

**COVER SHEET FOR EMERGENCY RULE**

Document Number \_\_\_\_\_

Rule Number He-C 4002

<p>1. Agency Name &amp; Address:</p> <p><b>Dept. of Health and Human Services Child Care Licensing Program Rules 129 Pleasant St, Brown Bldg. Concord, NH 03301</b></p> <p>5. Date of Filing: <b>May 17, 2017</b></p>	<p>2. RSA Authority: <u>RSA 170-E</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption <u>X</u></p> <p>Amendment _____</p> <p>Repeal _____</p>
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6. Short Title: **Child Care Licensing Program Rules**

7. Contact person for copies and questions:

Name:	<b>Catherine Bernhard</b>	Title:	<b>Rules Coordinator</b>
Address:	<b>Dept. of Health and Human Services Administrative Rules Unit 129 Pleasant Street Concord, NH 03301</b>	Phone #:	<b>271-9374</b>

**\*\*PLEASE ATTACH THE FOLLOWING**, numbered to correspond to the numbers on this sheet (a separate sheet is not required for every item):

8. An explanation of the nature of (a) the imminent peril to public health or safety, demonstrating that the emergency rule is necessary to prevent the imminent peril, or (b) the substantial fiscal harm to the state or its citizens which could otherwise occur if the rule were not adopted as an emergency rule.

**He-C 4002, is an interim rule scheduled to expire on May 18, 2017. Pursuant to RSA 541-A:18, I, the Department of Health and Human Services (Department) intends to adopt an emergency rule, to prevent the imminent peril to the public health or safety created if He-C 4002 “Child Care Program Licensing” expires. Absent the rule the Department will not have the enforcement authority and mechanisms in place to remedy violations of child care program licensing rules. Adoption of the emergency rule is necessary to maintain the specific standards and requirements in the existing rule, He-C 4002, that protect the health and safety of children, authorize enforcement of critical health and safety requirements in child care programs, and enforce staff qualifications, and safe child care ratios.**

**In the past six months, the Department’s Child Care Licensing unit has issued two program license revocations, received 89 complaints on licensed facilities, and issued 414 statements of findings that included critical rule violations requiring a corrective action plan. The adoption of the emergency rule is required to prevent the imminent peril to children from unenforceable standards, and sanctions for violations of the licensed child care rules.**

**In a recent action by the Department a program was cited for a staff member’s on-going inappropriate interactions with infants in care. The program was issued a statement of findings**

after finding were made that the staff member had acted aggressively toward infants in care by kicking the bouncy seats when occupied by infants, yelling at and demeaning infants, and force feeding infants. This conduct had been witnessed by other staff who took no action to keep the infants safe from the maltreatment. Without specific rules in place the Department would not have been able to enforce standards needed to end the conduct and to hold the program accountable with the requirement to provide a corrective action plan to address the violations.

9. A summary of the effect if the rule were not adopted. If the emergency rule is not adopted:

The Department would not have specific grounds to deny a renewal of a license because the minimum standards of care are listed and described in He-C 4002;

The approximate 868 child care programs licensed would be subject to the limited regulation of RSA 170-E, which does not provide the specificity found in rule;

The Department would not be able to conduct investigations of any complaint of violations of any licensing or operating standards, as set for in RSA 170-E:17, II; and

The Department approximates that licensed child care programs have the total capacity to care for 45,938 children. If He-C 4002 expires, these children face imminent peril resulting from the Department's lack of enforcement authority and ability to sanction for violations of:

- Health and safety requirements including rules: limiting corporal punishment, determining staff to child ratios, governing the safety of the physical environment, the safe administration of medication, and prevention and management of injuries;
- Requirements that staff, and especially program directors provide specific education and experience information on applications and with license renewals; and
- Violations identified during annual monitoring visits mandated RSA 170-E:8, or, issue statements of findings, and require submission of a corrective action plan by programs in violation of the rules.

10. A description of those affected.

Those affected by the rule include providers who are licensed, and those who are seeking to be licensed as child care programs, and the children and families who rely upon licensed child care program services.

\*PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET and all attachments along with 2 copies of the emergency rule to the Office of Legislative Services, Administrative Rules.

\*\*PLEASE SIGN THE FOLLOWING:

I, the adopting authority,\* hereby certify that the attached is an accurate statement explaining why an emergency rule is necessary.

Date: May 17, 2017

Signature: /s/Jeffery A. Meyers

Name: Jeffery A. Meyers

Title: Commissioner

\*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

**Readopt He-C 4002.01- 4002.08, effective 11-19-16, (Document #12046 Interim), cited and to read as follows:**

PART He-C 4002 NH CHILD CARE PROGRAM LICENSING RULES

He-C 4002.01 Definitions.

(a) “Administer” means an act whereby a single dose of a medication is instilled into the body of, applied to the body of, or otherwise given to a child for immediate consumption or use.

(b) “Agency” means “child day care agency” as defined in RSA 170-E:2, IV.

(c) “Applicant” means “applicant” as defined in RSA 170-E:2, I.

(d) “Assistant group leader” means a person who is employed in or is seeking employment in a New Hampshire licensed child care program, who meets the age, education and experience requirements specified in He-C 4002.32(r).

(e) “Associate teacher” means a person who is employed in or is seeking employment in a New Hampshire licensed child care program, who meets the age, education and experience requirements specified in He-C 4002.32(m) for employment in center based programs.

(f) “Authorized staff” means child care personnel that have completed training in medication safety and administration who are responsible for administration of medications to children.

(g) “Bureau” means the department’s bureau of licensing and certification.

(h) “Center based program” means any program owned and operated by one applicant which is not licensed as a family or family group child care home and is licensed to provide any of the following types of child care:

(1) Group child care center;

(2) Infant/toddler program;

(3) Night care program;

(4) Preschool program;

(5) School-age program; or

(6) Any combination thereof.

(i) “Child” means “child” as defined in RSA 170-E:2, II, namely “any person under 18 years of age.”

(j) “Child care” means “child day care” as defined in RSA 170-E:2, III, namely “the care and supervision of a child away from the child’s home and apart from the child’s parents.”

(k) “Child care assistant” means a person who is employed in or is seeking employment in a New Hampshire licensed child care program, who meets the age, education and experience requirements specified in He-C 4002.32(n).

(l) “Child care personnel” means all staff, whether professional or non-professional, paid or volunteer, who are engaged in the program, including the center director, site director and family child care provider, all professionals or other individuals who work with children in the program or have

authority over the operations of the child care program, and all household members who are acting as family child care workers or family child care assistants.

(m) “Clean” means to remove dirt, debris, and bodily fluids by scrubbing and washing with a detergent solution and rinsing with water.

(n) “Commissioner” means “commissioner” as defined in RSA 170-E:2, V, namely “the commissioner of the department of health and human services.”

(o) “Corporal punishment” means physical actions against a child, including but not limited to:

- (1) Slapping;
- (2) Striking;
- (3) Shaking;
- (4) Shoving;
- (5) Spanking;
- (6) Pinching;
- (7) Twisting;
- (8) Kicking;
- (9) Biting;
- (10) Ear pulling or ear twisting;
- (11) Hair pulling;
- (12) Spraying with water as a means of controlling behavior;
- (13) Placing tape over a child’s mouth;
- (14) Mechanical restraints, such as tying a child to a chair;
- (15) Rough handling;
- (16) Other forms of aggressive contact; or
- (17) Requiring or forcing a child to take an uncomfortable position such as:
  - a. Squatting;
  - b. Kneeling;
  - c. Standing, holding arms outstretched at sides or overhead;
  - d. Bending; or
  - e. Requiring or forcing a child to repeat physical movements.

(p) “Corrective action plan” means “corrective action plan” as defined in RSA 170-E:2, VI, namely “a written proposal setting forth the procedures by which a child day care agency will come into compliance with the standards set by rules adopted by the commissioner under RSA 541-A, and subject to

the approval of the department. The proposal shall include the time needed to assure compliance and the steps proposed by the agency to reach compliance.”

(q) “Critical rules” means the rules listed in He-C 4002.06, which the department has determined are most critical because non-compliance with those rules has the highest likelihood to jeopardize the health, safety or well being of the children in care, or the operations of the child care program.

(r) “Daily contact” means being in the presence of the children attending the program or in the care of the care giver for more than one hour per day, 5 days per week or more than 5 hours per week.

(s) “Department” means “department” as defined in RSA 170-E: 2, VII, namely “the department of health and human services.”

(t) “Developmentally appropriate” means actions, environment, equipment, supplies, communications, interactions, or activities that are based on the developmental level and abilities, the family culture, and the individual needs of each child in care.

(u) “Family child care home” means “family day care home” as defined in RSA 170-E:2, IV(a), namely “an occupied residence in which child day care is provided for less than 24 hours per day, except in emergencies, for up to 6 children from one or more unrelated families. The 6 children shall include any foster children residing in the home and all children related to the caregiver except children who are 10 years of age or older. In addition to the 6 children, up to 3 children attending a full day school program may also be cared for up to 5 hours per day on school days and all day during school holidays.”

(v) “Family child care assistant” means a person who is employed in or is seeking employment in a New Hampshire licensed child care program, who meets the age, education and experience requirements specified in He-C 4002.31(d).

(w) “Family child care provider” means the individual in whose home family or family group child care services are provided, who is responsible for the operation of the program, and who provides the child care for at least  $\frac{2}{3}$  of the operating hours.

(x) “Family child care worker” means a person who is employed in or is seeking employment in a New Hampshire licensed child care program, who meets the age, education and experience requirements specified in He-C 4002.31(c).

(y) “Family group child care home” means “family group day care home” as defined in RSA 170-E:2, IV(b), namely “an occupied residence in which child day care is provided for less than 24 hours per day, except in emergencies, for 7 to 12 children from one or more unrelated families. The 12 children shall include all children related to the caregiver and any foster children residing in the home, except children who are 10 years of age or older. In addition to the 12 children, up to 5 children attending a full day school program may also be cared for up to 5 hours per day on school days and all day during school holidays.”

(z) “Full day school program” means a kindergarten or elementary school program which operates more than 5 hours each day, and is administered by a public or private school which is approved by the department of education.

(aa) “Group child care center” means “group child day care center” as defined in RSA 170-E:2, IV(c), namely “a child day care agency in which child day care is provided for preschool children and up to 5 school-age children, whether or not the service is known as day nursery, nursery school, kindergarten, cooperative, child development center, day care center, center for the developmentally disabled, progressive school, Montessori school, or by any other name.”

(ab) “Group leader” means a person who is employed in or is seeking employment in a New Hampshire licensed child care program, who meets the age, education and experience requirements specified in He-C 4002.32(q).

(ac) “Guardian” means “guardian” as defined in RSA 170-E:2, VIII, namely “the guardian of the person of a minor, as defined in RSA 463.”

(ad) “Household member” means any person residing in the home of an applicant for licensure as a program, if the program will be located in that home.

(ae) “Infant” means a child from the time of birth to 18 months old.

(af) “Infant/toddler program” means “day care nursery” as defined in RSA 170-E:2, IV(d), namely “a child day care agency in which child day care is provided for any part of a day, for 5 or more children under the age of 3 years.”

(ag) “In-service professional development” means professional development activities including training or education acquired after an individual meets the qualifications for his/her position and which is acceptable toward meeting the annual professional development requirements for child care personnel, as specified in He-C 4002.30.

