

## Chapter HFS 45

### FAMILY CHILD CARE CENTERS

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**Note:** Chapter HSS 45 was renumbered chapter HFS 45 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, September, 1998, No. 513; **Chapter HFS 45 as it existed on December 31, 2004, was repealed and a new Chapter HFS 45 was created, eff. 3-1-05.**

**HFS 45.01 Authority and purpose.** This chapter is promulgated under the authority of s. 48.67, Stats., to carry out licensing requirements under s. 48.65, Stats., for family child care centers. The purpose of the chapter is to protect the health, safety and welfare of children being cared for in family child care centers.

**History:** CR 03-052; cr. Register December 2004 No. 588, eff. 3-1-05.

**HFS 45.02 Applicability. (1)** INCLUDED AND EXCLUDED CARE ARRANGEMENTS. This chapter applies to all family child care centers, but does not include any of the following:

- (a) Care and supervision of children in a program that operates no more than 4 hours a week.
- (b) Group lessons to develop a talent or skill, such as dance or music, social group meetings and activities and group athletic activities.
- (c) Care and supervision while the parents are on the premises and are engaged in shopping, recreation or other non-work activities.
- (d) Seasonal programs of 10 days or less duration in any 3-month period, including day camps, vacation bible school and holiday child care programs.
- (e) Care and supervision in emergency situations.
- (f) Care and supervision while the parent is employed on the premises if the parent's child receives care and supervision for no more than 3 hours a day.
- (g) Care and supervision provided at the site to the child of a recipient of temporary assistance to needy families, or Wisconsin works, who is involved in orientation, enrollment or initial assessment prior to the development of an employability plan or the child care is provided where parents are provided training or counseling.

**(2) EXCEPTION TO THE REQUIREMENT.** The department may grant an exception to a requirement of this chapter when a family child care center demonstrates to the satisfaction of the department that granting the exception will not jeopardize the health, safety or welfare of any child served by the center. A request for an exception shall be in writing, shall be sent to the department and shall include justification for the requested action and a description of any alternative provision planned to meet the intent of the pertinent provision in this chapter.

**Note:** A request for an exception to a requirement of this chapter should be sent to the regional licensing representative of the Department's Division of Children and Family Services. See Appendix A for addresses of the regional offices.

**History:** CR 03-052; cr. Register December 2004 No. 588, eff. 3-1-05.

**HFS 45.03 Definitions.** In this chapter:

- (1)** "Care" means providing for the safety and the developmental needs of a child in a family child care center.
- (2)** "Caregiver background check" means the retrieval of information about an individual's past criminal conduct pursuant to s. 48.685, Stats., and ch. HFS 12 that may bear on the suitability

of that individual to assume a child caregiving role or have regular contact with children at the center.

**(3)** "Center-provided transportation" means transportation in a vehicle owned by or contracted for the center or a vehicle owned by the licensee or an employee that is used to transport children, but does not include a vehicle owned and driven by a parent or volunteer.

**(4)** "Complaint" means an allegation of violation of this chapter or ch. 48, Stats.

**(5)** "Department" means the Wisconsin department of health and family services.

**(6)** "Emergency" means situations such as fire, tornado, flood, extreme outdoor heat or cold, loss of building service including, no heat, water, electricity or telephone, threats to the building or its occupants, lost or missing children or a provider family situation such as a medical emergency, illness or other circumstance requiring immediate attention.

**(7)** "Emergency back-up provider" means a designated adult available within 5 minutes of the premises who can provide assistance in the event an emergency occurs that requires a provider to leave the premises occasionally for a short period of time.

**(8)** "Employee" means any adult who is compensated to provide care and supervision of children enrolled in a family child care center, including a helper or assistant to a child care provider.

**(9)** "Family child care center" or "center" means a facility where a person provides care and supervision for less than 24 hours a day for at least 4 and not more than 8 children who are not related to the provider.

**(10)** "Field trip" means any experience a child has away from the premises of the center while in the care of center staff.

**(11)** "Fit and qualified" means displaying the capacity to successfully nurture and care for children and shall not include any of the following:

- (a) Abuse of alcohol or drugs.
- (b) A history of a civil or criminal conviction or administrative rule violation that substantially relates to caring for children, as described in ch. HFS 12.
- (c) Exercise of unsound judgment.

**(12)** "Foster care" means care and maintenance provided to a child in a foster home pursuant to a court order or voluntary placement agreement.

**(13)** "Foster home" means any facility that is operated by a person required to be licensed under s. 48.62 (1) (a), Stats., and that provides care and maintenance for no more than 4 foster children, or, if necessary to keep siblings together, for no more than 6 foster children.

**(14)** "HealthCheck provider" means a provider of health assessment and evaluation services eligible to be certified under s. HFS 105.37 (1) (a).

**(15)** "Inclement weather" means stormy or severe weather such as any of the following:

- (a) Heavy rain.
- (b) Temperatures above 90° F.

(c) Wind chills of 0° F. or below for children age 2 and above.

(d) Wind chills of 20° F. for children under age 2.

(16) "Infant" means a child under one year of age.

(17) "In care" means enrolled in the center, with the center providing supervision, either on or off the premises, for the safety and the developmental needs of the child or children.

(18) "Licensee" means the individual, corporation, partnership or non-incorporated association or cooperative that has legal and financial responsibility for the operation of a center and for meeting the requirements of this chapter.

(19) "Licensing representative" means a department employee responsible for licensing family child care centers.

(20) "Mildly ill" means a child who has a common, temporary illness that is non-progressive in nature and is not listed on the communicable disease chart in appendix A of ch. HFS 145.

(21) "Night care" means any care that is offered by a licensed family child care center between 9:00 PM and 5:00 AM.

(22) "Parent" means either "parent" as defined in s. 48.02 (13), Stats., or "guardian" as defined in s. 48.02 (8), Stats.

(23) "Physical restraint" means the use of physical force to restrict the free movement of all or a portion of a child's body.

(24) "Physician" has the meaning given in s. 448.01 (5), Stats.

(25) "Physician assistant" has the meaning given in s. 448.01 (6), Stats.

(26) "Premises" means the tract of land on which the center is located, including all buildings and structures on that land.

(27) "Provider" means an adult in a family child care center who provides care and supervision of the children in the care of the center.

(28) "Provider's own children" means a provider's natural or adopted children, foster children or stepchildren.

(29) "Representative of the department" means a department employee or a representative from an agency the department contracts with to provide pre-licensing services.

(30) "School-age child" means a child 5 years of age or older who is enrolled in a public or private school.

(31) "Sleeping bag" means a padded fabric bag that is closed or capable of being closed on 3 sides.

(32) "Substitute" means a provider who replaces another provider on a pre-arranged basis.

(33) "Sudden infant death syndrome" or "SIDS" means the sudden death of an infant under one year of age that remains unexplained after a thorough case investigation, including performance of a complete autopsy, examination of the death scene and a review of the clinical history.

(34) "Supervision" means guidance of the behavior and activities of children while awake and asleep for their health, safety and well-being by a provider who is within sight or sound of the children except as specified in ss. HFS 45.05 (3) (j) and 45.07 (7) (e).

(35) "Toddler" means a child at least one year of age but less than 2 years of age.

(36) "Universal precautions" means measures taken to prevent transmission of infection from contact with blood or other potentially infectious material, as recommended by the U.S. public health service's centers for disease control and adopted by the U.S. occupational safety and health administration (OSHA) as 29 CFR 1910.1030.

**Note:** "Standard precautions" for infection control measures incorporate universal precautions. Information on the OSHA requirements related to standard or universal precautions is available on the OSHA web site at <http://www.osha.gov>. Information is also available from the Child Care Information Center, 1-800-362-7353.

(37) "Volunteer" means a person who agrees to give time, without compensation, to transport children attending a family child care center or to work with children in a family child care center.

(38) "Wading pool" means a shallow pool, with sides of 15 inches or less in height, capable of being dumped to change water and used primarily for small children.

**History:** CR 03-052: cr. Register December 2004 No. 588, eff. 3-1-05.

**HFS 45.04 Operational requirements. (1) TERMS OF LICENSE.** (a) The number of children in the care of a family child care center at any time may not exceed the number for which the center is licensed.

(b) The age of children served by a center may not be younger or older than the age range specified in the license issued.

(c) The hours, days and months of a center's operation may not exceed those specified in the license.

(2) ADMINISTRATION. A licensee shall do all of the following:

(a) Comply with all laws governing the facility and its operation.

(b) Comply with all requirements in this chapter.

(c) Ensure that all information provided to the department is current and accurate.

(d) Prior to receiving or continuing a license, complete all application forms and pay all fees and forfeitures due to the department.

**Note:** The Department will provide an application after a Department representative completes the provision of pre-licensing technical assistance.

(e) Develop, submit to the department for compliance review, implement and provide to the parents written policies and procedures related to all of the following:

1. Enrollment and discharge of enrolled children.

2. Fee payment and refunds.

3. Child and provider absences.

4. Children's and staff's health care, including those policies and procedures pertaining to SIDS risk reduction, if the center is licensed to care for children under one year of age.

5. Nutrition

6. Daily activities of the children.

7. Child guidance.

8. Transportation of children.

9. Religious instruction or practices, if any.

10. Information related to the numbers, types and location of pets or other animals located on the premises of the center and the type of access the children will have to the pets.

**Note:** Under the state public accommodation law, s. 106.04, Stats., federal law and regulations related to use of federal funding, and some local anti-discrimination ordinances, denying admission on the basis of race, handicap, religion or certain other characteristics may be illegal.

(f) Develop, submit to the department for approval and implement a written orientation plan for any employees, substitutes and emergency back-up providers. The orientation plan shall cover all the items described in s. HFS 45.05 (2) (a) and (b).

**Note:** See s. HFS 45.05 (2) (a) and (b) regarding providing an orientation to employees, substitutes and emergency back-up providers.

(g) Provide written information to parents on whether a licensee has insurance coverage on the premises, on the child care operation and on vehicles when transportation is provided. Liability insurance is required if cats or dogs are allowed in areas accessible to children during the hours of operation as specified in s. HFS 45.07 (7) (h).

(h) Display the child care license in a location where parents can see it during the hours of operation.

(i) Post next to the child care license the results of the most recent licensing inspection, any notice of enforcement action and any stipulations, conditions, exceptions or exemptions that affect the license. Items posted shall be visible to parents.

