statement required by 1240-04-01-.07(1)(a) describing transportation plans, procedures and equipment utilized in the transportation process and parental permission for trips away from facility; and
15. Expulsion of a child, which policy shall be:
  - (i). Clearly articulated to staff and parents;
  - (ii). Developmentally appropriate and consistent;
  - (iii). Non-discriminatory;
  - (iv). Other options shall be considered prior to expulsion, such as but not limited to reducing the number of days or amount of time the child may attend, or if applicable, referrals to the Center on the Social and Emotional Foundations for Early Learning (CSEFEL), Early Intervention System, Individuals with Disabilities Education Act (IDEA);
  - (v). Procedures shall be developed to allow for a planned transition of a child to another program if expulsion must occur; and
  - (vi). Aggregate data that includes reasons for expulsions shall be maintained and reported to the Department annually.

Rule 1240-04-01-.02 Ownership and Administration is amended by deleting subparagraph (b) and (c) under paragraph (3) in its entirety, and substituting instead the following language; and also inserting a new subparagraph (c) and renaming subsequent subparagraphs accordingly, so that, as amended, paragraph (3), shall read as follows:

(3) Enrollment of Children and Parent Involvement.

- (a) Children shall be at least six weeks of age before entering day care.
- (b) The agency shall not admit a child into care until the parent/guardian has supplied the agency with a completed application, valid Tennessee Department of Health Official Immunization Certificates record (for children over two (2) months of age), and a health history. Exception: After an initial eligibility determination, children who are homeless and/or children in state custody may receive care prior to providing all required documentation as determined by the Department. Care without documentation of immunizations shall not exceed thirty days. [See 4(e) below and Chapter 1240-04-01-.06.]

- (c) The agency shall maintain written documentation that the parent/guardian performed an on-site visit to the agency prior to the child being enrolled into care and that the agency provided and reviewed parent engagement strategies recognized by the Department with the parent during the required pre-placement visit. Exception: a pre-placement visit is not required for children of homeless families.
- (d) A parent handbook that includes a copy of the agency's policies, operating procedures, information on parent engagement, and the Department's Summary of Licensing Requirements shall be supplied to the parent(s) upon admission of the child. The agency's policies shall include:
  - 1. Criteria for the disenrollment of children [see expulsion policy requirements in 1240-04-01-.02 (b)(14)], and
  - 2. Specific criteria concerning the release of children to anyone whose behavior may place the children at immediate risk.
- (e) During normal hours of operation, parents shall be permitted access to their children, and ready access to all licensed areas of the home and premises shall be granted to Department representatives and inspection authorities (i.e., fire safety, sanitation, and health).
- (f) Parents must be informed in advance of the child's removal from the premises except in cases of emergencies or pursuant to investigative procedures conducted pursuant to the child abuse laws.

Rule 1240-04-01-.02 Ownership and Administration is amended by deleting subparagraph (f) under paragraph 4, and substituting instead the following language, and also adding a new subparagraph (g) under paragraph (4) so that, as amended, paragraph (4), subparagraph (g) shall read as follows:

- (f) A child's record shall be kept in a central location and shall be kept for one (1) year following the child's leaving the agency. Exception: The health record shall be returned to the parent/guardian upon request when the child leaves the agency.
- (g) All children, including related children younger than age nine (9), shall have required records on file before care is provided. Exception: After an initial eligibility determination, children of homeless families and/or children in state custody may receive care prior to providing required documentation as determined by the Department.

Rule 1240-04-01-.02 Ownership and Administration is amended by adding a new paragraph (8), so that, as amended, paragraph (8) shall read as follows:

- (8) Data Reporting. Agencies shall submit data as requested by the Department quarterly on topics such as but not limited to: active enrollment, homeless children, non-traditional hours, deaths/serious injuries, child abuse, English as a Second Language/dual language learners, and children with disabilities.

Authority: T.C.A. §§4-5-201 et seq., 4-5-202, 71-1-105, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), 71-3-502(a)(4)(B), and Acts 2000, ch. 981, §§ 3(a)(4) and 14.

Rule 1240-04-01-.03 Staff is amended by deleting part 5 under subparagraph (a), paragraph (1) in its entirety, and substituting instead the following language, so that, as amended, paragraph (1), subparagraph (a), part 5, shall read as follows:

#### 5. Training of Employees

- (i) Training of New Employees - Prior to assuming duties, each new employee shall receive documented instruction in and have a working knowledge of:

- (I) Program philosophy and policies;
  - (II) Job description;
  - (III) Emergency health and safety procedures;
  - (IV) Behavior management procedures;
  - (V) Detection, reporting, and prevention of child abuse;
  - (VI) Procedures for receiving and releasing children;
  - (VII) Safe sleep procedures;
  - (VIII) Shaken baby syndrome/abusive head trauma;
  - (IX) Meal service and safe food preparation policies;
  - (X) Supervision during high risk activities such as eating and outdoor play;
  - (XI) Food allergies;
  - (XII) Expectations for communications with parent/guardian;
  - (XIII) Disease control and health promotion;
  - (XIV) An overview of licensing requirements;
  - (XV) Information on risks of Cytomegalovirus (CMV) to female employees of childbearing age;
  - (XVI) A minimum of two (2) hours pre-service training as recognized by the Department; and
  - (XVII) Documentation of the requirements in this subparagraph (i) shall be maintained in the staff file.
- (ii) Ongoing Training Requirements – any ongoing training required for employees shall include health and safety topics, such as but not limited to:
- (I) Prevention and control of infectious diseases (including immunization);
  - (II) Prevention of sudden infant death syndrome and use of safe sleeping practices;
  - (III) Administration of medication, consistent with standards for parental consent;
  - (IV) Prevention of and response to emergencies due to food and allergic reactions;
  - (V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
  - (VI) Prevention of shaken baby syndrome and abusive head trauma;
  - (VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a),
  - (VIII) Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

- (IX) Precautions in transporting children (if applicable); and
- (X) First aid and cardiopulmonary resuscitation.

Rule 1240-04-01-.03 Staff is amended by deleting part 6 under subparagraph (a), paragraph (1) in its entirety, and substituting instead the following language, so that, as amended, paragraph (1), subparagraph (a), part 6, shall read as follows:

6. Criminal history and abuse registry background checks; appeals; exemptions.

- (i) The following persons are required to have a background check no more than ninety (90) days before having access to any child care agency:
  - (I) Any person who owns or operates a child care agency and will have significant contact with children;
  - (II) Any person who applies to work in a child care agency as an employee, director or manager;
  - (III) Any person who will provide substitute services to a child care agency for more than thirty-six (36) hours in a calendar year and who is counted in the adult: child ratio; and
  - (IV) Any person who is fifteen (15) years of age or older who will reside in a child care agency.
- (ii) New background checks are required for all staff and residents when an agency moves from one class of care to another, such as when a family home becomes a group home or when an agency is sold and staff remain employed by the new owner or any time an agency is issued a license that is not the renewal of an existing license. Exception: Does not apply to background checks completed within the last ninety (90) days.
- (iii) Background checks are required for all staff at least every five (5) years.
- (iv) Requirements for Disclosure of Criminal/Juvenile and State Register History and Fingerprinting.
  - (I) The individuals identified in subparagraph (1)(a) above shall:
    - I. Complete a criminal/juvenile/administrative findings history disclosure form;
    - II. Submit fingerprint samples for a criminal and juvenile records background check; and
    - III. Complete a criminal, juvenile background check/state review consisting of:
      - A. An investigation of a person's criminal background history by the Tennessee Bureau of Investigation (TBI) and through the Federal Bureau of Investigation's (FBI) national database;
      - B. An investigation of a person's juvenile records history that is available to the TBI;
      - C. A review of any available juvenile court records, if determined necessary by DHS;
      - D. A search of the vulnerable persons registry (VPR), maintained by the Tennessee Department of Health;