(ah) “Junior helper” means a person who is engaged in a New Hampshire licensed child care program, who meets the age, education and experience requirements specified in He-C 4002.31(h) or He-C 4002.32(o).

(ai) “Lead teacher” means a person who is employed in or is seeking employment in a New Hampshire licensed child care program, who meets the age, education and experience requirements specified in He-C 4002.32(l).

(aj) “License” means “license” as defined in RSA 170-E:2, IX, namely “an authorization granted by the commissioner to provide one or more types of child day care.”

(ak) “License capacity” means the number and ages of children specified on the license or permit allowed to be on the premises at any one time.

(al) “Licensed health care practitioner” means a physician, physician's assistant, advanced registered nurse practitioner, dentist, or other licensed professional with prescriptive authority.

(am) “Licensing coordinator” means a person employed by the department who consults with and inspects programs for compliance with RSA 170-E and He-C 4002.

(an) “Medication” means a drug prescribed for a child by a licensed health care practitioner and non-prescription medications.

(ao) “Medication error” means any error in the prescribed or documented administration of a medication.

(ap) “Medication order” means:

(1) The prescription label attached to the prescription container;

(2) Written directions provided by a licensed health care practitioner for a specific prescription or non-prescription medication to be administered to a child;

(3) Written directions provided by the child's parents for non-prescription medication to be administered to a child when no manufacturer's instructions are available for a specific child's age, including a statement that the dosage instructions have been reviewed with the child's licensed health care practitioner; or

(4) Written permission provided by the child's parents for topical substances to be administered to a child.

(aq) "Monitoring visit" means "monitoring visit" as defined in RSA 170-E:2, X, namely "a visit made to the child day care agency by department personnel for the purpose of assessing compliance with the standards set by rule adopted by the commissioner pursuant to RSA 541-A."

(ar) "Night care program" means "night care agency" as defined in RSA 170-E:2, IV(e).

(as) "Parent" means a father, mother, guardian, person, agency or program legally authorized to act on behalf of a child.

(at) "Permit" means "permit" as defined in RSA 170-E:2, XI, namely "the initial authorization to operate issued to an operator of a child day care agency, which shall not be renewable except for good cause shown."

(au) "Pesticide" means a fungicide, insecticide, herbicide or rodenticide, but does not mean sanitizer, disinfectant, microbial agent or insect bait in a tamper resistant container.

(av) "Preschool program" means "preschool program" as defined in RSA 170-E:2, IV(f), namely "a child day care agency providing care and a structured program for children 3 years of age and older who are not attending a full day school program. The total number of hours a child may be enrolled in a preschool program shall not exceed 5 hours per day."

(aw) "Pre-service training" means training or education required before an individual can serve in a specific position in accordance with He-C 4002.31 for family based programs and He-C 4002.32 for center based programs.

(ax) "Program" means any or all of the various types of child care agencies listed below:

- (1) Center based;
- (2) Infant/toddler;
- (3) Family child care home;
- (4) Family group child care home;
- (5) Group child care center;
- (6) Night care;
- (7) Preschool; and
- (8) School age.

(ay) "Project leader" means a person who is engaged in a New Hampshire licensed child care program, who meets the age, education and experience requirements specified in He-C 4002.32(s).

(az) “Qualified substitute” means a person who assumes the responsibilities of any child care personnel and who meets the age, education and experience requirements of the position for which they are substituting.

(ba) “Regionally accredited college or university” means a college or university acknowledged as meeting acceptable levels of quality through accreditation by any of the regionally accrediting organizations recognized by the US department of education or the council for higher education accreditation.

(bb) “Regularly” means “regularly” as defined in RSA 170-E:2, XII, namely “supervision and care up to and including 7 days a week, whether paid or unpaid, for the following as defined in RSA 170-E:2, IV: (a) family day care home, (b) family group day care home, (c) group child day care center, (d) day care nursery, (e) night care agency, (f) preschool program, and (g) school-age program.”

(bc) “Repeat violation” means a violation of a specific licensing rule or law for which the program has been previously cited during the past 5 years, which does not need to be the same set of circumstances, or involve the same child care personnel or the same child or children as in the original citation, and which has not been removed as a result of an informal dispute resolution or overturned as a result of an adjudicatory procedure.

(bd) “Sanitize” means to clean to remove all organic material then wipe down or wash with a solution of one tablespoon of chlorine bleach to one quart of room temperature or cool water which is mixed fresh daily and left on the surface for 2 minutes or with an environmental protection agency (EPA) approved germicide designed to kill germs and which, when used in accordance with manufacturer’s directions, does not pose a health or safety risk to children.

(be) “School-age program” means “school-age program” as defined in RSA 170-E:2, IV(g), namely “a child day care agency providing child day care for up to 5 hours per school day, before or after, or before and after, regular school hours, and all day during school holidays and vacations, and which is not licensed under RSA 149, for 6 or more children who are 4 years and 8 months of age or older. The number of children shall include all children present during the period of the program, including those children related to the caregiver.”

(bf) “Site director” means a person who is employed in or is seeking employment in a New Hampshire licensed child care program, who meets the age, education and experience requirements specified in He-C 4002.32(p).

(bg) “Statement of findings” means a written report issued by the department which details the findings of a visit or an investigation conducted by the department.

(bh) “Supervision” means knowledge of and accountability for the activity and whereabouts of each child in care, and the ability to see or hear all children at all times and to provide prompt intervention to safeguard each child from accident or injury.

(bi) “Toddler” means a child 19 months to 35 months old.

(bj) “Toileting” means to use the toilet or to assist a child in using the toilet.

(bk) “Topical substances” include, but are not limited to, non-prescription medications such as sunscreen, insect repellent, medicated powders, teething medication, and diaper ointments.

(bl) “Wading pool” means a container of water designed for young children to wade and play in, which is portable and contains water that is less than 10 inches deep.

(bm) “Water activity” means any activity during which children are exposed to swimming pools, water features, or other bodies of water, excluding water tables, wading pools or sprinklers, whether the children will be swimming, wading, playing or walking in the water, floating or boating on, or otherwise in, on or near a pool or body of water.

(bn) “Water feature” means a natural or manmade structure or apparatus including but not limited to a pond, fountain, or stream that includes moving water or water that is more than one inch deep, excluding water tables, wading pools or sprinklers.

He-C 4002.02 Application.

(a) Any person or entity who intends to operate a program shall obtain an application packet from the bureau of licensing and certification, child care licensing unit.

(b) All applicants for licensure shall complete and submit an application to the department which shall not be considered complete until all of the information requested on the application form and the attachments specified in this section have been received, including any signatures required on such forms.

(c) Center based programs which have multiple buildings on the same or contiguous properties may apply for a single license for those buildings, provided that:

- (1) The buildings function as a single program;
- (2) The buildings are in close proximity to ensure that no street, road, or obstacle is present which would impede the safe flow of individuals between the buildings;
- (3) There is a means of communication between the buildings which allows the multiple buildings to function efficiently as a single program;
- (4) Staffing requirements for center based agencies with multiple buildings are met as specified in He-C 4002.32; and
- (5) In each building, there is adequate square footage and bathroom facilities for the number of children who will be cared for, in accordance with He-C 4002.15(c) through (k) and He-C 4002.21(a) through (i).

(d) Except as specified in (i) below, the applicant shall submit to the department the following attachments with the application:

- (1) A child care personnel health form provided by the department or an equivalent record of a health screening documenting that the family child care provider, the center director, or site director has had a physical examination and is able to work with children completed no more than one year prior to the date the department receives the application;
- (2) A completed health officer inspection form documenting that, within the 12 months immediately preceding the date the department receives the application, the premises have been inspected and approved by a local health officer, for operation as a program;
- (3) A life safety compliance report documenting that, within the 12 months immediately preceding the date the application for licensure is received by the department, the premises have been inspected for compliance with Saf-C 6000, “State Fire Code” by the local fire department or the state fire marshal’s office, and approved to operate as a program;
- (4) Documentation from the applicable town or city that the program has been granted zoning approval or that no zoning approval is required;

- (5) A household and personnel list including each of the following:
  - a. The owner or applicant;
  - b. All household members age 10 years and older;
  - c. All child care personnel age 16 and older; and
  - d. All other individuals age 10 and older, who are not enrolled in the child care program who will have daily contact with the children;
- (6) A notarized criminal record release authorization form for each individual listed on the household and personnel list in (5) above who is 17 years of age and older; and
- (7) For each name submitted on the household personnel list in accordance with (5) above, a check or money order which reflects the total cost of all the names listed for whom a criminal records release authorization form was submitted, in the amount charged by the department of safety pursuant to Saf-C 5700 and made payable to the "State of NH-Criminal Records."
- (e) For agencies which operate more than one licensed program, documents required in (d)(5) through (7) above may be submitted to the bureau once under the following conditions:
  - (1) Agencies provide the bureau with a list of programs within the agency where the child care personnel may work; and
  - (2) Child care personnel documents required in He-C 4002 are maintained at each site where the child care personnel is working.
- (f) For any family or family group child care provider between 18 and 21 years of age, the agency shall submit documentation that the individual meets the education requirements specified in He-C 4002.31.
- (g) For all center based programs, the agency shall submit documentation that the center director or site director meets the education and experience requirements for the applicable program type(s) as specified in He-C 4002.32.
- (h) The documentation of education and experience required under (f) and (g) above shall include the following:
  - (1) Copies of transcripts, certificates, diplomas, a non-expired, appropriate level credential issued by the NH professional development system, and/or degrees as applicable; and
  - (2) A résumé and/or verification of previous experience if such experience is required to meet the qualifications for the position.
- (i) In accordance with RSA 170-E:6, school-age programs which are operating in buildings in which public or private schools are currently located shall not be required to submit the documentation required in (d)(2) through (4) above.

He-C 4002.03 Waivers of Rules.

- (a) Applicants, licensees or permittees who wish to request a waiver of rules shall submit to the department a complete waiver request form, which shall not be considered complete until all of the information requested, including required documents, is received by the department.

(b) A time-limited waiver shall be granted to the applicant, permittee or licensee if the department determines that the alternative proposed by the applicant or licensee:

- (1) Meets the objective or intent of the rule;
- (2) Does not negatively impact the health, safety or well being of the children; and
- (3) Does not negatively impact the operation of the program.

(c) When a waiver is approved, the licensee's subsequent compliance with the alternatives approved in the waiver shall be considered equivalent to complying with the rule from which waiver was sought.

(d) The department shall not approve any request for a waiver of any of the provisions of RSA 170-E or of any rules of other state agencies which are referred to in this chapter.

(e) A waiver request shall be denied or rescinded when any of the following occurs:

- (1) The rule for which a waiver is being requested is related to fire safety or environmental health or safety and the requested waiver has not been approved by the fire inspector or local health officer, as required by the department;
- (2) The program has been found in violation of one or more critical rules and has not corrected those violations;
- (3) The department finds that approval of the requested waiver will jeopardize the health or safety of children;
- (4) The department finds that approval of the requested waiver will impair the program's ability to adequately care for children;
- (5) The department finds that approval of the requested waiver will impair the operations of the program; or
- (6) The department determines that the program has not submitted a time-limited written plan for compliance with the rule or an acceptable plan for satisfying the intent of the rule as an alternative to complying with the rule.

