STATE OF MAINE

CHILD CARE FACILITY
LICENSING RULE

CHILD CARE CENTERS, NURSERY SCHOOLS,
SMALL CHILD CARE FACILITIES, OTHER PROGRAMS

10-148 CODE OF MAINE RULES
CHAPTER 32

Maine Department of Health and Human Services
Office of Child and Family Services
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10-148 CMR
Chapter 32

Department of Health and Human Services
Office of Child and Family Services

CHILD CARE FACILITY LICENSING RULE

CHILD CARE CENTERS, NURSERY SCHOOLS, SMALL CHILD CARE FACILITIES, OTHER PROGRAMS

SUMMARY STATEMENT

This rule is established to govern the licensing of Child Care Facilities in the State of Maine, including Child Care Centers, Nursery Schools, Small Child Care Facilities, and Other Programs, and to protect the health, safety, and welfare of the Children served.

AUTHORITY

This rule is promulgated under the authority of 22 M.R.S. Chapters 1661, 1663, 1673 and 1675.

EFFECTIVE DATE

SECTION 1. STATEMENT OF PURPOSE AND DEFINITIONS

A. **Statement of Purpose**. The purpose of this rule is to establish licensing standards for Child Care Facilities. For purposes of this rule, "Child Care Facilities" is defined broadly, per 22 M.R.S. §8301-A(1-A)(B), to include child care centers (22 M.R.S. §8301-A(1-A)(A)), nursery schools (22 M.R.S. §8301-A(1-A)(D)), small child care facilities (22 M.R.S. §8301(1-A)(E)), and other programs (22 M.R.S. §8301-A(1-A)(B)); where Child Care Facilities is referenced, this rule governs the operations of each of those types of entities. Where a provision of this rule applies to only one of those types of entities, the rule so states.

This rule is promulgated in accordance with 22 M.R.S. Chapters 1661, 1663, 1673 and 1675 and describes the minimum requirements for the licensing and operation of Child Care Facilities. The rule supports Child Care services that meet Children's psychosocial and developmental needs, while providing a safe, healthy and secure environment.

B. **Definitions.** As used in this rule, unless the context otherwise indicates, the following terms have the following meanings:

1. **Abuse or Neglect** means a threat to a Child's health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these, by a person responsible for the Child.

2. **Accident** means an incident that results in damage or creates observable injuries (scratch, bite mark, scraped knee, first aid given, etc.).

3. **Adult** means a person 18 years of age and over.

4. **Age-appropriate** means activities, materials, curriculum, and environments that are developmentally consistent with the chronological age of the Child(ren) being served.

5. **Applicant** means any person applying for a License under these Rules.

6. **Attendance Record** means a list of the names of the Children who are physically present at the Child Care Facility at any given period of time.

7. **Bio-contaminants** are living organisms (such as bacteria, enzymes, fungi, viruses) or their products that can be hazardous to animal or human health if inhaled, swallowed, or otherwise absorbed into the body.

8. **Certified Lifeguard** means a person who holds a current certificate in life saving techniques issued by a qualified instructor from a recognized organization upon successful completion of a live training.

9. **Child or Children** means a person or persons under the age of 13.

10. **Child Care Facility** per 22 M.R.S. §8301-A(1-A)(B), means a child care center, nursery school, or small child care facility, as defined in §§8301-A(1-A)(A), (F), and (E), respectively, as well as any program for children under 5 located in a private school and programs that contract with one or more Child Development Services Systems sites (22 M.R.S. §8301-A(1-A)(B)).

a. A Child Care Facility includes:

i. **Child Care Center** (22 M.R.S. §8301-A(1-A)(A)) means (1) A house or other place in which a person maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for 13 or more children under 13 years of age; or (2) Any location or locations operated as a single child care program or by a person or persons when there are more than 12 children being cared for;

ii. **Nursery School** (22 M.R.S §8301-A (D)). A house or other place in which a person provides care for 3 or more Children between 33 months and 8 years of age, for a session no longer than three- and one-half hours in duration;

iii. **Small Child Care Facility** (22 M.R.S. §8301-A(1-A)(E)). A house or other place, not the residence of the operator, in which a person maintains or otherwise carries out a regularly scheduled program, for any part of a day, providing care and protection for 3 to 12 Children between 6 weeks and 12 years of age;

iv. **Other Programs** (22 M.R.S. §8301-A(A-1)(B)). Any program for children under 5 years of age that is located in a private school and programs that contract with one or more Child Development Services System sites are required to be licensed as a Child Care Facility (ie, collaborative Public Pre-K programs that include Head Start, Child Development Services, or privately funded child care).

b. A Child Care Facility does not include a:

i. Family Child Care Provider (22 M.R.S. §8301-A(1-A)(C));

ii. Residential or overnight summer camp established solely for recreational and educational purposes, licensed in accordance with 10-144 CMR Chapter 208, Rules Relating to Youth Camps, Primitive, and Trip Camping;

iii. Program offering relevant instruction to Children for the purpose of teaching a singular skill such as karate, dance or basketball;

iv. Private school recognized by the Department of Education as a provider of equivalent instruction for the purpose of equivalent school attendance; or

v. Formal public or private school in the nature of a kindergarten or elementary or secondary school approved by the Commissioner of Education in accordance with Title 20-A.

11. **Child Care Staff Member** means an individual:

a. (1) Who is employed by a Child Care Facility for compensation, including an owner, a contract employee or self-employed individual; or (2) Whose activities involve the care or supervision of Children for a Child Care Facility or unsupervised access to Children who are cared for or supervised by a Child Care Facility.

b. Child Care Staff Member does not include an individual who is related to all children for whom child care services are provided or a contractor performing maintenance and repairs at the Child Care Facility who does not have unsupervised access to children who are cared for or supervised by the Child Care Facility.

12. **Child with special needs** means a Child who:

a. Is up to 13 years of age who has been determined and documented by a qualified professional to be a "Child with a disability" as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. §1401);

b. Is eligible for early intervention services under Part C of the Individuals with Disabilities Education Act (20 U.S.C. §§1431, et seq.); is eligible for services under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §701);

c. Meets the definition of disability under the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §12102);

d. Is considered at-risk for health and/or developmental problems as a result of established biological risk factors, and/or as a result of identified environmental risk factors including, but not limited to, homelessness, abuse and/or neglect, lead poisoning, and prenatal drug or alcohol exposure; or

13. **Clean** means to remove dirt, debris, and bodily fluids by scrubbing and washing with a detergent solution and rinsing with water.

14. **Consent Agreement** means a written set of stipulations that a Child Care Facility will follow as a condition of licensure.

15. **Days** means calendar days, unless otherwise stated.

16. **Department** means the Child Care Licensing Unit within the Department of Health and Human Services with the responsibility for conducting inspections and issuing licenses, unless otherwise specified within this rule.

17. **Developmentally Appropriate** means actions, environment, equipment, supplies, communications, interactions, or activities that are based on the individual physical, emotional, social, and cognitive needs of each Child in care.

18. **Directed Plan of Action** means a written plan prepared by the Department following an inspection or investigation in which violations of this rule have been identified. A Directed Plan of Action includes the specific procedures, methods, changes to be enacted by the Child Care Facility to correct all areas of noncompliance. A Directed Plan of Action also includes the timeframes by which the Child Care Facility will come back into compliance.

19. **Director** means the qualified individual having responsibility for carrying out policy and administering the program.

20. **Discipline** means teaching Children about expectations, guidelines and principles, to maintain safety, foster sound judgement, and develop and maintain self-discipline.

21. **Finding** means a decision reached by an Out of Home Investigator based on the facts and evidence gathered during an investigation to support a decision that a person responsible for a Child has, by a preponderance of the evidence, abused or neglected a Child.

22. **Governing Body** means a person or persons ultimately responsible for the operation of an incorporated Child Care Facility.

23. **Group** means the specific Children assigned to a specific Child Care Staff Member(s) within one room or identifiable activity space.

24. **Hazardous Material** means any item or agent (biological, chemical, radiological, and/or physical), which has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors.

25. **Health Consultant** means a physician, physician's assistant, a nurse practitioner or registered nurse with pediatric or Child care experience, licensed to practice in the United States.

26. **Immediate Danger** means a situation in which the Child Care Facility's non-compliance with one or more sections of this rule has caused, or is likely to cause, harm or impairment to a Child, and there continues to be an immediate risk of harm or impairment unless immediate corrective action is taken.

27. **Immediate Jeopardy** means a situation in which the Child Care Facility's non-compliance with one or more sections of this rule has caused, or is likely to cause, serious injury or death of a Child, and there continues to be an immediate risk of serious injury or death of a Child unless immediate corrective action is taken.

28. **Incident** means a noteworthy occurrence, including but not limited to an aggressive outburst, allegations of inappropriate conduct by a Child Care Staff Member, inappropriate Child sexual behavior, unusual event, observations of changes in behavior, or a disclosure of abuse or neglect from a Child or parent.

29. **Infant** means a Child aged six weeks to 12 months.

30. **Infant/Toddler Program** means a Child Care Facility serving Children aged 6 weeks to 36 months of age.

31. **Investigation** means a systematic course of interviews, record reviews, and observations conducted for the purposes of determining the presence of Child abuse and/or neglect, and/or violations of this rule.

32. **Lead Teacher** means the individual having program responsibility for a group of Children attending a Child Care Facility. The lead teacher may also work under the Director or act as Director.

33. **Legal Guardian** means the person or agency who is legally authorized to act on behalf of a Child.

34. **License** means written permission, whether provisional, temporary, conditional, or full, by the Department that authorizes the operation of a Child Care Facility.

35. **Licensed Capacity** means the number and ages of Children, specified on the license, allowed to be on the premises at any one time.

36. **Lock** means a fastening operated by a key, a combination, or other mechanism that is attached to a hasp or a completely enclosed box or safe that prevents access to medications, cleaning supplies and other toxins, confidential records, and pools.

37. **Lockdown** means a condition of remaining locked, and potentially hidden, inside the Child Care Facility when it is unsafe to leave the facility or be outdoors during an emergency situation.

38. **Mandated Reporter** means a person who is required by law to report reasonable suspicions of Child abuse or neglect.

39. **Maximum Group Size** means the total number of Children who may be assigned to a specific Child Care Staff Member, occupying an individual classroom, a well-defined physical space within a larger room, or playground area. Maximum group size is determined by the type of program and the allowable ratios as defined in this rule.

40. **Medication** means a drug prescribed for a Child by a licensed health care practitioner and non-prescription medications.

41. **Multi-site Operation** means a Child care organization with separate licenses that share the same governing body, may have centralized business functions, record keeping and leadership.

42. **Natural Body of Water** means an ocean, lake, pond, river, reservoir, quarry, spring, stream, and wading area that may be used for recreational water activities.

43. **Night-time Care** means compensated Child care provided between the hours of 12 a.m. and 6 a.m.

44. **Non-swimmer** means a Child Care Staff Member or Child who cannot swim 25 feet on their stomach, 25 feet on their back, and tread water for 1 minute.

45. **Occasional Care Program** means a Child Care Facility caring for Children on a drop-in or otherwise irregular basis when parents are not within the building; for example, Child care located in a ski area or a shopping center.

46. **Out-of-Home Investigation Unit (OOH)** means the unit that is responsible for investigating reports of suspected abuse and neglect of Children by person(s) or in facilities subject to licensure pursuant to 22 M.R.S §§8351-8358.

47. **Parent** means a birth or adoptive father or mother. For the purpose of this rule, Parent includes a Legal Guardian.

48. **Plan of Action** means a written plan prepared by the Child Care Facility with the Department at the time of inspection or a written plan prepared by the Child Care Facility and submitted to the Department. A Plan of Action includes the specific procedures, methods, changes to be enacted by the Child Care Facility to correct all areas of noncompliance. A Plan of Action also includes the timeframes by which the Child Care Facility will come back into compliance.

49. **Premises** means all parts of contiguous real estate, including, but not limited to, lands, private ways, and any buildings or structures, over which the Child Care Facility occupies, or has direct or indirect control or interest, even though Children may not be served in all parts of the contiguous real estate.

50. **Preschool Child** means a Child 3 to 5 years of age.

51. **Provider Letter of Eligibility** means a letter sent by the Department to the individual who is the subject of the comprehensive background check that reports eligibility status exclusively and does

not reveal specific disqualifying information or any confidential information regarding the individual.

52. **Repeat Violation** means a violation of a specific licensing rule provision for which the Child Care Facility has been previously cited.

53. **Rescue Medication** means a medication prescribed and packaged for the use of a specific Child in an emergency situation, such as an Epi-pen or a bronchodilator.

54. **Rest and Relaxation** means quiet, undirected time. This may include reading circles, napping, or other quiet individual activities appropriate to the age of the Children.

55. **Risk** means the likelihood that a Child may experience some form of harm, injury, or abuse and/or neglect based on factors and/or circumstances to which that Child has been exposed.

56. **School-age Child** means a Child who is at least 5 years old and under 13 years old.

57. **School-age Program** means a program providing Child care solely to school-aged Children. A school-age program operates before or after the customary school day and may also operate during school holidays, the summer period, or any other time when school is not in session, including early release days.

58. **Serious Injury** means:

    a. An injury or illness which requires medical attention from a physician or other medical personnel, including, but not limited to, an emergency room visit and/or hospitalization, including those that are the result of an accident involving transportation to or from a Child Care Facility sponsored event; or

    b. Any illness which is a notifiable condition, as identified by the Department at https://www1.maine.gov/dhhs/mecdc/infectious-disease/epi/disease-reporting/documents/notifiable-list.pdf.

59. **Shelter-in-Place** means to remain inside the Child Care Facility during an emergency situation, when circumstances indicate that it is unsafe to leave the facility.

60. **Swimming Pool** means any water-filled container, located indoors or outdoors, for swimming or recreational activity, and having a depth of more than twenty-four inches (24") at any point.

61. **Toddler** means a Child aged 13 months through 36 months.

62. **Toxic Substance** means any chemical or mixture that may be harmful to the environment and to human health if inhaled, swallowed, or absorbed through the skin.

63. **Universal Safety Precautions** means an approach to infection control where all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

64. **Waiver** means written permission from the Department to modify a provision of this rule.

65. **Water Activities** means the use of splashing pools, wading pools, and swimming pools with or without slides, and other similar bodies of water including ponds, rivers, and the ocean, excluding water tables and sprinklers.

66. **Water Safety Attendant** means a person assigned to watch over Children participating in water activities who has completed a Department-approved basic water safety course that includes training in non-swimming rescue techniques within the last three years.

67. **Wading Pool** means a pool with a water level maintained at 24 inches or less and that is no more than 4 feet in diameter. This pool does not require a filter and may not contain chemically treated water.

68. **Wading Pool Attendant** is a person who holds a valid adult and pediatric First Aid and CPR certificate and is responsible for supervision of Children in a wading pool as defined above.

SECTION 2. LICENSING REQUIREMENTS AND PROCEDURES

A. Licensing

1. No person or entity may operate a Child Care Facility for more than two Children without a license from the Department in force, authorizing such operation, in accordance with 22 MRS §7801(1)(E).