- E. A search of the TN sexual offender registry (SOR), maintained by the TBI; and
  - F. A search of the DCS registry of indicated perpetrators of abuse or neglect of children.
  - G. A search of any state or federal registries required by the Child Care and Development Block Grant Act.
- (v) Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Children Prior to Completion of Criminal History Review.
- (I) A child care agency, substitute pool, or staffing agency shall be responsible for registration of persons required to have a background check. The responsible entity shall ensure that the process is completed prior to employment.
  - (II) A child care agency may not permit any person who is required to have a background check to assume any role or to have access to children until the agency receives written verification from the Department that the person is cleared to work/reside in the agency.
  - (III) Failure to Complete or Disclose Information on Criminal Disclosure Form.
    - I. Failure to properly complete all sections of the Criminal/Administrative History Disclosure Form shall result in the individual being prohibited from assuming any position for which a background review is required.
    - II. Failure to disclose all criminal and administrative history information may result in the person being:
      - A. Excluded by the Department from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and
      - B. Referred to the appropriate district attorney for criminal prosecution.
  - (IV) The Department will pay for the costs of performing one background check per person per agency per year.
  - (V) The child care agency shall be responsible for costs associated with the background check if:
    - I. The fingerprint sample is rejected and the fingerprint sample must be resubmitted;
    - II. The agency submits a second fingerprint sample for an individual when the initial background check has not been completed; or
    - III. The agency submits a fingerprint sample for a purpose unrelated to obtaining approval for a prospective employee, volunteer, etc. to have access to child care.
- (vi) Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Children.
- (I) No person shall be employed, be a licensee or operator or, provide substitute services, reside, or have any access to children in a child care agency if the criminal background check identifies an excludable criminal offense for which the person has:

- I. Been convicted of, pled guilty or no contest to (or to a lesser included offense);
  - II. Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or
  - II. Been named in a pending warrant, indictment, presentment, or petition.
- (II) An excludable criminal offense involves:
- I. The physical, sexual or emotional abuse or neglect of a child;
  - II. A crime of violence against a child, or any person;
  - III. Any offense, including a lesser included offense, involving the manufacture, sale, distribution or possession of any drug; or
  - IV. Any offense that presents a threat to the health, safety or welfare of children.
  - V. The criminal offenses for which a person will be excluded from a child care agency include but are not limited to the following offenses as well as their lesser included offenses (even if not listed here):
    - A. Aggravated arson (T.C.A. § 39-14-302);
    - B. Aggravated assault (T.C.A. § 39-13-102);
    - C. Aggravated child abuse (T.C.A. § 39-15-402);
    - D. Aggravated child neglect (T.C.A. § 39-15-402);
    - E. Aggravated cruelty to animals (T.C.A. § 39-14-212);
    - F. Aggravated kidnapping (T.C.A. § 39-13-304);
    - G. Aggravated rape (T.C.A. § 39-13-502);
    - H. Aggravated rape of a child (T.C.A. § 39-13-531);
    - I. Aggravated robbery (T.C.A. § 39-13-402);
    - J. Aggravated sexual battery (T.C.A. § 39-13-504);
    - K. Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);
    - L. Aggravated vehicular homicide (T.C.A. § 39-13-218);
    - M. Arson (T.C.A. § 39-14-301);
    - N. Assault (T.C.A. § 39-13-101);
    - O. Carjacking (T.C.A. § 39-13-404);
    - P. Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);
    - Q. Criminal attempt, under T.C.A. § 39-12-101, to commit any criminal offense that requires exclusion from child care;
    - R. Criminal exposure to HIV (T.C.A. § 39-13-109);
    - S. Criminal homicide (T.C.A. § 39-13-201);

- T. Criminally negligent homicide (T.C.A. § 39-13-212);
- U. Cruelty to Animals (T.C.A § 39-14-202);
- V. Custodial interference (T.C.A. § 39-13-306);
- W. Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);
- X. Domestic assault (T.C.A. § 39-13-111);
- Y. Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);
- Z. Especially aggravated burglary (T.C.A. § 39-14-404);
- AA. Especially aggravated kidnapping (T.C.A. § 39-13-305);
- BB. Especially aggravated robbery (T.C.A. § 39-13-403);
- CC. Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);
- DD. Exploitation of a minor by electronic means (T.C.A. § 39-13-529);
- EE. False imprisonment (T.C.A. § 39-13-302);
- FF. First degree murder (T.C.A. § 39-13-202);
- GG. Incest (T.C.A. § 39-13-302);
- HH. Indecent exposure (T.C.A. § 39-13-511);
- II. Involuntary labor servitude (T.C.A. § 39-13-307);
- JJ. Kidnapping (T.C.A. § 39-13-105);
- KK. Rape (T.C.A. § 39-13-503);
- LL. Rape of a child (T.C.A. § 39-13-522);
- MM. Reckless endangerment (T.C.A. § 39-13-103);
- NN. Reckless homicide (T.C.A. § 39-13-215);
- OO. Robbery (T.C.A. § 39-13-401);
- PP. Second degree murder (T.C.A. § 39-13-210);
- QQ. Sexual battery (T.C.A. § 39-13-505);
- RR. Sexual battery by an authority figure (T.C.A. § 39-13-527);
- SS. Sexual exploitation of a minor (T.C.A. § 39-17-1003);
- TT. Solicitation of a minor (T.C.A. § 39-13-528);
- UU. Stalking (T.C.A. § 39-17-315);
- VV. Statutory rape (T.C.A. § 39-13-506);

- WW. Statutory rape by an authority figure (T.C.A. § 39-13-532);
- XX. Trafficking a person for sexual servitude (T.C.A. § 39-13-309);
- YY. Vehicular assault (T.C.A. § 39-13-106);
- ZZ. Vehicular assault while intoxicated (T.C.A. § 39-13-106);
- AAA. Vehicular homicide (T.C.A. § 39-13-213);
- BBB. Voluntary manslaughter (T.C.A. § 39-13-211); and
- CCC. Weapons offenses (unlawful possession, carrying, use, etc.).

(III) No person may be employed as a driver or serve as a driver for a child care agency if the person:

- I. Is currently charged with; or
- II. Has been convicted of, or pled guilty, within the last five (5) years to any of the following criminal offenses:
  - A. Vehicular homicide;
  - B. Accidents involving death or personal injury;
  - C. Accidents involving damage to a vehicle;
  - D. Driving under the influence of an intoxicant, drug or drug producing stimulant; or
  - E. Any felony involving the use of a motor vehicle while under the use of any intoxicant.

(vii) Exclusion from access to child care based on a listing on a state registry.

(I) No person shall be employed, be a licensee or operator, provide substitute services, reside, or have any access to children in a child care agency if the results of the state registry review identify the person as being:

- I. Listed on the Vulnerable Persons Registry;
- II. Listed on the Sexual Offender Registry; or
- III. Indicated in the records of the Department of Children's Services as a perpetrator of abuse or neglect of a child.

(viii) Supplemental Background Checks Subsequent to Licensing, Employment or Residence in a Child Care Agency.

(I) The Department may, at any time, require a new background check of any individual with access to children in a child care agency.

- I. For an individual who was not subject to a background check prior to assuming a role, the individual's existing status in their role shall be conditional upon the satisfactory outcome of any requested background check.

(ix) Any person who is excluded shall remain excluded pending the outcome of any appeals or waiver review or any determination that the basis for exclusion no longer exists.

- (x) An individual will also be excluded if a criminal or juvenile proceeding, registry or administrative background review requiring exclusion or any other provision of law is discovered and verified in any manner.
- (xi) If a child care agency, substitute pool or staffing agency receives information from a source other than the Department that requires them to exclude an employee, substitute, volunteer, or resident they shall immediately exclude the person from any access to children and notify the Department on the same business day by calling the child and adult care complaint hotline.
- (xii) The exclusion of such persons from access to child care shall be conducted pursuant to T.C.A. §71-3-507 and this rule.
- (xiii) Failure of a child care agency to perform the required background check before allowing a person access to child care or to immediately exclude individuals with a criminal history or state registry review status that requires exclusion, shall be the basis for the immediate suspension, denial or revocation of the child care agency's license.

Authority: T.C.A. §§4-5-201 et seq., 4-5-202, 71-1-105, 71-3-501 et seq., 71-3-502(a)(2), 71-3-508(c), Acts 2000, ch. 981, §§ 8 and 14, and Acts 2003, ch. 412, § 2, Acts 2016, ch. 839.

Rule 1240-04-01-.06 Health and Safety is amended by adding a new part 3 under subparagraph (g), paragraph (1), so that as amended, paragraph (1), subparagraph (g) shall read as follows:

- (g) Exceptions to the above requirements in this section shall be made when:
  1. The child's physician or the Department of Health provides a signed and dated statement, giving a medical reason why the child should not be given a specified immunization; or
  2. The child's parent provides a written statement that such immunizations conflict with his/her religious tenets and practices, or
  3. Care for children of homeless families and/or children in state custody is needed before documentation of immunizations can be confirmed. Care without documentation of immunizations shall not exceed thirty days.

Authority: T.C.A. §§71-1-105(12), 71-3-501 et seq., and 37-1-603(b)(1)(A).

Amendments

Rule 1240-04-02-.04 Ownership, Organization and Administration is amended by deleting subparagraph (a) under paragraph (4) in its entirety, and substituting instead the following language, so that, as amended, paragraph (4), subparagraph (a) shall read as follows:

(a) Children's Records.

