

10 DEPARTMENT OF HEALTH AND HUMAN SERVICES  
148 DIVISION OF LICENSING AND REGULATORY SERVICES  
Chapter 33: RULES FOR FAMILY CHILD CARE PROVIDERS

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<b>Section I.</b>	<b>Definitions.....</b>	<b>1</b>
<b>Section II.</b>	<b>Certification Requirements and Procedures.....</b>	<b>3</b>
	Certificate Required .....	3
	Posting the certificate .....	3
	Uncertified homes .....	3
	Responsibility for compliance.....	3
	Qualifications of the applicant.....	3
	Number of children served .....	4
	Application required .....	4
	Age of provider .....	5
	Requirement for references .....	5
	Requirement for First Aid and CPR certification.....	5
	Requirement for orientation training .....	5
	Certificates are only effective at the location for which they are issued	5
	No person shall care for more children than the certificate allows.....	5
	One certificate issued per single family home .....	5
	Approval for Foster Homes applying for Family Child Care certification .....	5
	Inspections required .....	5
	Determining compliance with these Rules .....	5
	Right of entry.....	5
	Application constitutes permission for entry.....	6
	Compliance with the Life Safety Code.....	6
	Private water supplies.....	6
	Background records check.....	6
	Waivers .....	6
<b>Section III.</b>	<b>Certificate renewal requirements .....</b>	<b>7</b>
	Application for renewal of certificate .....	7
	State Fire Marshal approval .....	7
	Private water .....	7
	Maintaining CPR and First Aid certification .....	7
	Annual training required .....	7
<b>Section IV.</b>	<b>Types of certificates .....</b>	<b>8</b>
	Provisional certificate .....	8
	Full certificate .....	8
	Conditional certificate .....	8
	Temporary certificate .....	8
	Inspection for compliance .....	9

<b>Section V.</b>	<b>Home operation .....</b>	<b>9</b>
	Procedures .....	9
	Parent involvement .....	9
	Admission .....	10
	Confidentiality .....	11
<b>Section VI.</b>	<b>Rights for children in Family Child Cares .....</b>	<b>11</b>
	Right to freedom from abuse and neglect.....	11
	Right to confidentiality.....	11
	Right to freedom from harmful actions or practices.....	11
	Right to a safe and healthy environment.....	11
	Right to be free from discrimination.....	11
	Right to consideration and respect.....	11
	Right to be informed of services provided by the Family Child Care....	11
	Right to information regarding the Family Child Care's deficiencies...	11
	Right to service plan.....	12
	Right to a variety of appropriate activities, materials and equipment....	12
	Mandatory report of rights violations.....	12
	Reasonable modifications and accommodations.....	12
<b>Section VII.</b>	<b>Child's record.....</b>	<b>12</b>
<b>Section VIII.</b>	<b>Personnel.....</b>	<b>13</b>
	Provider and staff requirements for all Family Child Cares .....	13
	Reporting requirements .....	14
	Evaluation requirements .....	15
<b>Section IX.</b>	<b>Staffing requirements .....</b>	<b>15</b>
	Staff-child ratios .....	15
	Supervision .....	17
	Staff training .....	17
	Staff, volunteers and substitutes .....	17
<b>Section X.</b>	<b>Materials, equipment and activities .....</b>	<b>17</b>
	Toys and play equipment .....	17
	Indoor and outdoor activities .....	18
	Materials and equipment for children .....	18
	Extra clothing and diaper supplies .....	18
	Swimming/ and wading activities.....	18
	Use of lakes and ponds.....	21
<b>Section XI.</b>	<b>Child Guidance, management and discipline.....</b>	<b>22</b>
	Child Guidance shall meet the needs of each child.....	22
	Rules, expectations and limits shall be clear and consistent .....	22
	Constructive methods of guidance .....	22
	Actions that might be harmful to children are strictly forbidden .....	22

<b>Section XII.</b>	<b>Health/Medical.....</b>	<b>23</b>
	Immunization.....	23
	Accidents and sudden illness .....	23
	Giving medication .....	24
	First aid kit and manual .....	24
<b>Section XIII.</b>	<b>Environment and safety.....</b>	<b>24</b>
	General conditions of the home and surrounding premises.....	24
	Sanitation, health and safety .....	24
	Buildings, space, furnishing, and equipment .....	24
	Outdoor play area.....	26
	Fire evacuation drills .....	26
	Animals .....	27
	Local codes and ordinances .....	27
	Swimming pools.....	28
<b>Section XIV.</b>	<b>Food and kitchen facilities .....</b>	<b>28</b>
	Meals and snacks .....	28
	Kitchen facilities .....	29
<b>Section XV.</b>	<b>Transportation .....</b>	<b>29</b>
	Driver requirements .....	29
	Vehicle requirements .....	29
<b>Section XVI.</b>	<b>Child abuse and neglect .....</b>	<b>31</b>
	Abuse and neglect in the Family Child Care .....	31
	Reporting requirement .....	31
	Department's telephone available .....	31
<b>Section XVII.</b>	<b>Infant/toddler care .....</b>	<b>31</b>
	General standards .....	31
<b>Section XVIII.</b>	<b>Nighttime care .....</b>	<b>33</b>
	Additional rules for nighttime care .....	33
<b>Section XIX.</b>	<b>Failure to comply with applicable laws and rules .....</b>	<b>35</b>
	Failure to comply with applicable laws and rules .....	35
	Other sanctions for failure to comply .....	35
<b>Section XX.</b>	<b>Appeal procedure .....</b>	<b>38</b>
<b>Section XXI.</b>	<b>Subsequent application for a full certificate .....</b>	<b>38</b>

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**Section I. DEFINITIONS**

- A. “Abuse or neglect”** means a threat to a child’s health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these, by a person responsible for the child.
- B. “Adult”** means a person eighteen (18) years old and over.
- C. “Certificate”** means written permission by the Department to operate a Family Child Care.
- D. “Corporal punishment”** means actions against a child, including, but not limited to:
  - 1. Slapping; striking; shaking; shoving; spanking; pinching; twisting; kicking; biting; ear pulling or ear twisting;
  - 2. Forcing a child to taste or eat spicy, bitter or otherwise distasteful products for the purpose of discipline;
  - 3. Spraying with water as a means of controlling behavior;
  - 4. Placing tape over a child’s mouth;
  - 5. Mechanical restraints, such as tying a child to a chair;
  - 6. Requiring or forcing a child to take an uncomfortable position such as: squatting; kneeling; standing holding arms outstretched at sides or overhead; bending; or requiring or forcing a child to repeat physical movements; or
  - 7. Other forms of aggressive contact.
- E. “Department”** means the Maine Department of Health and Human Services.
- F. “Designee”** means a person acting on behalf of or representing the Department or the Commissioner of the Department of Health and Human Services.

- G.** “**Developmentally appropriate**” means suitable for the level of ability, interest and learning style of each child in care.
- H.** “**Home**” means the Family Child Care provider’s residence. The provider shall reside (defined as legal primary residence) in the certified home.
- I.** “**Family Child Care provider (provider)**” means the person who has received a certificate from the Department of Health and Human Services. This person is legally responsible for the operation of the Family Child Care.
- J.** “**Infant**” means children ages six (6) weeks to twelve (12) months.
- K.** “**Legal guardian**” means the parent or other person who has legal decision-making authority for the child.
- K-1** “**Lifeguard**” is a water safety attendant who has a current certificate issued by a lifeguard certifying authority recognized by the Department.
- L.** “**Out-of-Home Abuse and Neglect Investigation Unit**” means the Department of Health and Human Services unit that is responsible for investigating reports of suspected abuse and neglect of children by persons or in facilities subject to licensure or certification pursuant to M.R.S.A. Title 22, including Family Child Cares. This unit is also referred to as the Institutional Abuse Unit or IAU.
- M.** “**Parent**” means the birth or adoptive mother or father, legal guardian or legal custodian of the child.
- N.** “**Person**” means any individual, partnership, association, organization, or trust.
- O.** “**Preschool child**” means a child age two and a half (2 ½) years to not yet school age 5 years.
- P.** “**Relative**” means a child’s birth or adoptive mother, father, brother, sister, grandparent, great grandparent, uncle, aunt, niece, nephew, or first cousin.
- Q.** “**Relative by marriage**” means a child’s stepmother, stepfather, stepbrother, stepsister, step-grandparent, step-great grandparent and brother or sister of stepparent.
- R.** “**School-age child**” means a child who is at least five (5) years old and under thirteen (13) years old. Four-year-olds who are enrolled in kindergarten and will turn five years old on or before October 15 may be counted as school-age children.
- S.** “**Staff**” means a person, age sixteen (16) or older, who provides care and protection in a Family Child Care for a child(ren) under the age of thirteen (13) years.
- T.** “**Substitute**” means a person who temporarily takes the place of any regular provider or staff member who is absent.
- U.** “**Pool**” means any basin, chamber or tank constructed of impervious material, located either indoors or outdoors containing an artificial body of water for swimming or recreational bathing and having a depth of more than twenty-four inches (24”) at any point.