2. The Child Care Facility must post the following, where easily seen, at the Child Care Facility:

a. The current license issued by the Department;

b. The results of the most recent inspection, showing any violations of this rule;

c. Any enforcement actions, including a Directed Plan of Action or a Conditional License; and

d. Any notices or correspondence required by the Department to be posted, including but not limited to water test results or any lead hazard assessment.

e. The Department will post inspection reports to a website available to the general public, for a running period of three years, in accordance with 42 CFR §98.33(4).

3. The Child Care Facility shall be responsible for assuring compliance with all relevant State and federal statutes and regulations, and this rule.

a. All personnel and interns working in a Child Care Facility are responsible for complying with this rule.

4. Licenses are only effective at the location for which they are issued. If the Child Care Facility moves to another location, a new license must be issued prior to operation.

a. A license may not be transferred from one Child Care Facility to another.

b. In the event of an unanticipated occurrence, such as a fire, that renders an approved location uninhabitable, a Child Care Facility may provide services in an alternative location upon approval by the Department, in accordance with the Department of Health and Human Services' Child Care Emergency Plan.

c. The alternative location must also be approved by the State Fire Marshal's Office or Child Care Facility's local fire department prior to the provision of Child care services.

5. When two (2) or more buildings are or will be utilized to accommodate a Child Care Facility operated by the same person, the person must apply to the Department for a single license covering all the buildings, provided that:

a. The buildings are on the same or contiguous properties, and the Department determines that the issuance of a single Child Care Facility license would not be detrimental to the health, safety, well-being, and development of the Children served;

b. The facilities must have the same Director.

6. No Child Care Facility shall care for more Children than the license allows. Child Care Facilities must only care for Children within the age range of the license issued and within the proper staff-child ratios for those age ranges.

a. Changes in capacity or age range may be made at the discretion of the Department, and when necessary, with the approval of the local code enforcement and the State Fire Marshal's Office.

b. The license may be amended or reissued to increase or decrease the number of Children allowed or to change the age range of Children that may be cared for by the Child Care Facility.

B. **Qualifications of the Applicant and Director**. The Applicant and proposed Director must demonstrate their willingness and ability to operate and manage the Child Care Facility with mature judgment, compassionate regard for the best interests of Children and consistent compliance with these regulations and all relevant laws. In making this determination, the Department shall consider each of the following factors to the extent that they are relevant to the proposed Applicant and Director of the Child Care Facility:

1. Record and reputation of honest and lawful conduct in business and personal affairs, including but not limited to:

a. Arrests, indictments or convictions;

b. Investigation by Child Protective Services or the Out-of-Home Investigation Unit of the Department;

c. The removal of Children from the Applicant's or Director's care or custody by court order;

d. Any protection from abuse order or any other order that makes a finding of domestic abuse or family violence; and/or

e. Any prior licensing investigations, conditional licenses, license suspensions, application denials, fines and/or revocations regarding a child care license or approval issued to the Applicant or Director.

2. Conduct which demonstrates an understanding of, and compliance with this rule;

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;

5. Relevant experience, including the capacity to manage the financial operations and staff of the Child Care Facility for which the license is sought; experience in the field of child care, child development or areas related to the provision of child care services.

6. The applicant must authorize the Department to review the records of the following entities to determine compliance with this rule, as part of the license application and renewal processes: criminal history and driving record, when applicable; court records; Maine and national sex offender registries; Child Protective Services, and Out of Home Investigations.

C. Application

1. Application for an initial license must be made to the Department of Health and Human Services, on forms furnished by the Department, and the appropriate fee must be included.

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

b. Incomplete applications on which no action has been taken by the applicant shall be void after sixty (60) days.

c. A license must be issued prior to the commencement of operation of a Child Care Facility, or the Applicant may be subject to sanctions.

2. At least sixty (60) days prior to the expiration of a license to operate a Child Care Facility, the Child Care Facility must submit an application and the required fee for renewal to the Department on a form supplied by the Department, accompanied by all additional information as may be required. It is the responsibility of the Child Care Facility to make timely application for renewal.

3. Upon receipt and review of application and determination of compliance with the requirements of the Maine Revised Statutes Annotated and any rules adopted pursuant thereof, the Department shall renew such license for a period of two (2) years, unless it finds that there are specific and sufficient grounds either for denial of the application for renewal or for renewal of the license on a temporary or conditional basis.

4. If timely application for renewal is made, the existing license shall continue until a final decision on the renewal is made, in accordance with 5 M.R.S §10002.

5. The applicant must complete Department-approved training as required by Section 8 of this rule before a license may be issued.

6. The Child Care Facility must comply with the Life Safety Code of the State Fire Marshal's Office, Department of Public Safety.

a. The Department must receive a written statement, furnished bi-annually by the State Fire Marshal's Office, indicating that the Child Care Facility has complied with the requirements of the *Life Safety Code of the National Fire Protection Association.*

b. No license to operate a Child Care Facility at any location shall be issued until such Child Care Facility passes a satisfactory inspection for fire safety and fire protection, including working fire detection apparatus as required.

c. As an ongoing condition of licensure, the Maine Department of Public Safety, Office of the State Fire Marshal, must inspect and approve the Child Care Facility premises at least every two (2) years.

d. The Child Care Facility must obtain approval from the Maine Department of Public Safety, Office of the State Fire Marshal or designee, which specifically notes where child care may be provided (basements, specific rooms within property, and second or higher floors, including any restrictions on the ages of Children).

e. An additional fire safety inspection must be done when a heating system is changed, when major structural changes are made on the premises, and prior to use of new rooms on the

premises. The Child Care Facility is responsible for notifying the Department of any changes that require inspection 10 days prior to installation.

f. Child Care Facilities must establish and maintain compliance with all corrections, restrictions, or conditions specified by the Maine Department of Public Safety, Office of the State Fire Marshal or designee in the Plan of Correction resulting from identified deficiencies in the course of the fire safety inspection, within the time frames identified.

7. The Child Care Facility must maintain, and provide to the Department on request, documentation that indicates that the Child Care Facility complies with local codes and ordinances, including zoning, or a statement from the locality that no approval is required.

8. Requests for an increase in the number of Children the Child Care Facility is licensed to serve must be made in writing to the Department with applicable fee. No increases in the number of Children a program is licensed to serve shall be made without written prior approval from the Department, the State Fire Marshal's Office, and local code enforcement, where applicable.

9. The Child Care Facility must secure, in writing, the approval of the landlord for any rented or leased space for use as a Child care.

D. **Comprehensive Background check.** Child Care Staff Members over the age of 18 must comply with all provisions pursuant 10-148 C.M.R Ch. 34 Child Care Provider Background Check Licensing Rule.

1. When disqualifying information is found in any of the registries, repositories, and databases required for the background check for an Applicant or if the Applicant is otherwise ineligible because of refusal to consent to a background check or knowingly makes materially false statements in connection with such a background check, no License shall be issued to that Applicant.

2. No Child Care Facility shall employ a Child Care Staff Member, over the age of 18 years old who has not furnished a Provider Letter of Eligibility indicating that the Child Care Staff Member is eligible, nor allow any individual known by the Child Care Facility to be ineligible under this Rule to have access to any Child in the Child Care Facility's care.

E. **Type and term of a license**. The type and term of a Child Care Facility license issued by the Department must comply with the provisions of this rule.

1. A provisional license shall be issued by the Department to an applicant who meets all the following applicable criteria, in accordance with 22 MRS §7802(A):

a. Has not previously operated a Child Care Facility in Maine, or has relocated to a new property, or has closed a program and is reopening;

b. Complies with all applicable laws and rules for a provisional license; and

c. Demonstrates the ability to comply with all applicable laws and rules for a full license.

2. A written provisional license may be issued for a term of no less than three (3) months and no more than 12 months.

3. A full license shall be issued by the Department to an applicant who complies with the requirements set out in this rule, in accordance with 22 MRS §7802 (1)(B).

4. A full license shall be issued for a term of two (2) years, in accordance with 22 MRS §7802 (2)(B)(5).

5. A written conditional license may be issued when the Department determines that the Child Care Facility has failed to comply with applicable rules and laws. The conditional license must specify the corrections that must be made and the deadline for making each correction, in accordance with 22 MRS §7802(1)(C).

6. A conditional license shall be issued for a specific term not to exceed twelve (12) months, or the remaining portion of the term of the previous full license, whichever the Department determines appropriate based on the violations set out in the Directed Plan of Action, in accordance with 22 MRS §7802(2)(C).

7. When a licensed Child Care Facility plans a move to a new location, the Child Care Facility must submit an application for a license for the new location. A temporary license may be issued by the Department for the new location, in compliance with 22 MRS §8301-A(6), when:

a. All applicable requirements set out in this rule have been met, except an inspection or other action by a state agency or a contractor of that agency that is required by this rule is delayed; and

b. No action or inaction by the applicant caused a significant delay by that state agency or a contractor of that agency.

8. A temporary license shall be issued for a specific term, not to exceed six months.

F. Administration.

1. A corporation, partnership, association, or trust must identify the names and addresses of its officers, partners, trustees, or directors and must provide, where applicable, the charter, partnership agreement, constitutions, articles of incorporation, by-laws, trust document, or other documents governing the legal obligations and authority of the entity.

2. Insurance.

a. The Child Care Facility must carry a minimum liability insurance of $100,000 per person, $300,000 per occurrence; and a minimum of $5,000 property damage.

b. A certificate of liability insurance must be submitted prior to the issuance of a license.

3. The Child Care Facility must have a readily accessible copy of this rule on the premises and must make it available to any person upon request.

4. The Child Care Facility must allow a Child's parents/legal guardians unlimited access to visit the Child, to observe the program at any time that the Child is present and provide opportunities to participate in activities.

a. The Child Care Facility must exchange information with the Child's parents/legal guardians about the Child on a frequency appropriate for the age and development of the Child.

b. The Child Care Facility must advise a Child's parents/legal guardians prior to taking Children on field trips and must require the parents/legal guardian’s written permission.

c. The Child Care Facility must be directly accessible to a Child's parents/legal guardians by telephone at all times when Children are present.

d. The Child Care Facility must advise a Child's parents/legal guardians prior to allowing the Child to participate in any high-risk activity; for example, swimming, horseback riding or using a trampoline.

5. The Child Care Facility must encourage parents/legal guardians to visit the Child Care Facility prior to admission.

6. A copy of the Child Care Facility handbook will be made available to all parents or legal guardians at the time of enrollment. The handbook must contain, at a minimum:

a. Ages of Children served;

b. Hours of operation and daily schedule;

c. Numbers of Children served;

d. Specific focus if applicable, such as educational focus, religious focus, Montessori, after-school, summer recreation, teaching site, etc.;

e. Opportunities for Parent/Legal Guardian involvement;

f. A description of the Child guidance methods used by Child Care Staff Members;

g. Services offered, such as: basic childcare, care for Children with special needs, part-time care, infant/toddler care, pre-school care, school-age care, etc.;

h. Fees (if any) including charges for late pick-up of Children;

i. Vacation policy;

j. Terms of any contract or placement agreements;

k. The rights of Children;

l. Emergency procedures and relocation information;

m. Incident reporting and mandatory reporting of Child Abuse or Neglect;

n. Expulsion and suspension practices;

o. Management of communicable illnesses;

p. Medication administration;

q. Annual calendar of closure dates (if applicable);

r. Resources available for developmental screenings; and

s. Reporting of Child death and serious injury.

7. The Child Care Facility must be in compliance with applicable provisions of the Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990). Compliance with ADA accessibility standards includes but is not limited to the following:

a. The Child Care Facility cannot require that the parent(s)/legal guardian(s) of Children with physical, emotional and/or mental disabilities furnish the Child Care Facility with information pertaining to the Child's disabilities but is encouraged to ask pertinent developmental questions about all Children prior to entrance, to ensure appropriate and successful programming.

b. A Child Care Facility must ensure that all Child Care Staff Members are adequately trained and/or have sufficient experience to meet the needs of all Children for whom they are responsible, as the need presents.

8. Except as provided by law, confidential information may not be released without a court order or a written release from the parent or legal guardian of the Child about whom the confidential information has been requested. Violation of these provisions is subject to financial penalties as set forth herein and pursuant to 22 M.R.S. §7702-A. Confidential information includes:

a. All Child records.

b. All personnel records.

c. Information that identifies, directly or indirectly, a referent, complainant, or reporter of suspected child abuse and/or neglect, and/or licensing rule violations, in accordance with 22 M.R.S §7703(2)(G).

d. Information about Children in care (or formerly in care) must be disclosed only upon written authorization of a Child's legal guardian, except as otherwise specified by law, and must be shared with the Department and Child placing agencies licensed pursuant to 22 M.R.S Chapter 1671, upon request.

e. Personnel records must be provided to the Department upon request, in accordance with 22 M.R.S Chapter 1661.

9. The Child Care Facility must maintain a Child Care Facility Staff manual that addresses the following:

a. Policies and their implementation. This must include, at a minimum, policies for the following:

i. Mandated reporting,

ii. Child guidance,

iii. Child illness,

iv. Fire drill procedures,

v. Emergency and disaster procedures,
vi. Staff qualifications and training,

vii. Supervision of staff/interns

viii. Reporting licensing violations,

ix. Inclusionary practices for Children with disabilities,

x. Safe sleep policy,

xi. Serious injury and Child death reporting,

xii. Expulsion and suspension prevention,

xiii. Interpretation for English Language Learners,

xiv. Release of Children, and

xv. Transportation of Children (if applicable).

10. The facility must adopt written policy for handling all suspected instances of child abuse or neglect in accordance with Maine statute. Written policy must include, but is not limited to, the following:

a. Internal notification procedure of suspected abuse or neglect;

b. Conditions that require internal notification of the owner, director, or designee;

c. The requirement that any suspicion of abuse and/or neglect must be immediately shared with the owner, director, or designee;

d. The requirement that suspected child abuse and neglect must be immediately reported upon suspicion to Child Protective Intake hotline;

e. Identification of personnel responsible for contacting the Child Protective Intake hotline;

f. Protocol to notify all relevant parties that suspected child abuse and neglect has been reported to Child Protective Intake;

g. Completion of incident reports, including: the details of the allegation or suspicion, the date Child Protective Intake was called, which relevant parties were notified the report was filed, and whether or not the parent/guardian was notified of the allegation; and

h. Parental notification, including the determination how and what information will be shared with a parent/legal guardian when Child Protective Intake has been contacted.

11. The Child Care Facility must develop a written policy to follow if an allegation of Child abuse or neglect is made against any Child Care Staff Member at the Child Care Facility. The written policy must include but is not limited to the following:

a. Prevention measures to protect from potential allegations;

b. Conditions of continued employment and access to Children during the course of an investigation by the Department;

c. Grounds for termination;

d. The requirement to report suspected child abuse and neglect occurring at any location in accordance with statute; and

e. Parental notification.

12. The Child Care Facility is responsible for assuring that the policies are followed. This includes:

a. Responsibility for establishing and maintaining a sound financial structure;

b. Being qualified to administer the Child Care Facility or employing a qualified person to administer the program; and

c. The Child Care Facility must comply with all local, state and federal laws and rules pertaining to the operation of a Child Care Facility in Maine.