1. Each child shall have a record containing the following information:
  - (i) A current information form which includes the child's name, date of birth, name of parent(s), child's and parents' home address(es), emergency contact numbers (e.g., home, work, cell phone, pager, etc., as applicable), and the name and address (home and business or school) of a responsible person to contact in an emergency if the parent(s) cannot be located promptly;
  - (ii) Name, address, and telephone number of a physician to call in case of an emergency;
  - (iii) Written consent of parent(s) regarding emergency medical care;
  - (iv) A child release plan stating to whom the child shall be released and a clear policy concerning the release of child(ren) to anyone whose behavior may place the child(ren) in immediate risk;
  - (v) A signed statement from the parent or guardian verifying that the child or children are in good health and current with immunizations; and
  - (vi) Daily attendance records for each child.
2. A child's records shall be maintained in a central location within the agency and shall be kept by the drop-in center for one (1) year following the child's being disenrolled from the center. Exception: The health record shall be returned to the parent/guardian upon request when the child leaves the agency.
3. All children, including related children younger than age nine (9), shall have required records on file before care is provided. Exception: After an initial eligibility determination, children of homeless families and/or children in state custody may receive care prior to providing required documentation as determined by the Department.
4. Immunization Record Requirements. The agency shall have a Tennessee Department of Health Official Immunization Certificate before accepting any child age two months or older into care.
  - (i) Exceptions to immunization record requirements may be made only if:
    - (I) A signed and dated statement from the child's physician or the Health department stating the child should not be given a specified immunization; or
    - (II) A signed written statement from child's parent/guardian that immunizations conflict with his/her religious tenets and practices.
    - (III) Care for children of homeless families and/or children in state custody is needed before documentation of immunizations can be confirmed. Care without documentation of immunizations shall not exceed thirty days.

1240-04-02-.04 Ownership, Organization and Administration is amended by deleting subparagraph (a) under paragraph (6) in its entirety, and substituting instead the following language, and also adding a new subparagraph (g) and (h) under paragraph (6) so that, as amended, paragraph (6) shall read as follows:

- (a) Before accepting a child for care, the parent or guardian shall register the child by providing:
  - 1. The agency shall not admit a child into care until the parent/guardian has supplied the agency with a completed application, valid Tennessee Department of Health Official Immunization Certificates record (for children over two (2) months of age), and a health history. Exception: After an initial eligibility determination, children who are homeless and/or children in state custody may receive care prior to providing all required documentation as determined by the Department. Care without documentation of immunizations shall not exceed thirty days.
  - 2. A statement regarding the estimated amount of time that the parent anticipates that the child will be in attendance at the drop-in center.
- (b) A child shall be at least six (6) weeks old before being accepted in a drop-in center.
- (c) No child shall be accepted into child care in excess of the maximum allowable hours as set forth in paragraph 1240-04-02-.02(15). The drop-in center shall maintain and make available to the Department attendance records verifying that no child receives care in excess of the maximum allowable hours.
- (d) The drop-in center shall make the licensure rules for drop-in care available to parents of children enrolled.
- (e) During normal operating hours, parents shall be permitted immediate access to their children, and ready access to all areas of the child care facility shall be granted Department representatives and inspection authorities (i.e., fire safety, sanitation, and health).
- (f) Parents shall be informed in advance of the child's removal from the premises except in cases of emergencies or removal by the Department of Children's Services or a law enforcement agency pursuant to law.
- (g) The agency shall maintain written documentation that the parent/guardian performed an on-site visit to the agency prior to the child being enrolled into care and that the agency provided and reviewed parent engagement strategies recognized by the Department with the parent during the required pre-placement visit. Exception: a pre-placement visit is not required for children of homeless families.
- (h) A parent handbook that includes a copy of the agency's policies, operating procedures, information on parent engagement, and the Department's Summary of Licensing Requirements shall be supplied to the parent(s) upon admission of the child.

Rule 1240-04-02-.04 Ownership, Organization and Administration is amended by a new paragraph (9) so that, as amended, paragraph (9) shall read as follows:

- (9) Data Reporting. Agencies shall submit data as requested by the Department quarterly on topics such as but not limited to: active enrollment, homeless children, non-traditional hours, deaths/serious injuries, child abuse, English as a Second Language/dual language learners, and children with disabilities.

Rule 1240-04-02-.04 Ownership, Organization and Administration is amended by a new paragraph (10) so that, as amended, paragraph (10) shall read as follows:

- (10) The agency's policies shall include/address, at a minimum:
  - (a) Criteria for the disenrollment of children [see expulsion policy requirements in 1240-04-02-.04(10)(l)];

- (b) Specific criteria concerning the release of children; includes responsibility until signed out;
- (c) Written parental permission for observation of children by non-child care agency staff;
- (d) Behavior management techniques;
- (e) Hours of operation;
- (f) Late fees;
- (g) Rates;
- (h) Inclement weather;
- (i) Emergency policy;
- (j) Whether the environment is smoke free;
- (k) Meal Service policy; and
- (l) Expulsion of a child, which policy shall be:
  - 1. Clearly articulated to staff and parents;
  - 2. Developmentally appropriate and consistent;
  - 3. Non-discriminatory;
  - 4. Other options shall be considered prior to expulsion, such as but not limited to reducing the number of days or amount of time the child may attend, or if applicable, referrals to the Center on the Social and Emotional Foundations for Early Learning (CSEFEL), Early Intervention System, Individuals with Disabilities Education Act (IDEA);
  - 5. Procedures shall be developed to allow for a planned transition of a child to another program if expulsion must occur; and
  - 6. Aggregate data that includes reasons for expulsions shall be maintained and reported to the Department annually.

Rule 1240-04-02-.05 Staff Requirements is amended by deleting subparagraph (e) under paragraph (1) in its entirety, and substituting instead the following language, so that, as amended, paragraph (1), subparagraph (e) shall read as follows:

- (e) Criminal Background Check and State Registry/Records Review Procedures.
  - 1. Criminal Background and Abuse Registry Disclosures and Reviews; Fingerprinting Requirements.
    - (i) The following persons are required to have a background check no more than ninety (90) days before having access to any child care agency:
      - (I) Any person who owns or operates a child care agency and will have significant contact with children;
      - (II) Any person who applies to work in a child care agency as an employee, director or manager;

- (III) Any person who will provide substitute services to a child care agency for more than thirty-six (36) hours in a calendar year and who is counted in the adult: child ratio; and
  - (IV) Any person who is fifteen (15) years of age or older who will reside in a child care agency.
    - (ii) New background checks are required for all staff and residents when an agency moves from one class of care to another, such as when a family home becomes a group home or when an agency is sold and staff remain employed by the new owner or any time an agency is issued a license that is not the renewal of an existing license. Exception: Does not apply to background checks completed within the last ninety (90) days.
    - (iii) Background checks are required for all staff at least every five (5) years.
    - (iv) Requirements for Disclosure of Criminal/Juvenile and State Register History and Fingerprinting.
      - (I) The individuals identified in subparagraph (1)(a) above shall:
        - I. Complete a criminal/juvenile/administrative findings history disclosure form;
        - II. Submit fingerprint samples for a criminal and juvenile records background check; and
        - III. Complete a criminal, juvenile background check/state review consisting of:
          - A. An investigation of a person's criminal background history by the Tennessee Bureau of Investigation (TBI) and through the Federal Bureau of Investigation's (FBI) national database;
          - B. An investigation of a person's juvenile records history that is available to the TBI;
          - C. A review of any available juvenile court records, if determined necessary by DHS;
          - D. A search of the vulnerable persons registry (VPR), maintained by the Tennessee Department of Health;
          - E. A search of the TN sexual offender registry (SOR), maintained by the TBI; and
          - F. A search of the DCS registry of indicated perpetrators of abuse or neglect of children.
          - G. A search of any state or federal registries required by the Child Care and Development Block Grant Act.
2. Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Children Prior to Completion of Criminal History Review.
- (i) A child care agency, substitute pool, or staffing agency shall be responsible for registration of persons required to have a background check. The responsible entity shall ensure that the process is completed prior to employment.