- U-1** “**Swimming Pool**” means a pool with a depth of more than twenty-four inches (24”) at any point.
- U.V.** “**Toddler**” means children ages thirteen (13) months through thirty (30) months.
- U.W.** “**Volunteer**” means a person who helps or provides service in a Family Child Care, without pay or other compensation.
- X.** “**Wading pool**” means a pool with a maximum water depth of twenty-four inches (24”).
- Y.** “**Waiver**” means written permission from the Commissioner or designee to modify a provision of rules that is not mandated by statute.
- Z.** “**Water safety attendant**” is a person trained in rescue techniques whose job is to watch over swimmers ~~or~~ in a wading pool, a swimming pool, or off-site swimming and wading destinations. As required by these rules, appropriately trained water safety attendants include a lifeguard; a person with valid CPR and first aid certificates; and a person who has completed a Department-approved basic water safety ~~and rescue~~ course that includes training in non-swimming rescue techniques.

## Section II. CERTIFICATION REQUIREMENTS AND PROCEDURES

- A. Certificate required.** Any person who provides child care in that person’s home on a regular basis, for consideration, for three (3) to twelve (12) children under thirteen (13) years of age who are not the children of the provider must have a certificate from the Department of Health and Human Services.
- B. Posting the certificate.** The Certificate and any Notice of Deficiencies shall be posted in the Family Child Care where it can be seen and reviewed by the public.
- C. Uncertified homes.** No person or entity shall operate a Family Child Care for more than two (2) children, who are unrelated to the provider, without a certificate from the Department in force, authorizing such operation.
- D. Responsibility for compliance.** The person applying for the certificate shall be responsible for complying with Maine Statutes and Rules adopted pursuant thereto.
- E. Qualifications of the applicant.** The applicant must demonstrate his/her willingness and ability to operate and manage the Family Child Care with mature judgment, compassionate regard for the best interests of children and consistent compliance with these Rules and all relevant laws. In making this determination, the Department shall consider each of the following factors to the extent that they are relevant:
1. Record and reputation for honest and lawful conduct in business and personal affairs. The applicant shall, as part of the certificate application and renewal process, authorize the Department to review the records of professional licensing boards or registers, any criminal record, child protective record, Out-of-Home Abuse and Neglect Investigation Unit record or adult protective record necessary to determine compliance with these Rules;

2. Conduct which demonstrates an understanding of, and compliance with, Rights for Children in Family Child Care (Section VI of these Rules);
3. Information which relates to the ability or willingness to comply with all applicable laws and rules;
4. Any information reasonably related to the ability to provide safe and developmentally appropriate child care.

**F. Number of children served.** A Family Child Care certificate permits a qualified person to care for three (3) to twelve (12) children between the ages of six (6) weeks old and thirteen (13) years old, according to age groups and staffing requirements detailed in Section IX.A of these Rules.

1. Effective from the effective date of these Rules for a period of two (2) years, the children living in the home are not counted in determining the certificate capacity of a Family Child Care.

Effective two (2) years from the effective date of these Rules, children living in the home who are five (5) years and older are not counted in determining the certificate capacity of a Family Child Care.

2. Children of other staff members or volunteers shall be counted in the appropriate age groups when determining the certificate capacity of a Family Child Care, when they are in care at the home.
3. All children in care who are younger than thirteen (13) years old shall be counted in child/staff ratios.
4. In determining the number of children for which a provider is certified, the Department shall factor in the needs of children and adults who reside in the home.
5. The number of children allowed may be restricted by the Department when any of the following circumstances are present:
  - a) Space is unusually limited or configured;
  - b) The provider's ability to care for children is limited;
  - c) There is an unusually wide range of ages of the children; or
  - d) There is a child or children who may require exceptional amounts of care.

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

the application. The check shall be made payable to the Treasurer, State of Maine, and is non-refundable.

1. Fees for certificate application and renewal will be established based on an analysis of the Department's costs for issuing the certificate.
2. Fees will not exceed the cost of issuing certificates.

- H. Age of provider.** A Family Child Care Provider shall be at least eighteen (18) years old.
- I. Requirement for references.** With the original application, the applicant shall include references from three (3) persons who are not relatives or relatives by marriage of the applicant.
- J. Requirement for First Aid and CPR certification.** Before receiving a Family Child Care certificate, the applicant shall receive certification in adult child and infant cardiopulmonary resuscitation (CPR) and First Aid.
- K. Requirement for orientation training.** Before receiving a Family Child Care certificate, the applicant shall take part in six (6) hours of approved training in the operation of a Family Child Care.
- L. Certificates are only valid at the location for which they are issued.** If the provider intends to move to a new location, he or she shall submit a new application for the new location. A certificate cannot be transferred from one provider to another, or from one location to another.
- M. No person shall care for more children than the certificate allows.** No person shall care for children who are older or younger than the certificate allows. The provider must apply to the Department for a revised certificate to change the number of children or the age limits of the children to be cared for in the home.
- N. One certificate issued per single family homes.** No more than one certificate shall be issued for any home occupied by a single family.
- O. Approval for Foster Homes applying for Family Child Care certification.** A person holding a foster care certificate shall receive approval from the Supervisor of Foster Care Licensing and the Supervisor of Child Care Licensing before the Department will issue a Family Child Care certificate.
- P. Inspections required.** A representative of the Department and a representative of the State Fire Marshal's Office shall conduct inspections of the home to evaluate compliance with applicable rules before the Department will issue a certificate.
- Q. Determining compliance with these Rules.** The Department has the authority to determine compliance with these Rules.
- R. Right of entry**
1. The Department shall have the right to enter upon and into the premises of any certified home pursuant to these Rules at any reasonable time, in order to

determine the state of compliance with the provisions of these Rules and applicable laws.

2. Such right of entry and inspection shall extend to any premises which the Department has reason to believe is being operated or maintained as a Family Child Care without a certificate, but no such entry or inspection of any premises shall be made without the permission of the owner or person in charge thereof unless a warrant is first obtained from the court of jurisdiction authorizing the same.
- S. Application constitutes permission for entry.** Any application for a certificate made pursuant to these rules shall constitute permission for, and complete compliance in, any entry or inspection of the premises for which the certificate is sought in order to facilitate verification of the information submitted or in connection with such application.
- T. Compliance with the Life Safety Code.** The Family Child Care shall comply with the Life Safety Code of the State Fire Marshal's Office, Department of Public Safety.
- U. Private water supplies.** If the home's water, used for drinking and cooking purposes, is from any source other than an approved public water supply, the applicant shall submit a satisfactory water analysis report completed by the Department of Health and Human Services, Division of Health Engineering, or by another approved laboratory. Water shall be tested for, at least, the following: coliform bacteria, nitrate and nitrite nitrogen, fluoride, chloride, hardness, copper, iron, pH, manganese, uranium, and arsenic. If a satisfactory supply cannot be provided, a certificate or renewal of a certificate cannot be issued.
- V. Background records check**
1. The applicant shall provide signed release forms permitting the Department to obtain criminal history and child protective services information for him or herself, and for each adult member of the household. If any of these persons will be transporting children in care, the applicant shall also provide releases for motor vehicle checks.
  2. Criminal history reports, motor vehicle reports, Out-of-Home Abuse Investigation Reports and child protection reports shall be obtained for each individual applicant for a certificate, and for each paid, unpaid, temporary or regular staff member or volunteer, in a Family Child Care. Criminal history reports, Out-of-Home Abuse and Neglect Investigation reports and child protection reports shall also be obtained for any adult living in or frequenting the Family Child Care.
- W. Waivers.** The Department may waive or modify any provision(s) of these Rules as long as the provision is not mandated by State or Federal statute. The applicant/licensee shall state, in writing, that an alternative method will comply with the intent of the rule for which the waiver is sought.
1. If approved, the waiver may be time limited.
  2. Extensions will only be granted where the best interest of the Family Child Care child(ren) is served.

**Section III. CERTIFICATE RENEWAL REQUIREMENTS**

- A. Application for renewal of certificate.** At least sixty (60) days prior to the expiration of a certificate to operate a Family Child Care, an application and the required fee for a renewal thereof shall be submitted to the Department on a form supplied by the Department, and accompanied by such additional information as may be required. It is the responsibility of the certified provider to make timely application for renewal to the Department's Child Care Licensing Unit. Failure to submit an application for renewal may result in non-renewal of the Family Child Care certificate.

Upon receipt and review of applications and determination of compliance with the requirements of the Maine Revised Statutes Annotated and any rules adopted pursuant thereof, the Department shall renew such certificate for a period of one (1) year, unless it finds that there are specific and sufficient grounds either for denial of the application for renewal or for renewal of the certificate on a temporary or conditional basis. If timely application for renewal is made, the existing certificate shall continue until a final decision by the Child Care Licensing Unit on the renewal is made.

- B. State Fire Marshal approval.** As an ongoing condition of certification, the Office of the State Fire Marshal shall inspect and approve the home at least every two (2) years, and send the Department a written statement that the Family Child Care complies with the applicable fire safety rules. In addition, a fire safety inspection shall be done when a heating system is changed, or when major structural changes are made in the home. The provider is responsible for notifying the Department of any such changes.
- C. Private water.** If the home's water does not come from an approved public water supply, the certificate holder shall get the water tested each year by the Department of Health and Human Services, Division of Health Engineering, or another approved laboratory as follows:

Annually, water shall be tested for, at least, the following: coliform bacteria, nitrate and nitrite nitrogen.

Once every five (5) years, water shall be tested for, at least the following: coliform bacteria, nitrate and nitrite nitrogen, fluoride, chloride, hardness, copper, iron, pH, manganese, uranium, and arsenic.