He-C 4002.04 License and Permit Requirements.

(a) The program shall abide by the provisions specified on the license or permit.

(b) The program shall:

- (1) Display the current license or permit issued by the department in a prominent location which is accessible to parents, and notify clients and prospective clients of its location;
- (2) Display the statement of findings and corrective action plan approved by the department for the most recent visit to the program in a prominent location which is accessible to parents, and notify clients and prospective clients of their location;
- (3) Maintain on file on the premises and make available upon request to clients and perspective clients, a copy of the statement of findings and corrective action plan approved by the department for the visit immediately preceding the visit represented on the statement of findings posted in accordance with (2) above;

(4) Not alter the license or permit issued by the department;

(5) Not alter the statement of findings or corrective action plan after the corrective action plan has been submitted or approved by the department; and

(6) Have an identified center director for center based programs, or a site director for programs licensed solely as a school-age program, who meets the qualifications specified for their position in He-C 4002.32, or family child care provider for family based programs who meets the specified qualifications in He-C 4002.31.

(c) Any licensee, permittee, child care personnel or other person involved with a program who suspects that a child is being abused or neglected is a mandated reporter in accordance with RSA 169-C:29 and shall report the suspected abuse to the division for children, youth and families at 1-800-894-5533.

(d) When any child, while under the care of a program, is the victim of corporal punishment or other harsh punishment or treatment, has been physically or mentally injured because he or she was not supervised, or when the health, safety or well being of any child has been otherwise seriously jeopardized due to a program's non-compliance with any of the provisions of He-C 4002 or RSA 170-E, the center director, site director, family child care provider or his/her designee shall fully inform the child's parent(s) of the details of the punishment, or of the incident which injured their child or jeopardized the child's health, safety or well being, including the following details:

(1) Who was involved in and who witnessed the incident;

(2) What occurred prior to and following the incident;

(3) When and where the incident occurred; and

(4) Any action that has been or will be taken by the program as a result of the incident.

(e) The details of the incident outlined in (d) above shall be provided to the parent(s) of the child or children involved in writing by the next business day.

(f) Licensees, permittees, and child care personnel shall maintain all records required by He-C 4002:

(1) On file on the premises of the program; and

(2) Accessible and available for review by the department, upon request, for one year, unless otherwise specified.

(g) The applicant, licensee, permittee or any child care personnel shall submit any reports or make available to the department any records or information required by the department for investigation, monitoring or licensing purposes.

(h) The applicant, licensee, permittee or any child care personnel shall not:

(1) Make false or misleading statements or reports to the department; or

(2) Falsify any documents or other written information or reports issued by or required by the department under He-C 4002.

(i) The license or permit shall:

(1) Not be transferable to a new owner or to a new location; and

- (2) No longer be valid when any of the following occur:
  - a. The licensee or permittee has surrendered a license or permit;
  - b. The license has expired and a complete application form with attachments has not been received by the department; or
  - c. The license or permit has been revoked or suspended; and
    1. The licensee or permittee did not request an administrative hearing; or
    2. The licensee or permittee requested an administrative hearing and, following that hearing, a decision was issued upholding the revocation or suspension.
- (j) The licensee or permittee shall submit an application for revision:
  - (1) When he or she wishes to add additional program types or change the type(s) of program for which they are licensed or permitted; or
  - (2) Prior to moving to a new location.
- (k) A licensee or permittee who wishes to increase his or her license capacity shall:
  - (1) Submit a written request to the department;
  - (2) Obtain approvals from the local fire inspector, health inspector and zoning officials, when the increase exceeds the limits established in the current approvals;
  - (3) Submit diagrams of indoor and outdoor space if there have been changes in the child care space; and
  - (4) Not increase enrollment beyond the current license capacity until the program is issued a revised license or permit or other written authorization by the department for the increased license capacity.
- (l) The licensee, permittee or his/her designee shall submit a new household and personnel list, completed in accordance with He-C 4002.02(d)(5), no later than:
  - (1) The start date of any new child care personnel age 16 and older;
  - (2) The day any child care personnel reaches 14 years of age;
  - (3) The day any household member reaches the age of 10 years; or
  - (4) The day any person age 10 and older becomes a household member.
- (m) Along with the new household and personnel list in (l) above, the licensee or permittee shall submit a criminal record release authorization form, completed in accordance with He-C 4002.02(d)(6), for any individual who is age 17 years or older on the household and personnel list.
- (n) A licensee or permittee shall notify the department in writing when he or she wishes to change the name of the program, so that a revised license which reflects the name change can be issued.
- (o) When the center director or site director on record with and approved by the department leaves the position, the licensee, permittee or his/her designee shall, within 10 days of the vacancy occurring,

submit written notice of the vacancy to the department, including the name of the individual who will assume the responsibilities of the center director or site director.

(p) Any individual substituting for the center director or site director who is not qualified for the position of center director or site director in accordance with He-C 4002.32 shall serve as a substitute for not more than 60 consecutive days, and not more than a maximum of 120 consecutive days in a 12 month period.

(q) Not more than 60 consecutive days after the date the qualified center director or site director previously on record with and approved by the department leaves the position, the program shall:

(1) Replace that individual with a fully qualified center director or site director as specified; and

(2) Submit to the department the following information and documents for the new qualified center director or site director:

a. Name;

b. The effective hiring date;

c. Documentation of education and experience; and

d. All information required in He-C 4002.02(d)(1), (d)(5) through (7) and (g).

(r) Each licensee and permittee shall maintain, available for review by the department, evidence that the program is covered by liability insurance or, if the licensee or permittee has no coverage, a copy of a document disclosing that fact.

(s) Each licensee or permittee whose program is not covered by liability insurance shall, prior to enrolling any child, provide to the child's parent(s) a copy of the document disclosing that the program is not covered by liability insurance.

(t) Applicants, licensees, permittees and child care personnel shall cooperate with the department during all departmental visits authorized under RSA 170-E and He-C 4002.

(u) For the purposes of (t) above, cooperation shall include, but not be limited to, allowing representatives of the department to:

(1) Immediately enter and complete an inspection of the premises;

(2) Document evidence or findings through written records, audio recording of conversations or statements, and by photographing inside or outside child care space, other areas of the premises, toys, equipment and learning materials;

(3) Interview child care personnel, members of the board of directors or other governing body, or children, as allowed per He-C 4002.20(c)(2) and (d), enrolled in the program; and

(4) Review and or reproduce any forms or reports which the applicant, licensee or permittee are required to maintain or make available to the department under He-C 4002.

(v) Administrators, other program staff, or other individuals shall not:

(1) Require or request that the individual being interviewed ask that another person be present for or be recorded during the interview;

(2) Attempt to influence the response of any individual being interviewed by signaling them during the interview, telling them what to say, or threatening them with retaliation for providing information to the department;

(3) Require staff or children who have been interviewed to provide statements to program administration or other staff regarding their interview; and

(4) Require or encourage parents to refuse granting permission for their child to be interviewed by representatives of the department.

(w) Any violation of (v) above or any attempt by or on behalf of program staff, administrators, or other individuals to prevent or discourage program staff, children, or other individuals from responding to questions by the department, or from making a good faith report to the department regarding any concerns they have about the operation of the program relating to statutory or regulatory requirements shall be considered failure to cooperate with the department as specified in (u) and (v) above.

He-C 4002.05 Renewal of License.

(a) No less than 3 months prior to the expiration date of the current license, each licensee shall submit to the department:

(1) An application form for license renewal, completed in accordance with He-C 4002.02;

(2) The application attachments specified in He-C 4002.02(d)(2), (3), (5), (6) and (7), except as specified in (b) below;

(3) The application attachments specified in He-C 4002.02(d)(1) and (g), if there has been a new center director or site director since the previous application was filed and the department has not received the required information regarding the change in director; and

(4) A diagram of the indoor and outdoor space.

(b) For licensing renewal, a household and personnel list and a notarized criminal record release authorization form shall not be required for any child care personnel or household member for whom these forms were submitted to the department within 12 months prior to the expiration date of the license.

He-C 4002.06 Critical Rules, Statements of Findings and Corrective Action Plans.

(a) The department shall not issue a new, renewed, or revised license or permit to any program which has not corrected violations identified on a statement of findings.

(b) Rules that the department has determined to be critical rules shall be as listed in Table 4.2.1 below.

Table 4.2.1 Critical Rules

He-C 4002.04 (a)	He-C 4002.14 (j)	He-C 4002.18 (s)(4)	He-C 4002.29 (f)
He-C 4002.04 (b)(6)	He-C 4002.14 (m)	He-C 4002.18 (v)	He-C 4002.29 (h)
He-C 4002.04 (c)	He-C 4002.14 (n)(1)	He-C 4002.19 (a)	He-C 4002.29 (i)
He-C 4002.04 (d)	He-C 4002.14 (n)(3)	He-C 4002.19 (c)	He-C 4002.29 (j)
He-C 4002.04 (e)	He-C 4002.14 (n)(4)	He-C 4002.19 (e)	He-C 4002.29 l(2)a. & c.2
He-C 4002.04 (f)	He-C 4002.14 (o)(2)	He-C 4002.19 (g)	He-C 4002.29 (p)
He-C 4002.04 (g)	He-C 4002.14 (o)(4)	He-C 4002.19 (h)	He-C 4002.29 (q)

He-C 4002.04 (h)	He-C 4002.14 (p)	He-C 4002.19 (i)	He-C 4002.29 (r)
He-C 4002.04 (k)	He-C 4002.14 (q)	He-C 4002.19 (l)	He-C 4002.29 (s)(1)-(3)
He-C 4002.04 (l)	He-C 4002.14 (r)	He-C 4002.19 (m)	He-C 4002.29 (t)
He-C 4002.04 (m)	He-C 4002.14 (s)	He-C 4002.19 (u)(1)	He-C 4002.29 (v)
He-C 4002.04 (t)	He-C 4002.14 (v)(1) - (3)	He-C 4002.19 (x)(1)	He-C 4002.29 (x)
He-C 4002.04 (u)	He-C 4002.14 (v)(7)	He-C 4002.21 (a)	He-C 4002.29 (y)
He-C 4002.04 (v)	He-C 4002.14 (v)(10)	He-C 4002.21 (b)	He-C 4002.30 (a)
He-C 4002.05 (a)	He-C 4002.14 (w)	He-C 4002.21 (j)	He-C 4002.31 (b)
He-C 4002.06 (h)(1)	He-C 4002.14 (aa)	He-C 4002.21 (k)	He-C 4002.31 (d)(2)
He-C 4002.06 (o)	He-C 4002.14 (ab)	He-C 4002.21 (l)	He-C 4002.31 (m)
He-C 4002.08 (f)(1)	He-C 4002.14 (ad)	He-C 4002.22 (a)(4) & (5)	He-C 4002.31 (n)(1)
He-C 4002.14 (b)(1)	He-C 4002.14 (ae)	He-C 4002.22 (c)	He-C 4002.31 (o)
He-C 4002.14 (b)(4)b.& c.	He-C 4002.14 (ah)(1)	He-C 4002.22 (e)	He-C 4002.31 (p)(1)
He-C 4002.14 (b)(5)	He-C 4002.15 (a)(3)	He-C 4002.22 (g)	He-C 4002.32 (c)(1)
He-C 4002.14 (b)(8)	He-C 4002.15 (a)(5)	He-C 4002.22 (m)	He-C 4002.32 (c)(4)
He-C 4002.14 (b)(9)	He-C 4002.15 (b)	He-C 4002.23 (g)	He-C 4002.32 (i)
He-C 4002.14 (b)(11)	He-C 4002.15 (c)	He-C 4002.23 (h)	He-C 4002.32 (k)
He-C 4002.14 (b)(13)	He-C 4002.15 (d)	He-C 4002.23 (m)	He-C 4002.32 (n)(2)
He-C 4002.14 (b)(14)	He-C 4002.15 (g)	He-C 4002.24 (a)	He-C 4002.32 (o)(3)
He-C 4002.14 (b)(16)	He-C 4002.15 (j)(3) & (4)	He-C 4002.25 (a)	He-C 4002.32 (p)
He-C 4002.14 (b)(19)	He-C 4002.15 (k)(1)	He-C 4002.25 (b)	He-C 4002.32 (r)(2)
He-C 4002.14 (b)(20)	He-C 4002.15 (k)(5)	He-C 4002.25 (e)	He-C 4002.32 (v)
He-C 4002.14 (b)(21)	He-C 4002.18 (b)	He-C 4002.25 (f)	He-C 4002.37 (a)
He-C 4002.14 (b)(22)	He-C 4002.18 (d)	He-C 4002.27 (j)	
He-C 4002.14 (e)	He-C 4002.18 (i)	He-C 4002.28 (e)	
He-C 4002.14 (g)	He-C 4002.18 (r)	He-C 4002.28 (m)	
He-C 4002.14 (h)	He-C 4002.18 (s)(1)	He-C 4002.29 (e)	
He-C 4002.14 (i)			