- (ii) A child care agency may not permit any person who is required to have a background check to assume any role or to have access to children until the agency receives written verification from the Department that the person is cleared to work/reside in the agency.
  - (iii) Failure to Complete or Disclose Information on Criminal Disclosure Form.
    - (I) Failure to properly complete all sections of the Criminal/Administrative History Disclosure Form shall result in the individual being prohibited from assuming any position for which a background review is required.
    - (II) Failure to disclose all criminal and administrative history information may result in the person being:
      - I. Excluded by the Department from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and
      - II. Referred to the appropriate district attorney for criminal prosecution.
  - (iv) The Department will pay for the costs of performing one background check per person per agency per year.
  - (v) The child care agency shall be responsible for costs associated with the background check if:
    - (I) The fingerprint sample is rejected and the fingerprint sample must be resubmitted;
    - (II) The agency submits a second fingerprint sample for an individual when the initial background check has not been completed; or
    - (III) The agency submits a fingerprint sample for a purpose unrelated to obtaining approval for a prospective employee, volunteer, etc. to have access to child care.
3. Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Children.
- (i) No person shall be employed, be a licensee or operator or, provide substitute services, reside, or have any access to children in a child care agency if the criminal background check identifies an excludable criminal offense for which the person has:
    - (I) Been convicted of, pled guilty or no contest to (or to a lesser included offense);
    - (II) Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or
    - (III) Been named in a pending warrant, indictment, presentment, or petition.
  - (ii) An excludable criminal offense involves:
    - (I) The physical, sexual or emotional abuse or neglect of a child;
    - (II) A crime of violence against a child, or any person;

- (III) Any offense, including a lesser included offense, involving the manufacture, sale, distribution or possession of any drug; or
- (IV) Any offense that presents a threat to the health, safety or welfare of children.
- (V) The criminal offenses for which a person will be excluded from a child care agency include but are not limited to the following offenses as well as their lesser included offenses (even if not listed here):
  - I. Aggravated arson (T.C.A. § 39-14-302);
  - II. Aggravated assault (T.C.A. § 39-13-102);
  - III. Aggravated child abuse (T.C.A. § 39-15-402);
  - IV. Aggravated child neglect (T.C.A. § 39-15-402);
  - V. Aggravated cruelty to animals (T.C.A. § 39-14-212);
  - VI. Aggravated kidnapping (T.C.A. § 39-13-304);
  - VII. Aggravated rape (T.C.A. § 39-13-502);
  - VIII. Aggravated rape of a child (T.C.A. § 39-13-531);
  - IX. Aggravated robbery (T.C.A. § 39-13-402);
  - X. Aggravated sexual battery (T.C.A. § 39-13-504);
  - XI. Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);
  - XII. Aggravated vehicular homicide (T.C.A. § 39-13-218);
  - XIII. Arson (T.C.A. § 39-14-301);
  - XIV. Assault (T.C.A. § 39-13-101);
  - XV. Carjacking (T.C.A. § 39-13-404);
  - XVI. Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);
  - XVII. Criminal attempt, under T.C.A. § 39-12-101, to commit any criminal offense that requires exclusion from child care;
  - XVIII. Criminal exposure to HIV (T.C.A. § 39-13-109);
  - XIX. Criminal homicide (T.C.A. § 39-13-201);
  - XX. Criminally negligent homicide (T.C.A. § 39-13-212);
  - XXI. Cruelty to Animals (T.C.A. § 39-14-202);
  - XXII. Custodial interference (T.C.A. § 39-13-306);
  - XXIII. Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);
  - XXIV. Domestic assault (T.C.A. § 39-13-111);

- XXV. Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);
- XXVI. Especially aggravated burglary (T.C.A. § 39-14-404);
- XXVII. Especially aggravated kidnapping (T.C.A. § 39-13-305);
- XXVIII. Especially aggravated robbery (T.C.A. § 39-13-403);
- XXIX. Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);
- XXX. Exploitation of a minor by electronic means (T.C.A. § 39-13-529);
- XXXI. False imprisonment (T.C.A. § 39-13-302);
- XXXII. First degree murder (T.C.A. § 39-13-202);
- XXXIII. Incest (T.C.A. § 39-13-302);
- XXXIV. Indecent exposure (T.C.A. § 39-13-511);
- XXXV. Involuntary labor servitude (T.C.A. § 39-13-307);
- XXXVI. Kidnapping (T.C.A. § 39-13-105);
- XXXVII. Rape (T.C.A. § 39-13-503);
- XXXVIII. Rape of a child (T.C.A. § 39-13-522);
- XXXIX. Reckless endangerment (T.C.A. § 39-13-103);
- XL. Reckless homicide (T.C.A. § 39-13-215);
- XLI. Robbery (T.C.A. § 39-13-401);
- XLII. Second degree murder (T.C.A. § 39-13-210);
- XLIII. Sexual battery (T.C.A. § 39-13-505);
- XLIV. Sexual battery by an authority figure (T.C.A. § 39-13-527);
- XLV. Sexual exploitation of a minor (T.C.A. § 39-17-1003);
- XLVI. Solicitation of a minor (T.C.A. § 39-13-528);
- XLVII. Stalking (T.C.A. § 39-17-315);
- XLVIII. Statutory rape (T.C.A. § 39-13-506);
- XLIX. Statutory rape by an authority figure (T.C.A. § 39-13-532);
- L. Trafficking a person for sexual servitude (T.C.A. § 39-13-309);
- LI. Vehicular assault (T.C.A. § 39-13-106);
- LII. Vehicular assault while intoxicated (T.C.A. § 39-13-106);
- LIII. Vehicular homicide (T.C.A. § 39-13-213);
- LIV. Voluntary manslaughter (T.C.A. § 39-13-211); and

- LV. Weapons offenses (unlawful possession, carrying, use, etc.).
- (iii) No person may be employed as a driver or serve as a driver for a child care agency if the person:
  - (I) Is currently charged with; or
  - (II) Has been convicted of, or pled guilty, within the last five (5) years to any of the following criminal offenses:
    - I. Vehicular homicide;
    - II. Accidents involving death or personal injury;
    - III. Accidents involving damage to a vehicle;
    - IV. Driving under the influence of an intoxicant, drug or drug producing stimulant; or
    - V. Any felony involving the use of a motor vehicle while under the use of any intoxicant.
- 4. Exclusion from access to child care based on a listing on a state registry.
  - (i) No person shall be employed, be a licensee or operator, provide substitute services, reside, or have any access to children in a child care agency if the results of the state registry review identify the person as being:
    - (I) Listed on the Vulnerable Persons Registry;
    - (II) Listed on the Sexual Offender Registry; or
    - (III) Indicated in the records of the Department of Children's Services as a perpetrator of abuse or neglect of a child.
- 5. Supplemental Background Checks Subsequent to Licensing, Employment or Residence in a Child Care Agency.
  - (i) The Department may, at any time, require a new background check of any individual with access to children in a child care agency.
    - (I) For an individual who was not subject to a background check prior to assuming a role, the individual's existing status in their role shall be conditional upon the satisfactory outcome of any requested background check.
- 6. Any person who is excluded shall remain excluded pending the outcome of any appeals or waiver review or any determination that the basis for exclusion no longer exists.
- 7. An individual will also be excluded if a criminal or juvenile proceeding, registry or administrative background review requiring exclusion or any other provision of law is discovered and verified in any manner.
- 8. If a child care agency, substitute pool or staffing agency receives information from a source other than the Department that requires them to exclude an employee, substitute, volunteer, or resident they shall immediately exclude the person from any access to children and notify the Department on the same business day by calling the child and adult care complaint hotline.

9. The exclusion of such persons from access to child care shall be conducted pursuant to T.C.A. § 71-3-507 and this rule.
10. Failure of a child care agency to perform the required background check before allowing a person access to child care or to immediately exclude individuals with a criminal history or state registry review status that requires exclusion, shall be the basis for the immediate suspension, denial or revocation of the child care agency's license.

Authority: T.C.A. §§4-5-202,71-1-105(5) and (12), 71-3-501 et seq., 71-3-501(8), and 71-3-502(a)(2), Acts 2016, ch. 839.

Rule 1240-04-02-.05 Staff Requirements is amended by deleting subparagraph (f) under paragraph (2) in its entirety, and substituting instead the following language, so that, as amended, paragraph (2), subparagraph (f) shall read as follows:

(f) Training of New Employees

1. Prior to assuming duties, each new employee shall receive documented instruction in and have a working knowledge of:
  - (i) Program philosophy and policies;
  - (ii) Job description;
  - (iii) Emergency health and safety procedures;
  - (iv) Behavior management procedures;
  - (v) Detection, reporting, and prevention of child abuse;
  - (vi) Procedures for receiving and releasing children;
  - (vii) Safe sleep procedures;
  - (viii) Shaken baby syndrome/abusive head trauma;
  - (ix) Meal service and safe food preparation policies;
  - (x) Supervision during high risk activities such as eating and outdoor play;
  - (xi) Food allergies;
  - (xii) Expectations for communications with parent/guardian;
  - (xiii) Disease control and health promotion;
  - (xiv) An overview of licensing requirements;
  - (xv) Information on risks of Cytomegalovirus (CMV) to female employees of childbearing age;
  - (xvi) A minimum of two (2) hours pre-service training as recognized by the Department; and
  - (xvii) Documentation of the requirements in this subparagraph (f) shall be maintained in the staff file.