(j) Ensure that any action, by commission or omission, or any condition or occurrence relating to the operation or maintenance of the child care center does not adversely affect the health, safety or welfare of any child under the care of the licensee.

(k) Meet, upon request of the department, with a licensing representative on matters pertaining to the license.

**(3) REPORTS.** The licensee shall report to the department all of the following:

(a) Any death of a child in care or accident that results in an injury that requires professional medical treatment while the child is in the care of the center, within 48 hours after the occurrence.

**Note:** The licensee may use either the Department's form CFS-0055, Child Care Accident/Death Report, listed in Appendix E, or the licensee's own form to report accidents and deaths.

(b) Any damage to the premises that may affect compliance with this chapter, within 24 hours after the occurrence.

(c) Any construction or remodeling on the premises that has the potential to affect an area accessible to children or a condition of the license. Notification shall be provided in writing before the construction or remodeling begins.

**Note:** See s. HFS 45.11 (6) (a) for items that affect a condition of the license.

**Note:** It is recommended that the licensee check with the local municipality to determine whether a building permit is required before beginning any construction or remodeling.

(d) If requested by the department, a plan of correction for cited violations of this chapter or ch. 48, Stats., in a format specified by the department. The department shall receive the plan of correction by the date the department specifies and be approved by the department licensing representative.

**Note:** The licensing representative will notify the licensee that a plan of correction will be required and will provide the plan of correction format with the notification.

(e) Any known convictions, pending charges or other offenses of the licensee, a provider, household members or other persons subject to a caregiver background check which could potentially relate to the care of children at the center or activities of the center.

(f) Any incident related to a child who leaves the premises of the center without the knowledge of a provider or any incident that results in a provider not knowing the whereabouts of a child in attendance at the center within 24 hours of the incident.

(g) Any incident involving law enforcement within 24 hours after the occurrence that:

1. Involves a licensee, a household resident or an employee of the center in an incident that causes, or threatens to cause, physical or serious emotional harm to an individual, including a child in the care of the center.

2. Involves any traffic-related incident where a person responsible for the violation transports children in the care of the center.

(h) Any change in room usage, such as using rooms not previously approved for use at least 20 working days prior to the change. Changes in room usage shall be approved by the department prior to the change.

(i) Any suspected abuse or neglect of a child by a provider, volunteer or household member that was reported under sub. (8) (a) or any inappropriate discipline of a child by a provider, volunteer or household member during the child's hours of attendance within 24 hours after the incident.

**Note:** See also s. HFS 45.07 (2) for information on guiding children's behavior and sub. (6) (c) regarding recording injuries in a center medical log.

(j) A change in transportation services at least 5 calendar days prior to the change. A change in transportation services shall be approved by the department. Seasonal closing shall be reported at least 5 calendar days prior to the closing.

(k) Statistical data required by the department on forms provided by the department.

**Note:** The Department periodically requests statistical data from licensees. An example of the type of data collected relates to the immunization status of children in care. When the Department requests statistical data, the Department will supply the appropriate form.

**(4) PARENTS.** (a) The center shall permit parents to visit and observe the center's operations at any time during the center's hours of operation unless parental access is prohibited or restricted by court order.

(b) The licensee shall give parents of each enrolled child a summary of this chapter.

**Note:** Copies of a summary of this chapter may be obtained from the Child Care Information Center by calling 1-800-362-7353.

**(5) STAFF RECORDS.** The licensee shall maintain a file for each provider, employee, or substitute. The file shall contain the following items:

(a) A completed staff record form provided by the department.

**Note:** The Department's form CFS-0053, Child Care Staff Record, is used for recording staff information. Information on how to obtain the form is in Appendix E.

(b) A completed background information disclosure form provided by the department that does not reveal any information that may preclude the person's contact with children under s. 48.685, Stats., or ch. HFS 12 prior to the first day of work and every 4 years thereafter.

**Note:** The Department's form HFS-64, Background Information Disclosure, is used for reporting employee background information. Information on how to obtain the form is in Appendix E.

(c) The results of the complete caregiver background check including any report of any investigation required under ch. HFS 12 within 60 days after hire and every 4 years thereafter.

**Note:** If the licensee is a provider, the department is responsible for collecting the completed Background Information Disclosure form and conducting the necessary caregiver background check on the licensee.

(d) Documentation of the days and hours a substitute, employee or volunteer has worked and whose time is used to meet the applicable staff to child ratio under Table 45.05.

(e) Except as provided under par. (f), a physical examination report on a form provided by the department that was completed within 12 months prior to or 30 days after the person became licensed or began working with children. The report shall be dated and signed by a licensed physician, physician's assistant or HealthCheck provider. The report shall indicate all of the following:

1. That the person is free from illness detrimental to children, including tuberculosis.

2. That the person is physically able to work with young children.

**Note:** The Department's form CFS-0054, Child Care Provider Staff Health Report, is used for recording physical examination information. Information on how to obtain the form is in Appendix E.

(f) The health examination requirement under par. (e) does not apply to a provider who requests an exemption from par. (e) based on the provider's adherence to religious belief in exclusive use of prayer or spiritual means for healing in accordance with a bona fide religious sect or denomination.

(g) Documentation of the entry level training required under s. HFS 45.05 (1) (b) or s. HFS 45.09 (1) (b) and any continuing education required under s. HFS 45.05 (1) (b).

**Note:** "The Registry" is the organization that provides professional development opportunities and awards credentials for early childhood professionals in Wisconsin. A certificate issued by the Registry may be used to document completion of entry level training. Contact the Registry at 608-222-1123 for information on how to obtain a Registry certificate.

**(6) CHILDREN'S RECORDS.** (a) The licensee shall maintain a current written record at the center on each child enrolled and shall make the record available to the department representative on request. Each record shall include all of the following:

1. Enrollment information and health history on a form provided by the department. The enrollment information and health history shall be on file prior to the child's first day of attendance.

**Note:** The Department's form CFS-0062 or CFS-0062A, Child Care Enrollment Form and the CFS 2345 Health History and Emergency Care Plan Form are used for recording enrollment and health history information. Information on how to obtain the forms is in Appendix E. See s. HFS 45.07 (6) (L) 5. for information on sharing information related to a child's special health care needs.

2. Parental authorization for the child to participate in and be transported for field trips and other activities if these are part of the program.

**Note:** The Department's form CFS-0062, Child Care Enrollment Form, includes a blanket authorization to take children on field trips. The Department's form CFS-0058 or CFS-0058A, Day Care Field Trip or Other Activity Notification, or

another type of notification such as a note to a parent may be used to provide specific information about a field trip. Information on how to obtain the Department's forms is in Appendix E.

3. A written agreement, signed by the parent, outlining the plan for a school-age child to come to the center from school, home and other activities and to go from the center to school, home and other activities.

**Note:** The licensee may use either the Department's form CFS-0104, Day Care School-Age Agreement, or the licensee's own form for securing the parent's signed agreement. Information on how to obtain the Department's form is in Appendix E.

4. Documentation of each child's immunization history and, except for a school-aged child, the most recent physical examination.

5. Written permission from the parents under s. HFS 45.07 (6) (k) for medical attention to be sought for the child if the child is injured.

6. For an infant or toddler, a current statement from the parent on a form provided by the department about the infant or toddler's habits of eating, sleeping, toileting and communication, and specific techniques that appear to comfort the child.

**Note:** The Department's form CFS-0061, Child Care Intake for Child Under 2 Years is used for recording the infant's or toddler's habits. Information on how to obtain the form is in Appendix E.

(b) The licensee shall maintain a written record of the daily attendance that includes the time of arrival and departure and birthdate for each child for the length of time the child is enrolled in the program.

(c) The licensee shall maintain a medical log book with pages that are lined and numbered and a stitched binding. A provider shall record in ink any injuries received by a child, evidence of unusual bruises, contusions, lacerations or burns received by a child in or out of center care or medication dispensed to a child in the medical log and sign or initial each entry. Pages may not be removed or lines skipped.

**Note:** Licensees may obtain information about maintaining a medical log book by contacting the Child Care Information Center at phone number 800-362-7353.

**Note:** See sub. (8) of this section for requirements related to reporting suspected child abuse or neglect, and s. HFS 45.07 (6) (b) 2. for information on recording in the medical log book.

**(7) CONFIDENTIALITY.** (a) The licensee is responsible for compliance by the center with s. 48.78, Stats., and this subsection.

(b) The licensee shall ensure that all of the following occur:

1. Persons having access to children's records do not discuss or disclose personal information regarding the children and facts learned about the children and their relatives. This subdivision does not apply to any of the following:

a. The parent or person authorized in writing by the parent to receive the information.

b. Any agency assisting in planning for the child when informed written parental consent has been given.

c. Agencies authorized under s. 48.78, Stats.

2. A parent, upon request, has access to all records and reports maintained on his or her child.

3. All records required by the department under this chapter for licensing purposes are available to the licensing representative.

**(8) REPORTING CHILD ABUSE.** (a) A licensee or provider who knows or has reasonable cause to suspect that a child has been abused or neglected as defined in ss. 48.02 (1) and 48.981 (1), Stats., shall immediately contact the county department of social services or human services or local law enforcement agency in compliance with s. 48.981, Stats.

(b) The licensee shall document that each provider and substitute has received training at least every 2 years in all of the following:

1. Child abuse and neglect laws.

2. How to identify children who have been abused or neglected.

3. The procedure for ensuring that all known or suspected cases of child abuse or neglect are immediately reported to the proper authorities.

**Note:** Failure of the licensee to report known or suspected child abuse or neglect does not lessen the legal duty of a child care employee to report known or suspected cases of child abuse or neglect. Information related to child abuse may be obtained from the Child Care Information Center by calling 1-800-362-7353.

**Note:** See sub. (6) (c) of this section for information about logging evidence of unusual bruises, contusions, lacerations or burns received by a child in or out of center care in the center medical log book.

**History:** CR 03-052; cr. Register December 2004 No. 588, eff. 3-1-05.

**HFS 45.05 Staffing. (1) RESPONSIBILITIES AND QUALIFICATIONS OF STAFF.** (a) *Minimum age and competence.* A family child care provider shall be physically, mentally and emotionally able to provide responsible care for children and shall be at least 18 years of age.

(b) *Training.* 1. A provider shall have satisfactorily completed 40 hours or 3 credits of early childhood training approved by the department within 6 months after initial licensure. Additional providers required to meet staff to child ratios shall meet the training requirements within 6 months of beginning to work with children.