13. The Child Care Facility must be responsible for the daily operation in compliance with this rule.

a. If the director is absent from the Child Care Facility, a qualified Child Care Staff Member must be designated to be in charge and be given authority to administer the facility in compliance with this rule.

b. A facility licensed for 13-20 Children must employ at least one lead teacher who may be the same person as the director. Assistants may be employed to complete the ratios.

c. A facility licensed for more than 21 Children must employ one lead teacher per group of Children. Assistants may be employed to complete the ratios.

d. If the Director is absent in a facility licensed for 50 or more Children, a Child Care Staff Member who meets Director/lead teacher qualifications must be designated to be in charge and be given authority to administer the facility in compliance with this rule.

14. A sample daily activity schedule must be posted in each classroom. The schedule must include the following, as appropriate to the hours of operation:

a. Times for meals/snacks;

b. Time for sleep, rest, or quiet time; and

c. A period of time for indoor and outdoor activities appropriate to the developmental needs of the Children.

d. When necessary, modifications must be made in the schedule.

15. The Child Care Facility must register for Maine's Quality Rating and Improvement System.

16. **Requirement for Prevention of Communicable Disease**. For Nursery Schools only, every 2 years each licensee, administrator and other staff members of the Nursery School who provide care for children must be declared free from communicable disease by a licensed physician, nurse practitioner or physician assistant, pursuant to 22 M.R.S. §8402. This is a condition for maintenance of a license for Nursery Schools, and Nursery Schools must adequately maintain records reflecting compliance with this requirement.

G. Change in license. An application to revise a license is required when:

1. A Child Care Facility seeks to increase the capacity, within the limits established by the State Fire Marshal and this rule;

2. There is a change in the Director of a Child Care Facility; or

3. The Child Care Facility requests approval for construction, additional space to be used, or a heating system requires replacement.

H. Waiver

1. Request for a Waiver. The Department may, upon written request of any Child Care Facility or applicant, waive or modify a provision of these Rules which is not mandated by Maine or federal statute. The Child Care Facility or applicant shall provide clear and convincing evidence, including at the request of the Department expert opinion which satisfies the Department that the Child Care Facility or applicant's alternative method will comply with the intent of the rule for which a waiver or modification is sought. Application for a waiver or modification must include:

a. A statement of the provision for which waiver or modification is requested;

b. An explanation of the reasons why the provisions cannot be met and why a waiver or modification is being requested; and

c. A description of the alternative method proposed for meeting the intent of the provision sought to be waived or modified.

2. Approval or Denial of the Request for a Waiver. The Department will approve or deny a request for a waiver, in writing, within four weeks of receiving the request for a waiver. The written decision of the Department will explain the reasons why the Request for a Waiver were either approved or denied. If approved, the waiver will be limited to the term of the License; and extension will be granted only where the best interest of the Child(ren) is served.

SECTION 3. FEES

A. Fees.

1. A licensing fee must be submitted with each application for a license, as directed by the Department.

2. Fees for licensing are non-refundable.

3. Fees for license application and renewal will be established based on an analysis of the Department's costs for issuing the license. Fees will not exceed the cost of issuing licenses.

4. Failure to submit a timely renewal application will result in the expiration of the license.

B. Fees for facilities serving 3-12 Children.

1. The application fee for a provisional or a temporary license is $120.00.

2. The application fee for a full license or its biennial renewal is $240.00.

C. Fees for facilities serving 13 or more Children.

1. The application fee for a provisional or a temporary license is $120.00.

2. The application fee for a full license or its biennial renewal is $240.00.

D. Fee for Nursery Schools The application fee for a provisional, temporary, renewal, or full license for a Nursery School is $10.00.

SECTION 4. INSPECTIONS AND INVESTIGATIONS

A. **Inspections.** The Department generally conducts unannounced site inspections. The Department may conduct more frequent inspections at its discretion. Routine inspections occur at the following times:

1. Upon application;

2. Annually, after the date of initial licensure;

3. When the Child Care Facility has requested an increase in capacity, a change in premises or services, a change or proposed change in administrator, program description, physical plant or services;

4. To investigate a complaint of rule violation, or an allegation of suspected abuse and/or neglect;

5. For routine monitoring of care, including determining compliance with a Plan of Action or Directed Plan of Action to ensure that cited deficiencies have been corrected.

B. **Right of entry**

1. The Department has the right to enter upon and into the premises of any licensed Child Care Facility at any reasonable time, pursuant to 22 MRS §7804.

2. The Department may enter upon the premises of a Child Care Facility or an individual reported or suspected to be operating without a license, only with permission of the owner or person in charge, pursuant to 22 MRS §7702-B(7), or with a search warrant from the District Court authorizing entry and inspection, as set forth below, 22 M.R.S. §7804.

a. The Department and a duly designated officer or employee of the Department have the right to enter upon and into the premises of an unlicensed Child Care Facility with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E, by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine the state of compliance with this section. Pursuant to the Maine Rules of Civil Procedure, Rule 80E the Department's right of entry and inspection may extend to any premises and documents of a person, firm, partnership, association, corporation or other entity that the Department has reason to believe is operating without a license.

b. An owner or person in charge of an unlicensed Child Care Facility may not interfere with, or prohibit, the interviewing of consumers of Child care services by the Department.

C. **Elements of an inspection.** In order to determine compliance with this rule, the Child Care Facility must allow access to all records and any part of the premises occupied or used by Children.

1. The Department may speak with Children, parents, and Child Care Staff Members during inspections.

2. The Department may photograph any part of the premises or make a photographic record of documents. The Department will provide copies of photographs taken to the Child Care Facility upon request.

D. **Inspection report.** The Department will document all violations of this rule on an inspection report and will explain any violation noted at the time of inspection. The Child Care Facility may correct violations at the time of inspection. All violations corrected on-site shall be noted on the inspection report. The Child Care Facility and the Department shall determine a Plan of Action, to include timelines for correction, for any violations that cannot be corrected at the time of inspection.

1. If the Plan of Action cannot be determined at the time of inspection, the Plan of Action must be established by the Child Care Facility and the Department within five business days of the inspection.

2. Following the inspection, the Child Care Facility must demonstrate compliance with the written Plan of Action.

E. **Directed Plan of Action.** Following an inspection or investigation, the Department may issue a Directed Plan of Action for noncompliance with this rule.

1. The Directed Plan of Action will specify rules in which the Child Care Facility is non-compliant with this rule and will prescribe the actions that must be completed by the Child Care Facility in order to comply with this rule, along with a timelines for correction.

2. Failure to comply with a Directed Plan of Action may result in enforcement action, up to and including the revocation of a license in accordance with Section 21 of this rule.

F. **Investigations.** The Department will respond to reports from any person alleging violation(s) of licensing regulations or child abuse and neglect.

1. The Child Care Facility must cooperate in all aspects of the investigation of allegations of abuse and neglect, in accordance with 22 MRS Ch. 1674. Cooperation includes but is not limited to the following:

a. The owner or Director of the Child Care Facility may not prevent the Department from privately interviewing Child Care Staff Members;

b. Allowing private interviews with Children, with or without parental consent, in accordance with 22 MRS Ch. 1674;

c. Providing contact information for families of Children enrolled at the Department's request;

d. Providing access to all Child records;

e. Providing access to all records of current and former Child Care Staff Members including access to time cards and other payroll materials upon request;

f. Provide access to all incident and accident report records; and

g. Allow access to all parts of the licensed Child Care Facility, including spaces not used for Child care.

2. The Child Care Facility must not retaliate against any reporter or his/her representative for filing a complaint. Any rule violations noted as a result of a complaint investigation will be provided to the Child Care Facility in writing.

SECTION 5. RECORD MANAGEMENT AND RETENTION

A. **Record management.** Facilities must comply with the following:

1. The Child Care Facility must maintain a separate file for each Child Care Staff Member and Child served. These records must be retained by the Child Care Facility for a minimum of three years after the Child leaves care or the Child Care Staff Member leaves employment. Child and Personnel records must be available for inspection by the Department.

2. All attendance records must include date, year, start and end time of daily attendance for each group of children. The list must be available for inspection by the Department and be kept on site for three years.

3. The Child Care Facility must record actual hours worked and break times in which Child Care Staff Members are not in a caregiving capacity and are not counted in the staff to child ratio. This record must be available for inspection by the Department and be kept on site for three years.

4. The Child Care Facility must maintain a separate record of all reports of alleged Child abuse and/or neglect made in accordance with 22 MRS §4011-A.

5. A record of fire drills for the preceding three years must be available for inspection by the Department; the Department of Public Safety, State Fire Marshal's Office, and local fire inspectors.

6. The Child Care Facility must draft and follow a records management and retention policy, which must include provisions for access to Child records by legal guardians.

7. Child Care Facilities must maintain clean, readable records in an orderly, accessible format.

8. A record of rabies vaccinations for all pets on the premises.

9. Child Care Facilities that offer swimming and wading activities must keep a written record of the type, date, time and duration of the water safety emergency procedures training and drills required in Section 15 of this Rule.

B. **Falsification of records.** Falsification of records is a Class D crime under 17-A MRS §453 and may result in action by the Department.

C. **Inspection of records**. Records must be made available for inspection upon request by the Department, without the consent of the Child or their legal guardian.

1. Only authorized Child Care Staff Members may access the organization's records, on a need to know basis.

2. During business hours, authorized Child Care Staff Members at each service location must be able to locate and access records maintained in on-site and off-site locations.

D. **Child records.** Child records must be stored in a central location and may only be accessed by authorized Child Care Staff Members. Child records must be updated annually and maintained in an organized fashion.

1. A record must be completed at the time of admission and maintained in the Child Care Facility on each Child in care (including relatives) and must include:

a. Name, birth date, street address and mailing address of the Child;

b. Name, street address, mailing address and telephone number of parent(s) or legal guardian(s);

c. Places of employment of parent(s) or legal guardian(s), if employed;

d. The current telephone number of parent(s)' or legal guardian(s)' employers;

e. A method of contacting the parent(s) or legal guardian(s) while the Child is in care;

f. The name and telephone number of a person other than the parent(s) or legal guardian(s) to contact in case the parent(s) cannot be reached in an emergency;

g. Copy of financial agreement with parent(s) or legal guardian(s);

h. Dates of enrollment and termination;

i. Record of immunizations must be on file for every Child attending the program, including relatives and Children of Child Care Staff Members who are present in the program more than one day each month;

j. Names and telephone numbers of the Child's physician and family dentist. If there is no identified family doctor or dentist, it must be noted on the Child record form;

k. Signed authorization to dispense medication, if applicable;

l. Signed authorization to obtain emergency medical care;

m. Names of persons who are permitted by the parent(s) or legal guardian(s) to remove the Child from the facility premises;

n. A same-day record of all injuries, including serious injuries, Accidents, and Incidents or emergencies which reflects the time and date of verbal or written notification of Parent or Legal Guardian. The signature of the Parent or Legal Guardian must be obtained on the Incident report within 48 hours of the event.

o. Written record of significant changes in appearance and/or hygiene upon arrival, or significant changes in behavior (such as: increased aggression, withdrawal, sexual acting out, and/or prolonged tantrums) and other health conditions, if known;

p. Known allergies and other health conditions, including related health plans as needed,

q. Any relevant documentation of medical necessity (for example, sleeping in a non-horizontal position or avoiding the use of sunscreen), if applicable;

r. Signed acknowledgement by the parent or legal guardian that the program handbook has been received and read;

s. Signed permission for use or distribution of images or personal information of the Child on any publications, social media, or promotional materials;

t. Signed permission from the Child's parents before allowing the Child to participate in any high-risk activity, including but not limited to swimming, horseback riding and using a trampoline. The permission must be updated at least annually, and indicate the type and location of activity:

u. Written permission from the parent/guardian for use of sunscreen; and

v. Signed permission to transport the Child, if applicable.

2. Child Care Facilities must place a written explanation in the Child's record explaining why any required information is missing.

E. **Personnel records.** A personnel record must be kept for all Child Care Staff Members.

1. Personnel records must be stored in a confidential and central location at all times and may only be accessed by authorized Child Care Staff Members.

2. The personnel record must contain:

a. Name, current street and mailing address, birth date and current telephone number;

b. Documentation of training,

c. Dates of employment and termination of Child Care Staff Members. Reasons for termination must be kept in the personnel record for a minimum of one year;

d. A statement signed and dated by each Child Care Staff Member certifying that the most current licensing rule has been read and understood;

e. A statement signed and dated by each Child Care Staff Member certifying that the program personnel policies, admission policies, and Parent handbook have been read and understood;

f. Documentation of any disciplinary action;

g. Documentation of completed background checks and eligibility for hire issued by the Department, in accordance with 45 CFR § 98.43; and

h. Documentation of medical examination declaring that employees are free from communicable diseases, as required for Nursery School Child Care Staff Members according to 22 MRS §8402 (3)(A).

i. Education, experience, and other qualifications;

j. An annual evaluation of each Child Care Staff Member's performance by the Director or immediate supervisor signed by the Director and evaluator; and

k. Immunization records.

l. The Child Care Facility must document all orientation and training of all Child Care Staff Members by proof of completion from a qualified on-line or in-person source.

3. Active Child Care Staff Members may review, add, and correct information contained in their records. Access to active and inactive personnel records is limited to authorized Child Care Staff Members on a need-to-know basis.

SECTION 6. REPORTING REQUIREMENTS

A. **Child care changes**. Child Care Facilities must provide written notification to the Department of the following, within 24 hours of occurrence:

1. Extended or permanent closure and expected date of closure;

2. Any changes to the heating system, any structural alterations, or any plans to use existing space in the facility 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, playground modifications, or installation of a swimming pool.

3. Any changes in phone numbers or email contact information.

B. **Mandatory report of suspected child abuse and/or neglect.** Any Child Care Staff Member suspecting abuse and/or neglect must immediately report this information to Child Protective Intake, 1-800-452-1999, TTY 1-800-963-9490 which is staffed 24 hours a day, 7 days a week.

1. The Child Care Facility must maintain documentation, not maintained in the Child's record, that a report has been made.

2. All reporting of suspected Child abuse and/or neglect, and serious injuries of a Child who is under six months of age or otherwise non-ambulatory, must comply with 22 MRS §4011-A.

C. **Reporting adverse drinking water results to the Department.** For those Child Care Facilities required to test well water in accordance with Sections 13(A) through (C) of this rule, the Child Care Facility must report any unsatisfactory water quality levels to the Department within 24 hours of receiving the result. Unsatisfactory water quality results include any levels reported by the laboratory to exceed standards within 10-144 CMR Ch. 231, Rules Relating to Drinking Water, App. A.

D. **Reporting wastewater failure.** The Child Care Facility must notify the Department and the local plumbing inspector if the wastewater disposal system fails to operate properly.