Rule 1240-04-02-.05 05 Staff Requirements is amended by adding a new subparagraph (g) under paragraph (2) in its entirety, and substituting instead the following language, so that, as amended, paragraph (2), subparagraph (g) shall read as follows:

- (g) Ongoing Training Requirements – any ongoing training required for employees shall include health and safety topics, such as but not limited to:
1. Prevention and control of infectious diseases (including immunization);
  2. Prevention of sudden infant death syndrome and use of safe sleeping practices;
  3. Administration of medication, consistent with standards for parental consent;
  4. Prevention of and response to emergencies due to food and allergic reactions;
  5. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
  6. Prevention of shaken baby syndrome and abusive head trauma;
  7. Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);
  8. Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;
  9. Precautions in transporting children (if applicable); and
  10. First aid and cardiopulmonary resuscitation.

Chapter 1240-04-03  
Licensure Rules for Child Care Centers

Amendments

Rule 1240-04-03-.05 Ownership, Organization, and Administration is amended by deleting subparagraphs (d) and (f) under paragraph (5) in their entireties, and substituting instead the following language, so that, as amended, paragraph (5), subparagraphs (d) and (f) shall read as follows:

- (d) The agency shall not admit a child into care until the parent/guardian has supplied the agency with a completed application, valid Tennessee Department of Health Official Immunization Certificates record (for children over two (2) months of age), and a health history. Exception: After an initial eligibility determination, children who are homeless and/or children in state custody may receive care prior to providing all required documentation as determined by the Department. Care without documentation of immunizations shall not exceed thirty days.
- (f) The agency shall maintain written documentation that the parent/guardian performed an on-site visit to the agency prior to the child being enrolled into care and that the agency provided and reviewed parent engagement strategies recognized by the Department with the parent during the required pre-placement visit. Exception: A pre-placement visit is not required for children of homeless families.

Rule 1240-04-03-.05 Ownership, Organization, and Administration is amended by deleting part (1) under subparagraph (a), paragraph (6), in its entirety, and substituting instead the following language, so that, as amended, paragraph (6), subparagraph (a) shall read as follows:

- (a) A copy of the agency's policies, procedures, and the Department's Summary of Licensing Requirements shall be supplied to the parent/ upon admission of the child. The agency's policies shall include:
  - 1. Criteria for the disenrollment of children [see expulsion policy requirements in 1240-04-03-.05(13)];
  - 2. Specific criteria concerning the release of children to anyone whose behavior may place the children at immediate risk;
  - 3. Written parental permission for observation of children by non-child care agency staff;
  - 4. Behavior management techniques;
  - 5. Hours of operation;
  - 6. Late fees;
  - 7. Rates;
  - 8. Inclement weather;
  - 9. Emergency policy;
  - 10. Whether the environment is smoke free; and
  - 11. Meal Service policy.

Rule 1240-04-03-.05 Ownership, Organization, and Administration is amended by adding a new subparagraph (d) under paragraph (7), so that, as amended, paragraph (7), subparagraph (d) shall read as follows:

- (d) All children, including related children younger than age nine (9), shall have required records on file before care is provided. Exception: After an initial eligibility determination, children of

homeless families and/or children in state custody may receive care prior to providing required documentation as determined by the Department.

Rule 1240-04-03-.05 Ownership, Organization, and Administration is amended by adding a new item (III) under subpart (ii), part 9, subparagraph (a), paragraph (8), so that, as amended, paragraph (8), subparagraph (a), part 9, subpart (ii) shall read as follows:

- (ii) Exceptions to this immunization record requirement may be made only if:
  - (I) The child's physician or the health department provides a signed and dated statement, giving a medical reason why the child should not be given a specified immunization; or
  - (II) The child's parent provides a signed written statement that such immunizations conflict with his/her religious tenets and practices; or
  - (III) Care for children of homeless families and/or children in state custody is needed before documentation of immunizations can be confirmed. Care without documentation of immunizations for such children shall not exceed thirty days.

Rule 1240-04-03-.05 Ownership, Organization, and Administration is amended by adding a new paragraph (13), so that, as amended, paragraph (13) shall read as follows:

- (13) The agency shall have a written expulsion policy.
  - (a) The policy shall be:
    - 1. Clearly articulated to staff and parents;
    - 2. Developmentally appropriate and consistent; and
    - 3. Non-discriminatory.
  - (b) Other options shall be considered prior to expulsion, such as but not limited to reducing the number of days or amount of time the child may attend, or if applicable, referrals to the Center on the Social and Emotional Foundations for Early Learning (CSEFEL), Early Intervention System, Individuals with Disabilities Education Act (IDEA).
  - (c) Procedures shall be developed to allow for a planned transition of a child to another program if expulsion must occur.
  - (d) Aggregate data that includes reasons for expulsions shall be maintained and reported to the Department annually.

Rule 1240-04-03-.05 Ownership, Organization, and Administration is amended by adding a new paragraph (14), so that, as amended, paragraph (14) shall read as follows:

- (14) Data Reporting. Agencies shall submit data as requested by the Department quarterly on topics such as but not limited to: active enrollment, homeless children, non-traditional hours, deaths/serious injuries, child abuse, English as a Second Language/dual language learners, and children with disabilities.

Authority: T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., and 71-3-502(a)(2), Acts 2016, ch. 839.

Rule 1240-04-03-.07 Staff is amended by deleting subparagraph (e) under paragraph (2) in its entirety, and substituting instead the following language, so that, as amended, paragraph (2), subparagraph (e), shall read as follows:

- (e) Prior to assuming duties, each new employee shall receive documented instruction in, and have a working knowledge of:

1. Program philosophy and policies;
2. Job description;
3. Emergency health and safety procedures;
4. Behavior management procedures;
5. Detection, reporting, and prevention of child abuse;
6. Procedures for receiving and releasing children;
7. Safe sleep procedures;
8. Shaken baby syndrome/abusive head trauma;
9. Meal service and safe food preparation policies;
10. Supervision during high risk activities such as eating and outdoor play;
11. Food allergies;
12. Expectations for communications with parent/guardian;
13. Disease control and health promotion;
14. An overview of licensing requirements;
15. Information on risks of Cytomegalovirus (CMV) to female employees of childbearing age;
16. A minimum of two (2) hours pre-service training as recognized by the Department; and
17. Documentation of the requirements in this subparagraph (h) shall be maintained in the staff file.

Rule 1240-04-03-.07 Staff is amended by adding a new subparagraph (g) under paragraph (2) and renumber subsequent paragraphs accordingly, so that, as amended, paragraph (2), subparagraph (g), shall read as follows:

- (g) Ongoing Training Requirements – any ongoing training required for employees shall include health and safety topics, such as but not limited to:
1. Prevention and control of infectious diseases (including immunization);
  2. Prevention of sudden infant death syndrome and use of safe sleeping practices;
  3. Administration of medication, consistent with standards for parental consent;
  4. Prevention of and response to emergencies due to food and allergic reactions;
  5. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic,
  6. Prevention of shaken baby syndrome and abusive head trauma,
  7. Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a),

8. Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;
9. Precautions in transporting children (if applicable); and
10. First aid and cardiopulmonary resuscitation.

Rule 1240-04-03-.07 Staff is amended by deleting paragraph (9) in its entirety, and substituting instead the following language, so that, as amended, paragraph (9) shall read as follows:

(9) Criminal Background Check and State Registry/Records Review Procedures.

(a) Criminal Background and Abuse Registry Disclosures and Reviews; Fingerprinting Requirements.