If a satisfactory supply cannot be provided, a certificate or renewal of a certificate cannot be issued. The provider shall ensure that a copy of the written report showing that the water is safe is sent to the Department's Child Care Licensing Unit.

- D. Maintaining CPR and First Aid certification.** Providers shall maintain certification in basic adult, child, and infant cardiopulmonary resuscitation (CPR) and First Aid.
- E. Annual training required.** After the first year of operation and each following year, the provider and staff shall participate in a minimum of twelve (12) hours of training in child care and early education topics or other topics related to the operation of a Family Child Care. The provider shall have written proof that they completed the training.

**Section IV. TYPES OF CERTIFICATES**

The Department shall issue the following types of certificates:

**A. Provisional certificate**

1. A provisional certificate shall be issued by the Department to any applicant who meets all of the following:
  - a) Has not previously operated the Family Child Care for which the application is made, has been certified and then moves to a new location or is certified but has not operated during the time of that certificate;
  - b) Complies with all applicable laws and Rules, except those which can only be complied with once children are served by the applicant; and
  - c) Demonstrates the ability to comply with all applicable laws and Rules by the end of the provisional certificate term.
2. The provisional certificate shall be issued for a minimum period of three (3) months to a maximum of twelve (12) months, as determined necessary by the Department.

**B. Full certificate**

1. A full certificate shall be issued to an applicant who, in the Department's determination, complies with all applicable laws and Rules.
2. The term of the full certificate shall be established by the Department and shall be specified on the certificate.

**C. Conditional certificate.** A conditional certificate may be issued by the Department when the certified provider or applicant fails to comply with the applicable law and Rules and, in the judgment of the Commissioner, the best interest of the public would be so served by issuing a conditional certificate. The Department shall specify in writing when and what corrections must be made during the term of the conditional certificate.

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

**D. Temporary certificate.** A temporary certificate may be issued by the Department whenever a Family Child Care provider moves to a new location. The Department may issue a temporary certificate, valid pending final action on the application for the new location when both of the following are met:

1. All applicable standards have been met except a requirement that is dependent on the action of an agency of state government or a contractor of that agency; and

2. Through no action by the applicant that causes a significant delay, timely issuance of a provisional or full certificate has been delayed by the agency or contractor.

**E. Inspection for compliance.** Regardless of the term and type of certificate, the Department shall inspect for compliance with applicable laws and Rules at least annually.

## **Section V. HOME OPERATION**

### **A. Procedures**

1. **Minimum age of child.** A child shall be at least six (6) weeks old, as verified by a birth certificate, to be accepted for Family Child Care.
2. **Availability of Rules.** The provider shall keep a copy of the *Rules for Family Child Care Providers* in the home and shall give a copy to parents and anyone else who wants to place a child in that Family Child Care.
3. **Local, state and federal laws.** The provider shall meet all local, state and federal laws and regulations pertaining to the operation of his/her Family Child Care.
4. **Maintaining records.** The provider shall maintain personnel records and children's records as required by these Rules.
5. **Reporting legal actions.** The provider shall report, in writing, to the Department any legal proceeding whether criminal or civil (within 10 days of initiation of such proceedings) brought against him/her or any person employed by the Family Child Care or residing therein if such proceedings arise out of circumstances related to the care of children in the Family Child Care or may affect the continued operation of the Family Child Care or call into question the suitability of the provider, staff members or volunteers to care for children.
6. **Notification of intent to close.** The provider shall provide written notification of closure and expected date of closure of the Family Child Care to the Department.
7. **Notification for physical plant changes.** The licensee must provide written notification to the Department for any changes to the heating system, any structural alterations or any plans to use existing space in the family child care that have not been inspected and approved. This includes any physical or structural changes in the building(s) or on the grounds such as but not limited to remodeling, renovations, or installation of a swimming pool or wading pool.

### **B. Parent involvement**

1. The provider shall allow parents to visit and observe any time during the hours of operation.
2. The provider shall get written permission from parents or legal guardians before taking children on activities away from the home.

3. The space where child care is being provided must have a working telephone during the hours of operation.
4. **Responsibility to advise regarding high risk activities.** The provider must advise a child's parent or legal guardian prior to allowing the child to participate in any high risk activity, such as swimming, horseback riding or trampoline. The provider must obtain written authorization from the parent or guardian for the child to participate in any such activity. The statement must describe all types of high risk activities offered, and the authorization must be updated at least annually and shall list the child's name, type of activity, location of activity, parent's signature and date. For swimming or wading activities, the statement must describe the child's swimming ability.

### C. Admission

1. **Pre-admission visits.** The provider shall encourage parents to visit the Family Child Care prior to admission.
2. **Admission policy.** All Family Child Care shall adopt a written description of admissions policies and criteria which shall include:
  - a) Age range;
  - b) Services offered;
  - c) Fees (if any) including charges for late pick-up of children;
  - d) Vacation policy;
  - e) Terms of any contract or placement agreements; and
  - f) Hours of operation.
3. **Maintaining immunization records.** The provider shall maintain immunization records for enrolled infants, toddlers, and preschool children according to standards set by the Bureau of Health (see Section XII.A of these Rules).
4. **Asking about a child's needs.** Prior to admission, the provider will ask the parents about the child's needs and make a record of any special requirements or suggestions that may be helpful to the provider.
5. **Compliance with ADA.** The provider shall be in compliance with Americans with Disabilities Act (ADA) standards.
  - a) The provider cannot require that the parent(s) of children with physical, emotional and/or mental disabilities furnish the Family Child Care with information pertaining to the child's disabilities, but is encouraged to ask pertinent developmental questions of all children prior to entrance to ensure appropriate and successful programming.

- b) A provider must ensure that all staff are adequately trained and/or have sufficient experience to meet the needs of all children for whom they are responsible.

**D. Confidentiality**

1. Information about children in care (or formerly in care) and services provided to them by the home shall be kept confidential and shall be disclosed only upon written authorization of a child's parent, except as otherwise specified by law.
2. Information about children now in care (or formerly in care) shall be shared with the Department upon request.
3. All personnel records shall be confidential but shall be provided to the Department upon request according to Maine Statute.

**Section VI. RIGHTS FOR CHILDREN IN FAMILY CHILD CARES**

- A. Right to freedom from abuse and neglect.** Children shall be free from mental, verbal, physical and/or sexual abuse, neglect and exploitation.
- B. Right to confidentiality.** Children's records and information kept by the Family Child Care are confidential. Family Child Care shall follow the Rules regarding confidentiality as outlined in Section V.D of these Rules.
- C. Right to freedom from harmful actions or practices.** Each child has the right to freedom from harmful actions or practices that are detrimental to his/her welfare and to practices that are potentially harmful to the child.
- D. Right to a safe and healthy environment.** Each child has a right to an environment that meets the health and safety standards in these Rules.
- E. Right to be free from discrimination.** A child shall be provided child care without regard to race, age, national origin, religion, disability, sex or family composition.
- F. Right to consideration and respect.** Children shall be treated with dignity, consideration and respect in full recognition of their individuality. This includes the use of developmentally appropriate practices by the Family Child Care.
- G. Right to be informed of services provided by the Family Child Care.** A child's legal guardian shall be fully informed of items or services which are included in the rate they pay for children attending the Family Child Care.
- H. Right to information regarding the Family Child Care's deficiencies.** A child's legal guardian has the right to be fully informed of findings of any certification review conducted by the Department. The Family Child Care shall inform children's legal guardian that the certification review results are public information and available for examination upon request. Legal guardian shall be notified in a timely manner by the Family Child Care provider of any actions proposed or taken against the Family Child

Care by the Department, including but not limited to, decisions to issue conditional certificates, refusal to renew a certificate or to impose fines or other sanctions.

- I. Right to a service plan.** Each child has the right to expect the provider to assist him/her in implementing any reasonable plan of service developed with community or state agencies.
- J. Right to a variety of appropriate activities, materials and equipment.** Each child has a right to a variety of activities, materials and equipment that meets the child's interests and capabilities.
- K. Mandatory report of rights violations.** Any person or professional who provides health care, social services or mental health services or who administers a Family Child Care who reasonably believes that the Rules pertaining to children's rights and the conduct of childcare have been violated, shall report this information to the Department's Child Care Licensing Unit. Any person reporting suspected abuse and neglect shall report this information to Child Protective Intake Services, pursuant to Title 22 M.R.S.A. §4011-A and Section XVI of these Rules. Documentation shall be maintained in the Family Child Care that a report has been made.
- L. Reasonable modifications and accommodations.** To afford individuals with disabilities the opportunity to participate in a Family Child Care, the Family Child Care shall act as follows:
  - 1. The Family Child Care shall make reasonable modifications to their policies and practices to include children, parents and guardians with disabilities, unless to do so would be a fundamental alteration of their program.
  - 2. The Family Child Care shall make the home accessible to people with disabilities. Existing homes must remove any readily achievable barriers, while newly constructed homes and any altered portions of existing homes must be fully accessible. If existing barriers can be easily removed without much difficulty or expense, providers must remove those barriers immediately even if there are no children with disabilities using the program (rearranging tables, chairs or other furniture are examples of readily achievable barrier removal).