E. **Reporting legal actions.** The Child Care Facility must report, in writing, to the Department any of the following legal proceedings brought against the Child Care Facility or any Child Care Staff Member employed by the Child Care Facility within 24 hours:

1. Any proceeding that arises out of circumstances related to the care of Children in the Child Care Facility; or

2. Any proceeding that could affect the continued operation of the Child Care Facility; or

3. Arrests, indictments or convictions for sexual or violent crimes involving Children or adults, or any illegal acts involving Children, whether prosecuted or not;

4. Any arrest, indictment or conviction for operating under the influence of intoxicants or with an excessive blood-alcohol level (OUI), or for any other activity involving substance abuse;

5. Investigation by Child Protective Services;

6. The removal of Children from the Child Care Facility Licensee's care or custody by court order;

7. Any protection from abuse order or any other order that makes a Finding of domestic abuse or family violence.

8. In addition to notifying the Department in writing about any of the above legal proceedings, the Child Care Facility must furnish the Department with written releases permitting the Department to obtain information regarding any of the above legal proceedings from any source.

9. Information that calls into question the suitability of any Child Care Staff Member's ability to care for Children, including:

i. Any condition related to physical health, mental health or substance abuse that would interfere with one's ability to perform one's duties safely;

ii. Any other information regarding the Child Care Facility's circumstances or treatment of Children, such as the serious injury or death of a Child in the Child Care Facility's care, to enable the Department to determine whether there is a present threat to the health, safety and welfare of Children.

10. If such information as described above exists, the Child Care Facility must furnish the Department with written releases permitting the Department to obtain information regarding any of the above from appropriate officials or persons to determine whether there is a present threat to the health, safety and welfare of Children.

F. **Other Notifications.** The Child Care Facility must notify the Department of the following within 24 hours of occurrence:

1. All Child deaths and serious injuries that require medical care by a licensed medical provider, following notification of emergency medical personnel and the Child's parents/guardians;

2. Any Child abuse and neglect allegations naming any Child Care Staff Member(s) associated with the Child Care Facility, in addition to the immediate report to Child Protective Intake required in Section 6(B) above;

3. Child to Child sexual behavior, intentional exposure, or intentional contact;

4. Any violations of the Children's rights listed in Section 10 of this rule;

5. Any change in ownership;

6. Any change in the person designated by the Child Care Facility or the governing body as a qualified Director.

7. Any anticipated change of location:

a. If relocating due to an emergency that rendered the licensed location temporarily unsuitable for operation; or

b. If relocating permanently, the Child Care Facility must submit an application for licensure of the new location. The Child Care Facility may not operate until the Department issues a new license for the new location.

c. Department action on report. In deciding what action to take on a License under the foregoing

circumstances, the Department shall determine whether the Child Care Facility has presented sufficient evidence to indicate that the problems which resulted in any of the above have been adequately resolved such that the Child Care Facility will be in compliance with these Rules.

SECTION 7. STAFF-CHILD RATIOS, SUPERVISION, AND QUALIFICATIONS

A. Children under six weeks of age. No Child under six weeks of age, as verified by a birth certificate or immunization record may be cared for in a Child Care Facility.

B. Children of Child Care Staff Members.

1. Children of Child Care Staff Members must be counted in the appropriate age groups and in determining staff-child ratios when in care at the Child Care Facility.

2. The number of Children allowed may be restricted by the Department when any of the following circumstances are present:

a. Space is limited or unusually configured;

b. A Child Care Staff Member has physical limitations that would impact the Child Care Staff Member's ability to safely care for, supervise or respond to the needs of children in care; or

c. There is a Child or Children who may require exceptional amounts of care due to a health or other condition.

C. Staff-Child ratios.

1. The number of Children present must not exceed licensed capacity.

2. The maximum number of Children to be assigned per adult, excluding Staff Members with primary responsibility for clerical, cooking, and maintenance functions must be as follows:

a. Ratio requirements for Small Facilities serving 3-12 Children:

CHILD AGES	CHILD CARE STAFF MEMBER-CHILD RATIO		
6 weeks - 2 years	1:4	2:8	3:12
2 years – 5 years	1:8	2:12	Not applicable
Over 5 years	1:12	Not applicable	Not applicable
Mixed ages	1 Staff: 3 Children under 2 years + 3 Children 2 - 5 years + 2 Children over 5 years, **or** 8 Children 2 - 5 years + 2 Children over 5 years.	2 Staff: 6 Children under 2 years + 6 Children over 2 years.	3 Staff: 12 Children (No more than 9 Children may be under 2 years).

b. Ratio requirements for Facilities serving 13 or more Children:

AGE	CHILD CARE STAFF MEMBER-CHILD RATIO	MAXIMUM GROUP SIZE
6 weeks - 1 year	1:4	8
1 year - 2 ½ years	1:4 1:5	12 10
2 ½ years - 3 ½ years	1:7	21
3 years - Under 5 years	1:8 1:10	24 20
5 years (School age) - 12 years	1:13	n/a

c. Ratio requirements for Nursery School programs.

MAXIMUM GROUP SIZE	CHILD CARE STAFF MEMBER-CHILD RATIO
30	1:12

3. In Child care programs serving 13 or more Children:

a. A single Child Care Staff Member may provide care in one classroom within the building for six or fewer Children, regardless of age, for a period of time not to exceed one hour at the beginning and end of the posted hours of operation.

b. At least two Child Care Staff Members must be present in the Child Care Facility whenever seven or more Children, regardless of age, are present.

c. The group size and the number of required Child Care Staff Members must be determined based on the age of the youngest Child, when there is a combination of ages within a group.

d. Older Children may fill younger Children's spaces, but younger Children may not fill older Children's spaces.

e. Special events occurring at the Facility location must provide supervision in accordance with this rule. A Child attending a special event in the care of a parent or legal guardian will not be included in staff-Child ratios. Special events occurring outside of typical hours and days of operation are not subject to this rule.

D. Supervision.

1. Children must be supervised at all times.

a. In Child Care Facilities serving 3-12 Children, Child Care Staff Members must have knowledge of the activity and whereabouts of each Child in care.

i. Child Care Staff Members must be able to see or hear all Children at all times and be able to provide prompt intervention when needed.

ii. Child Care Staff Members must be physically present outside when Children under the age of eight outdoors.

iii. If children over the age of eight are outdoors and a Child Care Staff Member is not physically present, the play area must be enclosed by fencing.

b. In Child Care Facilities serving 13 or more Children, a Child Care Staff Member must be able to see and hear all children, be responsible for the ongoing activity of the Children, and be able to provide prompt intervention when needed.

2. When Children are grouped by age in programs serving 13 or more Children, groupings of Children must be within an individual room, or a specific area within a large room, separated by a partition which visually and physically separates groups of Children. The area must be defined by a visible barrier, partition or other room divider having a height above the eye level of the Children who will use that area.

3. The Child Care Facility must provide direct supervision, by awake Child Care Staff Members, to Children while maintaining staff-Child ratios during napping and/or sleeping.

a. One Child Care Staff Member may leave the group setting for periods of no longer than five minutes to attend to personal or programmatic needs, as long as that Child Care Staff Member continues to be available in an emergency.

b. Dimmed, but adequate, lighting to allow visual supervision of all Children must be maintained at all times.

c. Monitors providing both video and audio may be considered as an acceptable form of supervision in an adjacent nap space.

4. Child Care Staff Members must attend to a Child crying or crying out.

E. **Crisis plan.** The Facility must develop and follow a written plan for obtaining help in an emergency when only one Child Care Staff Member is present.

F. **Personnel Qualifications.**

1. All Child Care Staff Members working without supervision must be at least 18 years old. 16 and 17-year-old Child Care Staff Members must be directly supervised by another staff person over the age of 18.

a. All Child Care Staff Members must have a high school diploma or equivalent, be attending high school, or be enrolled in a General Educational Development (GED) preparation program or the High School Equivalency Test (HiSET) preparation program.

b. All Child Care Staff Members must demonstrate the following:

i. The ability and willingness to comply with all applicable laws and rules;

ii. The ability to provide safe and compassionate services;

iii. A history of honest and lawful conduct; and

iv. Child Care Staff Members working alone may not have physical limitations that would impact the Child Care Staff Member's ability to safely care for, supervise or respond to the needs of children in care.

c. All Child Care Staff Members responsible for, or assisting with, the care of Children must exercise good judgment in the handling of Children, demonstrate consistent compliance with this rule and all relevant laws, and must not engage in any action or practice detrimental to the welfare of the Children.

2. All Child Care Staff Members must be able to perform their assigned tasks and meet all requirements in this rule. No alcohol, tobacco, recreational marijuana, or illegal drugs may be consumed while on duty. Prescribed drugs or certified Medications that do not impair the ability of the Child Care Staff Member to care for Children are allowed.

3. Facilities licensed for 3 – 12 Children must employ a primary caregiver, Director and/or lead teacher who is:

a. At least 18 years of age, and who holds a current certification in adult and pediatric first aid and Cardio-Pulmonary Resuscitation (CPR); and

b. Has completed at least 6 hours of pre-licensing training in healthy, safe environments; Child development; observation and assessment; developmentally appropriate practice; guidance; relationships with families; individual and cultural diversity; children with special needs; business and professional development; and Child care practices.

4. Facilities licensed for 13-20 Children must employ a minimum of one director or lead teacher. The Director/lead teacher may be the owner of the Child Care Facility. The director and/or lead teacher must be at least 21 years of age and must meet one of the following requirements:

a. Graduation from an accredited high school or its equivalent, and 12 months of employment in a licensed Child Care Program and 12 hours of training in healthy, safe environments; Child development; observation and assessment; developmentally appropriate practice; guidance; relationships with families; individual and cultural diversity; children with special needs; business and professional development, Child care, or early childhood education; or

b. 30 credit hours of college courses including six credit hours in early Childhood education or closely related subjects and six months of experience (employment or college practicum) in a licensed Child Care Program; or

c. Current Child Development Associate (CDA) credential as awarded by the Council for Professional Recognition, or a Maine State-approved credential, and six months of direct Child care experience (employment or college practicum).

5. Facilities licensed for 21 – 49 Children must employ a Director and/or lead teacher who is at least 21 years of age, and meets one of the following requirements:

a. An Associate Degree in Arts/Associate in Science (AA/AS) in Early Childhood Education; or

b. An AA/AS with 12 credits in Early Childhood Education or a Department-approved related field, and two years of direct Childcare experience; or

c. 30 college credits in Early Childhood Education, and one year of direct Child care experience; or

d. Child Development Associate (CDA) as awarded by the Council for Professional Recognition or a Maine State-approved credential, and three years' direct child care experience; or

e. Five years of direct child care experience, and 135 hours of training in early childhood education including healthy, safe, and inclusive environments; child development; observation and assessment; developmentally appropriate practice; guidance; relationships with families; and cultural diversity.

6. Facilities licensed for 50 or more Children must employ a Director and/or lead teacher who is at least 21 years of age, and meets one of the following requirements:

a. A Bachelor of Science/Bachelor of Arts (BA/BS) in Early Childhood Education; or

b. A BA/BS in a Department-approved related field with 18 credit hours in Early Childhood Education and three years of direct Child care experience; or

c. An Associate in Arts/Associate in Science (AA/AS) in Early Childhood Education and three years of direct Child care experience; or

d. An AA/AS in a related field with 18 credit hours in Early Childhood Education and three years of direct Childcare experience;

e. Current CDA as awarded by the Council for Professional Recognition or a Maine State-approved credential, with five years of direct Childcare experience;

f. Seven years of experience and 180 hours of training in the topics listed in Section 7(F)(4)(e) above; or

g. Meet Level 5, 6, 7, or 8 on the Maine Roads to Quality Career Lattice.

7. The lead teacher or person having the primary responsibility for a group of Children in a program with 13 or more Children must be at least 18 years of age and meet one of the following requirements:

a. Current CDA as awarded by the Council for Professional Recognition or a Maine State-approved credential; or

b. 12 months of direct child care experience; or

c. One year (30 credit hours) of college work including one course in a child related subject and six months experience.

8. Directors and/or lead teachers of school-age Child Care Facilities must have an AA/AS in Early Childhood Education or 30 college credits in a closely related field such as elementary education, child development, or recreation management.

SECTION 8. TRAINING

A. **Child Care Facility Responsibility**. The Child Care Facility is responsible for ensuring that all Child Care Staff Members are familiar with the operation of the child care and understand the relevant requirements of this rule.

1. All Child Care Staff Members must receive training regarding fire drill and other emergency and disaster procedures within the first week of service.

B. **Orientation training.** All Child Care Staff Members must receive training in the following areas within the first ninety days of service:

1. 10-148 CMR Ch. 32, Child Care Facility Licensing Rule - Child Care Center, Nursery Schools, Small Child Care Facilities

2. The program's policies and procedures;

3. Prevention of Sudden Infant Death Syndrome (SIDS) or Sudden Unexplained Infant Death (SUID), Shaken Baby Syndrome, and safe sleep practices;

4. Administration of Medication and parental consent (Child Care Staff Members may not administer Medication until training has occurred);

5. Prevention of and response to food and allergy emergencies;

6. Building and physical premise safety;

7. Communicable diseases, infectious disease prevention and control Universal Safety Precautions and Blood Borne Pathogens;

8. Handling and storage of Hazardous material and disposal of Bio-contaminants;

9. Transportation of Children (if the individual will be responsible for the transportation of Children; required biannually thereafter);

10. Adult and pediatric first aid with hands-on skills demonstration;

11. Adult and pediatric Cardio-Pulmonary Resuscitation (CPR) with hands-on skills demonstration;

12. Mandated Reporter Training;

13. For programs serving 13 or more Children, training in the program's health care plan as developed by the program's Health Care Consultant.

C. **Ongoing Training.** All Child Care Facilities must ensure the appropriate number of hours of ongoing training for Child Care Staff Members.

1. All Child Care Staff Members must register with Maine's Professional Development Network.

a. Annual training must include a review of health and safety topics, as offered by Maine's state-approved Professional Development Network.

b. Ongoing training must include Department-approved mandated reporter retraining at least once every four years, in accordance with 22 MRS §4011-A(9).

2. The annual number of hours of training required is determined by the size of the program and number of hours the Child Care Staff Member works per week, as below:

Size of Program	More than 20 Hours	Less than 20 Hours
Under 13 Children	12	
Over 13 Children	30	18

a. All training, including Adult and Pediatric First Aid and CPR certification hours, will be counted toward the requirement for the year it was completed.

b. The calculation of training hours per year must be based upon the date of issuance of the license for Child Care Facilities.

c. Required training for new Child Care Staff Members will be prorated based on months of employment.

d. In order to count towards the required number of training hours per year, training must reflect current research of best practices relating to skills necessary for the childcare workforce to meet the needs of Children and be appropriate for population of Children served by the Child Care Facility. Training topics may include but are not limited to, healthy, safe environments; Child development; observation and assessment; developmentally appropriate practice; guidance; relationships with families; individual and cultural diversity; children with special needs, business and professional development; or childcare practices.

D. **Documentation of training**. The program must document all orientation and training of all staff by proof of completion from a qualified on-line or in-person source.

SECTION 9. CHILD GUIDANCE

A. **Positive methods of Child guidance.** All Child Care Staff Members must use positive methods of Child guidance which encourage self-control, self-direction, self-esteem, communication of wants and needs, and cooperation with others. Child guidance must meet the individual needs of each Child.