(c) Exceptions to (a) above shall be granted only under the following conditions:

- (1) A program has been cited for operation without a license or for violating the provisions of their license and has subsequently applied for and been determined eligible for the requested license;
- (2) The department has determined that issuance of that license will result in the program being in compliance with the previously cited violation(s);
- (3) The applicant, licensee or permittee has requested to change the name of the program or reduce the license capacity;
- (4) The department has made changes to the provisions of the license; or
- (5) The department has issued a conditional license.

(d) When the department finds that, due to the nature, degree or repetition of a violation, a violation of a rule not designated as critical has jeopardized or has the potential to jeopardize the health, safety or well being of children, the department shall upgrade the violation to critical status and respond to that violation in the same manner as a violation of a critical rule.

(e) The department shall issue a statement of findings to an applicant, licensee or permittee when it finds that he or she has one or more violations of the following:

- (1) Any provision of RSA 170-E;
- (2) Critical rules as identified in Table 4.2.1;
- (3) Rules not designated as critical, but which have been upgraded to critical status in accordance with (d) above; or
- (4) Violations of other rules which, due to the nature, degree or repetition of violation, if not corrected, have the potential to:
  - a. Jeopardize the health, safety or well being of children; or
  - b. Negatively impact the child care services provided by the program.

(f) A statement of findings shall not be issued as specified in (e) above when the department determines that all of the following conditions are met:

- (1) The violation is not a repeat violation;
- (2) The violations are corrected prior to or immediately during the visit;
- (3) The violation, or the situation that could result in a violation, was not documented in writing during a previous visit;
- (4) The violation is not a life safety code violation; and
- (5) The violation is a health or safety issue, in accordance with He-C 4002.14, but does not jeopardize the health, safety, or well being of a child or children in care.

(g) The family child care provider, center director or site director shall complete a corrective action plan for each violation included on the statement of findings, which shall include the following:

- (1) The action the program has taken or will take to correct the violation(s);
- (2) The steps the program will take to ensure compliance with these rules and the applicable statutes in the future;
- (3) The date by which each of the violations was corrected or will be corrected;
- (4) The interim measures the program has implemented to protect the health and safety of children, when the violation cannot be corrected immediately; and
- (5) The dated signature of the provider for family and family group child care homes and of the center director or site director for center-based programs.

(h) The family child care provider, center director, or site director shall complete corrective action plans and return them to the department in accordance with the following:

(1) The corrective action plan shall be submitted to the department within 3 weeks of the date the statement of findings is sent out by the department; and

(2) The names of individuals shall not be included in the corrective action plans.

(i) When the corrective action plan submitted to the department by the program in accordance with (g) and (h) above is not acceptable for correcting the violation, the department shall issue a directed corrective action plan to the program.

(j) Notwithstanding (g) through (i) above, when the department determines that there is an imminent threat to the health or safety of children, it shall issue a corrective action plan to the program, without first offering the program an opportunity to complete a corrective action plan.

(k) When a program receives a corrective action plan issued by the department, in accordance with (i) or (j) above, it shall:

(1) Add any additional details regarding the action plans the program feels are necessary; and

(2) Complete and return the corrective action plan in accordance with (g)(5) and (h) above.

(l) Notwithstanding (e) through (k) above, when a program has repeatedly violated licensing rules or statute or has violated a rule or statute which resulted in physical or mental injury to a child or caused a child to be in danger of physical or mental injury, the department shall initiate enforcement action without first requesting that the program submit a corrective action plan.

(m) At the close of any visit or when an investigation is concluded, or as soon as possible thereafter, the department shall review with the center director, site director, family child care provider, or his/her designee, a summary of any violations of critical or non-critical rules found during the visit.

(n) Non-critical violations shall be corrected as soon as possible and no later than 30 days from the date of verbal or written notification, unless an extension has been approved by the department.

(o) Programs shall comply with approved corrective action plans.

He-C 4002.07 Complaints and Investigations.

(a) In accordance with RSA 170-E:17, II, the department shall respond to any complaint that meets the following conditions:

(1) The alleged violation(s) occurred not more than 6 months prior to the date the department was made aware of the allegation(s);

(2) The complaint is based upon the complainant's first-hand knowledge regarding the allegation(s) or on information reported directly to the complainant by a child who has first-hand knowledge regarding the allegation(s);

(3) There is sufficient specific information for the department to determine that the allegation(s), if proven to be true, would constitute a violation of any of the provisions of RSA 170-E or He-C 4002; or

(4) The complaint is received from any source and alleges a violation that occurred at any time if the complaint alleges:

a. Physical injury or abuse;

b. Verbal, or emotional abuse; or

c. The danger of physical injury to one or more children.

(b) A complaint investigation shall be conducted when the department receives a complaint which meets the conditions specified in (a) above and which contains an allegation of violation of:

- (1) Any critical rule;
- (2) Any provision of RSA 170-E; or
- (3) Any non-critical rule which the department concludes may be upgraded in accordance with He-C 4002.06(d).

(c) When the complaint is determined to be founded, a statement of findings shall be issued listing the violations found as a result of the investigation and any other violations found during the visit, which shall be considered and treated as a finding of a monitoring visit under RSA 170-E:10.

(d) When the complaint is determined to be unfounded, a notice shall be sent to the program advising that the complaint was unfounded.

(e) When the department determines that an individual poses a threat to the safety of a child or children, in accordance with RSA 170-E:7, III or IV, it shall provide notice to the individual and to the child care program that:

- (1) The individual has been determined by the department to pose a threat to the safety of a child or children; and
- (2) The program shall take immediate action to prohibit the individual from being on the premises of the child care program and from having access to the children who are attending the program.

(f) The department shall include in its notice under (e) above:

- (1) The basis for the determination that the individual poses a threat to the safety of a child or children; and
- (2) The need for the child care program to inform the department in writing of the specific action it has taken as required under (e)(2) above.

He-C 4002.08 Confidentiality.

(a) When the department investigates an individual's criminal conviction records under RSA 170-E:7 and determines that the individual does not pose a current threat to the safety of children, it shall notify the program of that determination, and provide the program with a copy of the report of criminal convictions received from the NH department of safety, state police headquarters.

(b) Any information collected by the department pursuant to RSA 170-E:7 regarding criminal conviction records or founded cases of child abuse or neglect, which results in a department determination that the individual being investigated poses a threat to the safety of a child or children, shall be kept confidential by the department, with the following exceptions:

- (1) The program in which the individual is employed shall be notified that the individual has been determined to pose a threat to the safety of children, in accordance with the provisions of RSA 170-E:7, III, or RSA 170-E:7, IV, so that the program can take corrective action;

- (2) The notice under (1) above shall include the identity of the individual and the crime as reported on the criminal conviction record or the determination that there is a founded case of child abuse or neglect; and
  - (3) If a statement of findings is issued regarding the employment or presence in the program of an individual covered under (1) above, it shall not include the name of that individual on the statement of findings and shall identify only the crime as specified on the criminal conviction record or the determination that there is a founded case of child abuse or neglect.
- (c) The department shall keep confidential information collected during the application process and any records in its possession regarding the admission, progress, health, and discharge of children, with the following exceptions:
- (1) Upon receipt of:
    - a. A written request from the applicant, licensee, permittee or their designated legal representative, the department shall release to the requester, information obtained during the application process; and
    - b. Upon receipt of a written authorization to release information, signed by the applicant, licensee, or permittee, or in the case of personal information, signed by the individual who is the subject of the information, the department, shall release any information collected during the application process; or
  - (2) During an administrative proceeding against the applicant or licensee.
- (d) Except for law enforcement agencies or in an administrative proceeding against the applicant or licensee, the department shall keep confidential any information collected during an investigation, unless it receives an order from a court of competent jurisdiction.
- (e) When the department determines that any child was the victim of corporal punishment, or other harsh punishment or treatment, or has been physically or mentally injured because he or she was not supervised, or any child's health, safety or well-being was otherwise jeopardized due to a program's non-compliance with licensing rules, the department shall contact the child's parents to ensure that child care personnel have fully informed the parents about the corporal punishment or other harsh punishment or treatment, or the incident which injured their child or placed their child at risk, in accordance with He-C 4002.04(d).
- (f) Applicants, licensees, permittees and all child care personnel shall keep confidential all records required by the department pertaining to the admission, progress, health and discharge of children under their care and all facts learned about children and their families with the following exceptions:
- (1) Child care personnel shall allow the department access to all records that programs are required by department rule or state statute to keep, and to such records as necessary for the department to determine staffing patterns and staff attendance; and
  - (2) Child care personnel shall release information regarding a specific child only as directed by a parent of that child, or upon receipt of written authorization to release such information, signed by that child's parent.

(g) In addition to (f) above, child care personnel shall discuss or share information regarding the admission, progress, behavior, health or discharge of a child with the child's parent(s) in a manner that protects and maintains confidentiality for both the child and the child's parent(s).

**Readopt He-C 4002.09, effective 11-19-16 (Document #12046 Interim), to read as follows:**

He-C 4002.09 Enforcement Action.

(a) The department shall place conditions on a license or permit when it determines that the applicant, licensee or permittee is in violation of any of the provisions of RSA 170-E, any critical rule, or other rule which has been upgraded to critical status, and the department determines that placement of those conditions:

- (1) Will protect the health, safety or well-being of children;
- (2) Will assist the applicant, licensee or permittee to achieve and maintain compliance with licensing rules or statute; or
- (3) Will assist the applicant, licensee or permittee to avoid suspension, revocation or denial of his/her license or permit.