## **Section VII. CHILD'S RECORD**

- A.** A record shall be completed at the time of admission and maintained by the Family Child Care provider on each child in care and shall include the following:
  - 1. Name, birth date and street address and mailing address of the child;
  - 2. Name, street address, mailing address and telephone number of parent(s) or legal guardian;
  - 3. Places of employment of parent(s) or legal guardian, if employed;
  - 4. The telephone number, street address and mailing address of employer(s);
  - 5. A method of contacting the parent(s) or legal guardian while the child is in care;

6. If possible, the name, address and telephone number of a person other than the parent(s) or legal guardian, to contact in case the parent(s) or legal guardian cannot be reached in an emergency;
  7. Dates of enrollment and termination;
  8. Record of immunizations on infants, toddlers, and preschoolers (specified in section XII.A);
  9. Name, address and telephone number of the child's physician and dentist if available;
  10. Written authorization to obtain emergency medical care;
  11. Names of persons who are permitted by the parent(s) or legal guardian to remove the child from the Family Child Care;
  12. Allergies and other health conditions, if known;
  13. A record of injuries sustained while in care of the Family Child Care, significant changes in appearance and/or hygiene, or significant changes in behavior (such as: increased aggression, withdrawal, sexual acting out, and/or prolonged tantrums); ~~and~~
  14. Special needs, if any; and
  15. Written permission for participation in swimming or wading activities from each child's parent(s) or guardian(s) if swimming or wading is provided.
- B.** The provider shall record any accidents, injuries, sudden illnesses, or other incidents that occur while the child is in care, on the same day it happens.
- C.** The provider shall keep a record of daily attendance.
- D.** The child's records shall be kept for a minimum of six (6) months after the child leaves care.

#### **Section VIII. PERSONNEL**

##### **A. Provider and staff requirements for all Family Child Cares**

1. The Family Child Care provider and all staff and volunteers shall be emotionally stable and mature, able to exercise good judgment in the handling of children and shall not engage in any action or practice that may be deemed detrimental to the welfare of the children.

Actions or practices that may be deemed detrimental to the welfare of children or that are potentially harmful to children are strictly prohibited. Such actions or practices as defined by the Department of Health and Human Services include but are not limited to the following:

Corporal punishment (as defined in Section I.D of these Rules);

- a) Use of a stick or other instrument in disciplining a child;
  - b) Sexual abuse;
  - c) Lack of supervision;
  - d) Neglect in any form;
  - e) Withholding food or drink;
  - f) Derogatory remarks to or about children or parents;
  - g) Name calling;
  - h) Shaming or embarrassing;
  - i) Unusual confinement; or
  - k) Rough handling.
2. A staff member who is certified in basic adult, child, and infant First Aid and cardiopulmonary resuscitation (CPR) shall be present at all times while child care is being provided.
  3. Any staff or volunteer providing child care shall be at least sixteen (16) years old.
  4. No alcohol, tobacco or scheduled drugs (except appropriately prescribed drugs) shall be consumed during the hours of operation.

**B. Reporting requirements**

The provider shall report to the Department information about the following circumstances, which may have occurred either in or outside the State of Maine, regarding themselves and other persons living or employed in the home, or any individuals who may have contact with the children in care:

1. Arrests, indictments, or convictions for sexual or violent crimes involving children or adults, or any illegal acts involving children, whether prosecuted or not. Any prior convictions for any of these crimes or illegal acts must be reported;
2. Any physical, mental health or substance abuse problems which would interfere with one's ability to perform her/his duties safely;
3. Any arrest, indictment, or conviction for Operating Under the Influence (OUI), or for any other activity involving substance abuse. Any prior convictions for OUI or other activity involving substance abuse within the last six years must be reported;

4. Whether or not Child Protective Services or the Out-of-Home Abuse and Neglect Investigation Unit has ever investigated the provider or other individuals who may have contact with the children in care for allegations of child abuse or neglect;
5. Any prior conditional certificate, certificate suspension, fine or revocation regarding a child or adult care certificate, license or other approval issued to the applicant;
6. The removal of children from their care or custody by court order;
7. Any Protection from Abuse Order or any other Order which makes a finding of domestic abuse or family violence;
8. Any other information regarding their circumstances or treatment of children which may enable the Department to determine whether there is a present threat to the health, safety and welfare of children, and;
9. The provider shall submit information concerning required records checks, as detailed in Section II.V of these Rules.

**C. Evaluation requirements**

1. When the Department has reasonable cause to believe that the applicant, or a person employed or living in the home may have a problem which would make them unable to provide safe care for children, the Department may request the applicant to provide the Department with a report from a qualified professional or appropriate officials. This report shall include an evaluation of the person's ability to safely care for children.
2. No person shall be required to undergo a physical examination or other evaluation if he or she states in writing that it is contrary to his or her religious teachings and practice.
3. The Department shall make a determination if sufficient evidence exists to ensure that the provider can safely care for children.

**Section IX. STAFFING REQUIREMENTS**

**A. Staff-child ratios**

1. One provider, working alone, may care for (ages defined in section I):
  - a) 4 infants and toddlers, or
  - b) 3 infants and toddlers plus 3 preschool children, plus 2 school-age children.
  - c) 8 preschool children plus 2 school age children, or
  - d) 12 school-age children.

ONE PROVIDER, WORKING ALONE							
Children	EITHER	OR	OR	OR	OR	OR	OR
a. infants and toddlers (6 weeks - 30 months)	4	0	0	3	3	3	3
b. preschool (2 1/2 - 5 yrs and not kindergarten eligible)	0	8	0	3	2	1	0
c. school-age (5 - 12 years)	0	2	12	2	3	4	5

2. Additional staff must be present in order to increase enrollment, according to the following staff-child ratios:

Children	PROVIDER PLUS	
	1 Additional Staff Person	2 Additional Staff Persons
a. infants and toddlers (6 weeks – 30 months)	8	12
b. preschool through school age (2 1/2 - 12 yrs)	12	12
c. school-age (5 - 12 years)	12	12
d. infant through school-age (6 weeks – 12 yrs)	12 total no more than 6 infants and toddlers	12 total no more than 9 infants and toddlers

3. Older children may fill younger children's spaces but younger children may not fill older children's spaces.
4. Effective from the effective date of these Rules for a period of two (2) years, the children living in the home are not counted in determining the staff-child ratio.
- Effective two (2) years from the effective date of these Rules, children living in the home who are five (5) years and older are not counted in determining the staff-child ratio.
5. Children of other staff members shall be counted in the appropriate age groups when in care at the home, when determining the staff-child ratio.
6. Providers will not be penalized if they exceed their certified capacity, only when the following conditions exist:
- Unpredictable circumstances, not under the provider's control. Examples are bad weather, lateness of the parent, and/or emergency school closings. Proper supervision, as defined in Section IX.B of these Rules, shall be maintained. Procedures for managing such events shall be explained in the emergency plan.
  - Regularly occurring transition times (shift changes, end of school day), as long as the staff-child ratio is maintained and there is adequate space.

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

7. Providers shall record when and why capacity is exceeded, and specify the number of children involved.

**B. Supervision**

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

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

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

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

- A.** The provider shall supply toys and equipment for indoor and outdoor play appropriate to the ability and the numbers of the children.

1. **Toys and play equipment.** The provider shall provide toys and equipment for indoor and outdoor activities appropriate to the ages and the numbers of the children. Materials provided and used shall include a selection from the following areas:
  - a) For infants, a variety of toys, music and books designed to stimulate curiosity, small and large muscle development, hand-eye coordination, and the senses of sight, sound and touch;
  - b) For toddlers and preschool children, sufficient variety to offer activities in the following areas:

- 1) blocks;
- 2) housekeeping and dress-up;
- 3) books and language;
- 4) arts and crafts;
- 5) puzzles, games and manipulatives;
- 6) sensory activities (such as sand and water);
- 7) science and nature;
- 8) music; and
- 9) toys, equipment and space that encourage gross motor development.

**B. Indoor and outdoor activities**

1. Children in attendance for more than four (4) consecutive hours shall have an opportunity for rest of one (1) hour or longer according to the age and needs of the child.
2. All children shall spend a minimum of thirty (30) minutes out of doors for each morning session and each afternoon session of three and one half (3 ½) hours or more, weather permitting. Gross motor activity will be substituted for outdoor time when weather does not permit outdoor time.
3. Television, video viewing and/or use of the computer shall be educational and age appropriate. Alternative activities for children shall be made available during these times.
4. Activities shall be developmentally appropriate.
5. Toileting shall take place based upon individual needs.

**C. Materials and equipment for children.** Materials and equipment shall be appropriate for children enrolled, including those with special needs.

**D. Extra clothing and diapering supplies.** The provider serving infants, toddlers, and preschool age children shall have access to extra children's clothing and diapering supplies in the event that such items become soiled or damaged during the activities of the day.

**E. Swimming/ and wading activities**

1. **Policies regarding swimming and wading activities and safety procedures.**  
The family child care provider must develop policies and procedures regarding swimming and wading activities. Policies and procedures must include all swimming or wading activities that take place on the family child care premises

and swimming or wading activities that take place away from the family child care premises, e.g., at a public swimming pool or beach.

2.2. **Emergency Plan.** The family child care provider must include a written emergency plan related to any swimming or wading activities, regardless of where they are conducted. This plan must be available to all staff. The plan must cover procedures for medical emergencies, chemical emergencies and severe weather.

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3.3. **Emergency procedures.** For family child care providers with swimming pools on the premises, staff must be familiar with emergency procedures, the use of safety equipment and emergency contacts.