1. The following persons are required to have a background check no more than ninety (90) days before having access to any child care agency:
  - (i) Any person who owns or operates a child care agency and will have significant contact with children;
  - (ii) Any person who applies to work in a child care agency as an employee, director or manager;
  - (iii) Any person who will provide substitute services to a child care agency for more than thirty-six (36) hours in a calendar year and who is counted in the adult: child ratio; and
  - (iv) Any person who is fifteen (15) years of age or older who will reside in a child care agency.
2. New background checks are required for all staff and residents when an agency moves from one class of care to another, such as when a family home becomes a group home or when an agency is sold and staff remain employed by the new owner or any time an agency is issued a license that is not the renewal of an existing license. Exception: Does not apply to background checks completed within the last ninety (90) days.
3. Background checks are required for all staff at least every five (5) years.
4. Requirements for Disclosure of Criminal/Juvenile and State Register History and Fingerprinting.
  - (i) The individuals identified in subparagraph (1)(a) above shall:
    - (I) Complete a criminal/juvenile/administrative findings history disclosure form;
    - (II) Submit fingerprint samples for a criminal and juvenile records background check; and
    - (III) Complete a criminal, juvenile background check/state review consisting of:
      - I. An investigation of a person's criminal background history by the Tennessee Bureau of Investigation (TBI) and through the Federal Bureau of Investigation's (FBI) national database;
      - II. An investigation of a person's juvenile records history that is available to the TBI;
      - III. A review of any available juvenile court records, if determined necessary by DHS;

- IV. A search of the vulnerable persons registry (VPR), maintained by the Tennessee Department of Health;
  - V. A search of the TN sexual offender registry (SOR), maintained by the TBI;
  - VI. A search of the DCS registry of indicated perpetrators of abuse or neglect of children; and
  - VII. A search of any state or federal registries required by the Child Care and Development Block Grant Act.
- (b) Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Children Prior to Completion of Criminal History Review.
- 1. A child care agency, substitute pool, or staffing agency shall be responsible for registration of persons required to have a background check. The responsible entity shall ensure that the process is completed prior to employment.
  - 2. A child care agency may not permit any person who is required to have a background check to assume any role or to have access to children until the agency receives written verification from the Department that the person is cleared to work/reside in the agency.
  - 3. Failure to Complete or Disclose Information on Criminal Disclosure Form.
    - (i) Failure to properly complete all sections of the Criminal/Administrative History Disclosure Form shall result in the individual being prohibited from assuming any position for which a background review is required.
    - (ii) Failure to disclose all criminal and administrative history information may result in the person being:
      - (I) Excluded by the Department from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and
      - (II) Referred to the appropriate district attorney for criminal prosecution.
  - 4. The Department will pay for the costs of performing one background check per person per agency per year.
  - 5. The child care agency shall be responsible for costs associated with the background check if:
    - (i) The fingerprint sample is rejected and the fingerprint sample must be resubmitted;
    - (ii) The agency submits a second fingerprint sample for an individual when the initial background check has not been completed; or
    - (iii) The agency submits a fingerprint sample for a purpose unrelated to obtaining approval for a prospective employee, volunteer, etc. to have access to child care.
- (c) Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Children.
- 1. No person shall be employed, be a licensee or operator or, provide substitute services, reside, or have any access to children in a child care agency if the criminal background check identifies an excludable criminal offense for which the person has:

- (i) Been convicted of, pled guilty or no contest to (or to a lesser included offense);
  - (ii) Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or
  - (iii) Been named in a pending warrant, indictment, presentment, or petition.
2. An excludable criminal offense involves:
- (i) The physical, sexual or emotional abuse or neglect of a child;
  - (ii) A crime of violence against a child, or any person;
  - (iii) Any offense, including a lesser included offense, involving the manufacture, sale, distribution or possession of any drug; or
  - (iv) Any offense that presents a threat to the health, safety or welfare of children.
  - (v) The criminal offenses for which a person will be excluded from a child care agency include but are not limited to the following offenses as well as their lesser included offenses (even if not listed here):
    - (I) Aggravated arson (T.C.A. § 39-14-302);
    - (II) Aggravated assault (T.C.A. § 39-13-102);
    - (III) Aggravated child abuse (T.C.A. § 39-15-402);
    - (IV) Aggravated child neglect (T.C.A. § 39-15-402);
    - (V) Aggravated cruelty to animals (T.C.A. § 39-14-212);
    - (VI) Aggravated kidnapping (T.C.A. § 39-13-304);
    - (VII) Aggravated rape (T.C.A. § 39-13-502);
    - (VIII) Aggravated rape of a child (T.C.A. § 39-13-531);
    - (IX) Aggravated robbery (T.C.A. § 39-13-402);
    - (X) Aggravated sexual battery (T.C.A. § 39-13-504);
    - (XI) Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);
    - (XII) Aggravated vehicular homicide (T.C.A. § 39-13-218);
    - (XIII) Arson (T.C.A. § 39-14-301);
    - (XIV) Assault (T.C.A. § 39-13-101);
    - (XV) Carjacking (T.C.A. § 39-13-404);
    - (XVI) Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);
    - (XVII) Criminal attempt, under T.C.A. § 39-12-101, to commit any criminal offense that requires exclusion from child care;
    - (XVIII) Criminal exposure to HIV (T.C.A. § 39-13-109);
    - (XIX) Criminal homicide (T.C.A. § 39-13-201);

- (XX) Criminally negligent homicide (T.C.A. § 39-13-212);
- (XXI) Cruelty to Animals (T.C.A § 39-14-202);
- (XXII) Custodial interference (T.C.A. § 39-13-306);
- (XXIII) Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);
- (XXIV) Domestic assault (T.C.A. § 39-13-111);
- (XXV) Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);
- (XXVI) Especially aggravated burglary (T.C.A. § 39-14-404);
- (XXVII) Especially aggravated kidnapping (T.C.A. § 39-13-305);
- (XXVIII) Especially aggravated robbery (T.C.A. § 39-13-403);
- (XXIX) Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);
- (XXX) Exploitation of a minor by electronic means (T.C.A. § 39-13-529);
- (XXXI) False imprisonment (T.C.A. § 39-13-302);
- (XXXII) First degree murder (T.C.A. § 39-13-202);
- (XXXIII) Incest (T.C.A. § 39-13-302);
- (XXXIV) Indecent exposure (T.C.A. § 39-13-511);
- (XXXV) Involuntary labor servitude (T.C.A. § 39-13-307);
- (XXXVI) Kidnapping (T.C.A. § 39-13-105);
- (XXXVII) Rape (T.C.A. § 39-13-503);
- (XXXVIII) Rape of a child (T.C.A. § 39-13-522);
- (XXXIX) Reckless endangerment (T.C.A. § 39-13-103);
- (XL) Reckless homicide (T.C.A. § 39-13-215);
- (XLI) Robbery (T.C.A. § 39-13-401);
- (XLII) Second degree murder (T.C.A. § 39-13-210);
- (XLIII) Sexual battery (T.C.A. § 39-13-505);
- (XLIV) Sexual battery by an authority figure (T.C.A. § 39-13-527);
- (XLV) Sexual exploitation of a minor (T.C.A. § 39-17-1003);
- (XLVI) Solicitation of a minor (T.C.A. § 39-13-528);
- (XLVII) Stalking (T.C.A. § 39-17-315);
- (XLVIII) Statutory rape (T.C.A. § 39-13-506);
- (XLIX) Statutory rape by an authority figure (T.C.A. § 39-13-532);

- (L) Trafficking a person for sexual servitude (T.C.A. § 39-13-309);
  - (LI) Vehicular assault (T.C.A. § 39-13-106);
  - (LII) Vehicular assault while intoxicated (T.C.A. § 39-13-106);
  - (LIII) Vehicular homicide (T.C.A. § 39-13-213);
  - (LIV) Voluntary manslaughter (T.C.A. § 39-13-211); and
  - (LV) Weapons offenses (unlawful possession, carrying, use, etc.).
3. No person may be employed as a driver or serve as a driver for a child care agency if the person:
- (i) Is currently charged with; or
  - (ii) Has been convicted of, or pled guilty, within the last five (5) years to any of the following criminal offenses:
    - (I) Vehicular homicide;
    - (II) Accidents involving death or personal injury;
    - (III) Accidents involving damage to a vehicle;
    - (IV) Driving under the influence of an intoxicant, drug or drug producing stimulant; or
    - (V) Any felony involving the use of a motor vehicle while under the use of any intoxicant.
- (d) Exclusion from access to child care based on a listing on a state registry.
- 1. No person shall be employed, be a licensee or operator, provide substitute services, reside, or have any access to children in a child care agency if the results of the state registry review identify the person as being:
    - (i) Listed on the Vulnerable Persons Registry;
    - (ii) Listed on the Sexual Offender Registry; or
    - (iii) Indicated in the records of the Department of Children's Services as a perpetrator of abuse or neglect of a child.
- (e) Supplemental Background Checks Subsequent to Licensing, Employment or Residence in a Child Care Agency.
- 1. The Department may, at any time, require a new background check of any individual with access to children in a child care agency.
    - (i) For an individual who was not subject to a background check prior to assuming a role, the individual's existing status in their role shall be conditional upon the satisfactory outcome of any requested background check.
- (f) Any person who is excluded shall remain excluded pending the outcome of any appeals or waiver review or any determination that the basis for exclusion no longer exists.