(b) When the department intends to place conditions on a license or permit, it shall send to the applicant, licensee or permittee a letter setting forth:

- (1) The reason(s) for the intended action;
- (2) The specific condition(s) the department intends to place on the license or permit;
- (3) The effective date(s) of the proposed conditions;
- (4) Notice that, once the department places conditions on the license or permit, failure to comply with those conditions shall constitute failure to comply with the provisions of license; and
- (5) Information about the right to request an administrative hearing regarding the department's decision to place conditions on a license or permit by submitting a written request for an administrative hearing to the commissioner no later than 10 calendar days from the date of receipt of the notice.

(c) The conditions placed in accordance with (a) above:

- (1) Shall be determined by the department, based on the single or combination of options specified that will best address the specific issue or problem; and
- (2) May include, but not be limited to, the following:
  - a. Prohibiting a licensee or permittee from enrolling any additional children in a program;
  - b. Reducing the license capacity or the number of children for whom a licensee or permittee is authorized to care in a specific component of a program;
  - c. Requiring an applicant, licensee, permittee or child care personnel to obtain additional education other than that required for their position or complete additional in-service professional development activities, in excess of the annual requirement as

specified under He-C 4002.30 in order to prepare him/her to more effectively work with children in a program or assist them in achieving and maintaining compliance with He-C 4002;

d. Requiring an applicant, licensee or permittee to hire additional staff on a temporary or permanent basis;

e. Restricting an administrator, or any other child care personnel or other individual's access to enrolled children during child care hours as a result of a determination that the individual poses a threat to children and has been having, or may have, regular contact with the children enrolled in the program;

f. Prohibiting a licensee or permittee from applying for any increase in his/her license capacity, or any addition of new program types to an existing license or permit, until he/she achieves and maintains compliance with He-C 4002;

g. Prohibiting an applicant, licensee or permittee from applying for additional child care program licenses;

h. Requiring an applicant, licensee or permittee to hire a consultant, approved by the department in accordance with (d) below, to provide technical assistance or training to increase the knowledge or skills of the applicant, licensee, permittee or child care personnel in order to prepare them to more effectively work with children in a program or assist them in achieving and maintaining compliance with He-C 4002; or

i. Requiring an applicant, licensee, or permittee or child care personnel to:

1. Observe and document practices and review policies at another child care program designated by the department that would be related to identified areas of need; and

2. Submit documentation of the observations and a plan for how the program will implement new practices and policies to comply with the areas of need identified by the department.

(d) The department shall approve consultants, as specified in (c)(2)h. above, who have submitted to the bureau, documentation of:

(1) Current credential as a trainer, mentor, or faculty issued by the New Hampshire Early Childhood Professional Development System; or

(2) A bachelor's degree in the subject in which they are offering consultation, plus a minimum of 2 years experience in a position in which they have demonstrated that they have the expertise to provide effective consultation to a child care program.

(e) The department's decision to place conditions on a license or permit shall become final when:

(1) The applicant, licensee or permittee does not request an administrative hearing as specified in (b)(5) above; or

(2) An administrative hearing is conducted and the department's decision to place conditions on the license or permit is upheld.

(f) The placement of conditions on a license or permit shall not prohibit the department from enforcing any conditions or any other enforcement action available to it under He-C 4002 or RSA 170-E.

(g) When the department places conditions on a license or permit, the department shall issue a revised license or permit reflecting the conditions being imposed.

(h) Upon receipt of notice of the department's intent to place conditions on a license, the applicant, licensee or permittee receiving the notice shall immediately provide the department with a list of the names, addresses and phone numbers of the parents whose children are currently enrolled in the program.

(i) When a program has met the conditions placed on the license and has maintained compliance with all licensing rules and statutes related to the conditions for a period of one year or the time period reflected on the license or permit, whichever is greater, the department shall:

- (1) Provide written notice to the licensee or permittee of the department's intention to cancel the conditions; and
- (2) Issue a revised license or permit.

(j) The department shall revoke, suspend or deny an application for a new license, license renewal or license revision if:

- (1) After being notified of and given the opportunity to supply missing information, the application does not meet the requirements of He-C 4002.02;
- (2) After being notified by the department that an adult or a juvenile may pose a threat to the safety of a child or children, the applicant or licensee refuses to submit or adhere to an agreement or corrective action plan which ensures that the individual is removed from employment or from the household and will not have access to the children in care during the operating hours of the program;
- (3) An applicant, licensee or permittee has endangered or continues to endanger one or more children or otherwise caused one or more children to be physically or mentally injured;
- (4) The applicant, licensee or permittee has been found guilty of abuse, neglect, exploitation of any person or has been convicted of child endangerment, fraud or a felony against a person in this or any other state by a court of law, or has been convicted of any crime as referenced in RSA 170-E:7, III or IV, or had a complaint investigation for abuse, neglect or exploitation substantiated by the department or in any other state;
- (5) The applicant, licensee or permittee, or any representative or employee of the applicant knowingly provides false or misleading information to the department, including but not limited to information on the application or in the application attachments;
- (6) The applicant, licensee or permittee, or any representative or employee of the applicant fails to cooperate with any inspection by the department or fails to submit any records or reports required by the department;
- (7) The applicant, licensee or permittee violates any of the provision of RSA 170-E:1-23 or He-C 4002;
- (8) The applicant, licensee or permittee has demonstrated a history or pattern of multiple or repeat violations of RSA 170-E or He-C 4002, that pose or have posed a threat to the safety of a child or children;

(9) The applicant, licensee or permittee fails to submit an acceptable corrective action plan or fully implement and continue to comply with a corrective action plan that has been accepted by the department in accordance with He-C 4002.06(g) through (l);

(10) The applicant, licensee or permittee fails to pay a fine assessed by the department as specified in He-C 4002.10; or

(11) The applicant, licensee or permittee fails to implement and comply with conditions placed on a license by the department as specified in He-C 4002.09(a).

(k) If a license or permit has been revoked, or has expired due to the program's lack of timely application for renewal having been made in accordance with He-C 4002, operation shall be discontinued immediately.

(l) The department shall notify applicants, licensees or permittees affected by a decision of the department to deny, revoke, or suspend a license of their right to an administrative hearing in accordance with RSA 170-E:13.

(m) If an applicant, licensee or permittee fails to request an administrative hearing in writing within 10 days of the receipt of the notice required by RSA 170-E:13, I, the action of the department shall become final.

(n) Administrative hearings under this section shall be conducted in accordance with RSA 170-E:13 and 14, RSA 541-A, and He-C 200.

(o) Further appeals of department decisions under this section shall be governed by RSA 541 and RSA 170-E:14.

(p) Any licensee or permittee who has been notified of the department's intent to revoke or suspend a license or deny an application for license renewal may continue to operate during the appeal process except as specified in (q) below.

(q) When the department includes in its notice of revocation or suspension an order of immediate closure, pursuant to RSA 170-E:13, III, or RSA 541-A:30, III, the program shall immediately terminate its operation and not operate while an administrative hearing is pending except under court order or as provided by RSA 541-A:30, III.

(r) The department shall initiate a suspension of a license or permit rather than revocation when it determines that:

(1) The program does not have a history of repeat violations of licensing rules or statute and the action is based on a violation or situation which is:

a. Related to a correctable environmental health or safety issue, including but not limited to a problem with a program's water supply, septic system, heating system, or structure; and

b. Documented by the program as being temporary in nature; or

(2) The action is based upon one of the following and is under appeal or an administrative hearing:

a. A criminal conviction; or

b. A finding by the division for children, youth and families, of child abuse, neglect or endangerment.

(s) Any suspension of a license or permit for which an administrative hearing has not been requested or any suspension of a license that has been upheld by an administrative hearing shall remain in effect until the department notifies the program whose license or permit was suspended that the suspension has been removed because:

(1) The violation which resulted in the suspension is corrected; or

(2) The suspension was based on loss of fire or health officer approval and the local fire or health officer has reinstated their previously rescinded approval.

(t) Upon receipt of notice of the department's intent to revoke, suspend, deny or refuse to issue or renew a license or permit, the applicant, licensee or permittee receiving the notice shall immediately provide the department with a list of the names, addresses and phone numbers of the parents whose children are currently enrolled in the program and staff who are currently employed by the program.

(u) Based upon information provided under (t) above, the department shall notify the parents of children currently enrolled in the program, and staff currently employed by the program that the department has initiated action to revoke or suspend the license, or deny an application for a license renewal.

(v) The department shall send a notice equivalent to the notice specified in (u) above to the following entities:

(1) The health officer and fire inspector serving the town in which the program is located;

(2) The resource and referral agency which covers the town in which the program is located; and

(3) The state office of the United States Department of Agriculture child and adult food program.

(w) When a program's license or permit has been revoked, denied, or the department has refused to renew a license or an application has been denied by the department, the applicant, licensee or permittee, center director or site director shall not be eligible to reapply for a license or permit, be employed as a center director, site director, or family child care provider, or hold any corporate office or controlling interest in any licensed or permitted program for at least 5 years from:

(1) The date the decision to revoke or deny becomes final; or

(2) The date an order is issued upholding the action of the department, if an administrative hearing was requested.

(x) When an individual enters into an administrative agreement with the department to surrender a license or withdraw an application that exceeds the 5 years in (w) above, the agreement shall supersede the rule.

(y) The department shall accept an application from an individual or consider an individual to be eligible to be employed as a center director, site director or family child care provider after the 5 year period specified in (w) above only when it determined that the individual has, through education, training or experience, acquired the knowledge and skills, and has the resources necessary to operate or direct a child care program in compliance with licensing rules and statute.

(z) Notwithstanding (y) above, the department shall consider an application submitted after the decision to revoke or deny becomes final, but before the expiration of the 5 years referenced in (w) above, provided there has been no violation of RSA 170-E:4, II, RSA 170-E:12, I, RSA 170-E:12, V, RSA 170-E:12, VI, RSA 170-E:12, VII, RSA 170-E:12, VIII or RSA 170-E:12, XI, and only under the following circumstances:

(1) The denial was based on the applicant or licensee's inability or failure to correct a violation caused by a temporary condition which has been corrected; and

(2) The licensee or applicant who was denied an initial application shows that circumstances have substantially changed such that the department now has a good cause to believe that the applicant has the requisite degree of knowledge, skills and resources necessary to maintain compliance with the provisions of RSA 170-E and He-C 4002.

(aa) No ongoing enforcement action shall preclude the imposition of any remedy available to the department under RSA 170-E, RSA 541-A, He-C 4002 or other law.

**Readopt He-C 4002.10-4002.37, effective 11-19-16 (Document #12046 Interim), to read as follows:**

He-C 4002.10 Administrative Fines.