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a) Children must be reminded of the emergency procedures regularly.

b) **Emergency drills.** For family child care providers with pools on the premises, swimming pool emergency drills must be conducted at least once a month in any month during which the pool is used. These drills must be conducted according to policies and procedures that are posted in the swimming area. The provider must keep a written record of the type, date, time and duration of the training and drills.

4.4. **Pool safety rules.** For family child care providers with pools on the premises, legible safety rules for the use of swimming pools must be posted in a conspicuous location, and must be read and reviewed weekly by each staff member responsible for the supervision of children.

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5. **Basic water safety instruction for children.** Before initially entering the pool, all children must be instructed on all water safety measures.

6.6. **Safety checklist.** For family child cares with swimming pools on the premises, the provider must complete a checklist must be completed on any day on which a pool activity occurs. A The checklist will be supplied by the Department, and must be signed by the individual responsible for swimming or wading activities on that day.

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7. **Water safety attendant on duty.** The family child care provider must have an appropriately trained water safety attendant, as required by these rules, present at all times during swim instruction or other swimming or wading activity.

a) Swimming pools that are more than four (4) feet deep at any point shall comply with the following:

i. For pools that have a width of sixteen feet (16') or less, a water safety attendant must be on duty. Every three (3) years, the water safety attendant must complete basic water safety and rescue training in non-swimming rescue techniques in a program of instruction approved by the Department. A copy of the current training certificate must be on file in the family child care. If a non-swimming rescue is not feasible in a pool with a width of

~~sixteen feet (16') or less, a lifeguard shall be on duty instead of a water safety attendant.~~

~~ii. For pools more than sixteen feet (16') wide, a lifeguard must be on duty. A copy of the lifeguard's current Lifeguard Training Certificate must be on file with the family child care provider.~~

~~b) a) **Swimming pools.** For swimming pools, that are more than two feet (2') and less than four (4) feet deep at the deepest part, a the water safety attendant must be on duty. The water safety attendant must have completed within the past three (3) years a Department-approved basic water rescue and safety course that includes training course in non-swimming water rescue techniques. A copy of the current training certificate must be on file in the family child care. In a pool that is more than four (4) feet deep at any point, if a non-swimming rescue is not feasible, then a lifeguard must be on duty.~~

~~e) b) **Wading pools.** For wading pools, a the water safety attendant must be on duty. The water safety attendant must hold a valid CPR certificate and a valid first aid certificate.~~

~~d) c) **Off-site activities.** For swimming and wading activities away from the family child care premises, the family child care provider must provide an adequate number of water safety attendants, including lifeguards, as required by these rules, if the wading pool, swimming pool, beach, lake or water park operator does not.~~

~~8.8. **Constant supervision.** Staff must directly supervise children at all times. Children must be within sight and sound of staff.~~

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~~9.9. **Staff-to-child ratios.** The staff-to-child ratio must be maintained at all times.~~

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~~a) If the pool is more than four (4) feet deep at any point, only adults who can swim may be counted in the staff-to-child ratios.~~

~~b) For swimming pools, water safety attendants, including lifeguards, and swimming instructors do not count toward staff-to-child ratios. Water safety attendants, including lifeguards, must be stationed outside and next to the swimming pool.~~

~~c) **Exception.** If three (3) or fewer children are in the swimming pool and the water safety attendant is stationed outside and next to the swimming pool, the water safety attendant may count toward the staff-to-child ratio.~~

~~d) **Wading pools.** For wading pools, water safety attendants may count toward staff-to-child ratios.~~

~~10.10. **Identification of non-swimmers.** All non-swimmers must be clearly identified as non-swimmers in a way that is visually and easily recognized by lifeguards, water safety attendants and staff. Commonly used identifiers are specified~~

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bathing suits or caps, wristbands or colored zinc-oxide sun block. Personal flotation devices of any kind shall not be used as identifiers.

~~11~~ **11. Approved flotation devices.** All non-swimmers, when in water over their waists, must be protected by a Coast Guard approved flotation device properly fitted for age and weight, except during swim instruction programs.

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~~12~~ **12. Training for Family Child Care Providers.** Providers must take a Department-approved course in basic water safety and rescue.

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**E-1 Use of lakes and ponds.** For the use of lakes and ponds, away from the family child care premises, the family child care provider must comply with all applicable sections of these rules, including the following:

1. **Parental permission.** Prior to allowing a child to participate in water activities in lakes and ponds, the family child care provider must have written permission from the parent or legal guardian. The department-approved parental permission form shall describe the water activities offered at lakes and ponds, the child's swimming ability and shall include the child's name, location of the lake or pond, the parent's signature and date. At least annually, the written parental permission form must be updated, signed and dated by the parent or legal guardian. The signed and dated parental permission form must be placed in the file maintained by the family child care provider for each child's records.
2. **Parental notice that no lifeguard is on duty.** A family child care provider that offers lake and pond activities when there is no lifeguard on duty must give a department-approved written notice to each child's parent or legal guardian that there will be no lifeguard on duty at lakes and ponds.
3. **Water safety plan.** The family child care provider must have a written water safety plan for water activities at lakes and ponds that includes the following:
  - 3-1 The same staff-to-child ratios for swimming pools in Section X (E) (9) of these rules, apply to water activities at lakes and ponds.
  - 3-2 When no lifeguard is on duty, no fewer than 2 staff persons who are at least 18 years of age must be present at all times during water activities at lakes and ponds. When there is a lifeguard on duty at the lake or pond, the requirements of Section X (E) (9) of these rules apply.
  - 3-3 Whether there is a lifeguard on duty or not, at all times during water activities at lakes and ponds at least one staff person present at the lake or pond must be an appropriately trained water safety attendant. When there is no lifeguard on duty, the appropriately trained water safety attendant is a person who has completed a department-approved basic water safety course that includes training in non-swimming rescue techniques. At no time do these rules require that a lifeguard be on duty at lakes and ponds during water activities.
  - 3-4 Whether there is a lifeguard on duty or not at the lake or pond, prior to any child entering the water, the family child care provider must ensure that a barrier, such as a roped-off area with buoys, is in place that limits the swimming area in the

lake or pond to an area that is no wider than 16 feet across at any point and partitions off a part of the water that is no deeper than 4 feet at any point.

- 3-5 When there is no lifeguard on duty at the lake or pond, all children 8 years of age and younger must wear a Coast Guard-approved flotation device, properly fitted for age and weight, in the water at all times, except during swim instruction programs. When there is a lifeguard on duty at the lake or pond, the requirements of Sections X (E) (10) and (11) of these rules apply.
- 3-6 When there is no lifeguard on duty at the lake or pond, all children over 8 years of age must wear a Coast Guard-approved flotation device, properly fitted for age and weight, in the water at all times unless the child has taken swimming lessons and can demonstrate the ability to swim. During swim instruction programs the child does not need to wear a flotation device. When there is a lifeguard on duty at the lake or pond, the requirements of Sections X (E) (10) and (11) of these rules apply.

#### **Section XI. CHILD GUIDANCE, MANAGEMENT AND DISCIPLINE**

- A. Child guidance shall meet the needs of each child.** Staff shall use positive methods of child guidance which encourage self-control, self-direction, self-esteem and cooperation. Child guidance and management shall meet the needs of each child.
- B. Rules, expectations and limits shall be clear and consistent.** A child shall not be expected to do more than the child's understanding and ability allow.
- C. Constructive methods of guidance.** The Family Child Care shall use only constructive methods of guidance. This may include, but is not limited to interventions such as conflict resolution, encouraging the use of language skills, redirecting, providing choices, positive reinforcement, recognizing of a child's strengths, and allowing for individual differences.
- D. Actions that might be harmful to children are strictly forbidden.** No child shall be subjected to an action or practice detrimental to the welfare of children as defined by the Department of Health and Human Services in Section VIII.A.1.
- E.** Corporal punishment as defined in Section I.D in these Rules is strictly prohibited.
- F.** Shaming and embarrassing shall not be used.
- G.** The withholding of food, drink or rest shall not be used as punishment or threat of punishment.
- H.** No child shall be forced to eat or drink against his/her will.
- I.** No child shall be punished for soiling, wetting or not using the toilet.
- J.** No child shall be subjected to cruel or severe punishment, humiliation, verbal abuse or unusual confinement.

- K.** The withholding of any adaptive equipment that would result in loss of a child's independence shall not be used.

## **Section XII. HEALTH/MEDICAL**

### **A. Immunization**

1. **Certificate of Immunization for children.** In order to assure that proper medical treatment can be determined and given in the event of a disease outbreak or public health emergency, immunization records will be maintained. For each child who is not attending public or private school, the provider shall require and have on file, within thirty (30) days of the child's first admission to the home, a Certificate of Immunization which clearly illustrates each child's present immunization status. Each child's record should reflect an up-to-date status according to the Day Care Immunization Standards set forth by the Maine Bureau of Health Immunization Program. Dates of immunization (month/day/year) and vaccine type shall be on file.
2. **Exceptions of proof of immunity.** No child may be required to be immunized if the child's parent states in writing an opposition to immunization because of a sincere religious belief or philosophical reasons, or if the child's physician submits documentation that such immunization is medically inadvisable. In the event of a disease outbreak, a child not vaccinated for religious, philosophical or medical reasons must be excluded from the Family Child Care until the outbreak no longer exists or until the child receives the necessary immunization.
3. **Blood test demonstrating immunity.** A blood test demonstrating immunity to measles, mumps, rubella and varicella (chickenpox) can be provided as proof of immunity. Evidence of this shall be kept on file and updated in a timely manner.
4. **Documenting exemptions to immunization.** The provider shall maintain a list of children and staff exempted for religious, philosophical or medical reasons.
5. **Record keeping requirement.** The provider shall make immunization records available to the Department of Health and Human Services Bureau of Health upon request.