**Note:** Non-credit courses entitled *Introduction to the Child Care Profession* and *Fundamentals of Family Child Care*, together, meet the requirement for 40 hours of Department-approved training. Credit-based courses used to meet entry level training requirements must be at least 3 credits and be broad-based (for example, child development, child psychology or introduction to early childhood education).

2. If the center is licensed to care for children under 2 years of age, s. HFS 45.09 (1) (b) shall apply to all providers.

3. A substitute hired to meet staff to child ratios need not meet the training requirements specified in this section until the substitute has worked in the center for 240 hours.

4. A provider shall receive and document having received 15 hours of continuing education each year in child growth and development, early childhood education, or first aid, as approved by the department. This training may include attendance at training events, workshops, conferences, consultation with community resource people or observation of child care programs. Up to 5 hours of independent reading or watching educational materials may be used to meet continuing education requirements.

**Note:** The licensee may use either the Department's form CFS-0053A, Child Care Staff Continuing Education Record, or the licensee's own form to document the completion of continuing education. Information on how to obtain the Department's form is in Appendix E.

5. A provider shall obtain within 6 months of licensure or date of hire and maintain a current certificate of completion for infant and child cardiopulmonary resuscitation. The time spent obtaining or renewing cardiopulmonary resuscitation training may be counted towards the required continuing education hours.

(c) *Volunteers.* Volunteers used to meet staff-to-child ratios shall meet the qualifications of a provider as specified under par. (b) or s. HFS 45.09 (1) (b) following 240 hours of first date of volunteering.

**(2) STAFF DEVELOPMENT.** (a) *Orientation of employees, volunteers and substitutes.* Each employee, volunteer, or substitute shall receive an orientation before beginning work. The orientation shall be documented on a form provided by the department and kept in the employee file. The orientation shall cover all of the following:

**Note:** See s. HFS 45.04 (2) (f) relating to a written plan for orientation.

1. Names and ages of all the children in care.

2. Current arrival and departure information for each child enrolled including the names of people authorized to pick up the child.

3. Location of children's emergency contact information.

4. Specific information relating to children's special health care needs including medications, disabilities or special health conditions.

5. Procedures to reduce the risk of sudden infant death syndrome, if the center is licensed to care for children under one year of age.

6. An overview of the daily schedule including meals, snacks, nap and any information related to the eating and sleep schedules of infants and toddlers enrolled in the center.

7. A review of the center's procedures for dealing with emergencies.

8. The procedure for reporting suspected abuse and neglect of a child.

9. The plan for evacuating sleeping children, if the center is licensed to care for children between the hours of 9 PM and 5 AM.

**Note:** The Department's form CFS-2255, Family Child Care Orientation Checklist, is used to document employee information. Information on how to obtain the form is in Appendix E.

(b) *Orientation of emergency back-up providers.* Each time an emergency situation occurs, each emergency back-up provider shall receive an orientation immediately before being left alone with the children. The orientation shall cover all of the following:

**Note:** See s. HFS 45.04 (2) (f) relating to a written plan for orientation.

1. Names and ages of all the children in care.
2. Arrival and departure information for each child in care including the names of people authorized to pick up the child.
3. Location of children's files.
4. Procedures to reduce the risk of sudden infant death syndrome, if the center is licensed to care for children under one year of age.

(3) **SUPERVISION.** (a) 1. A provider may not be engaged in any other activity or occupation during the hours of operation of the center, except for daily maintenance of the home.

2. The licensee may not combine the care of children enrolled in the child care center with foster care of other non-related children or adults without the prior written approval of both licensing agencies.

(b) A provider shall be awake whenever children are in care.

(c) No individual provider may take care of children for more than 12 hours in any 24-hour period.

(d) No child may be in care for more than 12 hours in any 24-hour period.

(e) A child shall have adult supervision at all times.

(f) No person under 18 years of age may be left in sole charge of the children.

(g) The center shall have a plan approved by the department for ensuring supervision of the children in an emergency or during a provider's absence.

(h) A provider and any other adult in contact with children may not consume beverages containing alcohol or any non-prescribed controlled substance specified in ch. 961, Stats., or be under the influence of any alcohol or a non-prescribed controlled substance, during the hours of the center's operation.

(i) Each child shall be closely supervised by a provider to guide the child's behavior and activities, prevent harm and assure safety.

(j) A provider shall be outside with children and provide sight and sound supervision of the children unless the children are playing inside the enclosed outdoor area on the premises, as specified under s. HFS 45.06 (11) (b).

(k) A child may not be released to any person who has not been previously authorized by the parent to receive the child.

(4) **STAFFING AND GROUPING.** (a) At no time may more than 8 children be in the care of the center. This total includes:

1. All children under 7 years of age, including a provider's own children.
2. All children 7 years of age or older who are not a provider's own children.

(b) The maximum number of children that one provider may care for is specified in Table 45.05.

Children Under 2 Years of Age	Children 2 Years of Age and Older	Maximum Number of Additional Children in First Grade Or Above In Care For Fewer Than 3 Hours a Day	Maximum Number of Children
0	8	0	8
1	7	0	8
2	5	1	8
3	2	3	8
4	0	2	6

(c) If the size of the group or the age distribution of the children exceeds the number that may be served by one provider, an additional qualified provider shall be present.

**Note:** For example, if there are 3 children under age 2 present at one time and 5 children between the ages of 2 years and 6 years present, a second provider is required. At no time may the maximum number of children in care exceed 8.

**History:** CR 03-052: cr. Register December 2004 No. 588, eff. 3-1-05.

**HFS 45.06 Physical plant and equipment. (1) BUILDING.** (a) *Conformance with building codes.* Family child care centers located in other than a one or 2 family dwelling shall conform to the applicable Wisconsin commercial building codes. A copy of a building inspection report evidencing compliance with the applicable building codes shall be submitted to the department prior to the department's issuance of a license.

**Note:** The building inspection report should be sent to the appropriate regional office listed in Appendix A.

(b) *Space and temperature.*

1. A center shall have at least 35 square feet of usable floor space per child. This space shall be exclusive of passageways, bathrooms, lockers, storage areas, the furnace room, that part of the kitchen occupied by stationary equipment, and space occupied by furniture that is not intended for children's use.

2. The inside temperature of the center may not be less than 67° F.

3. If the inside temperature exceeds 80° F., the licensee shall provide for air circulation with fans or other means if the center is not air conditioned.

(2) **PROTECTIVE MEASURES.** (a) Furnaces, water heaters, steam radiators, fireplaces, wood burning stoves, electric fans, electric outlets, electric heating units and hot surfaces such as pipes shall be protected by screens or guards so that children cannot touch them.

(b) Firearms, ammunition or other potentially dangerous items located on the premises shall be kept in locked storage and may not be accessible to children.

(c) Materials harmful to children, including power tools, flammable or combustible materials, insecticides, matches, drugs and any articles labeled hazardous to children, shall be in properly marked containers and stored in areas inaccessible to children.

(d) The center shall have at least one working telephone with a list of emergency telephone numbers, including telephone numbers for the local rescue squad, fire department, police department, law enforcement agency, poison control center and emergency medical service, posted near each telephone.

(e) The center's indoor and outdoor child care space shall be free of hazards.

(f) A motor vehicle shall be immediately available at the center at all times in case of an emergency if an ambulance or first response unit cannot arrive within 10 minutes of a phone call.

(g) Differences of elevation, including open sides of stairways, elevated platforms, walks, balconies and mezzanines shall be protected by railings at least 36 inches high and designed to prevent the passage of an object with a diameter larger than 4 inches through any openings in the railing bars.

(h) Smoking is prohibited anywhere on the premises of a center when children are present.

**Note:** Section HFS 45.03 (25) defines a "premise" as a building and the tract of land on which the building is located.

(i) A hot tub located in a room or area accessible to children shall have a visible, locked, rigid cover or be enclosed by a locked fence at least 4 feet tall. The lock shall be installed so that the lock is inaccessible to children.

(j) If a hot tub is located in a room or area that is not intended for use by children, access to the room or area shall be controlled through the use of a visibly locked door. The lock shall be installed so that the lock is inaccessible to children.

(k) The premises shall have no flaking or deteriorating paint on exterior or interior surfaces in areas accessible to children. Lead-based paint or other toxic finishing material may not be used on any surface on the premises.

**(3) EMERGENCIES.** Each center shall have a written plan for taking appropriate action in the event of a fire or tornado or other emergency. The center shall practice the fire and tornado plan with the children each month and document when the plan was practiced.

**Note:** The Licensee may use either Department's form CFS-0460, Family Child Care Fire and Safety Report or the licensee's own form to document when the fire and tornado emergency plan was practiced. Information on how to obtain the Department's form is in Appendix E.

**(4) FIRE PROTECTION.** (a) Smoke detectors shall be installed and maintained in operating condition on each level of the center and in all areas used for nap or rest periods. All smoke detectors shall be tested monthly and a record kept of the time, date and results of the test.

**Note:** The licensee may use either the Department's form CFS-0460, Family Child Care Center Fire and Safety Report, or the licensee's own form to record the results of smoke detector tests. Information on how to obtain the Department's form is in Appendix E.

(b) An operable fire extinguisher with a minimum rating of 2A-10BC shall be provided for the kitchen and cooking area and inspected annually, and a provider shall know how to use it. Inspection tags are not required, but documentation of the inspection must be kept on file at the center.

**Note:** Licensees or a commercial fire extinguisher inspector may inspect fire extinguishers.

(c) Unvented gas, oil or kerosene space heaters are prohibited.

(d) A woodburning stove may be used only if it meets standards specified under s. Comm 23.045.

**(5) SANITATION.** The premises, furnishings and equipment shall be free from litter and vermin and maintained in a sanitary condition and in good repair.

**(6) WATER.** (a) If the center gets its water from a private well, water samples from the well shall be tested annually by a laboratory certified under ch. HSS 165 and shall be found bacteriologically safe. The laboratory report shall be available to the department upon request.

(b) If the center is licensed to care for infants under 6 months of age, the center shall have nitrate levels in the water tested annually.

(c) If water test results indicate the water is bacteriologically unsafe or has nitrate levels that exceed the recommended limits, the water shall be appropriately treated and re-tested until it is determined to be safe. Bottled water shall be used until the water is determined to be safe.