(a) The department shall assess administrative fines in accordance RSA 170-E:11, VI and VII, and RSA 170-E:21-a as follows:

(1) Notice of the department's intent to assess a fine shall be sent by certified mail or be hand delivered to any person, applicant, licensee or permittee;

(2) The written notice required under (1) above shall contain:

a. The amount of the fine, the violation(s) and dates for which the fine is being assessed;

b. Information regarding the right to request an administrative hearing regarding the department's decision to assess a fine by submitting a written request for an administrative hearing to the commissioner no later than 10 calendar days from the date of receipt of the notice;

c. Information about the option of reducing any assessed fine by 50% by submitting to the department, no later than 10 days from receipt of the notice, payment of the reduced fine and a written statement waiving the right to request an administrative hearing regarding the fine, signed by the applicant, licensee, or permittee; and

d. The name, address, and phone number of the hearings unit, and a contact person within the office of operations support, bureau of licensing and certification;

(3) If the applicant, licensee or permittee does not request an administrative hearing as specified in (2)b. above, the department's decision to assess a fine shall become final after the 10 day period specified in (2)b. above and the fine shall be paid to the department no later than 10 days from that date;

(4) When an administrative hearing is conducted and the department's decision to assess a fine is upheld, the fine shall be due and payable within 10 days of the date of the hearing officer's decision; and

(5) The assessment of fines shall not prohibit the department from enforcing any conditions or any other enforcement action available to it under He-C 4002 or RSA 170-E.

(b) The violations for which fines will be assessed by the department and the amount of the fines for any applicant, licensee or permittee shall be as follows:

(1) For failure to comply with the provisions of a license or permit, in violation of He-C 4002.04(a) the fine shall be \$100.00 plus \$100.00 per day for each day for which the department has evidence that the program continues after receipt of written notice from the department that the violation exists;

(2) If a child care program has a repeat violation of He-C 4002.04(a), the fine shall be \$250.00, plus \$100.00 for each day for which the department has evidence that the program continues to violate this rule, after receipt of written notice from the department that the violation exists;

(3) For establishing, maintaining, operating or conducting a child care program without a license or permit in violation of RSA 170-E:4, I, the fine for an applicant, licensee, permittee or unlicensed individual or entity shall be \$100.00 plus \$100.00 per day for each day for which the department has evidence that the violation continues after receipt of written notice from the department that the violation exists;

(4) For continuing to operate a child care program after voluntarily surrendering a license or permit, or after failing to submit a timely application for renewal of a license and the license has expired, in violation of RSA 170-E:4, I, the fine for an unlicensed individual or entity shall be \$500.00 and an additional fine of \$100.00 per day for each day for which the department has evidence that the former licensee or permittee continues to operate a child care program in violation of RSA 170-E:4, I;

(5) For failure to submit any reports or failing to make available to the department any records required by the department for investigation, monitoring or licensing purposes, within 2 business days of receipt of a verbal or written request from the department for such reports in violation of He-C 4002.04(g) or (h), or by the due date specified in writing for He-C 4002.09(t), the fine for an applicant, licensee or permittee shall be \$500.00 and an additional fine of \$100.00 per day for each day for which the department does not receive the requested documents;

(6) For the purposes of (5) above, each different type of report or record requested but not provided shall constitute a separate violation subject to a separate fine;

(7) For furnishing or making false or misleading statements or reports to the department, or directing, requiring or knowingly allowing any child care personnel to furnish or make false or misleading statements or report to the department, in violation of He-C 4002.04(h), the fine shall be \$1000.00;

(8) For the purposes of (7) above, each false or misleading statement or report furnished or made by any applicant, licensee, permittee, or furnished or made by any child care personnel with the knowledge of, at the direction of or on behalf of the applicant, licensee or permittee shall constitute a separate violation;

- (9) For failure by the applicant, licensee or permittee, or by any child care personnel at the direction of or on behalf of the applicant, licensee or permittee, center director or site director, to cooperate during any visit authorized under RSA 170-E or He-C 4002, in violation of He-C 4002.04(t) the fine shall be \$1000.00;
- (10) For failure to comply with an approved corrective action plan, in violation of He-C 4002.06(o), the fine shall be \$250.00;
- (11) For failure to supervise each child in care, in violation of He-C 4002.19(a), the fine shall be \$500.00;
- (12) For abusing or neglecting a child or children, in violation of He-C 4002.25(e)(1), or failing to protect a child or children from abuse or neglect by any individual when the licensee, permittee, center director or site director, either knew or should have known about the abuse or neglect in violation of He-C 4002.25(f), the fine shall be \$1000.00;
- (13) For using corporal punishment, in violation of He-C 4002.25(e)(2), or failing to protect children from corporal punishment in the child care program by any child care personnel, household member or other individual, when the licensee, permittee, center director or site director either knew or should have known about the corporal punishment, in violation of He-C 4002.25(f), the fine shall be \$1000.00;
- (14) For using inappropriate discipline or mistreating children, in violation of He-C 4002.25(e)(3) through (5), or failing to protect children from inappropriate discipline or mistreatment in the child care program by any child care personnel, household member or other individual, when the licensee, permittee, center director or site director either knew or should have known about the inappropriate discipline or mistreatment, in violation of He-C 4002.27(f), the fine shall be \$500.00;
- (15) For failure to comply with the qualifications for a site director, in violation of He-C 4002.32(p), and for a center director, in violation of He-C 4002.32(k), when the violation is not corrected within 5 business days of written notice from the department that the violation exists, the fine shall be \$100.00 plus \$100.00 for each day that the violation continues;
- (16) For a violation of any statute, critical rule or any rule upgraded to critical status in accordance with He-C 4002.06(d) and the violation endangered one or more children, the fine shall be, in lieu of any fine specified in (b)(1) through (15) above, \$1000.00 for each violation and an additional \$200.00 per day for each day for which the department has evidence that the violation continues after receipt of written notice from the department that the violation exists;
- (17) For a repeat violation of any critical rule not specified in (b)(1) through (16) above, or any rule upgraded to critical status, in accordance with He-C 4002.06(d), the fine shall be \$100.00;
- (18) Notwithstanding (a)(2)c. above, the minimum fine the department shall assess shall be \$100.00;
- (19) When an inspection results in a determination that a violation of RSA 170-E or He-C 4002 is a repeat violation of any of the rules specified in (b)(1) through (16) above, the fine shall be twice the amount as the original fine assessed, not including any applicable daily rates;

(20) For the purposes of (b)(17) through (19) above, each incident of non-compliance shall constitute a separate violation subject to a separate fine; and

(21) When the department finds that the licensee or permittee has violated any statute, critical rule or any rule upgraded to critical status in accordance with He-C 4002.06(d) and the violation resulted in actual physical or mental injury to one or more children, or placed one or more children in jeopardy of physical, mental or emotional harm, the department shall in lieu of any fine specified in (b)(1) through (17) above, assess a fine of \$1000.00 for each violation and an additional \$100.00 per day for each day for which the department has evidence that the licensee or permittee continues to violate the rule after receipt of written notice from the department that the violation exists.

He-C 4002.11 Informal Dispute Resolution.

(a) An opportunity for informal dispute resolution shall be available to any applicant, licensee or permittee who disagrees with a finding of violation made by the department.

(b) A notice to the department requesting an informal dispute resolution shall be submitted in writing by the applicant, licensee, center director or site director no later than 14 days from the date the statement of findings was issued by the department.

(c) Written notice of the department's decision shall be provided to the applicant or licensee.

(d) An informal dispute resolution shall not be an option for any applicant, licensee or permittee against whom the department has initiated a fine, a conditional license or action to suspend, revoke, deny or refuse to issue or renew a license or permit.

He-C 4002.12 Time Frames for Departmental Response to Applications.

(a) Pursuant to RSA 541-A:29, the department shall approve or deny an application, petition or request no later than 120 days from receipt of the application, petition or request and any additional information requested by the department.

(b) The 120 days specified in (a) above shall begin on the date on which all requested information is received by the department.

(c) The department shall approve or deny waiver requests and applications for license revisions within 120 days of receipt of the completed waiver request or application for revision.

(d) Any outstanding corrective action plan for violations of rule or statute shall be considered additional information under (a) above.

He-C 4002.13 License Capacity and Staff and Child Attendance.

(a) Child care personnel shall complete and maintain daily child attendance records.

(b) The daily child attendance records required in (a) above shall:

(1) Be filled in by child care personnel or by the individual dropping off or picking up the child as each child arrives at or departs from the program;

(2) At all times during operating hours, accurately reflect the number of and identity of the children who are present in the program;

(3) Be maintained for 6 months;

- (4) Be available for review by the department; and
  - (5) Include the following for each child:
    - a. Name;
    - b. Birth date; and
    - c. The time the child arrived at and departed from the program.
- (c) Programs shall keep daily staff attendance records which shall:
- (1) Be filled in by each individual as she/he arrives at and departs from the program;
  - (2) At all times during operating hours, accurately reflect the number of and identity of child care personnel present in the program and in each group or classroom;
  - (3) Be maintained for 6 months;
  - (4) Be available for review by the department; and
  - (5) Include the following for each staff person:
    - a. Name;
    - b. Scheduled work hours;
    - c. The time the individual arrived at and departed from the program;
    - d. Job title; and
    - e. Age group or classroom of children with whom the individual is primarily assigned to work.
- (d) A program shall exceed its license capacity only when it has requested and received prior authorization from the department to temporarily exceed its license capacity as provided under (e) below.
- (e) Authorization to temporarily exceed its license capacity shall be given up to a maximum of 20 work days in a calendar year, if the department finds that:
- (1) The program does not have any violations of critical rules or statute which have not been corrected; and
  - (2) The approval will not result in:
    - a. More than 4 children younger than 3 years of age being cared for at the same time in a family or family group child care home;
    - b. More than 2 children younger than 24 months of age in a family child care home, without an additional family child care worker or family child care assistant present and assisting in the care of the children;
    - c. More than 2 children over license capacity in a family or family group child care home;
    - d. More than 4 children over license capacity in all other programs; or

e. Health or safety risks to children.

He-C 4002.14 Health and Safety in the Child Care Environment.

(a) Programs shall establish and maintain a healthy and safe learning environment.