B. **Consistent and reasonable application of program rules.** Rules, expectations and limits must be clearly and consistently applied and carried out in a manner that reflects a Child's developmental ability.

C. **Constructive methods of guidance.** The Child Care Facility must use only constructive methods of guidance. This may include, but is not limited to, interventions such as:

1. Conflict resolution,

2. Encouraging the use of language skills,

3. Redirecting,

4. Providing choices,

5. Using praise or positive reinforcement,

6. Recognizing a Child's strengths,

7. Allowing Children to take supervised breaks away from the group when needed,

8. Reminding Children of expectations using positive, clear language,

9. Teaching self-regulation,

10. Modeling appropriate behavior, and

11. Allowing for individual differences.

D. **Detrimental practice.** Actions that have a reasonable likelihood to be harmful to Children are strictly prohibited. The Child Care Facility must ensure that no Child is subjected to an action or practice detrimental to the welfare of Children, including, but not limited to:

1. Corporal punishment. Corporal punishment means physical actions harmful to a child's body, including, but not limited to, the following:

a. Slapping, striking, shaking, shoving, spanking, pinching, twisting, kicking, biting, ear pulling or ear twisting;

b. Forcing a Child to taste or eat spicy, bitter or otherwise distasteful products for the purpose of Discipline;

c. Spraying with water as a means of controlling behavior;

d. Placing tape over a Child's mouth;

e. Mechanical restraints, such as tying a Child to a chair;

f. Requiring or forcing a Child to take an uncomfortable position such as: squatting, kneeling, standing and holding arms outstretched at sides or overhead, bending, or requiring or forcing a Child to repeat physical movements; or

2. Other forms of aggressive contact harmful to a Child's body. Cruel or severe punishment, humiliation, or verbal abuse, including but not limited to:

a. Shaming and embarrassing; or

b. Punishment for soiling, wetting or not using the toilet;

c. Humiliating or verbally abusing a Child in any other way.

3. Withholding food, drink, rest or outdoor playtime as punishment or threat of punishment, or being forced to eat or drink against the Child's will;

4. Exposing a Child to profane language, depictions of violence, use of illicit drugs or sexual content;

5. Requiring a Child to be silent or inactive as a disciplinary measure for a period exceeding that Child's age in minutes;

6. Unusual confinement, including but not limited to developmentally inappropriate use of high chairs, play yards, cribs or leaving a Child unattended in any room;

7. Withholding any adaptive equipment that would result in loss of a Child's independence;

8. Using physical restraints, unless trained, and with the review and approval of a Licensed clinician;

9. Lack of supervision;

10. Derogatory remarks to or about Children or parents; or

11. Rough handling.

SECTION 10. RIGHTS OF CHILDREN AND PARENTS

A. Rights of Children. Children receiving childcare from Child Care Facilities have the following rights.

1. Children must be free from emotional, physical and/or sexual abuse, neglect and exploitation.

2. Each Child has the right to freedom from harmful actions or practices that are detrimental to the Child's welfare, and to practices that are potentially harmful to the Child.

3. Each Child has a right to an environment that meets the health and safety standards in this rule.

4. Each Child must be provided child care services without regard to race, age, national origin, religion, disability, sex or family composition.

5. Children must be treated with dignity, consideration and respect in full recognition of their individuality. This includes the use of developmentally appropriate practices by the Child Care Facility.

6. Each Child has the right to the implementation of any plan of service that has been developed for that Child in conjunction with community or state agencies by the Child Care Facility.

7. Each Child has the right to Developmentally Appropriate activities, materials, and equipment.

8. Children with disabilities have the right to reasonable modifications to Child Care Facility policies and practices.

B. Rights of parents and legal guardians of children receiving child care from Child Care Facilities.

1. A Child's Parent or Legal Guardian must be fully informed of items or services which are included in the rate they pay for childcare services.

2. A Child's Parent or Legal Guardian has the right to be fully informed of findings of the most recent inspection conducted by the Department. The Child Care Facility must inform Children's Parents or Legal Guardians that the licensing inspection results are public information and inspection results must be posted in a prominent place on the Premises.

3. Parents or Legal Guardians must be notified by the Child Care Facility within two business days of any actions taken against the Child Care Facility by the Department, including but not limited to, decisions to issue conditional Licenses, refusal to renew a License, or to impose fines or other sanctions.

SECTION 11. REPORTING CHILD ABUSE AND NEGLECT

A. **Requirement to report child abuse or neglect.** All Child Care Staff Members must immediately contact the Department of Health and Human Service's Child Protective Intake hotline (800-452-1999) when they suspect Child Abuse or Neglect.

B. **Child Care Facility requirement to inform.** The Director must inform all Child Care Staff Members during orientation of their status as Mandated Reporters and their responsibility to report to the Department of Health and Human Services whenever there is reasonable cause to suspect Abuse or Neglect of a Child, and comply with ongoing Mandated Reporter training for all Child Care Staff Members as provided in Section 8 of this Rule.

C. **Written instruction provided.** Child Care Staff Members must receive written instructions regarding Child Abuse or Neglect reporting that contains a summary of the State of Maine Child abuse reporting statute and a statement that they will not be discharged or disciplined solely because they have made a Child Abuse or Neglect report.

D. **Hotline number posted.** The Child Care Facility must ensure that the telephone number of the Department's Child Protective Intake hotline is posted in a readily accessible central location on the Premises.

SECTION 12. HEALTH AND MEDICAL

A. **Immunization.** Immunization records must be maintained to ensure proper medical treatment is determined and given in the event of a disease outbreak or public health emergency.

1. All Children in care must meet the following requirements:

a. The Child Care Facility must have a current record of immunization on file for each child, which clearly documents each child's present immunization status based on the Department's Day Care Immunization Standards (available at http://www.maine.gov/dhhs/mecdc/infectious-disease/immunization/family/ and published in September 2011), within 30 days of the child's first admission to the child care and updated as needed thereafter or,

b. A blood test documenting immunity to measles, mumps, rubella and varicella (chickenpox), placed in the Child's record and updated in a timely manner.

c. **Pursuant to P.L. 2019, Ch. 154, § 11, effective September 1, 2021, children must be immunized as set forth herein and exemption from immunization requirements are limited to medical reasons.** The Child's physician, nurse practitioner, or physician assistant must provide documentation that immunization is medically inadvisable.

2. Unimmunized Children and Child Care Staff Members. The Child Care Facility must maintain a list of all unimmunized persons, regardless of age. In the event of a disease outbreak as defined by CDC reporting standards, a Child not immunized must be excluded from the Child Care Facility in accordance with CDC guidance or until the Child receives the necessary immunization or proof of immunity is on record.

3. Immunization records. The Child Care Facility must make immunization records available to the Department of Health and Human Services, Maine Center for Disease Control and Prevention, upon request.

4. Documentation of immunity against tetanus, pertussis, and diphtheria is required for all Child Care Staff Members.

a. For Child Care Staff Members born after 1956, the Child Care Facility must obtain and have available a Certificate of Immunization for measles, mumps, rubella, tetanus pertussis, and diphtheria.

b. Documentation of immunity against measles, mumps and rubella is not required for Child Care Staff Members born prior to 1957. A laboratory blood test proving immunity may also be accepted.

c. Only written documentation from a physician that such immunization is medically inadvisable exempts a Child Care Staff Member from the requirement of Section 12(A)(4)(a) and (b).

B. **Evaluation requirements.** When the Department has reasonable cause to believe that an Applicant or Child Care Staff Member may be unable to provide safe care for Children, the Department may request a report from a qualified professional or an appropriate official that includes the evaluator's determination of the person's ability to safely care for Children.

1. A physical examination or other evaluation is not required if the Applicant or Child Care Staff Member states in writing that it is contrary to the person's religious teachings and practice.

2. If the Applicant or Child Care Staff Member refuses to be evaluated, the Department shall determine whether sufficient evidence exists to ensure that the person can safely care for Children.

C. Health care consultation.

1. For Child Care Facilities licensed for 3-12 Children:

a. The Child Care Facility must have a manual of written guidelines for the prevention and control of communicable diseases and other appropriate health practices for Child Care Facilities of this size.

b. The Child Care Facility must ensure that the manual be available to and read by all Child Care Staff Members

2. For Child Care Facilities licensed for 13 or more Children:

a. The Child Care Facility must have a written agreement with a physician, physician's assistant, a nurse practitioner, or registered nurse with pediatric or child care experience to serve as a health consultant. The agreement must be updated at the time of license renewal.

b. The Child Care Facility must have a written plan approved by the health care consultant which must include:

i. Plan for access to emergency medical services;

ii. Prevention and control of communicable diseases;

iii. Policy on administration of medication including identification of Child Care Staff Members permitted to dispense medication and procedures for documentation of the administration or dispensing of medication; and

iv. Provision of training to all Child Care Staff Members in the Child Care Facilities' health care plan.

D. Health monitoring. The Child Care Facility must observe the Child each day at the time of arrival and throughout the Child's stay for obvious signs of illness such as fever, diarrhea, vomiting, or skin rashes.

1. In the event of an apparent illness of a Child, the Child Care Facility must follow appropriate health practices.

a. The Child Care Facility licensed for 3-12 Children must comply with the guidance in the manual described in Section 12(C)(1)(a) above.

b. The Child Care Facility licensed for 13 or more Children must follow its written health care policy statement.

2. When a Child Care Facility knows or suspects that a Child has contracted a notifiable communicable disease or condition the Child Care Facility must notify the Maine Center for Disease Control and Prevention (MECDC).

a. The Child Care Facility must notify the MECDC immediately by phone for Category 1 conditions, and within 48 hours for Category 2 conditions. MECDC contacts: Phone: 1-800-821-5821 (24 hours a day); FAX: 1-800-293-7534 (24 hours a day); or TTY: Maine relay 711 (24 hours a day).

b. For a list of Category 1 and 2 notifiable conditions, see 10-144 CMR Chapter 258, Rules for the Control of Notifiable Conditions, Chapter 2(I). http://www.maine.gov/sos/cec/rules/10/144/144c258.doc

E. **Dismissal of Children due to illness.** When a Child becomes ill, but does not require immediate medical help, the Child Care Facility must determine if the Child should be sent home. The Child Care Facility must notify the parent/guardian of the Child who has symptoms that require exclusion.

F. **Illness, serious injury, incidents, and accidents.**

1. The Child Care Facility must immediately notify the Child's parent or legal guardian of any illness, serious injury, or incident involving their Child. An adult designated by the parent or legal guardian must be notified immediately should the parent or legal guardian be unavailable.

2. The Child Care Facility must document all accidents, injuries, incidents, or emergencies in the Child's record on the day of the occurrence and the parent or legal guardian must review and sign the document within two business days.

G. **First aid**. The Child Care Facility must have a first aid kit and a current first aid manual.

1. A complete first-aid kit must be readily available at a Child Care Facility serving 3 to 12 Children, during all field trips, and while transporting Children.

2. Programs serving 13 or more Children must have a separate first aid kit and manual in each classroom.

3. The first aid kit must be kept in a clean and sanitary condition, be stored in an easily accessible, designated location known to all Child Care Staff Members and be kept out of the reach of Children.

4. A complete first aid kit includes, but is not limited to, adhesive tape, band aids, gauze pads, gauze roller bandage, disposable gloves, instant cold pack, scissors, tweezers, thermometer, and antiseptic wipes.

5. The first aid kit must not contain any expired materials.

H. **Medication administration.** A Child Care Facility may give a Child prescription medication only when the Child Care Facility has written, signed, and dated permission from a Parent.

1. The Child Care Facility must only give medication prescribed for the specified Child, according to the label instructions on the original container.

2. The Child Care Facility must not give any nonprescription medications to a Child without written permission from the parent. Telephone, text, or email permission is allowed in emergencies, if the Child Care Facility documents giving the medication and obtains written permission from the parent as soon as possible.

3. The Child Care Facility must keep a written record, noting each time a prescription and nonprescription medication is given to a Child.

4. All medications, refrigerated or non-refrigerated, must be:

a. Completely inaccessible to Children,

b. Stored at the proper temperature, and

c. Discarded upon expiration.

5. The use of medical marijuana in Child Care Facilities is governed by 18-691 CMR Chapter 2, Maine Medical Use of Marijuana Program Rule.

I. **Handwashing.** Handwashing must be done with soap and running water. The Child Care Facility must ensure that all adults and all Children wash their hands in at least the following circumstances:

1. Immediately before and after eating snacks and meals, including washing the hands of all infants and toddlers before all feedings;

2. After each diaper change or toileting;

3. Before and after handling food; and

4. Before and after administering medication.

J. **Prevention of exposure to blood and bodily fluids**. Child Care Staff Members must take measures to prevent potential exposure to blood and other potentially infectious fluids, which may include use of disposable gloves. When touching blood, body fluids, secretions, excretions, mucous membranes, or non-intact skin, Care Staff Members must:

1. Wash their hands after contact, even if gloves are worn;

2. Ensure safe waste management by immediately discarding contaminated single use items; and

3. Immediately clean and disinfect surfaces and reusable equipment.

K. **Emergency procedures.** Facilities must have a procedure for responding to situations when an immediate emergency medical response is required. Staff-Child ratio must be maintained, and Child Care Staff Members will be called in to maintain the required ratio. All Child Care Staff Members should be trained to manage an emergency until emergency medical care becomes available.

SECTION 13. DRINKING AND WASTE WATER

A. **Drinking water.** A Child Care Facility must provide documentation of water safe for drinking by Child Care Staff Members and Children in care. If a satisfactory supply cannot be provided, a license or renewal of a license may not be issued.

1. Facilities serving drinking water from their own well must demonstrate satisfactory water quality by testing for the following contaminants by a Maine-certified laboratory:

a. Fluoride,

b. Uranium,

c. Arsenic,

d. First-draw lead sample,

e. Nitrates, and

f. Total coliform bacteria.

2. Facilities serving water from a municipal public water system well must demonstrate satisfactory water quality by collecting and testing one first-draw lead sample prior to receiving a license. The sample container must be from a Maine-certified laboratory and consist of a one-liter capacity.

B. **Ongoing annual water tests for Child Care Facilities with wells.** Facilities serving water from their own well must test their water annually for coliform bacteria and nitrates. Samples must be analyzed and results reported by a Maine-certified laboratory. Facilities must maintain water quality reports for Department inspection.

C. **Five-year water tests for facilities with wells.** In addition to the annual testing required by Section 13(B) above, facilities serving water from their own wells must test their water every five years for at least the following contaminants: fluoride, uranium, first-draw lead sample and arsenic.

D. **Bottled water agreements.** If the facility chooses to use and serve bottled water due to the presence of one or more of the contaminants listed in Section 13(A)(1)(a-e) above, then the Child Care Facility may operate under a written bottled water agreement with the Department. Under this agreement, the Child Care Facility must:

1. Use bottled water for all consumption and food preparation;

2. Provide written notification to parents of enrolled and prospective Children that the Child Care Facility is required to use bottled water for all consumption and food preparation;

3. Post the agreement where it can be readily seen by parents; and

4. Continue to conduct annual water testing in accordance with Section 13(B) of this rule.

E. **Non-transient, non-community water systems.** A Child Care Facility that provides the drinking water from a well to 25 or more Child Care Staff Members and Children must comply with 10-144 CMR Chapter 231, Rules Relating to Drinking Water, last amended May 9, 2016.