**(7) EXITS, DOORS AND WINDOWS.** (a) *Exits.* 1. All exits shall be clear of obstructions.

2. Each floor or level occupied by children shall have at least 2 exits.

3. Exits shall be located as far apart as practical.

4. The width of every exit door shall be at least 2 feet 6 inches.

5. The primary exit shall be a door or stairway providing unobstructed travel to the outside of the building at street or ground level.

6. The secondary exit shall be one of the following:

a. A door or stairway that provides unobstructed travel to the outside of the building at street or ground level.

b. A door or stairway leading to a platform or roof with railings complying with sub. (2) (g), which has an area of at least 25 square feet, is at least 4 feet long, and is not more than 15 feet above ground level.

c. A window that is not more than 46 inches above the floor, capable of being opened from the inside without the use of tool or removal of a sash, and which has a nominal window opening size of at least 20 inches in width and 24 inches in height.

7. If care is provided in a basement, all of the following apply:

a. The primary exit shall be a door or stairway that provides unobstructed travel to the outside of the building at street or ground level.

b. The secondary exit shall be either a door or stairway leading to the ground level or a window not more than 46 inches above the floor that is capable of being opened from the inside without the use of tool or removal of a sash, and which has a nominal window opening size of at least 20 inches in width and 24 inches in height. The window shall open directly to the ground or to a window well with an area of at least 6 square feet that is not more than 46 inches below the ground.

8. Two children under 24 months of age may be cared for on a level that is more than 6 feet up or down from the ground level if the center is equipped with an interconnected smoke detection system in operating condition.

(b) *Doors and windows.*

1. Every closet door latch shall be capable of being opened by children from inside the closet.

2. Every toilet room door lock shall be designed to permit the locked door be opened from the outside in an emergency, and the opening device shall be readily accessible to a provider.

3. Windows that are capable of being opened and located in areas of the center that are accessible to children shall have screens.

**(8) FURNISHINGS.** (a) Furnishings shall be durable and safe, with no sharp, rough, loose or pointed edges.

(b) The furnishings shall include all of the following:

1. Table space and seating for each child.

2. Storage space for equipment, cots, if used, bedding, children's clothing and personal belongings.

3. A safe, washable cot, bed, 2-inch thick mat or sleeping bag for each child one year of age or older who naps or sleeps.

4. A safe, washable crib or playpen for each child under one year of age who naps or sleeps.

**Note:** See Appendix D for information related to safe cribs.

**(9) KITCHENS.** (a) Equipment and utensils for preparing, serving and storing food shall be clean and equipped for the safe handling of food. Eating surfaces shall be washed before use.

(b) Reusable eating and drinking utensils shall be thoroughly cleaned with detergent and hot water and rinsed after use. Single use articles such as food containers designed to be used only once and discarded including plastic silverware, paper or styrofoam cups and plates may not be reused.

(c) Food shall be clean, wholesome, free from spoilage and from adulteration and misbranding, and safe for human consumption.

(d) Food shall be covered and stored at temperatures that protect against spoilage. Refrigerators shall be maintained at 40° F. or lower and freezers shall be maintained at 0° F. or lower.

(e) Leftovers shall be discarded after 36 hours unless frozen for later use.

**(10) WASHROOMS AND TOILET FACILITIES.** (a) There shall be at least one toilet with plumbing and one sink with hot and cold running water available for use by the children.

(b) Soap, toilet paper and a waste paper container shall be provided in the washroom and accessible to children.

**(11) OUTDOOR SPACE.** (a) *Requirement for outdoor play space.* A center shall have outdoor play space if any child is receiving care for more than 3 hours a day.

(b) *Required features of outdoor play space.* Except when an exemption is requested and approved by the department under par. (c), a center shall comply with all of the following requirements for outdoor play space:

1. The outdoor play space shall be on the premises of the center.

2. There shall be at least 75 square feet of outdoor play space for each child using the space at a given time.

3. The outdoor play space shall be well-drained and shall be free of hazards. Structures such as playground equipment, railings, decks and porches accessible to children and built with CCA-treated lumber shall be sealed with an oil-based sealant or stain.

4. A permanent enclosure not less than 4 feet high shall be provided where there are hazards nearby, including traffic or bodies of water, which present a threat to the safety of children in care.

5. Concrete and asphalt are prohibited under climbing equipment, swings and slides.

(c) *Exemption for off-premises play space.* 1. In this paragraph, "main thoroughfare" means a heavily traveled street or road used by vehicles as a principal route of travel.

2. If a center has no outdoor play space available on the premises of the center, the licensee may request an exemption from the requirements under subd. 3. for the center's outdoor play space.

3. A request for an exemption under subd. 2. shall be in writing and shall be accompanied by a plan for outdoor play space that does all the following:

a. Identifies and describes the location to be used, the travel distance from the center to that location and the means of transporting the children to that location.

b. Provides for adequate supervision of the children as specified in Table 45.05.

c. Provides for daily vigorous exercise in the out-of-doors for the children.

d. Describes the arrangements to meet the toileting and diapering needs of the children.

e. Affirms the center's compliance with the requirements included in subds. 4. to 7.

**Note:** Send the request for an exemption, including the plan for the use of that space, to the licensing representative at the appropriate regional office of the Department's Division of Children and Family Services. See Appendix A for addresses of the regional offices.

4. The off-premises outdoor play space shall be free of hazards such as bodies of water, railroad tracks, unfenced swimming pools, heavily wooded areas and nearby highways and main thoroughfares.

5. There shall be at least 75 square feet of play space for each child using the space at a given time.

6. No climbing equipment, swing or slide in the play space may have concrete or asphalt under it.

7. When the off-premises outdoor play space is reached by walking, the center shall transport children under 3 years of age in wheeled vehicles, such as strollers or wagons, with a seating capacity equal to the number of children under 3 years of age to be transported.

8. A center's plan for use of an off-premises outdoor play space is subject to approval by the department. Within 30 days after receipt of a plan and request for an exemption from the requirements under par. (b), the department shall either approve the plan and grant the exemption or not approve the plan and deny the request for exemption. The department shall notify the center in writing of its decision and if it does not grant an exemption, shall state its reasons for not granting the exemption.

9. If any circumstance described in an approved plan for use of off-premises outdoor play space changes or if any condition for plan approval is not met, the department may withdraw its approval of the plan and cancel the exemption. A center with an approved plan shall immediately report to the department's licensing representative any significant change in any circumstance described in the plan.

**(12) SWIMMING AREAS.** (a) Swimming pools on the premises of the center may not be used by children in care. Swimming pools on the premises shall be surrounded by a permanent enclosure as specified under sub. (11) (b) 4. In addition, the all of the following restrictions apply:

1. If access to the pool is through a gate, the gate shall be closed and locked during the center's hours of operation.

2. If access to the pool is through a door, the door shall be closed, visibly locked and equipped with an alarm at the door that signals when someone has entered the pool area. The door may not be used as an exit.

3. Locks shall be located so that the locks cannot be opened by the children.

4. The free-standing wall of an above ground pool may not serve as an enclosure unless it is at least 4 feet in height and not climbable. If a ladder is present, the ladder shall be removed or raised up so that it is inaccessible to children.

5. The area around the pool enclosure shall be free of toys or equipment that would allow a child to climb or otherwise gain access to the pool.

(b) Wading pools may be used if the water is changed daily and the pool is disinfected daily.

(c) A swimming pool or beach that is not located on center premises may be used by children, if all of the following conditions are met:

1. The construction and operation of the pool meet the requirements of chs. Comm 90 and HFS 172 for public swimming pools and the beach complies with any applicable local ordinance.

2. Certified lifesaving personnel are on duty.

3. While children are in the water of a pool or beach, the following staff-to-child ratios for persons who can swim are met:

a. For children under 2 years of age: 1:1.

b. For children 2 and 3 years of age years of age: 1:3.

- c. For children 4 and 5 years of age: 1:6.
- d. For children 6 years of age and older: 1:8.

4. When a mixed age group of children are swimming, the staff-to-child ratio shall be adjusted based on to the number of children in the water and each child's age.

**Note:** A worksheet to help calculate the staff to child ratio for mixed aged groupings during swimming is available from the department upon request. Requests may be made to the licensing representative or regional office in Appendix A.

5. A child shall be restricted to the area of the pool or beach that is within the child's swimming ability.

**History:** CR 03-052; cr. Register December 2004 No. 588, eff. 3-1-05.

**HFS 45.07 Program.** (1) PROGRAM PLANNING AND SCHEDULING. (a) A provider shall plan activities so that each child may be or do all of the following:

1. Be successful and feel good about himself or herself.
2. Use and develop language.
3. Use large and small muscles.
4. Use materials and take part in activities that encourage creativity.
5. Learn new ideas and skills.
6. Participate in imaginative play.
7. Be exposed to a variety of cultures.

**Note:** The Wisconsin Model Early Learning Standards are voluntary standards that were designed to help centers develop programs and curriculum to help ensure that children are exposed to activities and opportunities that will prepare them for success in school and into the future. The Standards are primarily intended as guidance on developmentally appropriate expectations and are not intended to be used as a checklist to gauge a child's progress. The Standards are based on scientific research. Copies of the Wisconsin Model Early Learning Standards are available on the Wisconsin Early Childhood Collaborating Partners website at <http://www.collaborating-partners.com/> or through the Child Care Information Center at 1-800-362-7353.

(b) A provider shall plan daily activities according to the age and developmental level of the children in care and shall include a flexible balance of all of the following:

1. Daily indoor and outdoor activities when a child is in care for more than 3 hours except that outdoor activities are not required during inclement weather or when not advisable for health reasons.
2. Active and quiet play.
3. Protection from excess fatigue and over stimulation.
4. Individual and group activities.

(c) Television, including videotapes and DVDs, may be used only to supplement the daily plan for children. No child may be required to watch television.

(2) CHILD GUIDANCE. (a) Each family child care center shall provide positive guidance and redirection for the children and shall set clearly specified limits for the children. A provider shall help each child develop self-control, self-esteem and respect for the rights of others.

(b) If a provider uses time-out periods to deal with unacceptable behavior, time-out periods may not exceed 5 minutes or be used for children under age 3. Time-out procedures shall be included in the center's written child guidance policy.