(b) Programs shall maintain the child care environment free of conditions hazardous to children, including, but not limited to, the following:

(1) Life safety code violations or hazards such as blocking doorways, hallways and stairs that are a means of egress;

(2) Matches and lighters and other ignition devices which shall be stored out of sight and inaccessible to children;

(3) Lit candles or other items with flames, with the exception those used for cultural or community practices, which do not pose a safety risk to children and under the direct supervision of child care personnel;

(4) Electrical hazards, including but not limited to:

a. Unshielded, or unprotected electrical outlets, except that in programs which serve only school-age children, protective caps shall not be required on electrical outlets;

b. Overloaded electrical outlets and extension cords;

c. Frayed, cracked or crimped extension cords; and

d. Any electrical device accessible to children and located so that it could be plugged into an electrical outlet while in contact with a water source;

(5) Fixed cords or strings long enough to encircle a child's neck which pose a strangulation hazard and are accessible to children, including, but not limited to, telephone cords and window blind cords;

(6) Stairways with 3 or more steps that do not have hand rails, except in school-age programs which are located in buildings which currently house public or private schools and serve only school-age children;

(7) Gaps that are between 3 ½ inches and 9 inches apart on ballusters, handrails, guardrails or slats on play structures, lofts, stairways, decks, porches, balconies, fences or other barriers, that are accessible to children;

(8) Guns, weapons or live or spent ammunition, which are not in locked storage, or otherwise inaccessible to children;

(9) Knives and sharp objects or objects with sharp edges accessible to children, except that, at the discretion of child care personnel and under close supervision, child care personnel may allow children to use scissors and or knives for specific cooking, fine motor or craft projects;

(10) Holes in flooring, loose tiles or loose throw rugs which present a slipping or tripping hazard;

- (11) Heavy furnishings or other heavy items that have not been secured to the wall or floor or both, and could be easily tipped over or are unstable and which if not secured to the wall or floor or both could easily fall on children and would be likely to cause injury;
  - (12) Open doors and windows without screening which allow the entrance of insects into the child care environment;
  - (13) Open windows which are accessible to children and are not equipped with protective barriers designed to prevent children from falling out the window;
  - (14) Open doors which are not equipped with a sturdy screen door equipped with a latch to prevent children from running out of the building, except in school-age programs which are located in buildings which currently house public or private schools and serve only school-age children;
  - (15) Loose and flaking paint which is accessible to children;
  - (16) Stairways which are accessible to children younger than 3 years of age and are not equipped with functional, properly latched safety gates;
  - (17) Unclean conditions or disrepair which demonstrate a lack of regular cleaning or maintenance;
  - (18) Damp conditions which result in visible mold or mildew or a musty odor;
  - (19) Poisonous or hazardous plants;
  - (20) Trampolines, with the exception of small indoor trampolines intended for individual use with direct adult supervision only;
  - (21) Fumes from toxic or harmful chemicals or materials;
  - (22) Empty plastic bags, or bags which pose a suffocation hazard, which are accessible to children under the age of 3 years;
  - (23) Items labeled “keep out of reach of children” which are accessible to children without the direct supervision of child care personnel, with the exception of wall-mounted hand sanitizer units, and for programs operating solely as a school-age program, sunscreen; and
  - (24) Items listed in (i) below, which are accessible to children.
- (c) When using pesticides, programs shall:
- (1) Notify parents and staff in writing at least 2 days prior to the pesticide application, except in emergencies where pests pose an immediate threat to children; and
  - (2) Document the date, time and type of pesticide used for each time a pesticide is used.
- (d) Pesticides shall not be used on the premises while children are present and any treated indoor area must be aired out per manufacturers’ instructions prior to allowing children to return to that area.
- (e) When interior or exterior surfaces are in a deteriorating condition, including flaking and peeling paint, and the building was built prior to 1978, the program shall:

- (1) Contact the NH childhood lead poisoning prevention program to determine what measures shall be taken in accordance with He-P 1600 to make the deteriorating surfaces intact;
  - (2) Provide the department with documentation of the recommendations made by the NH childhood lead poisoning prevention program; and
  - (3) Provide the department with documentation of compliance with the recommendations in (2) above.
- (f) Construction, remodeling or alteration of structures during child care operations shall be done in a manner as to prevent exposure of children to hazardous or unsafe conditions including, but not limited to, fumes, dust, construction materials and tools which pose a safety hazard.
- (g) When there is information or evidence indicating that the building may contain asbestos hazards, programs shall submit evidence that the building has been inspected by a licensed asbestos inspector and is free of asbestos hazards or submit a plan of action to reduce or eliminate any existing contamination to be approved by the department.
- (h) When there is information indicating that the building or water supply may contain radon hazards, programs shall submit evidence that the building has been inspected by a licensed radon inspector and is free of radon hazards or submit a plan of action to reduce or eliminate any existing contamination to be approved by the department.
- (i) All containers of toxic and flammable materials shall be clearly labeled with the name of the product they contain, including but not limited to:
- (1) Tobacco products;
  - (2) Cleaners;
  - (3) Household chemicals;
  - (4) Paint, not intended for use by children;
  - (5) Hand sanitizers;
  - (6) Sunscreen;
  - (7) Pesticides and lawn care products; and
  - (8) Materials labeled, "Keep out of Reach of Children".
- (j) All items listed in (i) above shall be:
- (1) Stored separate from food items in a manner to prevent contamination of food items in case of leakage; and
  - (2) In cabinets which are locked or secured with child proof latches or otherwise out of reach of children.
- (k) Such materials listed in (i) above, including all items labeled "Keep out of Reach of Children," shall be used:
- (1) In accordance with the manufacturer's instructions and for their intended purpose; and

(2) Only in a manner that will not contaminate play surfaces, food or food preparations areas and will not constitute a hazard to children.

(l) The only exception to (k) above shall be the use of non-toxic materials such as shaving cream, for activities with children under direct adult supervision.

(m) Child care personnel shall ensure that the presence of pets in the program does not present a hazard to the children.

(n) When there are pets in the program, child care personnel shall require that:

(1) Dogs and cats have a current vaccination for rabies;

(2) Pets and their living quarters are not allowed on food preparation surfaces or food service surfaces;

(3) Litter boxes are not kept in food preparation or food service areas or in areas where children play;

(4) Children are not exposed to animal feces or urine either indoors or outdoors;

(5) Pets which are known to pose a health or safety risk to children are not permitted in rooms used by children and are not accessible to children;

(6) Pets that have been determined by the department to pose a health or safety risk to children shall include, but are not limited to, the following:

a. Bats;

b. Turtles;

c. Tortoises;

d. Snakes;

e. Other lizards or reptiles;

f. Hedgehogs;

g. Parakeets; and

h. Parrots and parrot-like birds; and

(7) The only exceptions to (6) above shall be for a visiting animal show, provided that:

a. Children wash their hands immediately after handling any animals; and

b. Once animals leave, all surfaces which animals came into contact with are cleaned and sanitized immediately.

(o) For all enclosed areas used by children, programs shall utilize areas which:

(1) Are ventilated by means of an unobstructed mechanical ventilation system or an open, screened window which does not pose a hazard to children;

(2) Have a safe, functioning heating system;

- (3) Are heated to maintain a temperature of not less than 65 degrees Fahrenheit, whenever children are present; and
  - (4) Include protection for children from exposed heat sources which present a hazard, including but not limited to baseboard heaters, radiators, fireplaces and woodstoves.
- (p) Portable electric space heaters shall be approved by the local fire inspector and:
- (1) Be inaccessible to children;
  - (2) Bear the safety certification of a recognized laboratory such as Underwriters Laboratory (UL) or Electro Technical Laboratory (ETL);
  - (3) Be placed at least 3 feet from curtains, papers, furniture, or any other flammable object; and
  - (4) Be installed and operated in accordance with the manufacturer's specifications.
- (q) Except for (p) above, all other portable heating devices shall be prohibited.
- (r) Smoking shall not be permitted in the building anytime for center based programs or during operating hours for family child care homes.
- (s) Notwithstanding (r) above, child care personnel shall not smoke in view of children or while personnel are responsible for the care of children.
- (t) Child care personnel who choose to smoke on their breaks shall change into fresh clothing, or remove smoke contaminated outerwear prior to returning to work with children younger than 24 months to reduce exposure to second hand smoke.
- (u) During the hours of operation, programs shall light sufficiently all child care space to allow the following:
- (1) Supervision of the children in care;
  - (2) Individuals to move about safely; and
  - (3) Children to complete projects and play safely.
- (v) Outside areas which are accessible to children shall be free of hazards including, but not limited to, the following:
- (1) Unprotected pools, wells or other bodies of water;
  - (2) Poisonous plants;
  - (3) Farm or lawn machinery or implements;
  - (4) Trash, litter, or debris;
  - (5) Animal feces;
  - (6) Broken toys;
  - (7) Sharp objects;
  - (8) Soil contaminated with toxic chemicals or substances;

- (9) Standing pools of water that may attract mosquitoes; and
- (10) Other dangerous items or substances.

(w) Except as specified in (z) below, play areas shall be enclosed by a fence if they are determined by the department to be unsafe because they are on a roof, or located adjacent to any of the following:

- (1) A street;
- (2) A road;
- (3) A river;
- (4) A pond;
- (5) A stream;
- (6) A swimming pool or other body of water;
- (7) An active railroad track or crossing;
- (8) Sharp inclines or embankments; or
- (9) Any dangerous area.

(x) Programs shall submit a written plan to the department for any water feature located in the play area and accessible to children prior to installation.

(y) Water features shall be installed and maintained so that they are free of conditions hazardous to children.

(z) A fence shall not be required for any school playground used by school-age programs operating in buildings which currently house public or private schools and which serve only school-age children.

(aa) All fencing required by the department or otherwise intended to limit children's access to a defined area shall:

- (1) Be designed to restrain young children from climbing out of, over, under or through the fence; and
- (2) Either:
  - a. Be equipped with a child proof self-latching device on any gates leading to an entrance or egress; or
  - b. Be equipped with a child proof lock if the area is determined to be hazardous to children.

(ab) For outdoor play equipment which would allow a child to fall from a height of more than 29 inches, programs shall:

- (1) Equip and maintain the ground area under and extending at least 39 inches beyond the external limits of such equipment with an energy absorptive surface; and
- (2) Utilize an energy absorptive surface, required by (1) above, that:

- a. Does not present a choking hazard;
- b. Conforms with Table 4.2.2 below or, if not listed, is approved by the department; and
- c. Is checked and raked regularly to remove any foreign matter, correct compaction and increase absorption.

Table 4.2.2 Energy Absorptive Surface

Fall Height of Equipment	Wood Chips	Bark Mulch	Engineered Wood Fibers	Fine Sand	Coarse Sand	Fine Gravel	Medium Gravel	Shredded Tires
30 inches to 5 feet	6 inch	6 inch	6 inch	6 inch	6 inch	6 inch	6 inch	6 inch
6 feet	6 inch	6 inch	6 inch	12 inch	12 inch	6 inch	12 inch	6 inch
7 feet	6 inch	9 inch	9 inch	12 inch	N/A	9 inch	N/A	6 inch
8 feet	9 inch	9 inch	12 inch	12 inch	N/A	12 inch	N/A	6 inch
9 feet	9 inch	9 inch	12 inch	12 inch	N/A	12 inch	N/A	6 inch
10 feet	9 inch	9 inch	12 inch	N/A	N/A	12 inch	N/A	6 inch
11 feet	12 inch	12 inch	12 inch	N/A	N/A	N/A	N/A	6 inch

(ac) School-age programs which operate in buildings that currently house public or private schools and serve only school-age children shall be exempt from the requirements for energy absorptive materials specified in (ab) above.

(ad) All swimming pools or wading pools on the premises of the child care program or used as part of the child care operations shall be clean, maintained and supervised in accordance with the following:

- (1) Child care personnel shall supervise children at all times when they have access to wading pools which have water in them;
- (2) Child care personnel shall not allow children inside the swimming pool area or in the swimming pool without adult supervision;
- (3) There shall be at least one staff person who is currently certified in CPR present with the children at all times during any water activity, and whenever children have access to swimming pools or other bodies of water; and
- (4) Programs shall maintain all pools in accordance with the manufacturer's or installer's printed instructions regarding cleaning, filtration and chemical treatment, and the following:
  - a. In-ground pools shall be enclosed by a fence with a gate which has a child proof, self-latching device and a lock;
  - b. Above ground pools shall be enclosed by a fence with a gate which has a child proof, self-latching device and a lock, or equipped with a lockable gate, lockable swing up stairway or other lockable barrier to prevent access to the stairs or ladders, or otherwise make the pool inaccessible to children;
  - c. A pool that is directly accessible from inside the building shall have a secure, lockable barrier which meets the requirements in a. and b. above to make the pool inaccessible to children;

d. Pool gates, fences or other barriers as required in a., b. and c. above shall be locked during all operating hours, except when the children are involved in a supervised water activity in the pool;

e. The keys, combinations or other means to open the locks required in a. through d. above shall not be accessible to children; and

f. Each swimming pool shall be provided with a ring buoy and attached rope of sufficient length to reach the center of the pool from the edge of the pool and shall not be accessible to children.