- (g) An individual will also be excluded if a criminal or juvenile proceeding, registry or administrative background review requiring exclusion or any other provision of law is discovered and verified in any manner.
- (h) If a child care agency, substitute pool or staffing agency receives information from a source other than the Department that requires them to exclude an employee, substitute, volunteer, or resident they shall immediately exclude the person from any access to children and notify the Department on the same business day by calling the child and adult care complaint hotline.
- (i) The exclusion of such persons from access to child care shall be conducted pursuant to T.C.A. § 71-3-507 and this rule.
- (j) Failure of a child care agency to perform the required background check before allowing a person access to child care or to immediately exclude individuals with a criminal history or state registry review status that requires exclusion, shall be the basis for the immediate suspension, denial or revocation of the child care agency's license.

Authority: T.C.A. §§4-5-202, 71-1-105(5), 71-3-501 et seq., 71-3-502(a)(2), and 71-3-507, Acts 2016, ch. 839.

Chapter 1240-04-04  
Standards for Family Child Care Homes

Amendments

1240-04-04-.02 Ownership and Administration is amended by adding a new subparagraph (f) and (g) to Paragraph (3), so that as amended paragraph (3)(f) and (g) read as follows:

- (f) The agency shall not admit a child into care until the parent/guardian has supplied the agency with a completed application, valid Tennessee Department of Health Official Immunization Certificates record (for children over two (2) months of age), and a health history. Exception: After an initial eligibility determination, children who are homeless and/or children in state custody may receive care prior to providing all required documentation as determined by the Department. Care without documentation of immunizations shall not exceed thirty days.
- (g) The agency shall maintain written documentation that the parent/guardian performed an on-site visit to the agency prior to the child being enrolled into care and that the agency provided and reviewed parent engagement strategies recognized by the Department with the parent during the required pre-placement visit. Exception: A pre-placement visit is not required for children of homeless families.

Rule 1240-04-04-.02 Ownership and Administration is amended by amending subparagraphs (b)(5) and (b)(6), adding a new subparagraph (b)(7) to (18), so that, as amended subparagraph (b)(5) to (18) reads as follows:

- 5. Handling of children's personal belongings;
- 6. If the agency provides transportation for children in the agency's care, the written statement required by 1240-04-04-.07(1)(a) describing transportation plans, procedures and equipment utilized in the transportation process and parental permission for trips away from facility;
- 7. Criteria for the disenrollment of children [see expulsion policy requirements in 1240-04-04-.02(b)(18)];
- 8. Specific criteria concerning the release of children; includes responsibility until signed out;
- 9. Written parental permission for observation of children by non-child care agency staff;
- 10. Behavior management techniques;
- 11. Hours of operation;
- 12. Late fees;
- 13. Rates;
- 14. Inclement weather;
- 15. Emergency policy;
- 16. Whether the environment is smoke free;
- 17. Meal Service policy; and
- 18. The agency shall have a written expulsion policy.
  - (i) The policy shall be:
    - (I) Clearly articulated to staff and parents;

- (II) Developmentally appropriate and consistent; and
- (III) Non-discriminatory.
- (ii) Other options shall be considered prior to expulsion, such as but not limited to reducing the number of days or amount of time the child may attend, or if applicable, referrals to the Center on the Social and Emotional Foundations for Early Learning (CSEFEL), Early Intervention System, Individuals with Disabilities Education Act (IDEA).
- (iii) Procedures shall be developed to allow for a planned transition of a child to another program if expulsion must occur.
- (iv) Aggregate data that includes reasons for expulsions shall be maintained and reported to the Department annually.

Rule 1240-04-04-.02 Ownership and Administration is amended by deleting subparagraph (f) of Paragraph (4) in its entirety, and substituting instead the following language, and adding a new subparagraph (g) so that, as amended, subparagraph (f) and (g) shall read as follows:

- (f) All children, including related children younger than age nine (9), shall have required records on file before care is provided. Exception: After an initial eligibility determination, children of homeless families and/or children in state custody may receive care prior to providing required documentation as determined by the Department.
- (g) Data Reporting - Agencies shall submit data as requested by the Department quarterly on topics such as but not limited to: active enrollment, homeless children, non-traditional hours, deaths/serious injuries, child abuse, English as a Second Language/dual language learners, and children with disabilities.

Rule 1240-04-04-.03 Staff is amended by deleting part 6 under subparagraph (a), paragraph (1) in its entirety, and substituting instead the following language, so that, as amended, paragraph (1), subparagraph (a), part 6, shall read as follows:

- 6. Criminal Background Check and State Registry/Records Review Procedures.
  - (i) Criminal Background and Abuse Registry Disclosures and Reviews; Fingerprinting Requirements.
    - (I) The following persons are required to have a background check no more than ninety (90) days before having access to any child care agency:
      - I. Any person who owns or operates a child care agency and will have significant contact with children;
      - II. Any person who applies to work in a child care agency as an employee, director or manager;
      - III. Any person who will provide substitute services to a child care agency for more than thirty-six (36) hours in a calendar year and who is counted in the adult: child ratio; and
      - IV. Any person who is fifteen (15) years of age or older who will reside in a child care agency.
    - (II) New background checks are required for all staff and residents when an agency moves from one class of care to another, such as when a family home becomes a group home or when an agency is sold and staff remain employed by the new owner or any time an agency is issued a license that is not the renewal of an existing license. Exception: Does not apply to background checks completed within the last ninety (90) days.

- (III) Background checks are required for all staff at least every five (5) years.
- (IV) Requirements for Disclosure of Criminal/Juvenile and State Register History and Fingerprinting.

I. The individuals identified in subparagraph (1)(a) above shall:

- A. Complete a criminal/juvenile/administrative findings history disclosure form;
- B. Submit fingerprint samples for a criminal and juvenile records background check; and
- C. Complete a criminal, juvenile background check/state review consisting of:
  - (A) An investigation of a person's criminal background history by the Tennessee Bureau of Investigation (TBI) and through the Federal Bureau of Investigation's (FBI) national database;
  - (B) An investigation of a person's juvenile records history that is available to the TBI;
  - (C) A review of any available juvenile court records, if determined necessary by DHS;
  - (D) A search of the vulnerable persons registry (VPR), maintained by the Tennessee Department of Health;
  - (E) A search of the TN sexual offender registry (SOR), maintained by the TBI;
  - (F) A search of the DCS registry of indicated perpetrators of abuse or neglect of children; and
  - (G) A search of any state or federal registries required by the Child Care and Development Block Grant Act.

(ii) Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Children Prior to Completion of Criminal History Review.

(I) A child care agency, substitute pool, or staffing agency shall be responsible for registration of persons required to have a background check. The responsible entity shall ensure that the process is completed prior to employment.

(II) A child care agency may not permit any person who is required to have a background check to assume any role or to have access to children until the agency receives written verification from the Department that the person is cleared to work/reside in the agency.

(III) Failure to Complete or Disclose Information on Criminal Disclosure Form.

I. Failure to properly complete all sections of the Criminal/Administrative History Disclosure Form shall result in the individual being prohibited from assuming any position for which a background review is required.

II. Failure to disclose all criminal and administrative history information may result in the person being:

- A. Excluded by the Department from working, directing, managing, operating, substituting, volunteering, residing in or acting as a licensee in any child care agency licensed by the Department; and
  - B. Referred to the appropriate district attorney for criminal prosecution.
- (IV) The Department will pay for the costs of performing one background check per person per agency per year.
- (V) The child care agency shall be responsible for costs associated with the background check if:
  - I. The fingerprint sample is rejected and the fingerprint sample must be resubmitted;
  - II. The agency submits a second fingerprint sample for an individual when the initial background check has not been completed; or
  - III. The agency submits a fingerprint sample for a purpose unrelated to obtaining approval for a prospective employee, volunteer, etc. to have access to child care.
- (iii) Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Children.
  - (I) No person shall be employed, be a licensee or operator or, provide substitute services, reside, or have any access to children in a child care agency if the criminal background check identifies an excludable criminal offense for which the person has:
    - I. Been convicted of, pled guilty or no contest to (or to a lesser included offense);
    - II. Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or
    - III. Been named in a pending warrant, indictment, presentment, or petition.
  - (II) An excludable criminal offense involves:
    - I. The physical, sexual or emotional abuse or neglect of a child;
    - II. A crime of violence against a child, or any person;
    - III. Any offense, including a lesser included offense, involving the manufacture, sale, distribution or possession of any drug; or
    - IV. Any offense that presents a threat to the health, safety or welfare of children.
    - V. The criminal offenses for which a person will be excluded from a child care agency include but are not limited to the following offenses as well as their lesser included offenses (even if not listed here):
      - A. Aggravated arson (T.C.A. § 39-14-302);
      - B. Aggravated assault (T.C.A. § 39-13-102);