(c) Actions that are aversive, cruel or humiliating, and actions that may be psychologically, emotionally or physically painful, discomfoting, dangerous or potentially injurious are prohibited. Examples of prohibited actions include all of the following:

1. Spanking, hitting, pinching, shaking, slapping, twisting, or inflicting any other form of corporal punishment on the child.
  2. Verbal abuse, threats or derogatory remarks about the child or the child's family.
  3. Physical restraint, binding or tying the child to restrict the child's movement or enclosing the child in a confined space such as a closet, locked room, box or similar cubicle.
  4. Withholding or forcing meals, snacks or naps.
- (d) A child may not be punished for lapses in toilet training.

**Note:** See s. HFS 45.04 (8) for information on reporting suspected child abuse and s. HFS 45.04 (3) (i) for rules requiring that inappropriate discipline of a child be reported to the Department within 24 hours after the occurrence.

(3) EQUIPMENT. (a) Safe indoor and outdoor play equipment shall be provided and shall be all of the following:

1. Scaled to the size and developmental level of the children.
2. Of sturdy construction with no sharp, rough, loose, or pointed edges, in good operating condition, and anchored when necessary.
3. Placed so as to avoid danger of accident or collision and to permit freedom of action.

(b) Various types of play equipment shall be provided to allow for large and small muscle activity, dramatic play, creative expression and intellectual stimulation.

(c) Indoor play equipment shall be provided to allow each child a choice of at least 3 activities involving equipment when all children are involved in using equipment.

(d) Outdoor play equipment shall be provided to allow each child at least one activity when all children are using equipment at the same time.

(e) Trampolines shall not be in areas accessible to children and may not be used by the children in care.

**Note:** Lists suggesting kinds and numbers of equipment for centers are available from the Child Care Information Center by calling 1-800-362-7353.

(4) REST PERIODS. (a) Children under 5 years of age in care for more than 4 consecutive hours shall have a nap or rest period.

(b) A provider shall permit children who do not sleep after 30 minutes and children who wake up early to get up and shall help them to have a quiet time through the use of equipment or activities which do not disturb other children.

(c) Each child who has a nap or rest period shall be provided with a bed, cot, mat at least 2 inches thick, sleeping bag, crib or playpen which is placed at least 2 feet from the next sleeping child.

(d) Each child shall be provided with an individually identified sheet and blanket or sleeping bag that may be used only by that child until it is washed. Sleeping bags and bedding shall be stored in a sanitary manner and washed at least after every 5 uses or as soon as possible if wet or soiled.

(e) Infants shall sleep alone in cribs or playpens. Two related children may share a double bed. No more than one child may occupy a single size bed, cot, mat or sleeping bag.

**Note:** See also s. HFS 45.06 (8) (b) 3. and 4. which require that the cot, bed, mat, sleeping bag, crib or playpen be safe and washable.

(5) MEALS AND SNACKS. (a) Food shall be provided based on the amount of time children are present, as specified in Table 45.07.

<b>TABLE 45.07 Meals and Snacks to be Served to Children in Family Child Care Centers</b>	
<b>Time Present</b>	<b>Number of Meals and Snacks</b>
At least 2 1/2 but less than 4 hours	1 snack
At least 4 but less than 8 hours	1 snack and 1 meal
At least 8 but less than 10 hours	2 snacks and 1 meal
10 or more hours	2 meals and 2 or 3 snacks

(b) Food shall be served at flexible intervals, but no child may go without nourishment for longer than 3 hours.

(c) Each meal and snack shall meet the U.S. department of agriculture child and adult care food program minimum meal requirements.



**Note:** See Appendices B and C for United States Department of Agriculture child and adult care food program minimum meal requirements. You may also contact the Department of Public Instruction Community Nutrition Services for information on the United States Department of Agriculture child and adult care food program at 608-267-9123.

(d) Accurate records of meals and snacks served to children shall be available for review by parents and the licensing representative. Written records of meals and snacks served to children must be kept for 3 months.

(e) Enough food shall be prepared for each meal so second portions of vegetables, fruit, bread and milk are available to children.

(f) When food for a child is provided by the child's parent, the licensee shall give the parents information about the requirements for food groups and quantities specified by the U.S. department of agriculture child and adult care food program minimum meal requirements.

(g) A child enrolled in school who is in attendance at the center when a meal or snack is served shall be offered the meal or snack.

(h) A special diet based on a medical condition, excluding food allergies, but including nutrient concentrates and supplements, may be served only upon written authorization of a child's physician and upon the request of the parent.

(i) A special diet based on a food allergy may be served upon the written request of the parent.

**(6) HEALTH.** (a) *Contact with others who are ill.* 1. A licensee, provider, household member, employee, volunteer, visitor or parent who has symptoms of illness or of a communicable disease that may be transmitted through normal contact may not be in contact with the children in care.

2. a. A licensee, provider, household member, employee, volunteer, visitor or parent whose behavior with respect to any child, adult, animal or property, on or off the center's premises, raises reasonable concern for the safety of the children, may not be in contact with the children in care.

b. The department may require a licensee, provider, household member or other adult in contact with the children whose behavior gives reasonable concern for the safety of children to submit to an examination by a licensed mental health professional as a condition of licensure or employment.

**Note:** See also s. HFS 45.11 (2) (e) which requires a written statement from a physician or licensed mental health professional when there is reason to believe that the physical and mental health of a person may endanger children in care.

3. No person with a health history of typhoid, paratyphoid, dysentery or other diarrheal disease may work in a center until it is determined by appropriate medical tests that the person is not a carrier of the disease.

(b) *Observation of children.* 1. Each child upon arrival at the center shall be observed for symptoms of illness. For a child who appears to be ill, the licensee shall follow the procedure under par. (c).

2. A provider shall note in a medical log book any injury or evidence of unusual bruises, contusions, lacerations or burns received by a child in or out of the center and any incidents requiring the services of medical personnel.

**Note:** See s. HFS 45.04 (6) (c) for information on maintaining a medical log book.

(c) *Ill child.* Unless a center has been previously authorized to care for mildly ill children under par. (d), any child who appears to be ill shall be moved to a separate room or area and shall be provided with a bed, crib or cot and a sheet and blanket or sleeping bag. The licensee shall notify the parent or emergency contact and arrange to remove the child from the center as soon as possible.

(d) *Care of a mildly ill child.* A child who is mildly ill may be cared for at the center when all of the following conditions are met:

1. The space for the care of a mildly ill child is a self-contained room that is separate from children who are well.

2. The parent consents in writing.

3. The written health policy of the center allows a mildly ill child to remain at the center.

4. The center follows and implements procedures in a written plan for the provision of care to mildly ill children that has been approved and signed by a licensed physician, a family nurse practitioner or a pediatric nurse practitioner, and which covers all of the following:

- a. Admissions and exclusions.
- b. Staffing.
- c. Staff training.
- d. Monitoring and evaluation.
- e. Programming.
- f. Infectious disease control.
- g. Emergency procedures.

5. Medical consultation is available from a physician or local health department in establishing policy for the management of mildly ill children.

(e) *Communicable disease.* 1. When it is determined that a child attending the center or a provider's own child has a reportable communicable disease under ch. HFS 145 transmitted through normal contact, such as chicken pox, German measles, infectious hepatitis, measles, mumps, scarlet fever or meningitis, the local public health officer and parents of all the enrolled children shall be notified.

2. A child may be readmitted to the family child care center if the child's parents provide a statement from a physician that the child's condition is no longer contagious or if the child has been absent for a period of time equal to the longest usual incubation period for the disease as specified by the department.

**Note:** The Wisconsin Division of Public Health has developed materials that identify those communicable diseases that are required to be reported to the local public health officer. These materials also provide additional guidance on the symptoms of each disease and information on how long an infected child shall be excluded from the center. The materials include a communicable disease chart and exclusion guidelines for child care centers. Copies of the communicable disease chart or the exclusion guidelines for child care centers are available from the Child Care Information Center 800-362-7353.

(f) *Medications.* 1. A provider may give prescription or non-prescription medications to a child only under the following conditions:

a. A completed written authorization on a form provided by the department, dated and signed by the parent is on file. Authorizations that exceed the period of time specified on the label are prohibited.

**Note:** The Department's form CFS-0059 or CFS-0059A, Authorization to Administer Medication, is used to obtain the parent's authorization to provide medications. Information on how to obtain the form is in Appendix E.

b. The medication is in the original container and labeled with the child's name and with dosage and administration directions.

c. A written record, including the name of the child, type of medication given, dosage, time, date and the initials or signature of the person administering the medication shall be made in the medical log on the same day that the medication is administered.

**Note:** See s. HFS 45.04 (6) (c) about maintaining a medical log book.

2. Sunscreen and insect repellent may only be applied upon the written authorization of the parent. The authorization shall include the brand and ingredient strength of the sunscreen or repellent. Authorizations shall be reviewed periodically and updated as necessary. The recording of the application of sunscreen or insect repellent is not required.

3. Medications shall be stored so that they are not accessible to children.

4. Medications requiring refrigeration shall be kept in the refrigerator in a separate, covered container clearly labeled "medications."

(g) *Personal cleanliness.* 1. A child's hands shall be washed with soap and warm running water before meals or snacks and after toileting or diapering. A child's hands and face shall be

washed after meals. Persons working with children shall wash their hands with soap and warm running water before handling food and after assisting with toileting. Towels and washcloths shall be individual to each person and used only once.

2. Bodily secretions from a child shall be wiped with a disposable tissue. Whoever does the wiping shall wash his or her hands immediately.

3. All providers shall use universal precautions when exposed to blood or bodily fluids or discharges containing blood.

4. All persons exposed to blood or bodily fluids containing blood or other types of bodily discharges shall wash their hands immediately with soap and warm running water.

5. Single use disposable gloves shall be worn if there is contact with blood-containing body fluids or tissue discharges. Hands shall be washed with soap and warm water after removal of gloves. Gloves shall be discarded in plastic bags.

(h) *Disinfecting surfaces.* Surfaces containing bodily secretions shall be washed with soap and water and disinfected with a solution of one tablespoon bleach to one quart of water, made fresh daily, or a quaternary ammonia-based disinfectant prepared according to the label instructions, or a commercially prepared disinfectant containing bleach or a quaternary ammonia product. Hands shall be washed immediately.

(i) *Prohibition against sharing utensils.* Cups, eating utensils, or toothbrushes may not be shared.