F. **Water and Sewer.** During all hours of operation, water supply and sewage disposal must meet the standards of the Department of Health and Human Services, Maine Center for Disease Control and Prevention, Division of Environmental and Community Health to accommodate the licensed capacity of the Child Care Facility.

1. When the sewage disposal system is not properly operating, the Child Care Facility must close.

2. The Child Care Facility may resume operation when the sewage disposal system is properly operating.

SECTION 14. ENVIRONMENT AND SAFETY

A. **General condition of the building and surrounding premises**. The facility must take immediate steps to correct any condition in the physical building or on the premises, which poses a danger to Children's life, health or safety.

1. Stairs used by Children must be equipped with solidly mounted handrails.

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

3. Electrical outlets in areas used by infants, toddlers and preschool Children must be protected by safety caps, plugs, tamper-resistant outlets, or other means.

4. Any Medications, Toxic Substances, Hazardous Materials, and other items dangerous to Children such as matches, lighters, fireworks, and power tools must be kept where Children cannot access them.

5. Smoking is prohibited on the premises when Children are present.

6. Strings and cords long enough to encircle a Child's neck (six inches or more) must not be accessible to Children unless the Child is engaged in a recreational or educational activity with an adult.

7. Equipment with an electrical cord must be anchored to the wall to prevent falling, or the cord must be inaccessible to Children under five years of age.

8. The Child Care Facility must have a phone in working condition on the premises.

9. A facility may lock the main entrance to prevent access from the exterior, provided that the door can be freely opened from the interior and there is a means to inform Child Care Staff Members of the arrival of parents/guardians or other visitors.

10. Toys and equipment must be kept clean and in safe working order.

11. The fall zone under and around all indoor play equipment which would buffer a fall from a height of more than 29 inches must be covered with shock-absorbing mats or materials which extend at least 39 inches beyond the outside edge of the equipment in all directions. If the play structure exceeds 48 inches in height, the shock absorbing mat must be at least two inches thick.

12. Furnishings, other heavy items, and/or items that could easily tip over or are unstable must be secured to the wall or floor.

13. The Child Care Facility must Clean surfaces daily in all areas where Children are present. Cleaning products must not be used in close proximity to Children and adequate ventilation must be maintained during use.

14. Children are not allowed to be near power equipment while it is being operated and power equipment must be stored out of reach or have safeguards to prevent any Child from being injured when not in use.

15. Staff purses, bags, Medications and other belongings must be inaccessible to Children.

16. All entrances and exits must be clear for evacuation at all times.

17. Child Care Facilities must empty trash, recycling, and compost containers and remove the contents from Child care space when the containers are filled, or sooner if contents create an odor or a health risk.

B. **Outdoor playtime and rest required.** Children must have opportunities for indoor and outdoor activities.

1. Children in attendance for four or fewer hours must have an opportunity for rest or relaxation for at least 10 minutes according to the needs of the Child.

2. Children in attendance for more than four hours must have an opportunity for rest or relaxation of one hour or longer according to the age and needs of the Child.

3. Children in attendance for more than four hours and over the age of 12 months shall have a minimum of 60 minutes of active play outdoors daily. Infants must go outside at least once daily.

4. When weather presents a risk to Children in accordance with Child Care Weather Watch and the Air Quality Index. Gross motor activity will be substituted for outdoor time when weather does not permit outdoor time.

5. Television, video viewing, and/or use of the computer or hand-held electronic devices shall be educational, age appropriate, and limited to one hour or less per day.

6. Activities must be developmentally appropriate.

C. **Satisfactory lead levels**. Child Care Facilities must comply with 22 MRS Ch. 252, Lead Poisoning Control Act, regarding the use of lead-based paint on toys, furniture, or any interior or exterior surfaces.

1. Child Care Facilities will have an annual screening for potential lead hazards due to chipped and/or peeling paint.

2. A facility will be exempt from this screening if:

a. The building was constructed in 1978 or later;

b. The building has been certified as having no lead hazards and no lead-based paint within the previous 12 months;

c. Lead-safe status has been maintained by a re-evaluation performed 6 months after the initial lead-safe certification and annually thereafter by a lead inspector or risk assessor; or

d. The Facility does not serve any Children under six years of age.

3. A lead inspection performed by a Maine certified lead inspector or risk assessor must be completed if the screening indicates the potential of exposure to lead paint.

4. If evidence of lead-based paint is found in a structure built prior to 1978, the Child Care Facility must provide written notification to the parents of all Children in care and prospective families of the possibility of exposure to lead paint. The Child Care Facility must maintain in each Child's record a written acknowledgement of receipt of the notification required above.

5. All remediation of lead paint and dust must be done following lead-safe work practices in compliance with 10-144 CMR Ch. 292, Rules Relating to the Lead Poisoning Control Act.

D. **Carbon monoxide.** Child Care Facilities must be equipped with a working carbon monoxide detection system.

1. Equipment may be individual electric (plug-in or hardwire) or battery-operated carbon monoxide detectors that meet Underwriters Laboratories Inc. requirements (UL-Listed); or an electronic carbon monoxide detection system connected to an electronic alarm/smoke detection system that is UL-Listed.

2. At least one carbon monoxide detector must be installed on every level of each building of the Child Care Facility and the detector(s) must be installed in compliance with the Maine Department of Public Safety, Office of the State Fire Marshal or designee's instructions.

E. **Building temperature.**

1. A minimum temperature of at least 65º Fahrenheit measured within two feet of the floor must be maintained in spaces occupied by Children.

2. If indoor temperatures exceed 82º Fahrenheit, then the Child Care Facility must use methods to cool the space when occupied by children.

3. Air conditioners, electric fans, and heaters must be mounted and anchored out of all Children's reach or have safeguards that keep any Child from being injured.

4. Portable electric space heaters must be approved by the Maine Department of Public Safety, Office of the State Fire Marshal or designee. Heating units must be shielded in a manner to prevent injuries and burns and be installed and operated in accordance with the manufacturer's specifications.

F. **Lighting and Ventilation**.

1. Every room used by Children must be properly lighted to allow safe movement through the space. Natural light is required in any room used by Children for more than four hours per day.

2. All indoor space used by Children must be adequately ventilated.

a. Windows should be open when outside temperature and air quality allow.

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

c. The facility must resolve any damp conditions which result in visible mold, mildew, or musty odors before Children may occupy the space.

G. **Minimum Usable Space.** The Child care Facility must provide a minimum net area of thirty-five (35) square feet of usable space per Child.

1. Areas not to be calculated as usable space include but are not limited to equipment, hallways, lockers, cubbies, door swings, closets, supply cabinets, corridors, bathrooms, teachers' spaces, food preparation areas, and offices.

2. The maximum Child occupancy of any room must not exceed the usable space per Child requirement at any time, except for occasional large group activities as reflected in the written program schedule.

H. **Outdoor play areas.** The facility must have access to an outdoor play area, with sufficient space for safe play for all Children, with drainage that prevents standing water.

1. In playgrounds intended to serve Children of all ages, the layout of pathways, fencing, and the landscaping of the playground must show the distinct areas for the different age groups. The areas should be separated by a buffer zone, which may include, but is not limited to, shrubs or benches.

2. Where hazardous conditions exist in the outdoor play area, the Children must be protected from those conditions by fencing or other appropriate barriers.

a. Hazardous conditions include, but are not limited to, roads, any body of water, active railroad tracks, sharp inclines or embankments, or any other dangerous area.

b. Fencing should be a minimum of 48 inches high. Any fully enclosed area must have at least one gate, which is secured with a childproof latching mechanism.

c. There must be an exit from the playground other than through a building.

3. The indoor and outdoor active play equipment must be arranged to allow Child Care Staff Members to maintain line of sight supervision of all Children at all times.

4. Appropriately fitted helmets must be worn for all activities when head injury risks are present (e.g. bicycles, scooters, rollerblades, skateboards, snowboard, and/or power wheels).

5. Equipment that exceeds 36 inches in height at the climbable or standing surface shall have energy-absorbing materials beneath it.

a. Energy-absorbing materials include loose fill materials such as playground wood chips, pea gravel, rubber tiles or mats, or sand.

b. Energy-absorbing material must extend beyond the equipment in all directions to prevent injury in the event of a fall.

c. If using loose-fill energy-absorbing materials, all swings, climbers, and slides must have a sufficient amount of energy-absorbing materials to prevent injury, based upon equipment height.

d. Concrete or asphalt must not be used.

6. A variety of equipment suitable for the age and needs of all Children in care must be available. Climbers, swings and slides must be:

a. Firmly secured, clean, in proper repair and safely constructed; and

b. Located at a sufficient distance to prevent injury from any hard surfaces, including poles, fences, sheds and other play equipment.

7. The play area must be free of hazards and visually inspected daily, prior to Children having access to the area.

8. Sandboxes or sand piles must be maintained in a safe and sanitary condition.

9. Outdoor play areas must provide shade.

a. The Child Care Facility shall ensure sun safety for Children by limiting sun exposure when UV rays are strongest, wearing hats, or applying sunscreen (unless directed otherwise by the Child's parent).

b. Infants younger than six months must stay out of direct sunlight, and Child Care Staff Members may not apply sunscreen to an infant unless the Child's parent provides a physician's recommendation. Written documentation from the physician must be stored in the Child's file.

10. The Department will not require outdoor play space in Nursery School programs, if the curriculum includes at least 20 minutes of gross motor activities.

11. In Child Care Facilities serving 13 or more Children, groups of Children may occupy a play area at the same time when:

a. Staff-Child ratios for each group are maintained at all times;

b. The Child Care Facility has a written policy regarding outdoor play, which includes:

i. The maximum number of Children that may be present at one time;

ii. Specific requirements for supervision, such as zoning of the play area for Children of different age groups; and

iii. Child Care Staff Member positioning and activities.

c. All Child Care Staff Members are trained and adhere to the outdoor play policy.

d. All parents/guardians must receive a copy of the written outdoor play policy.

I. **Weapons.** Firearms, hunting knives, bows and arrows, and other weapons are prohibited on the premises of the Child Care Facility.

J. **Materials, toys and equipment.** Materials, toys and equipment must be Developmentally appropriate for Children enrolled.

1. The Child Care Facility must provide toys and equipment to encourage development for indoor and outdoor activities appropriate to the age range and number of Children.

a. Infants: A sufficient 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. Toddlers and preschool Children: A sufficient variety to offer activities in each of the following areas: blocks, dramatic play, language and literacy, arts and crafts, games and

manipulatives (such as pegboards and puzzles), sensory activities (such as sand and water), science and nature, and music.

c. School-age Children: A sufficient variety to offer activities in each of the following areas: books and language, arts and crafts, games, science and nature, and music.

2. Toys and equipment that have been recalled through the manufacturer or the United States Consumer Product Safety Commission (CPSC) must be removed from the Premises, repaired, or replaced based on the recall information available.

3. The facility must have access to extra Children's clothing, in the event that clothes become soiled, damaged, or were not provided for the activities of the day.

K. Furnishings. The Child Care Facility must be furnished to meet the needs of the Children served.

1. Easily accessible and individual space must be made available for Children's outside clothing and personal possessions.

2. The Child Care Facility must assign each Child his/her own toilet articles (toothbrush, brush, comb, etc.) and personal items (towel, drinking glass) when the use of such is offered.

3. When bathing facilities are available:

a. Children must not take baths together or share the same bath water;

b. Tubs or showers must be cleaned before being used by a different Child;

c. Children must be given clean washcloths and towels; and

d. No Child under five years of age shall be left unattended while in the bathtub or shower.

L. Cribs, cots, and bedding.

1. A crib or play yard that meets Consumer Product Safety Commission (CPSC) safety standards, available at https://www.cpsc.gov/s3fs-public/5023.pdf, must be provided for each Child up to 18 months of age.

a. No crib or play yard may be used for sleeping by more than one Child at a time.

b. Double or multi-decked cribs are prohibited.

c. Mats must be waterproof or washable.

d. Each crib must be equipped with a waterproof, firm, snug fitting mattress which is positioned within two finger widths on all sides of the crib frame.

e. Devices of any type that restrict the movements of Children must not be used in cribs.

f. Toys including mobiles and other types of play equipment that is designed to be attached to any part of the crib must not be used. Each play yard must be used with the original mattress or a replacement specified by the manufacturer.

g. Accessible Child Care Facilities must have at least one designated wheeled evacuation crib for non-mobile infants. Wheeled play yards are not approved evacuation cribs.

2. Bassinets that meet CPSC safety standards may be used for infants up to five months of age, within appropriate weight limits. A Child Care Facility may not use a bassinet for an infant who can independently lift their chest off the sleep surface.

3. Cribs, bassinets and play yards for infants less than 12 months old must not include soft or loose bedding including, but not limited to: bumper pads, pillows, quilts, comforters, blankets, sleep positioning devices, bibs or stuffed toys. Appropriately fitted arms-free wearable blankets are permitted.

a. Cots, mats, play yards, bassinets, and cribs used by any infant or toddler must be cleaned and sanitized between use by different Children, when contaminated, or at a minimum of once per week.

b. All crib, bassinet, and play yard mattresses will be covered by a snugly-fitted sheet.

c. Cribs, cots, beds, mats, or play yards used for sleeping must be arranged in a manner that ensures that they are spaced at least 2 feet apart to allow walking between while in use or separated by a solid divider on one side.

4. A separate mat, bed or cot, with a blanket or sleeping bag, must be assigned to each Child under the age of five in care for longer than four hours. All bedding must be cleaned before being used by another Child. Bedding must be cleaned as needed, or at least weekly.

a. Blankets, sleeping bags, bedding, cots, and mats must be stored in a manner which ensures that sleeping surfaces are not touching or must be washed and disinfected before re-use if stored in a manner that allows sleeping surfaces to touch during storage.

b. Sheets must be washed or changed before being used by another Child. Sheets and all wearable blankets must be laundered as needed, but no less than weekly.

M. **Toilet facilities.** Washing and toilet facilities with both hot and cold running water and soap must be provided.

1. One toilet and wash basin is required for every twenty (20) Children, must be readily accessible to Children, and allow for the ongoing supervision of Children.

2. Child Care Facilities must have one hand-washing sink in each diaper-changing area, located where supervision of all children in the group can be maintained.

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

4. Water temperature must not exceed 120° Fahrenheit in taps available for use by Children.

5. Either disposable paper products, or clean, individually assigned wash cloths and towels may be used. Individually assigned washcloths and towels must be laundered daily.

N. Diapering/Toileting

1. Children must be checked at a minimum of every two (2) hours for wet or soiled diapers and clothing, and must be changed as soon as possible

2. Wet or soiled disposable diapers must be placed in a lined, lidded, container, separate from other trash or garbage and separate from play or food-preparation areas, or individually bagged and tied within a lidded shared garbage container.

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

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

5. Child Care Staff Members must wash their hands and the Child's hands with soap and running water after each diaper change.