- C. Aggravated child abuse (T.C.A. § 39-15-402);
- D. Aggravated child neglect (T.C.A. § 39-15-402);
- E. Aggravated cruelty to animals (T.C.A. § 39-14-212);
- F. Aggravated kidnapping (T.C.A. § 39-13-304);
- G. Aggravated rape (T.C.A. § 39-13-502);
- H. Aggravated rape of a child (T.C.A. § 39-13-531);
- I. Aggravated robbery (T.C.A. § 39-13-402);
- J. Aggravated sexual battery (T.C.A. § 39-13-504);
- K. Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);
- L. Aggravated vehicular homicide (T.C.A. § 39-13-218);
- M. Arson (T.C.A. § 39-14-301);
- N. Assault (T.C.A. § 39-13-101);
- O. Carjacking (T.C.A. § 39-13-404);
- P. Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);
- Q. Criminal attempt, under T.C.A. § 39-12-101, to commit any criminal offense that requires exclusion from child care;
- R. Criminal exposure to HIV (T.C.A. § 39-13-109);
- S. Criminal homicide (T.C.A. § 39-13-201);
- T. Criminally negligent homicide (T.C.A. § 39-13-212);
- U. Cruelty to Animals (T.C.A. § 39-14-202);
- V. Custodial interference (T.C.A. § 39-13-306);
- W. Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);
- X. Domestic assault (T.C.A. § 39-13-111);
- Y. Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);
- Z. Especially aggravated burglary (T.C.A. § 39-14-404);
- AA. Especially aggravated kidnapping (T.C.A. § 39-13-305);
- BB. Especially aggravated robbery (T.C.A. § 39-13-403);
- CC. Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);
- DD. Exploitation of a minor by electronic means (T.C.A. § 39-13-529);
- EE. False imprisonment (T.C.A. § 39-13-302);

- FF. First degree murder (T.C.A. § 39-13-202);
- GG. Incest (T.C.A. § 39-13-302);
- HH. Indecent exposure (T.C.A. § 39-13-511);
- II. Involuntary labor servitude (T.C.A. § 39-13-307);
- JJ. Kidnapping (T.C.A. § 39-13-105);
- KK. Rape (T.C.A. § 39-13-503);
- LL. Rape of a child (T.C.A. § 39-13-522);
- MM. Reckless endangerment (T.C.A. § 39-13-103);
- NN. Reckless homicide (T.C.A. § 39-13-215);
- OO. Robbery (T.C.A. § 39-13-401);
- PP. Second degree murder (T.C.A. § 39-13-210);
- QQ. Sexual battery (T.C.A. § 39-13-505);
- RR. Sexual battery by an authority figure (T.C.A. § 39-13-527);
- SS. Sexual exploitation of a minor (T.C.A. § 39-17-1003);
- TT. Solicitation of a minor (T.C.A. § 39-13-528);
- UU. Stalking (T.C.A. § 39-17-315);
- VV. Statutory rape (T.C.A. § 39-13-506);
- WW. Statutory rape by an authority figure (T.C.A. § 39-13-532);
- XX. Trafficking a person for sexual servitude (T.C.A. § 39-13-309);
- YY. Vehicular assault (T.C.A. § 39-13-106);
- ZZ. Vehicular assault while intoxicated (T.C.A. § 39-13-106);
- AAA. Vehicular homicide (T.C.A. § 39-13-213);
- BBB. Voluntary manslaughter (T.C.A. § 39-13-211); and
- CCC. Weapons offenses (unlawful possession, carrying, use, etc.).

(III) No person may be employed as a driver or serve as a driver for a child care agency if the person:

- I. Is currently charged with; or
- II. Has been convicted of, or pled guilty, within the last five (5) years to any of the following criminal offenses:
  - A. Vehicular homicide;
  - B. Accidents involving death or personal injury;

- C. Accidents involving damage to a vehicle;
  - D. Driving under the influence of an intoxicant, drug or drug producing stimulant; or
  - E. Any felony involving the use of a motor vehicle while under the use of any intoxicant.
- (iv) Exclusion from access to child care based on a listing on a state registry.
- (l) No person shall be employed, be a licensee or operator, provide substitute services, reside, or have any access to children in a child care agency if the results of the state registry review identify the person as being:
    - I. Listed on the Vulnerable Persons Registry;
    - II. Listed on the Sexual Offender Registry; or
    - III. Indicated in the records of the Department of Children’s Services as a perpetrator of abuse or neglect of a child.
- (v) Supplemental Background Checks Subsequent to Licensing, Employment or Residence in a Child Care Agency.
- (l) The Department may, at any time, require a new background check of any individual with access to children in a child care agency.
    - I. For an individual who was not subject to a background check prior to assuming a role, the individual’s existing status in their role shall be conditional upon the satisfactory outcome of any requested background check.
- (vi) Any person who is excluded shall remain excluded pending the outcome of any appeals or waiver review or any determination that the basis for exclusion no longer exists.
- (vii) An individual will also be excluded if a criminal or juvenile proceeding, registry or administrative background review requiring exclusion or any other provision of law is discovered and verified in any manner.
- (viii) If a child care agency, substitute pool or staffing agency receives information from a source other than the Department that requires them to exclude an employee, substitute, volunteer, or resident they shall immediately exclude the person from any access to children and notify the Department on the same business day by calling the child and adult care complaint hotline.
- (ix) The exclusion of such persons from access to child care shall be conducted pursuant to T.C.A. § 71-3-507 and this rule.
- (x) Failure of a child care agency to perform the required background check before allowing a person access to child care or to immediately exclude individuals with a criminal history or state registry review status that requires exclusion, shall be the basis for the immediate suspension, denial or revocation of the child care agency’s license.

Authority: T.C.A. §§4-5-201 et seq., 4-5-209, 71-1-105, 71-3-501 et seq., 71-3-502(a)(2), 71-3-508(c), Acts 2000, ch. 981, §§8 and 14 and Acts 2003, Ch. 412, § 2, Acts 2016, ch. 839.

1240-04-04-.03 Staff – is amended by adding new subparagraphs (d) and (e) to Paragraph (1) so that as amended, paragraph (1)(d) and (e) shall read as follows:

- (d) Prior to assuming duties, each new employee shall receive documented instruction in, and have a working knowledge of:
1. Program philosophy and policies;
  2. Job description;
  3. Emergency health and safety procedures;
  4. Behavior management procedures;
  5. Detection, reporting, and prevention of child abuse;
  6. Procedures for receiving and releasing children;
  7. Safe sleep procedures;
  8. Shaken baby syndrome/abusive head trauma;
  9. Meal service and safe food preparation policies;
  10. Supervision during high risk activities such as eating and outdoor play;
  11. Food allergies;
  12. Expectations for communications with parent/guardian;
  13. Disease control and health promotion;
  14. An overview of licensing requirements;
  15. Information on risks of Cytomegalovirus (CMV) to female employees of childbearing age;
  16. A minimum of two (2) hours pre-service training as recognized by the Department; and
  17. Documentation of the requirements in this subparagraph (d) shall be maintained in the staff file.
- (e) Ongoing Training Requirements – any ongoing training required for employees shall include health and safety topics, such as but not limited to:
1. Prevention and control of infectious diseases (including immunization);
  2. Prevention of sudden infant death syndrome and use of safe sleeping practices;
  3. Administration of medication, consistent with standards for parental consent;
  4. Prevention of and response to emergencies due to food and allergic reactions;
  5. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
  6. Prevention of shaken baby syndrome and abusive head trauma;
  7. Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);
  8. Handling and storage of hazardous materials and the appropriate disposal of bio contaminants,

9. Precautions in transporting children (if applicable); and
10. First aid and cardiopulmonary resuscitation.

Rule 1240-04-04-.06 Health and Safety is amended by a new subparagraph (g)(3) to Paragraph (1), so that, as amended, paragraph (1)(g)(3) shall read as follows:

3. Care for children of homeless families and/or children in state custody is needed before documentation of immunizations can be confirmed. Care without documentation of immunizations shall not exceed thirty days.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

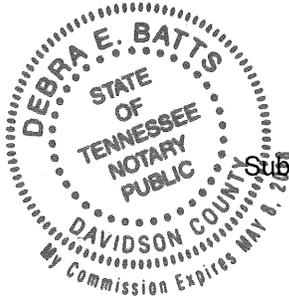
Date: 6-21-16

Signature: Nicole Armstrong

Name of Officer: Nicole Armstrong

Assistant General Counsel

Title of Officer: Tennessee Department of Human Services



Subscribed and sworn to before me on: June 21, 2016

Notary Public Signature: Debra E. Battis

My commission expires on: May 8, 2018

Department of State Use Only

Filed with the Department of State on: 7/1/16

Tre Hargett  
Secretary of State

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