(j) *Clothing and diaper changing.*

1. Wet or soiled clothing or diapers shall be changed promptly from an available supply of clean clothing or diapers.

2. Section HFS 45.09 (4) shall apply when a child 2 years of age or older needs attention for diapering or toileting.

(k) *Injuries.* 1. Written permission from the parent to call the child's physician or refer the child for medical care in case of injury shall be on file at the center. A provider shall contact a parent of the injured child as soon as possible after an emergency has occurred or, if the injury is minor, when the child is picked up.

**Note:** See HFS 45.04(3)(a) regarding reporting injuries that require medical attention to the Department within 48 hours after the occurrence.

**Note:** The Department's Child Care Enrollment Form, CFS-0062 and CFS-0062A, includes authorization for the center to obtain emergency medical care for a child. Information on how to obtain forms is in Appendix E.

2. Superficial wounds shall be cleaned with soap and water only and protected with a bandaid or bandage.

3. Suspected poisoning shall be treated only after consultation with a poison control center.

4. The licensee shall designate a planned source of emergency medical care, such as a hospital emergency room, clinic or other constantly staffed facility and shall advise parents about that designation.

5. A daily record of injuries including the child's name, date and time of injury and a brief description of the facts surrounding the injury shall be kept in the center medical log book.

**Note:** See s. HFS 45.04 (6) (c) about maintaining a medical log book.

(L) *Health examination and history.*

1. Each child under 2 years of age, including each provider's child in care, shall have an initial health examination not more than 6 months prior to nor later than 3 months after being admitted to the center, and a follow-up health examination at least once every 6 months after admission.

2. Except for a school-aged child, each child 2 years of age or older, including a provider's children in care, shall have an initial health examination not more than one year prior to nor later than 3 months after being admitted to a center, and a follow-up health examination at least once every 2 years after admission.

3. The health examination report shall be on a form provided by the department and shall be signed and dated by a licensed physician, physician assistant or a HealthCheck provider.

**Note:** The Department's form CFS-0060 or CFS-0060A, Child Health Report, is used to record health examination information. Information on how to obtain the form is in Appendix E.

4. The health examination requirement under subd. 2. does not apply if the parents of a child request in writing that the department grant an exemption based upon the parents' adherence to religious belief in exclusive use of prayer or spiritual means for healing in accordance with the teachings of a bona fide religious sect or denomination.

5. A health history for each child, including school age children and a provider's own children, completed by the parent shall be on file at the center by the child's first day of attendance. Information relating to a child's special health care needs shall be shared with any person caring for children including emergency back-up providers and substitutes. The health history shall be recorded on a form provided by the department.

**Note:** The Department's form CFS-2345, Health History and Emergency Care Plan, is used to record each child's health history. Information on how to obtain the form is in Appendix E.

(m) *Immunization.* The center shall maintain a record of immunizations for each child to document compliance with s. 252.04, Stats., and ch. HFS 144.

**Note:** The Department's form DPH-4192 or DPH-4192S, Day Care Immunization Record, is used to record immunization information. An electronic printout from the Wisconsin Immunization Registry, or other registry maintained by a health care provider may be used in place of DPH-4192 or DPH 4192S. Information on how to obtain the form is in Appendix E.

(7) **PETS AND ANIMALS.** (a) Animals shall be maintained in good health and appropriately immunized against rabies. Rabies vaccinations shall be documented with a current certificate from a veterinarian.

(b) Animals that pose any risk to the children shall be restricted from the indoor and outdoor areas used by children.

(c) Licensees shall ensure that parents are aware of the presence of pets and animals in the center. If pets and animals are allowed to roam in areas of the center occupied by children, written acknowledgement from the parents shall be obtained. If pets are added after a child is enrolled, parents shall be notified in writing prior to the pets' addition to the center.

(d) Reptiles, amphibians, ferrets, poisonous animals, psittacine birds, exotic and wild animals may not be accessible to children.

**Note:** Psittacine birds are hooked bill birds of the parrot family that have 2 toes forward and 2 toes backward, including macaws, grays, cockatoos and lovebirds.

(e) All contact between pets or animals and children shall be under the sight and sound supervision of a provider who is close enough to remove the child immediately if the pet or animal shows signs of distress or aggression or the child shows signs of treating the animal inappropriately.

(f) Pets are prohibited in any food preparation or serving area when food is being prepared or served. Pet feeding dishes, cages and litter boxes are prohibited in any food preparation, storage or serving areas. Animal feeding dishes and litter boxes may not be placed in areas accessible to children.

(g) Indoor and outdoor areas accessible to children shall be free of pet and animal excrement.

(h) Proof of liability insurance from an insurance carrier specifically covering the presence of dogs and cats shall be on file with the pertinent regional licensing office in appendix A if dogs or cats are allowed in areas of the center accessible to children.

(i) Licensees shall ensure that the center is in compliance with all applicable local ordinances regarding the number, types and health status of pets and animals.

**History:** CR 03-052: cr. Register December 2004 No. 588, eff. 3-1-05.

**HFS 45.08 Transportation.** (1) **APPLICABILITY.** This subsection applies to all center-provided transportation of children in care, including both regularly scheduled transportation to and from the center and field trip transportation.

**Note:** The Department's form CFS-0056 Child Care Transportation Permission may be used to obtain parental consent for transportation when regularly scheduled

transportation between the center and the child's residence or another location is provided. See Appendix E for information on how to obtain copies of Department forms.

**(2) EMERGENCY INFORMATION.** All of the following emergency information shall be carried in the vehicle for each child transported:

(a) An address and telephone number where a parent or other adult can be reached in an emergency.

(b) The name, address and telephone number of the child's health care provider.

(c) Written consent from the child's parent for emergency medical treatment.

**Note:** The licensee must use the Department's form CFS-0062 or CFS-62A, Child Enrollment form to obtain consent of the child's parent for emergency medical treatment. Information on how to obtain the Department's form is in Appendix E.

**(3) DRIVER.** The driver of the vehicle shall be at least 18 years of age and shall hold a valid Wisconsin operator's license for the type of vehicle driven.

**(4) VEHICLE.** (a) All vehicles used to transport children shall be registered by the state of Wisconsin.

(b) Center-owned or provider-owned vehicles used to transport children shall be in safe operating condition. At 12-month intervals the licensee shall provide the department with evidence of a vehicle's safe operating condition on a form provided by the department.

**Note:** The Department's form CFS-0052, Vehicle Safety Inspection, is used to record evidence of the vehicle's safe operating condition. Information on how to obtain a copy of the Department's form is in Appendix E.

**(5) SEAT BELTS.** Each child under 4 years of age or 40 pounds being transported in a vehicle shall be properly seated and restrained in an individual child car safety seat. Each child not required to be transported in an individual child care safety seat and accompanying adult shall be restrained by a seat belt. Seat belts may not be shared.

**(6) VEHICLE CAPACITY AND SUPERVISION.** (a) Children may not be left unattended in a vehicle.

(b) Children under age 13 years may not ride in the front seat of a vehicle. If a vehicle has a front passenger side air bag, the air bag shall be deactivated and inoperable during the time a child is a passenger in the front seat.

(c) When children are transported in a vehicle, there shall be at least one adult supervisor in addition to the driver whenever there are more than 3 children who are either under 2 years of age or who have a handicap which limits their ability to respond to an emergency.

(d) After transporting a child to his or her destination, an adult shall ensure the child is in the custody of a provider, a parent, or other adult designated by the parent. A parent of a school age child may authorize a child to enter a building unescorted.

**Note:** Form CFS-0056 Child Care Center Transportation Permission form may be used to designate an adult to receive a child being transported. See Appendix E for information on how to obtain a copy of this form.

**(7) SMOKING.** Smoking is prohibited in the vehicle while children are being transported.

**History:** CR 03-052; cr. Register December 2004 No. 588, eff. 3-1-05.

**HFS 45.09 Additional requirements for infant and toddler care.** **(1) APPLICABILITY, QUALIFICATIONS AND GENERAL REQUIREMENTS.** (a) Family child care centers providing care and supervision to infants and toddlers shall comply with the additional requirements of this section.

(b) *Qualifications.* 1. Prior to becoming licensed to care for children under age 2 or prior to working in a center licensed to care for children under age 2, a provider shall have at least 40 hours or 3 credits of entry level training required under s. HFS 45.05 (1) (b) or at least 10 hours of department-approved training in the care of infants and toddlers. If the training was taken prior to September 1, 2001, a provider shall document successful completion of training in SIDS risk reduction procedures.

**Note:** Non-credit courses entitled *Introduction to the Child Care Profession* and *Fundamentals of Family Child Care* together meet the requirement for 40 hours of

department approved training. The non-credit course entitled *Fundamentals of Infant and Toddler Care* meets the requirement for 10 hours of department-approved training in the care of infants and toddlers.

2. Within 6 months of becoming licensed or working in a center licensed to care for children under age 2, a provider shall have completed both the entry level training specified under s. HFS 45.05 (1) (b) and 10 hours of department-approved training in the care of infants and toddlers.

(c) *General requirements.* 1. A provider shall use information obtained on a department-provided form for children under 2 years of age to individualize the program of care for each child. A provider and the child's parents shall periodically discuss the child's development and routines.

**Note:** The Department's form CFS-0061, Day Care Intake for Child Under 2 Years, is used to record information for individualizing the program of care for each child. Information on how to obtain the form is in Appendix E.

2. Cribs and playpens shall contain a tight fitting mattress and any mattress covering shall fit snugly over the mattress. Waterbeds may not be used by children under age 2.

3. Sheets or blankets used to cover the child shall be tucked tightly under the mattress and shall be kept away from the child's mouth and nose.

4. Children under one year of age may not sleep in a crib or playpen that contains soft materials such as sheepskins, pillows, fluffy blankets, bumper pads or stuffed animals.

5. Safety gates shall be provided at open stairways.

**(2) DAILY PROGRAM.** (a) Child care providers shall respond promptly to a crying child's needs.

(b) Each infant and toddler shall be allowed to form and follow his or her own patterns of sleeping and waking.

(c) Each child under one year of age shall be placed to sleep on his or her back in a crib unless otherwise specified in writing by the child's physician. The child shall be allowed to assume the position most comfortable to him or her when able to roll over unassisted.

(d) Emphasis in activities shall be given to play as a learning and growth experience.

(e) Throughout the day, each infant and toddler shall receive physical contact and attention such as being held, rocked, talked to, sung to and taken on walks inside and outside the center.