6. For Children using cloth diapers, the diaper must have a clean, absorbent inner lining completely contained within an outer covering made of waterproof material that prevents the escape of feces and urine.

a. Both the diaper and the outer covering must be changed as a unit.

b. Cloth diapers and clothing that are soiled by urine or feces must be immediately placed in a clean sealable bag or container (without rinsing, shaking, or dumping) and sent home that day for laundering.

c. This sealable bag or container must be stored out of reach of Children.

7. The facility must collaborate with families to determine the best toileting practice based on the needs of each Child.

8. Potty chair receptacles must be emptied immediately after each use, rinsed, and sanitized in a sink not used for food preparation.

9. Potty chair receptacles may not be used in a food preparation area.

O. Pets.

1. Pets must not present a danger to Children.

2. The premises must be free of pet or other animal waste and the interior of the facility must be free of pet waste odors.

3. Pet waste boxes must not be kept in food preparation or food service areas and must be covered so that Children cannot come into contact with pet waste.

4. All pets must be vaccinated against rabies and a record of each pet's vaccination must be retained as provided in Section 5 of this rule.

P. Fire evacuation drills

1. Fire evacuation drills must be conducted at least once a month for all Children and adults present using at least two (2) means of exit. A record of all fire evacuation drills must be maintained as provided for in section 5 of this Rule.

2. Fire drills must be conducted according to policies and procedures that are posted in each room utilized by Children.

3. Pull alarms or smoke detectors must be used, when possible, to execute the fire drills.

Q. Emergency preparedness plan. Child Care Facilities must have a written emergency preparedness plan in the event of a fire, natural disaster, or other threatening situation that may pose a health or safety hazard to the Children in the Child Care Facility. Child Care Staff Members must review the emergency preparedness plan annually and update as needed. Child Care Facilities must retain the updated copy of the plan for evacuation and provide details of the emergency relocation procedures to each Parent or Legal Guardian of the Child at the time of the Child's enrollment with the Child Care Facility and whenever the plan is updated

1. The plan must provide for the following:

a. Evacuation, including a designated relocation site and evacuation route;

b. Lockdown of the facility or shelter-in-place;

c. Procedures for notifying Parents/Legal guardians;

d. Procedures to address the needs of individual Children including Children with special needs;

e. Coordination with local emergency management officials; and

f. Guidelines for the continuation of Child care services in the period following the emergency or disaster.

2. The Child Care Facility must conduct an evacuation drill at least twice a year and the dates must be recorded and be available for review.

3. All Child Care Staff Members must be trained in and familiar with the emergency preparedness plan.

SECTION 15. SWIMMING AND WADING

A. **Policies regarding water activities and safety procedures**. Direct supervision and in close physical proximity of Children is required at all times, by Child Care Staff Members in close physical proximity to allow intervention and within sight and sound of all Children in the swimming or wading activity area.

1. A Child Care Facility that provides swimming or wading activities must develop policies and procedures regarding swimming and wading activities and safety procedures.

2. Policies and procedures must cover all swimming or wading activities that take place at the Child Care Facility and away from the premises, e.g., at a public swimming Pool or beach.

3. Policies and procedures must include a written emergency plan related to any swimming or wading activities, regardless of where they are conducted. The plan must be available to all staff. The plan must cover procedures for medical emergencies, chemical emergencies, drowning, severe weather and frequent verification that all Children are safe.

B. **Parental permission**. Prior to allowing a Child to participate in water activities, the Child Care Facility must have written permission from the Parent or Legal guardian. 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 Child Care Facility for each Child's records. The Parental permission form must include:

1. The Child's name and date of birth;

2. The water activities offered;

3. The Child's swimming ability;

4. Location of the water activities;

5. The presence or absence of a lifeguard; and

6. The Parent's signature and date.

C. **Surfaces.** All water play equipment must be positioned on grass or energy absorbing material during use.

D. **Minimum training and certification required for water activities.** The Child Care Facility must have appropriately trained water attendant(s), as defined by this rule, present at all times during swim instruction or other swimming or wading activities.

1. Wading Pools. Children must not be allowed to enter a Wading Pool without supervision by a Wading Pool Attendant.

2. Swimming Pools. Children must not be allowed to enter any swimming Pool deeper or wider than a Wading Pool without supervision by a Water Safety Attendant.

3. Certified Lifeguard. Child Care Facilities who offer swimming activities in bodies of water more than 48 inches deep at any point must assure that a certified lifeguard is present during the swimming activity. A copy of the lifeguard's current Lifeguard Training Certificate must be on file in the program.

E. **Cleanliness**. Swimming Pools must have sufficient clarity. The bottom must be clearly visible in the deepest part of the Pool. Swimming Pools must be equipped with a filtration and/or treatment system. Wading Pools must be cleaned and emptied daily, and as needed in response to the presence of contaminants.

F. **Pool Accessibility**.

1. All Wading Pools must be emptied when not in use.

2. Hot tubs must be protected by fencing or locked barriers to prevent access by Children.

3. All in-ground Swimming Pools located in areas accessible to Children must be fenced. The fence must be at least four feet in height and secured with a Locked gate.

4. All above-ground Swimming Pools must have non-climbable sidewalls that are at least four feet high or must be enclosed with a fence at least four feet in height and secured with a Locked gate. When the Pool is not in use, steps must be removed from the Pool or otherwise protected to prevent unsupervised access.

G. **Emergency preparedness and drills**.

1. All Pools must have an accessible emergency telephone located in the Pool area. The telephone must be able to dial directly for emergency assistance.

2. Water activity emergency drills must be conducted at least once a month in any month during which the water activity participation occurs. These drills must be conducted according to policies and procedures, which include the use of safety equipment, Child evacuation, routine methods of ensuring all Children are present, and emergency contacts.

3. The facility must keep a written record of the type, date, time and duration of the training and drills.

H. **Staff-Child ratios during water activities.** Staff-Child ratios must be maintained at all times during swimming and wading.

1. Wading Pool attendants may count toward staff-Child ratios. Water safety attendants, lifeguards, and swimming instructors do not count toward staff-Child ratios. Water safety attendants and Certified Lifeguards must be stationed outside and next to the swimming pool.

2. When three or fewer Children are in the swimming Pool, a water safety attendant may be included in staff-Child ratios. The water safety attendant must be solely responsible for supervision of the Children in the swimming Pool.

3. If the pool is more than four feet deep at any point, only Child Care Staff Members who are able to swim may be counted in the staff-Child ratios.

I. **Swimming pools.** Child Care Facilities with swimming Pools on the premises must be familiar with emergency procedures, the use of safety equipment and emergency contacts.

1. Facilities must complete a safety checklist on any day which a swimming activity occurs. A checklist will be supplied by the Department and must be signed by the individual responsible for swimming activities on that day.

2. 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 Child Care Staff Member responsible for the supervision of Children.

J. Off-site Pools or natural bodies of water

1. For water activities away from the Child Care Facility, when a Certified Lifeguard is on duty, the Child Care Facility must provide one water safety attendant for every 20 Children present.

a. Certified Lifeguards must not be counted as water safety attendants. Water safety attendants must not count in staff-Child ratios. Additional Child Care Staff Members must be present to complete staff-Child ratio requirements.

b. Water activities in natural bodies of water must be limited to a specific area established by the Child Care Facility by visual barriers on land and in the water.

2. For water activities at off-site pools or natural bodies of water, when a Certified Lifeguard is not on duty, the Child Care Facility must provide one water safety attendant for every 13 Children present.

a. Water safety attendants and Certified Lifeguards must not be counted in staff-Child ratios. Additional Child Care Staff Members must be present to complete staff-Child ratio requirements.

b. A Child Care Facility that offers water activities at natural bodies of water or in pools over 24" deep, must give written notice to each Child's Parent or Legal guardian that there will be no lifeguard on duty.

c. No fewer than two Child Care Staff Members who are at least 18 years of age must be present at all times during water activities at natural bodies of water.

d. Water activities in natural bodies of water must be limited to a specific area established by the Child Care Facility. Prior to any Child entering the water, the Child Care Facility 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 four feet at any point.

K. Non – Swimmers. All non-swimmers must be clearly identified as Non-swimmers in a way that is visually and easily recognized by Child Care Staff Members, water safety attendants and Certified Lifeguards as applicable.

SECTION 16. FOOD AND KITCHEN FACILITIES

A. **Well-balanced meals and snacks.** Meals and snacks provided by the Child Care Facility must be nutritious and well-balanced. Each meal (breakfast, lunch, and dinner) and snack provided by the Child Care Facility must include items such as proteins, dairy products, fruits and vegetables, water and whole grains**.**

1. Drinking water must be available to the Children at all times.

2. A variety of snacks that are nourishing and include items such as dairy products, fruit, water, vegetables, and whole grains will be served.

3. Milk, water, or a milk substitute must be offered to Children at all meals and snacks.

4. Portions of food served must be suited to the Child's age and appetite.

5. The staff may encourage Children to try new foods, but no Child shall be forced to eat anything they do not want.

6. Unhealthy foods such as convenience food, fast food, and processed foods must be limited to special occasions such as holiday celebrations and birthday parties. Soda must not be served at any time.

7. Only 4 to 6 ounces of 100% juice without added sugars may be served to children over 12 months of age, not more than once daily.

8. Children must be allowed time to eat their food, not be rushed during the meal or snack time, and must be seated. Children must not be allowed to play, watch television or use electronic devices during meal or snack time.

B. **Handwashing.** All adults and all Children must wash their hands immediately prior to preparing or consuming snacks and meals.

C. **Allergies.** Documentation regarding Children's food allergies/food intolerance as verified by a physician must be readily accessible and reviewed by all staff responsible for food preparation and distribution. Food must be prepared according to a written plan for each child with a food allergy or food intolerance. The plan must be reviewed and updated as the Child's needs change or a minimum of once a year.

D. **Child Care Staff Member Responsibilities**

1. Child Care Staff Members who are ill must not work in the food preparation area. Child Care Staff Members with open sores that cannot be covered must not handle or prepare food.

2. Children may be permitted in meal preparation areas only when under the direct supervision of a Child Care Staff Member and there is no danger of injury from kitchen equipment.

3. Children must be within sight and sound of Child Care Staff Members must be able to see and hear all children during meal and snack times.

4. Any food served to one Child must not be re-served to another Child.

E. Food Storage

1. All contaminated, spoiled, and expired foods must be disposed of promptly. Swelled, rusted, dented, or leaky canned food or drink must not be consumed and must be disposed of promptly.

2. All perishable food must be kept at the appropriate temperature

3. Refrigerators must be kept at a temperature not to exceed 40° Fahrenheit. A thermometer must be kept in the refrigerator at all times.

4. Freezers must be kept at a temperature not to exceed 0° Fahrenheit. A thermometer must be kept in the freezer at all times.

5. Food stored in the refrigerator must be stored in a manner that permits free circulation of cool air. All foods must be covered. Containers of food in the refrigerator in Child Care Facilities Children must be labeled and dated. Containers of leftover foods must be served within three days of preparation.

6. Box/bag lunches or other food supplied from outside the program must be kept refrigerated if required.

F. Food Preparation

1. Frozen foods must be thawed in the refrigerator or under cold running water. Frozen foods defrosted in the microwave oven must be immediately served or prepared for service.

2. Fresh fruits and vegetables must be thoroughly washed before use.

3. Food, if heated, must be served to Children only after contents have been mixed, stirred, and temperature checked to prevent scalding.

G. Equipment and Utensils

1. All food preparation and eating surfaces must be Cleaned before and after use.

2. Dishes and utensils must be washed in an automatic dishwasher or thoroughly washed in warm soapy water and rinsed in hot water.

3. Paper products must have a single use and must be disposed of immediately after use.

4. Single-service utensils must be used only once.

H. Kitchen facilities

1. Kitchen areas must be well-lighted, clean, sanitary, and orderly.

2. The food preparation area must not be used for other activities when food or drink is being prepared or served.

3. All hot foods and liquids must be out of Children's reach. A staff person who is cooking or drinking a hot beverage must not hold Children.

4. In Child Care Facilities, pets must not be kept or allowed in areas where food or drink is being prepared.

5. Proper sinks with approved plumbing and hot and cold water under pressure must be available in all rooms where food or drink is prepared, or utensils are washed. Bathrooms are not to be used for preparing foods, cleaning bottles for infants, or washing dishes.

6. Surfaces coming into contact with food or drink must be easily cleanable, uncluttered, and in good repair.

7. Kitchen facilities must be maintained in a sanitary condition free of insects, rodents, and other contaminants. All utensils, equipment, and food must be stored in a clean, dry place free from insects, rodents, and other contamination and must be handled in such a manner as to prevent contamination.

8. Wastewater pipes in Child Care Programs serving 13 or more Children must not be located over food preparation, storage or serving areas.

9. The refrigerator must be maintained in a clean and sanitary fashion, free from mold and spills.

SECTION 17. TRANSPORTATION

A. **Driver requirements.** Any person driving Children receiving Child care from a Child Care Facility must have the proper license to drive the class of motor vehicle being used, annually submit a signed release authorizing the Department to check the records of the Bureau of Motor Vehicles, receive a qualifying result pursuant to the Bureau of Motor Vehicle Check, and complete Department-approved training for transportation of Children prior to driving Children and at least every two years thereafter.

1. The following offenses disqualify from driving Children receiving Childcare at a Child Care Facility, whenever committed:

a. Motor vehicle violation resulting in death,

b. Aggravated refusing to stop for a law enforcement officer,

c. Criminal homicide in operation of a motor vehicle.

2. The following offenses disqualify from driving Children receiving Childcare at a Child Care Facility if committed within the last five years:

a. Criminal OUI,

b. Operating while license suspended or revoked,

c. Driving to endanger,

d. Refusing to stop for a law enforcement officer,

e. Criminal speeding

B. **Vehicle capacity not to be exceeded.** The number of persons transported in any vehicle must not exceed the seating capacity of the vehicle, except in the event of emergency evacuation and relocation to a previously established relocation site.

C. **Safety in vehicles.**

1. No Child will be permitted in any vehicle without Adult supervision.

2. Children must be seated with seat belts fastened or in Child safety seats in accordance with 29-A M.R.S. § 2081.

3. The vehicle requirements above shall not apply to vehicles not operated by the Child Care Facility, such as school buses, taxis, and/or public transportation agencies.

4. Children being transported on a school bus that are under the age of 4 must be in Child safety seats in accordance with 29-A M.R.S. § 2081.

5. Weapons must not be transported in any vehicle in which Children are riding.

D. **Field Trips**

1. Child Care Facilities must have measures in place to account for all Children at all times.

2. Children must be accounted for when leaving and re-entering the Premises, and a head count should be performed periodically during a Field Trip.

SECTION 18. INFANT/TODDLER CARE

A. **Additional rules for programs serving infants and toddlers.** In addition to the preceding rules, a Child Care Facility serving Children ages six weeks to 36 months must also comply with this section.

B. **Restriction to first floors**. Children under two years of age are restricted to first floors or floors having direct exit at grade level.