- B. Accidents and sudden illness.** The provider shall immediately notify the child's parent or guardian of any serious illness, injury, or accident involving their child. If the parent is not available at the time of emergency, the provider must notify an adult designated by the parent. For any serious illness or injury, the provider shall seek appropriate medical attention.

### **C. Giving medication**

1. The provider shall give a child prescription medication only upon written, signed and dated order from either a parent or a physician.
2. The provider shall only give medication prescribed for the specified child, according to the label instructions on the original container.

3. The provider shall not give any nonprescription medications to a child without written permission from the parent. Verbal permission is allowed in emergencies if the provider makes a written note and then gets written permission from the parent as soon as possible.
  4. The provider shall keep a written record, noting each time any prescription and nonprescription medication is given to a child.
- D. First Aid kit and manual.** The provider shall have a First Aid kit and a current First Aid manual. The type and quantity of supplies are to be determined by current guidelines of the American Red Cross or other recognized health organization.

### Section XIII. ENVIRONMENT AND SAFETY

- A. General condition of the Family Child Care and surrounding premises.**
1. The Family Child Care and surrounding premises shall show evidence of routine maintenance. Repair of wear and tear shall be made in a timely fashion.
  2. The Family Child Care provider shall take immediate steps to correct any condition in the physical building or on the premises, which poses a danger to children's life, health or safety.
- B. Sanitation, health and safety.** The Family Care, toys, and equipment shall be kept clean and in safe working order, ensuring health and safety.
- C. Buildings, space, furnishings, and equipment**
1. **Indoor space requirement.** The Family Child Care shall provide a minimum area of thirty-five (35) square feet of usable indoor space per child. The allowed area includes moveable furniture used by children, but not storage cabinets. Space that is not used by children cannot be counted in the square footage. Areas not to be counted as usable space include but are not limited to, bathrooms and closets.
  2. **Heating.** The temperature of the space used by the children shall be maintained at a safe and comfortable level for the children.
    - a) A minimum temperature of at least sixty-eight (68) degrees measured within two (2) feet of the floor shall be maintained for children's playrooms during the heating season.
    - b) Heating units shall be safeguarded in a manner to prevent injuries and burns.
  3. **Lighting**
    - a) Every room used by children shall be properly lighted.
    - b) Natural light is required in any room used by children for more than four hours per day.

4. **Ventilation**

- a) All indoor space used by children shall be adequately ventilated.
- b) Doors and windows used for ventilation shall be equipped with securely fastened screens.

5. **General safety**

- a) All stairs used by children shall be equipped with solidly mounted handrails.
- b) All stairs shall be enclosed by walls or railings. All stairs used by infants, toddlers and preschool age children shall be protected by a gate or door.
- c) Electrical outlets in areas used by infants, toddlers and preschool children shall be protected by safety caps, plugs or other means.
- d) Family Care providers shall comply with laws and rules about the use of lead-based paint on toys, furniture or any interior or exterior surfaces, defined by the Lead Poisoning Control Act (Title 22 M.R.S.A. §1314 *et seq.*).
- e) The home shall have an annual screening for potential lead hazards. A home may be exempt from this screening if:
  - 1) The home was constructed in 1978 or later;
  - 2) The home has been certified as lead-safe within the previous twelve (12) months;
  - 3) The home has been certified as lead-free; or
  - 4) The home does not serve any children under six (6) years of age.
- f) Any medications, cleaning supplies, toxic substances, matches, lighters, power tools, and other items dangerous to children shall be kept where children cannot see or reach them.
- g) Children are not allowed to be near power equipment while it is being operated.
- h) Firearms shall be kept unloaded and, along with any other weapons, shall be locked up to prevent contact by children. Ammunition shall be locked in a separate location from weapons.
- i) Smoking is prohibited on the premises when children are present. This includes all indoor and outdoor areas used by the Family Child Care where children may be present.

- j) Strings and cords (e.g. those that are parts of toys or those that are found on window shades) long enough to encircle a child's neck (six [6] inches or more) shall not be accessible to children.

6. **Furnishings for napping**

- a) A separate mat, bed or cot, with a blanket or sleeping bag, shall be assigned to each child in care for longer than four (4) hours per session. All bedding must be cleaned before being used by another child. Bedding must be cleaned as needed or at least weekly.
- b) A crib or playpen shall be provided for each child up to eighteen (18) months old.
- c) No crib or playpen shall be used for sleeping by more than one child at a time.
- d) There shall be adequate walking space between beds, mats and cribs.

7. **Toilet facilities**

- a) A step, low platform or other means shall be placed next to toilets and wash basins, for children who need help reaching and using them.
- b) Either disposable paper products, or clean, individually assigned wash cloths and towels may be used.
- c) Washing and toilet facilities shall have both hot and cold running water and soap.
- d) The home shall provide a means of maintaining a water temperature of 120° Fahrenheit or less in taps available for use by children.

**D. Outdoor play area**

1. **Access to outdoor play area.** The Family Child Care shall have access to an outdoor play area with sufficient space for safe play for all children. Children must have regular time for outdoor play.
2. **Location of play areas.** The play area shall not be located near hazardous areas, (such as busy streets, wells, open water) unless protected by either natural boundaries or fencing.
3. **Supervision of play area.** The provider or a staff person shall supervise the children when they are using the play area.
4. **Safe equipment.** All equipment shall be firmly secured, clean, and in proper repair. When necessary, padding or other shock-absorbing material (such as wood mulch, wood chips or fine, loose sand of sufficient depth) shall be used to protect children in case of a fall.

5. **Sand boxes.** Sand boxes shall be kept repaired and sanitary.
- ~~6. **Swimming pools.** Swimming or wading pools shall be emptied or removed from play areas when not in use or must be otherwise protected by fencing or suitable barriers to prevent children from gaining access without staff approval and supervision. Swimming or wading pools shall be emptied and cleaned daily or equipped with a filtration and/or treatment system.~~
- ~~6. **Safe outdoor play equipment.** Outdoor play equipment must be safely constructed and of a size suitable to the age and needs of all children. Play equipment, including pools, must be adequately spaced apart to prevent injuries.~~
7. **Sun and shade.** Outdoor play areas shall provide both shade and sun.

**E. Fire evacuation drills**

1. **Monthly fire drills.** Fire evacuation drills shall be conducted at least once a month for all children and adults present using at least two (2) means of exit. Fire evacuation drills shall be conducted in accordance with guidelines established by the State Fire Marshal's Office.
2. **Fire drill procedures.** Fire drills shall be conducted according to policies and procedures which are posted in each room utilized by children.
3. **Record of fire drills.** A record of drills shall be available for inspection by the Department of Health and Human Services, the State Fire Marshal's Office and local fire inspectors.

- F. Animals.** When animals are in a home, the provider shall ensure that staff supervision is adequate to protect the safety of the children and animals. There shall be proof of rabies vaccinations for household dogs and cats. Pets shall not present a danger to children or guests. The home shall be free of pet odors and waste shall be disposed of regularly. All indoor and outdoor areas used by children shall be free from pet waste.

- G. Local codes and ordinances.** The Family Child Care shall maintain, and provide to the Department on request, documentation that indicates that the home complies with local codes and ordinances, including zoning.

**H. Swimming Pools**

1. **Swimming pools must be registered.** On-premises swimming pools over twenty-four inches (24") deep at any point must be registered with the Maine Department of Health and Human Services, Maine Center for Disease Control and Prevention, Division of Environmental Health.
2. **Swimming pool cleanliness.** Swimming or wading pools shall be emptied and cleaned daily or equipped with a filtration and/or treatment system.
  - a. The water in a swimming pool must have sufficient clarity. The bottom must be clearly visible in the deepest part of the pool.

- b. Any family child care provider that operates a swimming pool over twenty-four inches (24") deep at any point must be in compliance with Department of Health and Human Services, Maine Center for Disease Control and Prevention, Division of Environmental Health Rules Relating to Public Swimming Pools and Spas.
- 3. **Swimming pools when not in use.** Swimming or wading pools must be emptied or removed from play areas when not in use or must be otherwise protected by fencing or suitable barriers to prevent children from gaining access without staff approval and supervision.

  - a. All in-ground pools located in areas accessible to the children must be fenced. The fence must be at least four (4) feet in height and secured with a locked gate.
  - b. All above-ground pools must have non-climbable sidewalls that are at least four feet high or must be enclosed with a fence in accordance with subsection 3.a (above) of this Section. When the pool is not in use, steps must be removed from the pool or otherwise protected to prevent unsupervised access.
- 4. **Emergency telephone.** All pools must have an accessible emergency telephone located in the pool area. The telephone shall be able to dial directly for emergency assistance.