(f) Routines related to activities such as taking a nap, eating, diapering and toileting shall be used as occasions for language development and other learning experiences.

(g) When a non-mobile child is awake, a provider shall change the child's body position and location in the room periodically. Non-mobile awake children shall be placed on their stomach occasionally throughout the day.

(h) Each non-walking child who can creep or crawl shall be given opportunities each day to move freely in a safe, clean, open, warm and uncluttered area.

(i) A provider shall encourage infants and toddlers to play with a wide variety of safe toys and objects.

(j) Infants and toddlers shall be taken outdoors for part of each day except during inclement weather or when this is not advisable for health reasons.

**(3) FEEDING.** A provider shall do all of the following:

(a) Feed each infant and toddler on the child's own feeding schedule.

(b) Ensure that food and formula brought from home is labeled with the child's name and dated, and is refrigerated if required.

(c) Ensure that formula provided by the center is of the commercial, iron-fortified type and mixed according to the manufacturer's directions.

(d) Provide formula or breast milk to all children under 12 months of age.

(e) Provide another type of milk or milk substitute only on the written direction of the child's physician.

(f) Discard leftover milk or formula after each feeding, and rinse bottles after use.

(g) Refrain from heating breast milk in a microwave oven.

(h) Offer drinking water to infants over 6 months of age and toddlers several times daily.

(i) Hold a child unable to hold a bottle whenever a bottle is given. Bottles may not be propped.

(j) Hold or place a child too young to sit in a highchair or feeding table in an infant seat during feeding. Wide-based highchairs with safety straps or feeding tables with safety straps shall be provided for children who are not developmentally able to sit at tables and chairs.

(k) Ensure that eating utensils and cups are scaled to the size and developmental level of the children.

**(4) DIAPERING AND TOILETING.** A provider shall do all of the following:

(a) Change wet or soiled diapers and clothing promptly.

(b) Change the child on an easily cleanable surface which is cleaned with soap and water and a disinfectant solution after each use with a chlorine bleach solution of one quart water to one table-spoon bleach, made fresh daily or a product containing quaternary ammonia prepared according to the label directions or a commercially prepared disinfectant that contains bleach or quaternary ammonia.

(c) If the diapering surface is above floor level, provide a strap, restraint or other structural barrier to prevent falling. A child may not be left unattended on the diapering surface.

(d) Place soiled cloth diapers in a plastic bag labeled with the name of the child and send them home daily.

(e) Place soiled disposable diapers in a plastic-lined, covered container and dispose of them daily.

(f) Wash his or her hands with soap and warm running water before and after each diapering or assistance with toileting routines.

(g) Apply lotions, powders or salves to the child during diapering only at the specific direction of a parent or the child's physician.

(h) Wash the child during diapering with a disposable towel used only once.

(i) Wash the child's hands with soap and warm running water after diapering. The hands of children under one year of age may be washed with soap and a wet fabric or paper washcloth, used once and discarded.

**History:** CR 03-052: cr. Register December 2004 No. 588, eff. 3-1-05.

**HFS 45.10 Additional requirements for night care.**

**(1) APPLICABILITY.** Family child care centers which operate during any period of time between 9:00 p.m. and 5:00 a.m. shall comply with the requirements of this section.

**(2) GENERAL REQUIREMENTS.** (a) When the same premises are used for the operation of both day care and night care, the number of children during any overlapping of the day care and night care periods may not exceed the maximum licensed capacity of the center.

(b) Minimum staff-child ratios and group sizes as specified in table HFS 45.05 shall be maintained during night care.

(c) The parent or center shall provide each child in night care with an individually labeled sleeping garment and a toothbrush.

**(3) PROGRAM.** (a) Child care staff shall ascertain from a child's parent a child's typical family activities during the period the child is at the center for night care and strive to replicate those activities with the child.

(b) A center offering night care shall provide a self-contained room away from sleeping children where an awake child may engage in activities.

(c) An evening and morning schedule of program activities shall be planned for the hours that children in night care are awake.

(d) School-age children shall have an opportunity to read or do school work.

**(4) PREVENTIVE MEASURES.** (a) A provider shall develop, submit to the department for approval and implement a plan to evacuate sleeping children in an emergency. Review of the plan shall be part of orientation under s. HFS 45.05 (2).

(b) Centers operating during hours of darkness shall have emergency lighting, such as an operable flashlight, readily available to a provider.

(c) Providers shall be awake, available, within call and able to respond to the needs of the children whenever children are in care.

**(5) FEEDING.** (a) Breakfast shall be served to all children in care for the night, unless the parent specifies otherwise.

(b) A nighttime snack shall be available to all children in care.

(c) A child present at the time the evening meal is served shall be served the evening meal.

**(6) SLEEP.** (a) Children who attend the center for the evening hours but not the whole night shall have an opportunity to sleep, as needed.

(b) Sleep routines for individual children shall be based on information provided by the parents.

(c) A bed, crib or cot with sheets and blankets individual to each child shall be provided for children spending the night.

(d) The center shall maintain a supply of extra sleeping garments and bedding for emergencies and accidents.

(e) Children under 2 years of age in night care shall sleep in cribs.

**History:** CR 03-052: cr. Register December 2004 No. 588, eff. 3-1-05.

**HFS 45.11 Licensing administration. (1) LICENSING**

**REQUIREMENT.** If a person provides care on a regular basis to 4 or more children under the age of 7 years, that person shall be deemed to be providing care for compensation and shall be licensed.

**(2) GENERAL CONDITIONS FOR APPROVAL OF LICENSE.** (a) Prior to receiving or continuing a license, an applicant for a license under this chapter shall complete all application forms truthfully and accurately and pay all fees and forfeitures that are due to the department.

(b) The department may refuse to issue or continue a license if another center operated by the licensee is in substantial non-compliance with the licensing rules or has any outstanding fines or forfeitures.

(c) Persons licensed to operate a family child care center shall be responsible, mature individuals who are fit and qualified. In determining whether an applicant is fit and qualified, the department shall consider any history of civil or criminal violations or other offenses substantially related to the care of children by the applicant, owner, manager, representative, employee, center resident or other individual directly or indirectly participating in the operation of the family child care center. A determination that a person is unfit and unqualified includes substantiated findings of child abuse or neglect under ch. 48, Stats., or substantiated abuse under ch. 50, Stats., or under similar statutes in another state or territory whether or not the abuse or neglect results in a criminal charge or conviction.

(d) The department shall issue a family child care license to an applicant within 60 working days after receipt and department approval of a properly completed application, satisfactory department investigation and determination that the applicant is fit and qualified. Continued licensure requires a licensee to remain fit and qualified.

(e) If the department has reason to believe that the physical or mental health of any person associated with the care of children at the center or any household resident of the center may endanger

children in care, the department may require that a written statement be submitted by a physician or, if appropriate, by a licensed mental health professional that certifies the condition of the individual and the possible effect of that condition on the family child care center or the children in care.

(f) The department may deny or revoke the license if the examination specified under par. (e) gives the department reasonable concern for the care of children.

(g) The department may not process an application for a license if the applicant has had a license or certification to operate a child care center revoked or denied within the last 2 years prior to the date of the application. An applicant is deemed ineligible to submit an application for a license and a person may not hire an employee within 2 years from the date an applicant employee had a child care license revoked or denied.

(h) The department shall consider a licensee who fails to submit any of the materials described in sub. (4) or (5) by the expiration date of a license to have surrendered the license and to no longer hold title to the license. The former licensee may not continue to operate the child care center.

**(3) INITIAL APPLICATION FOR A PROBATIONARY LICENSE.** (a) An applicant for a license shall have obtained pre-licensing technical assistance that results in a completed initial licensing study checklist from a representative of the department prior to submitting an application for a license.

**Note:** 1. Information on how to obtain pre-licensing technical assistance is available from the appropriate regional office in Appendix A. The Department will provide the application form to an applicant upon completion of the pre-licensing technical assistance.

**Note:** 2. An initial licensing study checklist includes a list of those rules that must be met before a license can be issued. A copy of the checklist is available from a representative of the Department or the appropriate regional office in Appendix A.

(b) An applicant for a license shall submit an application at least 60 days before the date proposed for the center to begin operating.

(c) An applicant for an initial license shall include all the following with the application form:

1. The license fee required under s. 48.65 (3) (a), Stats.
2. A completed background information disclosure form provided by the department for the applicant and, if the center will be located in a residence, any household member aged 10 and above and any applicable fees.
3. A statement from a representative of the department that details the results of any pre-licensing technical assistance.
4. A statement from the applicant that indicates the center is in compliance with all applicable items in this chapter.
5. Any other materials determined by the department as necessary to complete the department's licensing investigation.

(d) Upon submission of a complete application, the department shall conduct an investigation to determine whether the applicant is eligible for a license.

(e) If the department determines that the applicant is eligible for a license, the department shall issue a probationary license having a 6 month duration. A probationary license may be renewed for one 6-month period.

(f) If the department determines that an application does not comply with the applicable requirements of this chapter or the department's investigation determines that the applicant is not eligible for a license, the department may deny the application.

**(4) OBTAINING A REGULAR LICENSE.** (a) At least 30 days before the expiration date of a probationary license, an applicant for license renewal shall submit to the department the following materials:

1. A completed license application.
2. Any completed background information disclosure forms required under s. 48.685, Stats., including any applicable fees.

3. The license renewal fee under s. 48.65 (3) (a), Stats., and any forfeitures due and owing under s. 48.715 (3), Stats., or penalties under s. 48.76, Stats.

4. Any changes to center policies, if not previously submitted.

(b) If the department determines that the applicant has met the minimum requirements for a license under s. 48.67, Stats., and if the applicant has paid any applicable fees under ss. 48.65 and 48.685 (8), Stats., any forfeiture under s. 48.715 (3) (a), Stats., and any applicable penalty under s. 48.76, Stats., the department shall issue the applicant a regular license. Regular licenses shall be reviewed and continued for a 2-year period.

**(5) CONTINUING A REGULAR LICENSE.** (a) A regular license shall be valid indefinitely, unless suspended or revoked by the department or surrendered by the licensee.

(b) At least 30 days before the continuation review date of the license, an applicant for license renewal shall submit to the department the following materials:

1. A completed license continuation application.
2. Any completed background information disclosure forms required under s. 48.685, Stats., including any applicable fees.
3. The license renewal fee under s. 48.65 (3) (a), Stats., and any forfeiture due and owing under s. 48.715 (3), Stats., or penalty under s. 48.76, Stats.
4. Any changes to center policies, if not previously submitted.