C. **Promoting developmental needs.** The developmental needs of Infants and Toddlers must be promoted in the following ways:

1. The Child Care Facility must ensure that Infants and Toddlers are given a variety of activities to promote proper development in all areas of learning, consistent with each Child's developmental needs.

2. Each Child must be allowed to form and follow his or her own pattern of sleeping, resting, and waking periods;

3. Infants and Toddlers must not be allowed to use toys or objects which could be swallowed or cause choking. Foods that are choking hazards due to the size, shape or texture must not be served to Infants and Toddlers;

4. Each Infant's position must be changed every 30 minutes, when the Child is awake;

5. Infants must be offered supervised tummy time / floor time daily;

6. Use of Infant equipment to include, but not limited to bouncers, jumpers, and swings must be limited to 30 consecutive minutes; and

7. Infants and toddlers may be combined in a group only when the total number does not exceed 8 Children.

D. **Feeding**

1. Breast milk must be labeled with the Child's name, dated, and stored or discarded in accordance with the table below.

Storage Location and Temperatures			
Type of Breast Milk:	Countertop	Refrigerator	Freezer
	77°F (25°C) or colder (room temperature)	40°F (4°C)	0°F (-18°C) or colder
Freshly Expressed or Pumped	Up to 4 Hours	Up to 4 Days	Within 6 months is best Up to 12 months is acceptable
Thawed, Previously Frozen	1–2 Hours	Up to 1 Day (24 hours)	NEVER refreeze human milk after it has been thawed
Leftover from a Feeding	If the baby did not finish the bottle, use within 2 hours after the baby is finished feeding.		

2. Formula must be made from commercially prepared products. Homemade formula solutions are prohibited.

3. Formula and breast milk must be labeled with the Child's name and date.

4. Use prepared Infant formula within 2 hours of preparation and within 1 hour from when feeding begins. If the prepared Infant formula is not used within 2 hours, immediately store the bottle in the refrigerator and use it within 24 hours.

5. The feeding schedule amount and type must meet the Infant's needs.

6. Child Care Staff Members must hold Infants who are not independently bottle-feeding in their arms for feeding.

7. Children who are independently bottle-feeding must be in a seated position within reach of a Child Care Staff Member.

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

9. A chair or table used for feeding Infants and toddlers must be designed to prevent the Child from slipping or falling.

10. Dishes and bottles used for feeding must be made of unbreakable material or sheathed in material that prevents shattering and may not contain bisphenol A (BPA).

11. Parents must be immediately informed if a Child is accidentally fed another Child's breast milk. Child Care Facilities must have information available regarding follow-up testing and sharing results.

12. Previously opened baby food jars will not be accepted at the Child Care Facility. All open commercial baby food jars will contain a label of the date opened by the program. All containers of homemade baby food contain a label of the date received by the facility. Any unused food will be discarded no more than two (2) days following date of opening or date of receipt for homemade baby food. Frozen home prepared baby food must be discarded after one month if not used.

E. **Napping/Resting.** The facility must observe the provisions of Section 14(L) of this rule, and:

1. Infants must be placed on their backs in an approved bassinet, crib, or play yard for sleeping, unless the Child's parent provides a physician's recommendation. The written documentation from the physician must be in the Child's file.

2. Each Infant/Toddler must be allowed to follow his/her own sleep/rest pattern, unless specific written documentation from the physician is in the Child's file.

3. Bibs and garments with ties or hoods must be removed before placing an infant in the crib to sleep.

4. Swaddling of Infants and Toddlers is prohibited.

5. Cribs, cots, and play yards may only be used by one Child at a time.

SECTION 19. NIGHT TIME CARE

A. **Additional rules for nighttime care.** A facility receiving Children for Nighttime care must comply with the requirements in this section, in addition to other sections of this rule.

B. **Individualized care.** Special effort must be made by the Child Care Facility to individualize care at a Child's bedtime and awakening.

1. Child Care Staff Members must be awake, provide proper supervision, and remain alert to the needs of Children.

2. In Child Care Facilities, at least two staff persons must be present in the program at all times during the hours that night time care is in operation.

C. **Rooms used for sleeping or napping**. All rooms occupied for sleeping or napping must be approved by the State Fire Marshal's Office.

1. A room above the first floor maybe used for sleeping or napping if the room has two exits, with one exit leading directly to the outside, with means to safely reach the ground level.

2. The Child Care Facility must have written approval from a Parent of each Child in care, regardless of age, to share a sleeping room with another child. School age Children must be provided with gender-specific sleeping and private dressing areas. Opposite gender siblings may share a sleeping area with written parental approval.

D. **Beds and bedding.** A facility who offers nighttime care must have a safe and sturdy crib for each infant, and a safe and sturdy bed or cot with mattress and a pillow for each older Child.

1. The top level of bunk beds must have a safety rail.

2. Waterbeds must not be used for Children under 36 months of age.

3. Sheets must be changed weekly between use by different Children, or more frequently if needed. No Child may be allowed to sleep in a wet bed.

4. Beds arranged side by side must be at least two feet apart.

5. Cribs for infants must comply with Section 14(L) of this rule.

6. Mats may not be used for sleeping overnight.

SECTION 20. SCHOOL AGE AND OCCASIONAL CARE PROGRAMS

A. **Additional rules for school-age Child Care Facilities.** In addition to the preceding rules, School-Age Child Care Facilities must comply with this section. School-Age Child Care Facilities include (A) facilities licensed for thirteen (13) or more that include a School-Age Childcare Program, and (B) facilities licensed for twelve (12) or fewer that serve school-age children exclusively.

1. There must be space, activities and equipment for group and individual activity;

2. Planned activities must reflect an awareness of the social, emotional, physical and cognitive needs of older Children; and

3. The facility must allow time for individual self-directed activity.

4. School -age Child Care Facilities located in public school buildings, as defined by and approved by the Department of Education, shall be exempt from the following rules:

a. Sections 2(A)(6)(a), 2(C)(7), and 2(C)(8) regarding code compliance;

b. Section 7(C)(3)(b) regarding the requirement to have two staff people present;

c. Section 14(A)(1-2) regarding stairs;

d. Section 14(D) regarding carbon monoxide detectors; and

e. Section 14(F)(2)(b) regarding screens.

B. **Occasional Care Programs.** Additional rules for Occasional Care Programs: In addition to the preceding rules, Child Care Facilities providing Occasional Care must comply with this section.

1. The facility must have a written procedure to ensure that a Child is discharged only to the person who enrolls the Child or to another individual authorized by the parent or guardian who enrolls that Child.

2. The program must have a means of identifying each Child while in care, by a nametag or other method.

3. The program may only administer rescue medications to Children in care, and only when the criteria in Section 12(H)(1) are met.

4. Occasional Care Programs are exempt from the following:

a. Section 5(D)(1)(c) and (d) regarding the name, and phone number of the parents' place of employment); and

b. Section 5(D)(1)(j) regarding the name and phone number of Child's physician and dentist.

c. Copy of financial agreement with Parent(s) or Legal Guardian(s).

d. Section 5(D)(1)(i) requiring immunization records

e. Section 5(D)(1)(h) Dates of enrollment and termination.

SECTION 21. ENFORCEMENT, SUBSEQUENT REAPPLICATION, AND APPEAL RIGHTS

A. **Enforcement.** The Department may direct any Child Care Facility to correct any violations in a manner, and within a time frame, that the Department determines is appropriate to ensure compliance with this rule or to protect the health and safety of Children. The Department may take one or more of the measures set forth herein, at any appropriate level, to address violations of this rule or applicable statutes.

B. **Civil Penalties.** The Department may assess civil penalties in accordance with the schedule of penalties outlined in this rule, if the Child Care Facility fails to comply with applicable laws and/or this rule.

1. A civil penalty may be assessed for a violation as set forth in this rule.

2. A civil penalty is issued via a Notice of Civil Penalty. The Notice will describe each violation, the rule or statute that has been violated and any scheduled amount of civil penalty corresponding to that violation.

3. The Department has established the following schedule of civil penalties for Child Care Facility's failing to correct violations by the Department's timeline pursuant to 22 MRS §7702-A:

a. **Violations regarding records/disclosure**: $500.00 per violation.

b. **Violations regarding child to staff ratios** – not more than $500/incident or $500/number of children above the limit set by rule, or both.

5. Child Care Facilities are required to pay the Department the amount of the civil penalty within 30 days of receipt of the Notice of Civil Penalty. If the Child Care Facility has not paid the total fines due before license renewal, then the license renewal application will be denied.

6. Imposing a civil penalty is not deemed, in any way, to extend any deadline for compliance.

C. **Conditional license.** The Department may issue a conditional License, when the Child Care Facility fails to comply with applicable law and rules and, in the judgment of the Department, the best interest of the public would be so served by issuing a conditional license or approval, in accordance with 22 MRS §7802(1)(C).

1. The notice of conditional License will include a Directed Plan of Action, which must specify when and what corrections must be made during the term of the conditional license or approval.

2. Failure to complete or comply with a Directed Plan of Action may result in further enforcement, up to and including the revocation of a license.

D. **Suspension of a license.** The Department may suspend or seek to suspend a License as follows:

1. **Administrative Suspension/Order of Closure:** Pursuant to 22 M.R.S. § 8301-A(5), whenever conditions exist that immediately jeopardize the health and safety of children, the Commissioner may issue an order of closure, which suspends the Child Care Facility license for up to 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 Child Care Facility and made public as it determines to be most appropriate for parents and other potential customers.

2. **Emergency Suspension:** Pursuant to 22 M.R.S. § 7802(3)(C), whenever, upon investigation, conditions are found which, in the opinion of the Department, immediately endanger the health

and safety of persons attending a Child Care Facility, the Department may request from the District Court an emergency suspension in accordance with 4 MRS §184(6).

E. **Referral to and Authority of the Office of the Attorney General.** Pursuant to 22 M.R.S. § 7702-B(4), the Office of the Attorney General has authority to file a complaint with the District Court seeking civil penalties or injunctive relief or both when the Department alleges that a person, firm, partnership, association, corporation or other entity is, as relevant here, operating a Child Care Facility as defined in 22 M.R.S. § 8301-A(B) without first obtaining a license.

1. Civil penalties: Pursuant to 22 M.R.S. § 7702-B(3), the civil penalty is not less than $500 nor more than $10,000 per day. Each day of violation constitutes a separate offense.

2. Injunctive relief: Pursuant to 22 M.R.S. § 7702-B(3), notwithstanding any other remedies provided by law, the Office of the Attorney General may seek an injunction to require compliance with 22 M.R.S. § 7702-B(1).

F. **Refusal to issue or renew a license.** The Department may refuse to issue or renew a license when a Child Care Facility fails to comply with applicable laws and rules. The Notice of Refusal to issue or renew a license shall be in writing, will indicate the reasons for refusal, and will be mailed or delivered to the Applicant or Child Care Facility.

G. **Revocation of a License.** The Department may revoke a full or temporary license for violation of applicable laws and rules for committing, permitting, aiding or abetting any illegal practices in the operation of the Child Care Facility or for conduct, or practices detrimental to the welfare of Children attending the Child Care Facility in accordance with 22 MRS §7802(3)(D).

H. **Voiding of a Conditional License.** The Department may void a conditional License when the Child Care Facility fails to comply with the conditions of the License.

I. **Consent Agreement.** The Department may issue a Consent Agreement in lieu of another formal sanction. If the Consent Agreement is not followed the Department may take further licensing action.

J. **Limitation on reapplication after denial or revocation of a license.** The following time limit applies to a reapplication after denial or revocation of a license.

1. When a license has been denied or revoked on one occasion, the Applicant or Child Care Facility may not reapply for a License for a period of one year from the effective date of the denial or revocation decision if not appealed or, if appealed, from the effective date of the commissioner's final decision or the reviewing court's order, whichever is later.

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

3. If a License has been denied or revoked on three occasions, the Applicant or Child Care Facility may not receive another License for the care of Children.

K. **Subsequent application for a full License.** A subsequent application for a full License may be considered by the Department after any of the following actions, when the deficiencies identified by the Department at the time the action was taken have been corrected:

1. Issuance or voiding of a conditional License;

2. Amendment or modification of a License;

3. Refusal to issue or renew a full License;

4. Revocation or suspension of a full License; or

5. Refusal to issue a provisional License.

L. Full licensure after deficiencies corrected. An application for a full License may be considered by the Department only when the deficiencies identified by the Department have been corrected.

M. Right to appeal.

1. The Child Care Facility may appeal a Department action and request an administrative hearing as follows:

a. The appeal must be in writing and must state the specific issue(s) being appealed.

b. The appeal must be made within 30 days of receipt of notice of an action subject to the right of appeal and must be mailed or delivered to the Department's Hearings Examiner.

c. The following actions are subject to the right of appeal:

i. Denial of a requested Waiver;

ii. Issuance of a conditional License, including amendment or modification of a License, a reduction in Licensed capacity or cessation of new admissions, when required by the Department in conjunction with a conditional license;

iii. Emergency Suspension of a License;

iv. Voiding of a conditional License;

v. Refusal to issue or renew a full License;

vi. Civil penalties; or

d. Actions subject to the right to appeal shall be stayed until the Department makes a final agency decision, unless the License is suspended under Section 21(D)(1-2).

2. The hearing will be conducted pursuant to the Department's Administrative Hearings Regulations at 10-144 CMR Ch. 1.

3. A Child Care Facility may appeal an adverse final agency action to Superior Court.

STATUTORY AUTHORITY AND REGULATORY HISTORY

From current 10-148 CMR Ch 32, Rules for the Licensing of Child Care Facilities:

STATUTORY AUTHORITY
22 M.R.S.A. Ch. 1673; 5 M.R.S.A. §8054; Resolve 2007 Ch. 199

EFFECTIVE DATE:
January 20, 1980

AMENDED:
March 11, 1980 - Sec. 4 (B)
February 16, 1982 - Sec. 7 (added)
March 4, 1986
February 11, 1987

REPEAL & REPLACE:
December 1, 1991

AMENDED:
May 14, 1995 - Sec. 2B

NON-SUBSTANTIVE CORRECTION:
February 11, 1998 - removal of duplicate §III

AMENDED:
July 1, 1998

NON-SUBSTANTIVE CORRECTION:
March 15, 2000 - corrected temperature in XVII(C)(6)(f), font change, formatting

REPEALED AND REPLACED:
November 12, 2002 - filing 2002-336

NON-SUBSTANTIVE CORRECTIONS:
March 3, 2003

AMENDED:
August 17, 2004 – filing 2004-318

AMENDED:
January 31, 2008 – filing 2008-8
June 1, 2008 – filing 2008-234 (EMERGENCY)
August 27, 2008 – filing 2008-382

From current 10-148 CMR Ch 36, Rules for the Licensing of Nursery Schools:

EFFECTIVE DATE:
July 30, 1976 (Filed 1-15-80)

REPEALED & REPLACED:

May 14, 1995

September 27, 2004 – filing 2004-271. Also changed the title of the chapter from "Rules for Approval to Operate A Nursery School or A Registered Baby-Sitting Service" to "Rules for the Licensing of Nursery Schools"

NON-SUBSTANTIVE CORRECTIONS:

March 2, 2005 - spelling, spacing and capitalization only