#### Section XIV. FOOD AND KITCHEN FACILITIES

##### A. Meals and snacks

1. **Well-balanced meals and snacks.** The provider shall serve well-balanced meals and snacks.
2. **New foods.** The provider and staff may encourage children to try new foods, but no child shall be forced to eat anything they do not want.
3. **Food supplied from outside the home.** Box/bag lunches or other food supplied from outside the home shall be kept refrigerated if required.
4. **Food storage.** All food shall be stored in a manner to prevent spoilage, and kept hot or cold, as required.
5. **Formula and breast milk shall be properly labeled and stored.** Formula and breast milk shall be labeled with the child's name, dated, and stored in the refrigerator.
6. **Use of formula or breast milk.** Formula supplied by the provider shall be made from commercially-prepared products. Breast milk or specialized dietary formulas may be used when needed and supplied by the child's parent(s).

7. **Hand washing.** Staff shall ensure that all adults and all children wash their hands immediately before and after eating snacks and meals. Hand washing shall be done with soap and running water, when available.
8. **Supervision at mealtime.** Staff shall closely supervise children during mealtimes.

**B. Kitchen facilities**

1. **Kitchen areas shall be well-lighted, clean and orderly.**
2. **Clean surfaces.** All surfaces where food is prepared and served shall be washed before and after use.
3. **Staff hand washing.** Staff shall wash their hands both before and after handling food.
4. **Cleaning dishes.** Dishes shall be washed in an automatic dishwasher or thoroughly hand-washed in warm soapy water and rinsed in hot water.
5. **Use of paper products.** Paper products shall be used only once and must be thrown away immediately after use.
6. **Refrigerator temperature.** Refrigerators shall be kept at a temperature not to exceed forty-one degrees (41°) Fahrenheit. A thermometer shall be kept in the refrigerator at all times.
7. **Freezer temperature.** Freezers shall be kept at a temperature not to exceed zero (0°) Fahrenheit. A thermometer shall be kept in the freezer at all times.

**Section XV. TRANSPORTATION**

- A. **Driver requirements.** Any person assigned by the provider to drive children under care shall have the proper license to drive the class of motor vehicle being used.
- B. **Vehicle requirements**
  1. **All children age twelve (12) and under shall ride in the back seat.**
  2. **No child left alone in vehicle.** The staff shall not leave any child alone in a motor vehicle.
  3. **Safety in moving vehicles.** Children shall be seated with seat belts fastened or in child safety seats as required by State law, while the vehicle is in motion.
  4. **The driver shall wear a seat belt.**
  5. **One seat belt per child.** The buckling of more than one child in a single seat is prohibited.

6. **Adult to child ratios in vehicles.** There shall be one adult present for up to six preschool children transported. Additional preschool children shall be supervised according to staff-child ratios specified in Section IX of these Rules. One adult person shall be in the vehicle for every three non-ambulatory children.
7. **No weapons.** Weapons shall not be carried in any vehicle in which children are riding.
8. **Child safety seats.** The following standards shall be met regarding the use of car safety seats:

	<b>INFANTS</b>	<b>TODDLER</b>	<b>YOUNG CHILDREN (up to 8 years old)</b>
<b>WEIGHT</b>	Birth to 1 year and up to 22 lbs.	Over 1 year and Over 20 lbs up to 40 lbs.	Over 40 lbs.- up to 80 lbs.
<b>TYPE of SEAT</b>	Infant only or rear-facing convertible	Convertible / Forward-facing	Belt positioning booster seat
<b>SEAT POSITION</b>	Rear-facing only	Forward-facing	Forward-facing
<b>ALWAYS MAKE SURE:</b>	Children to one year and at least 20 lbs. in rear-facing seats  Harness straps at or below shoulder level	Harness straps should be at or above shoulders  Most seats require top slot for forward-facing	Belt positioning booster seats must be used with both lap and shoulder belt.  Make sure the lap belt fits low and tight across the lap/upper thigh area and the shoulder belt fits snug crossing the chest and shoulder to avoid abdominal injuries

9. **Limitations of vehicle requirements.** The vehicle requirements above shall not apply to vehicles not operated by the Family Child Care provider or staff, such as school buses, taxis and vehicles operated by parents or public transportation agencies.

#### **Section XVI. CHILD ABUSE AND NEGLECT**

- A. **Abuse and Neglect in the Family Child Care.** The provider shall ensure that staff, volunteers and others living in the household or frequenting the Family Child Care do not abuse or neglect the children in any way, including physical, sexual, or emotional abuse.
- B. **Reporting requirement.** The provider and all child care personnel (staff) are required to report to the Department of Health and Human Services when there is reasonable cause to suspect abuse or neglect of a child under the age of eighteen (18). The Family Child Care shall make all child care personnel aware of their status and responsibility as mandated reporters of suspected abuse or neglect of a child.

- C. **Department's telephone available.** The provider shall ensure that the telephone number of the Department's child abuse and neglect unit can be easily found in the home.

## Section XVII. INFANT/TODDLER CARE

### A. General standards

1. **Size of toys, food or other objects.** Infants and toddlers shall not be allowed to use toys or objects which could be swallowed or cause choking. Foods that are choking hazards due to the size, shape or texture shall not be served to infants and toddlers.
2. **Individualized rest times.** Each child shall be given appropriate rest time, according to his/her age and other needs.
3. **Individualized patterns.** Each infant or toddler shall be allowed to form and follow his or her own pattern of sleeping, resting and waking periods.
4. **Changing positions.** Each infant/toddler's position shall be changed at least each half hour, when the child is awake.
5. **Variety of activities.** The provider shall ensure that infants and toddlers are given a variety of activities to promote proper muscle development, consistent with approved training in developmental needs.
6. **Outdoor time for infants and toddlers.** Infants and toddlers shall spend time outdoors daily when weather permits.
7. **Feeding**
  - a) Staff shall thoroughly wash the hands of all infants and toddlers before all feedings.
  - b) Formula shall be temperature tested prior to feeding.
  - c) The feeding schedule shall meet the infant's needs and not just according to the hour.
  - d) The provider or staff shall hold non-ambulatory infants in their arms for bottle-feeding.
  - e) A chair or table used for feeding infants/toddlers shall be designed to prevent the child from slipping or falling.
  - f) Dishes and nursing bottles used shall be made of unbreakable material.
  - g) If breast milk or formula is to be warmed, bottles shall be placed in a pan of hot (not boiling) water for no longer than five (5) minutes, after which the bottle shall be shaken well and the milk temperature tested before

feeding. Bottles of formula or breast milk shall never be warmed in a microwave oven.

8. **Diapering**

- a) Children shall be checked frequently for wet or soiled diapers and other clothing, and shall be washed and changed as soon as needed.
- b) Wet or soiled disposable diapers shall be placed in a lined, lidded container, separate from other trash or garbage and separate from play or food-preparation areas.
- c) Diapering shall be done on a changing table or washable vinyl mat which is cleaned and sanitized after each use or has a disposable single-use covering.
- d) The changing table or mat shall not be located in kitchen/food preparation area.
- e) Staff shall wash their hands and the child's with soap and warm water after every diaper change.
- f) Family Child Care providers using cloth diapers shall comply with diapering guidelines available from the Department of Health and Human Services, Bureau of Health.
- g) All containers of soiled cloth or disposable diapers shall be removed daily from the child care areas.

9. **Toilet training**

- a) The provider shall work with parents to determine the best toileting practice for each child.
- b) Toileting practices shall be developed by the family and staff, and must be based on the individual needs of the child.
- c) Potty chair receptacles shall be emptied, rinsed, and sanitized after each use.

10. **Napping/resting.** Infants shall be placed on their backs for sleeping, unless contraindicated by a physician. Placing children on their abdomens for sleeping shall be avoided, unless specifically instructed by the child's physician to do so.

Sleeping infants shall be checked at least every thirty (30) minutes.

**Section XVIII. NIGHTTIME CARE**

- A. **Additional rules for nighttime care.** A Family Child Care receiving children for night care shall comply with the requirements in this section, in addition to other sections in the Rules for Family Child Care.

1. **Individualized care.** Special effort shall be made by the Family Child Care provider to individualize care at children's bedtime and awakening. The parent(s) shall be consulted concerning his/her child's particular behavior patterns at bedtime and awakening;
2. **Provider to be awake.** The provider shall be awake and alert to the needs of children.
3. **Rooms above the first floor.** A room above the first floor may be used for sleeping or napping if the room has two (2) exits with one exit leading directly to the outside with means to safely reach the ground level.
4. **A crib or bed for each child.** A provider who offers nighttime care shall have a safe and sturdy crib for each infant, and a safe and sturdy bed or cot with mattress and a pillow for each older child.
5. **Bunk beds.** The top level of bunk beds shall not be used for children below nine (9) years of age.
6. **Water beds.** Waterbeds shall not be used for children under thirty-six (36) months of age.
7. **Clean linens.** When linens become soiled, they shall be changed. Protective mattress covers shall be used and washed at least weekly. Sheets must be changed weekly, between use by different children, or more frequently if needed.
8. **Wet beds.** No child shall be allowed to sleep in a wet bed.
9. **Space between beds.** Beds arranged side by side shall be at least two (2) feet apart.
10. **Safe Crib.** Infants under thirteen (13) months of age shall sleep only in federally approved cribs. Cots, pillows, mats, futons, or cushions will not be used for infants under thirteen (13) months of age.
11. **Sharing sleeping rooms.** If children in care over the age of four (4) share sleeping rooms with persons who are over age four (4), the provider shall have approval from the parent(s) or guardian(s) of each child involved. A child six (6) years of age or older, shall not be in a room shared with another child of the opposite sex nor with any adult.
12. **Separate sleeping and dressing areas.** Separate sleeping and dressing areas shall be provided for school-age boys and girls.
13. **Adequate lighting.** There shall be a night light or other mechanism to illuminate hallways leading to stairs and/or the restroom.
14. **Safe evacuation plan.** There shall be a plan for evacuating children to safety in case of fire or emergency.