(c) If the department determines that the licensee has met the minimum requirements for a license under s. 48.67, Stats., has paid the applicable fees referred to in ss. 48.65 and 48.685 (8), Stats., any forfeiture under s. 48.715 (3) (a), Stats., and any penalty under s. 48.76, Stats., the department shall continue the license for an additional 2 years.

**(6) AMENDING A LICENSE.** (a) A licensee shall submit to the department a written request for an amendment to the license if the licensee wishes to change any of the following aspects of the license:

1. A change in the number of children served.
2. The age range of the children.
3. The hours of the center's operation.
4. The days of the week the center is in operation.
5. The months of the year the center is in operation.
6. The name of the center.

(b) A licensee may not make a change that affects a condition of the license identified under par. (a) without the prior written approval of the department.

(c) A licensee may not move the center to a new location or change ownership of the center without notifying the department at least 30 days prior to the change. A new application and license is required when a center moves or changes ownership.

**Note:** The Department's form CFS-0067, Family Day Care License Application, is used to apply for a new license. The Department will provide an application prior to the continuation date for a new license.

**(7) ADDITIONAL LICENSE.** A licensee applying for a license for an additional center location shall demonstrate compliance with this chapter in the operation of any existing center he or she operates and compliance with rules for any other facility licensed by the department and operated by the licensee. The licensee shall pay any fines, forfeitures or other fees due and owing under s. 48.715, Stats., or s. 48.65, Stats., on other facilities licensed by the department before the department issues an additional license.

**(8) LICENSE DENIAL OR REVOCATION.** (a) The department may deny, revoke, or suspend a license, initiate other enforcement actions specified in this chapter or in ch. 48, Stats., or place conditions on the license if the applicant or licensee, a proposed or current employee, a volunteer or any other person having regular contact with the children is, has or has been any of the following:

1. The subject of a pending criminal charge for an action that substantially relates to the care of children or activities of the center.

2. Convicted of a felony, misdemeanor or other offense that substantially relates to the care of children or activities of the center.

3. Determined to have abused or neglected a child pursuant to s. 48.981, Stats., or has been determined to have committed an offense which substantially relates to the care of children or the activities of the center.

4. The subject of a substantiated finding of misconduct in the department's nurse aide registry under s. HFS 129.10.

5. The subject of a court finding that the person has abandoned his or her child, has inflicted sexual or physical abuse on a child or has neglected or refused, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter for his or her child or ward or a child in his or her care so as to seriously endanger the physical health of the child.

6. Had a child care license or certification revoked or denied within the last 5 years.

7. Violated any provision of this chapter or ch. 48, Stats., or fails to meet the minimum requirements of this chapter.

8. Made false statements or withheld information.

(b) The department may deny, revoke, refuse to renew or suspend a license, initiate other enforcement actions specified in this chapter or in ch. 48, Stats., or place conditions on the license if the applicant or licensee is not fit and qualified as determined under sub. (2).

**Note:** Examples of charges and offenses the Department will consider when making a determination under this paragraph that an act substantially relates to the care of children are the following: abuse or neglect of a child; sexual assault; abuse or of a facility; a crime against life and bodily security; kidnapping; abduction; arson of a building or of property other than a building; robbery; receiving stolen property from a child; a crime against sexual morality, such as enticing a minor for immoral purposes or exposing a minor to harmful materials; and interfering with the custody of a child. This list is illustrative. Other types of offenses may be considered.

(c) The department shall deny or refuse to continue or revoke a license if the applicant or licensee has failed to pay court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse or for the failure of the applicant or licensee to comply, after appropriate notices, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5), Stats., and related to paternity or child support proceedings, as provided in a memorandum of understanding entered into under s. 49.857, Stats. Notwithstanding s. 48.72, Stats., an action taken under this subsection is subject to review only as provided in the memorandum of understanding entered into under s. 49.857, Stats., and not as provided in s. 48.72, Stats.

(d) The department shall deny an application for the issuance or continuation of a license or revoke a license if the department of revenue certifies under s. 73.0301, Stats., that the applicant or licensee is liable for delinquent taxes. An action taken under this subsection is subject to review only as provided under s. 73.0301 (5), Stats., and not as provided in s. 48.72, Stats.

**(9) EFFECT OF NOTICE TO DENY OR REVOKE A LICENSE.** (a) 1. If the department decides under sub. (8) to deny the grant of a license or to revoke a license, the department shall notify the applicant or licensee in writing of its decision and the reasons for that decision.

2. If the department revokes a license, the effective date of the revocation shall be either immediately or 30 days after the date of the department notice in subd. 1., based on the criteria under s. 48.715 (4m) (a) and (b), Stats., unless the decision is appealed under sub. (11).

(b) Upon receipt of the notice in par. (a) and during any revocation or denial procedures that may result, a family child care center may not accept for care any child not enrolled as of the date of

receipt of the notice without the written approval of the department.

**(10) SUMMARY SUSPENSION OF A LICENSE.** (a) Under the authority of s. 227.51 (3), Stats., the department shall summarily suspend a license and close a family child care center when the department finds that the public health, safety or welfare requires emergency action and incorporates a finding to that effect into its order. A finding of a requirement for summary suspension of the license may be based on any of the following:

1. Failure of the licensee to provide environmental protections for the children, such as heat, water, electricity or telephone service.

2. The licensee, an employee, a volunteer or any other person in regular contact with the children in care has been convicted of or has a pending charge for a crime against life or bodily security.

3. The licensee, an employee, a volunteer or any other person in regular contact with the children in care has been convicted of a felony, misdemeanor or other offense which substantially relates to the care of children or activities of the center or has a pending charge which substantially relates to the care of children or activities of the center.

4. The licensee, employee, volunteer or any other person in regular contact with the children in care is the subject of a current investigation for alleged child abuse or neglect pursuant to s. 48.981, Stats., or has been determined by a child protective services agency or law enforcement agency to have abused or neglected a child.

5. The licensee or a person under the supervision of the licensee has committed an action or has created a condition relating to the operation or maintenance of the child care center that directly threatens the health, safety or welfare of any child under the care of the licensee.

(b) An order summarily suspending a license and closing a family child care center may be a verbal order by a licensing representative of the department. Within 72 hours after the order takes effect, the department shall either permit the reopening of the center or proceed under subs. (8) or (9) to revoke the license. A preliminary hearing shall be conducted by the department of administration's division of hearings and appeals, within 10 working days after the date of the initial order to close, on the issue of whether the license shall remain suspended during revocation proceedings.

**(11) APPEAL OF DECISION TO DENY OR REVOKE A LICENSE.** (a) Any person aggrieved by the department's decision to deny an initial license or the renewal of a license or to revoke a license may request a hearing on that decision under s. 227.42, Stats. The request for a hearing shall be in writing and submitted to the department of administration's division of hearings and appeals. The request for a hearing shall be received by the division of hearings and appeals within 10 days after the date of the notice under sub. (9). A request for a hearing is considered filed upon its receipt by the division of hearings and appeals. A request for a hearing transmitted by facsimile to the division of hearings and appeals shall be considered filed on the date and time imprinted by the division's facsimile machine on the transmission report that accompanies the document. Documents received by facsimile after midnight local time shall be deemed filed on the first following business day.

**Note:** A request for hearing should be submitted by mail to the Division of Hearings and Appeals, P.O. Box 7875, Madison, Wisconsin 53707-7875, or should be delivered to the Division at 5005 University Ave., Room 201, Madison, WI. Hearing requests may be faxed to 608-264-9885. A copy of the request should be sent to the appropriate Division of Children and Family Services regional office listed in Appendix A.

(b) The division of hearings and appeals shall conduct an administrative hearing under s. 227.42, Stats., within 30 calendar days after receipt of the request for the administrative hearing, unless any of the following occurs:

1. The aggrieved person consents to an extension of that time period.

2. The petitioner withdraws the request in writing.

3. The petitioner agrees in writing to accept an informal resolution of the appeal.

4. The petitioner abandons the hearing request. The division of hearings and appeals shall determine that abandonment has occurred when the petitioner, without good cause, fails to appear personally or by representative at the time and place set for the hearing or scheduled pre-hearing matters. Abandonment may also be deemed to have occurred when the petitioner or the authorized representative fails to respond within a reasonable time to correspondence from the division regarding the hearing or when the petitioner is not at an agreed-upon telephone number at the agreed time.

(c) The division of hearings and appeals:

1. Shall consider and apply all standards and requirements of this chapter.

2. Issue a decision no later than 30 calendar days after holding the hearing, unless both parties agree to a later date.

3. May dismiss the petition if it determines that the petitioner has abandoned the request pursuant to par. (b) 4.

(d) If, under s. HA 3.09, the division of hearing and appeals issues a proposed decision, both parties may file comments on the decision with the division of hearings and appeals within 15 calendar days from the date of the proposed decision's issuance. At the close of the comment period, the division shall forward a decision and comments to the secretary for issuance of a final decision, and the secretary shall issue the final decision within 30 calendar days

thereafter. The decision of the division of hearings and appeals administrative law judge, if adopted by the secretary, constitutes the final decision of the department.

**History:** CR 03-052: cr. Register December 2004 No. 588, eff. 3-1-05.

**HFS 45.12 Complaints, inspections and enforcement actions.** (1) COMPLAINTS.

(a) Anyone having a complaint about a licensed or illegally operating family child care center may submit that complaint to the department by telephone, letter or personal interview. A representative of the department shall investigate every complaint. If requested by the complainant, the department shall provide the complainant a written report of the investigation findings.

**Note:** A complaint should be sent, phoned or delivered to the appropriate Division of Children and Family Services regional office listed in Appendix A.

(b) The licensee may not discharge an employee because the employee has reported violations of this chapter to the licensing representative.

(2) INSPECTION. Pursuant to s. 48.73, Stats., the department may visit and inspect any family child care center at any time during licensed hours of operation. A department licensing representative shall have unrestricted access to the premises identified in the license, including access to children served and staff and child records and any other materials or other individuals having information on the family child care center's compliance with this chapter.

(3) ENFORCEMENT ACTION. The department may order any sanction or impose any penalty on a licensee in accordance with s. 48.685, 48.715 or 48.76, Stats.

**History:** CR 03-052: cr. Register December 2004 No. 588, eff. 3-1-05.