15. **Smoke detectors.** Operating, properly mounted, smoke detection equipment shall be available on all floors wherein children sleep. Wired smoke detection equipment is U.L. (Underwriters Laboratories) approved.
16. **Meals and snacks.** The Family Child Care shall serve meals and snacks that supplement food served at home as prescribed in Section XIV.A of these Rules.
  - a) An evening meal that meets nutritional requirements shall be served at a regular time each evening and shall be available to children who may arrive without having first eaten.
  - b) A bedtime snack shall be served, unless contraindicated by parents or physician.
  - c) Children who remain overnight and go to school directly from the Home Day Care shall have breakfast, including juice or fruit, unless they are receiving breakfast at school.
17. **Drinking water.** Drinking water shall be available to children during the night.
18. **Bathing**
  - a) Bathing facilities shall be available.
  - b) Children shall not take baths together or share the same bath water.
  - c) The provider shall give each child a shower, tub, or sponge bath in a manner agreed upon between the parent and the provider.
  - d) Tubs or showers shall be cleaned after each use.
  - e) Children shall be given fresh washcloths and towels.
  - f) No child under five (5) years of age shall be left unattended while in the bathtub.
  - g) Privacy shall be ensured for school age children.
19. **Toilet articles.** Each child shall have individual toilet articles such as comb, toothbrush, towel, and washcloth.
20. **Appropriate, comfortable sleepwear.** In preparation for sleep, the child shall be dressed in appropriate, comfortable sleep wear as agreed to by the parent of the child.
21. **Extra sleep wear.** A complete set of clean sleep wear shall be available in the event that a change is necessary.
22. **Fire drills for nighttime care.** Fire evacuation drills shall be conducted at least once a month for all children and adults present using at least two (2) means of

exit. This shall include sleeping nighttime fire drills to be conducted in accordance with guidelines established by the State Fire Marshal's Office.

23. **Limitations for nighttime care.** A Family Child Care provider shall be limited to operating either a daytime child care or an overnight child care but not both, if working alone. A provider may operate in the day time and at night if additional staff is used.

#### Section XIX. FAILURE TO COMPLY WITH APPLICABLE LAWS AND RULES

- A. **Failure to comply with applicable laws and rules.** When an applicant fails to comply with applicable laws and rules, the Department may refuse to issue or renew the certificate. The notice of a refusal to issue or renew and a statement indicating the reasons for refusal shall be formulated in writing and mailed to the applicant.
- B. **Other sanctions for failure to comply**
  1. **Conditional certificate.** If, at the expiration of a full or provisional certificate or during the term of a full certificate, the provider fails to comply with applicable laws and rules and, in the judgment of the Commissioner, the best interest of the public would be served, the Department may issue a conditional certificate, or change a full certificate to a conditional certificate. Failure by the conditional certificate holder to meet the conditions specified by the Department shall permit the Department to void the conditional certificate or refuse to issue a full certificate. The conditional certificate shall be void when the Department has delivered in hand or by certified mail a written notice to the certificate holder or, if the certificate holder cannot be reached for service in hand or by certified mail, has left written notice thereof at the Family Child Care.
  2. **Refusal to issue a certificate.** The Department shall refuse to issue a certificate to the applicant identified in the application if it finds any representation made in the application to be materially incorrect or insufficient, or if it finds that the applicant does not meet all requirements of law and rules.
  3. **Suspension or Revocation of a certificate.** The Department may suspend or revoke any certificate for violation of applicable laws and rules; for committing, permitting, aiding or abetting any illegal practices in the operation of the program or for conduct or practices detrimental to the welfare of children participating in the program.
    - a) **Emergency suspension.** Whenever, upon investigation, conditions are found which, in the opinion of the Department, immediately endanger the health or safety of children attending the Family Child Care, the Department may request the District Court for an emergency suspension pursuant to Title 4 M.R.S.A. §184(6).
    - b) **Administrative suspension.** Whenever conditions exist that immediately jeopardize the health and safety of children, the Commissioner of the Department of Health and Human Services may

issue an order of closure, which suspends the Family Child Care certificate for up to ten (10) days, pending further investigation or prior to obtaining an order of emergency suspension from the court. The Department shall require that an order of closure be posted at the home and made public as it determines to be most appropriate for parents and other potential customers.

4. **Intermediate sanctions**

a) **Grounds for intermediate sanctions.** The following circumstances shall be grounds for the imposition of intermediate sanctions:

- 1) Operation of a Family Child Care without a certificate;
- 2) Impeding or interfering with the enforcement of laws or rules governing the certifying of a Family Child Care, or giving false information in connection with the enforcement of such laws and rules; and/or
- 3) Failure to comply with Rights for Children in Family child Cares, Section VI of these Rules.

b) **Intermediate sanctions.** The Department is authorized to impose one or more of the following intermediate sanctions when any of the circumstances listed in Section XIX.B.4.a of these Rules are present and the Department determines that a sanction is necessary and appropriate to ensure compliance with State certification rules to protect the children in a Family Child Care or the general public:

- 1) The Family Child Care may be directed to stop all new admissions until such time as it determines that corrective action has been taken.
- 2) The Department may impose a financial penalty upon a Family Child Care.

5. **Financial penalties**

a) The amount of any penalty to be imposed shall be calculated as follows:

- 1) Operation of a Family Child Care without a certificate: A penalty not to exceed \$100.00 per child per day may be adjudged.
- 2) Impeding, interfering or giving false information in connection with the enforcement of laws or rules governing certification: A penalty not to exceed \$500.00 per incident may be adjudged.
- 3) Violation of Rules governing child-to-staff ratios outlined in these Rules is a violation for which a penalty not to exceed \$500.00 per incident or \$500.00 per number of children above the limitation set by rule, or both, may be adjudged

- 4) Violation of Rules governing records disclosure and confidentiality outlined in these Rules commits a violation for which a penalty not to exceed \$500.00 per incident or \$500.00 per number of children above the limitation set by rule, or both, may be adjudged.
  - 5) Violation of Rights for Children in Family Child Cares, Section VI: \$50.00 per incident may be adjudged.
- b) If the Department assesses financial penalties, an Assessment of Penalties will be issued. The Assessment shall describe each violation found to have been committed by the Family Child Care, the rule or law that has been violated and any scheduled amount of time corresponding to that violation. If the provider does not contest the imposition or amount of the penalty, the provider must pay within thirty (30) days of receipt of the Assessment of Penalties. If the provider disagrees with the imposition or amount of the penalty, the provider must notify the Department, in writing, stating the nature of the disagreement, within ten (10) working days of receipt of the Assessment of Penalties. The Department will schedule an informal conference to resolve the dispute and a written decision based on this conference will be provided. If the provider is still dissatisfied with the written decision, an administrative hearing may be requested in accordance with Section XX.
  - c) Any Family Child Care that is unable to immediately pay penalties may apply to the Department for a delay in payment or installment payments or, in certain circumstances, to have the penalty reduced.
    - 1) In order to have the payment delayed or paid in installments, a provider must supply sufficient information to the Department to demonstrate that immediate full payment of the total amount due would result in the interruption of the provision of necessary services to children.
    - 2) In order to have a fine reduced, a provider must supply sufficient information to the Department to demonstrate that payment in full would result in a permanent interruption in the provision of necessary services to children. The Department has the authority to determine whether a provider has supplied sufficient information to the Department.
- C. The Department may issue an order of correction for violations of substantive rules or other chronic noncompliance. The order must be posted in public view in the Family Child Care until deficiencies are corrected.
- D. The Department shall inform parents, referral and funding sources of such action(s). The Department will also inform the above when corrections are made and when providers return to a full certificate.

- E. An application for a full certificate may be considered by the Department only when the deficiencies identified by the Department have been corrected.

**Section XX. APPEAL PROCEDURE**

Any person aggrieved by the Department's decision to take any of the following actions, or to impose any of the following sanctions, may request an administrative hearing to refute the basis of the Department's decision, as provided by the Maine Administrative Procedure Act, Title 5, Chapter 375. Administrative hearings will be held in conformity with the Department's Administrative Hearing Regulations. A request for a hearing must be made, in writing, to the Assistant Director, Community Services Program Licensing, Division of Licensing and Regulatory Services, Department of Health and Human Services, and must specify the reason for the appeal. Any request must be mailed within ten (10) working days from receipt of the Department's decision to:

- A. Issue a conditional certificate;
- B. Amend or modify a certificate;
- C. Void a conditional certificate;
- D. Refuse to issue or renew a full certificate;
- E. Refuse to issue a provisional certificate; or
- F. Impose a fine.

**Section XXI. SUBSEQUENT APPLICATION FOR A FULL CERTIFICATE**

Subsequent to any of the following actions, a subsequent application for a full certificate may be considered by the Department when the deficiencies identified by the Department at the time the action was taken have been corrected:

- A. Issuance or voiding of a conditional certificate;
  - B. Refusal to issue or renew a full certificate;
  - C. Revocation or suspension of a full certificate; or
  - D. Refusal to issue a provisional certificate.
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EFFECTIVE DATE:

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

AMENDED:

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

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

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

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

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