(ae) Wading pools shall:

- (1) Be emptied and cleaned after each use;
- (2) Be stored so that water does not collect in them; and
- (3) Not contain water that is more than 10 inches deep.

(af) Trash containers in which food waste, or soiled disposable cups, dishes or plastic ware are disposed shall be covered.

(ag) Programs shall empty trash containers and remove the contents from child care space when the containers are filled, or sooner, if contents create an odor or a health risk.

(ah) All foods prepared and served to children shall be:

- (1) Free from spoilage, filth or other contamination;
- (2) Stored in a clean dry location;
- (3) Protected from sources of contamination;
- (4) Stored in containers at least 6 inches above the floor;
- (5) Stored separate from non-food items which could contaminate food or be mistaken for food; and
- (6) Stored in the original containers or in labeled containers designed for food storage.

(ai) Child care personnel shall not serve to children any canned goods that are dented, bulging or rusted.

(aj) Child care personnel shall store all perishable foods which are to be served to children at temperatures of 41 degrees Fahrenheit or below in a refrigerator and at 0 degrees Fahrenheit or below in a freezer.

(ak) Refrigerators and freezers used to store foods which shall be served to children shall be equipped with non-mercury, food service approved thermometers.

(al) Child care personnel shall maintain in clean condition refrigerators and freezers used to store foods which will be served to children.

(am) Only food contact surfaces that are easily cleanable, smooth, free of cracks, breaks, open seams or similar difficult to clean imperfections and are kept clean shall be used for food preparation.

(an) Child care personnel shall wrap or cover and date any left over foods which will be served to children.

(ao) Child care personnel shall not serve any left over perishable foods which have been stored in the refrigerator for more than 2 days to children.

(ap) Child care personnel shall thaw frozen foods which will be served to children by the following methods:

- (1) In a refrigerator;
- (2) Under cold running water; or
- (3) In a microwave, if the food is to be cooked immediately after thawing.

(aq) Child care personnel shall clean all dishes and cooking utensils in a dishwasher or manually wash them in clean hot water and detergent, and rinse them in hot water.

(ar) Child care personnel shall allow manually washed dishes to air dry.

He-C 4002.15 Water Supply, Septic Systems, Bathroom Facilities and Diaper Changing Facilities.

(a) Programs shall have a safe supply of water under pressure available for drinking and household use in accordance with the following:

- (1) Hot water under pressure, which measures at least 100 degrees Fahrenheit, shall be available at all sinks used by children during operating hours;
- (2) Notwithstanding (a)(1) above, school-age programs which serve only school-age children and which are located in buildings which currently house public or private schools shall not be required to have hot water;
- (3) Hot water at taps which are accessible to children shall have an automatic control to maintain a temperature at the tap of not higher than 120 degrees Fahrenheit;
- (4) In accordance with Env-C 300, a program which cares for more than 24 children, and which has its own independent water supply that is considered to be a non-transient non-community water system, subject to regulation by the department of environmental services, shall have on file, available for review by the health officer and the department, a written document which lists the United States environmental protection agency identification number of the system, assigned by the New Hampshire department of environmental services; and
- (5) Programs which have their own independent water supply and are caring for 24 or fewer children shall maintain on file, available for review, evidence that their water supply has been tested in accordance with the following:

a. In accordance with Env-C 300, water testing shall be performed by the department of environmental services laboratory or by an independent water-testing lab certified by the department of environmental services to perform such tests in accordance with Env-C 300;

b. Water testing for bacteria and nitrates results shall be repeated at least annually and results maintained on file at the program, available for review by the health officer and the department;

c. For new applicants, documentation that not more than 90 days prior to the date the application is received by the department the water has been tested for bacteria, nitrates, nitrites and lead and determined to be at acceptable levels in accordance with the following:

1. Env-Ws 315.07 for bacteria; and
2. Env-Ws 316.01 for nitrates, nitrites and lead;

d. Documentation that on an annual basis, water has been tested for bacteria and nitrates and determined to be at acceptable levels, in accordance with Env-Ws 315.07 for bacteria and Env-Ws 316.01 for nitrates;

e. Any program whose water has been tested and has failed to meet the acceptable levels identified in this section or as required by the department of environmental services, shall:

1. Immediately contact the department to report that finding, and provide the department with a plan for how it will ensure that children will not be at risk from exposure to the unsafe water; and
2. Within 10 days of the date the program learns that they have failed a water test submit to the department an acceptable corrective action plan which details what action will be taken to correct the unsafe condition of the water and a date by which that action will be complete, unless the program requests, either verbally or in writing, and the department agrees, to extend that deadline, based on the following criteria:
  - (i) The program demonstrates that it has made a good faith effort to develop and submit the corrective action plan within the 10 day period but has been unable to do so; and
  - (ii) The department determines that the health, safety or well being of children will not be jeopardized as a result of granting the extension; and

f. When a program fails to submit a written proposed corrective action plan within 10 days of receiving the unacceptable test result under (a)(5)e. above, the department shall initiate action to suspend the license or permit in accordance with He-C 4002.09(q), until such time as laboratory results meeting those requirements are received by the department.

(b) During all hours of operation there shall be functional sewage disposal facilities designed to accommodate the license capacity of the program, in accordance with the following:

- (1) There shall be no visible sewage on the grounds;
- (2) There shall be flush toilets in working order connected to a sewage disposal system; and
- (3) Any program whose septic system is showing signs of failure shall:
  - a. Immediately make arrangements with a contractor licensed to evaluate and repair or replace septic systems to:

1. Make temporary repairs to the septic system to correct the problem so that the program may continue to operate; or

2. Make permanent repairs to the septic system or replace the septic system;

b. Immediately contact the local health officer to inform him or her of the problem;

c. Immediately contact the department to verbally report the problem, and give the department a plan for how it will immediately provide that:

1. All required bathroom units function properly; and

2. Children will not be exposed to any risks from the failed septic system;

d. Within 10 days of the date that child care personnel first notice signs indicating that the septic system is in failure, submit to the department a written plan, which includes:

1. What action has been taken to correct the failed septic system;

2. The date by which that action will be completed;

3. An explanation of how the program will ensure that the requirements in c.1. and c.2. above will continue to be met until repair or replacements are completed; and

e. Request an extension to d. above, which the department shall grant if additional time is necessary to develop a written plan and the safety and well being of the children is maintained.

(c) Programs shall provide at least one toilet and one wash basin for every 20 children of their licensed capacity.

(d) Except for potty chairs for use by older infants and toddlers, programs shall not use portable toilets, chemical toilets, and/or any other toilets which are not attached to a functional sewage disposal system.

(e) Adult-sized toilet and sinks used by children younger than 5 years of age shall be equipped with foot stools or platforms.

(f) Foot stools or platforms required in (e) above shall:

(1) Have a smooth, non-porous finish; and

(2) Be designed to prevent tipping.

(g) When child-sized toilets are used:

(1) They shall be age appropriate; and

(2) An adult-sized toilet shall be easily accessible for use by child care personnel.

(h) Programs shall provide privacy for each child toileting while allowing for age appropriate supervision of each child.

(i) Programs shall maintain bathroom facilities in accordance with the following:

- (1) Sinks, toilets, foot stools, potty chairs and adapters shall be cleaned and sanitized at least once a day and whenever visibly soiled;
- (2) Toilet paper, individual cloth or paper towels and liquid soap from a dispenser shall be available and accessible to children and staff;
- (3) Bathrooms shall have a means of outside ventilation; and
- (4) Bathroom floors and other surfaces adjacent to toilets, including but not limited to walls, shall be cleaned and sanitized at least weekly, and when visibly soiled.

(j) In addition to the requirements for toilets set forth in (c) above, programs which serve children younger than 3 years of age shall:

- (1) Provide additional child size toilets, adult toilets with adapters, or potty chairs to meet a ratio of one unit for every 10 children ages 18 months through 35 months;
- (2) Place potty chairs within easy access to a toilet and sink to allow child care personnel to proceed to the toilet to empty the potty chair and proceed to the hand washing sink after toileting without having to open doors or gates, or have physical contact with other children;
- (3) Not place potty chairs in food preparation areas or food service areas; and
- (4) Empty and sanitize each potty chair receptacle after each use.

(k) Programs serving diapered children and children who are not toilet trained shall have a designated diaper changing area which shall:

- (1) Not be located in kitchens or in food preparation or food service areas or on surfaces where food is prepared or served;
- (2) Except for the requirements in (5) below, be located adjacent to or in close proximity to a hand washing sink to allow access for hand washing without having to open doors or gates or have physical contact with other children;
- (3) Have a non-porous, washable surface, which shall be sanitized after each diaper change and used exclusively for diaper changing;
- (4) Contain a covered, hand-free receptacle, lined with a plastic bag and located within reach of the diaper changing area for disposal of soiled disposable diapers and cleansing articles;
- (5) In center based programs, in addition to the requirements in (1) through (4) above, the diaper changing area shall:
  - a. Be located in the room where the children in diapers are cared for; and
  - b. Be equipped with a sink used for adult and child hand washing before or after diaper changing or toileting;
- (6) The only exception to (5)a. above shall be for children ages 3 and older for whom privacy issues may be a concern;
- (7) Center based programs which, prior to May 31, 2000 were licensed to operate in a building which does not meet the requirements in (5) above, shall be exempt from those requirements until December 31, 2012, as long as they continue to meet the required minimum staff to child ratio for the children remaining in the classroom; and

(8) Any exception allowed under (7) above shall be valid only for the current licensee or permittee and shall no longer be valid if the program relocates to a new building, if there is any new or changed space or if there is a lapse in license.

He-C 4002.16 Child Care Personnel and Household Members Health Requirements.

(a) A written record of a health screening, which shall include, at a minimum, the child care personnel health form provided by the department or its equivalent, shall be on file at the program and available for review by the department for all child care personnel, household members and other individuals who have daily contact with the children within 60 days of the date of hire or the date the household member or individual begins having daily contact with children.

(b) The initial record of the health screening required in (a) above for newly hired child care personnel shall have been completed not more than 12 months preceding the date of hire or the date the individual began having daily contact with children.

(c) Health screenings required under (a) above shall be repeated every 3 years and a new record of a health screening shall be on file at the program no more than 3 years and 60 days after the date of the previous health screening record on file at the program.

He-C 4002.17 Child Health Requirements and Communicable Disease Issues.

(a) Documentation of immunizations, in accordance with RSA 141-C:20-a, RSA 141-C:20-b and He-P 301.14, shall be on file for each child on the first day the child is in attendance at the program.

(b) Exemptions from the immunizations required under (a) above shall be in accordance with RSA 141-C:20-c.

(c) A child health screening form provided by the department or an equivalent record of physical examination shall be completed and on file at the program and available for review by the department for each child no more than 60 calendar days after the date of admission.

(d) A written record of a health screening or physical examination update shall be on file in accordance with the following:

(1) For children younger than 6 years of age, physical examinations shall be updated annually;

(2) Updated physical examination records required under (1) above shall be on file at the program no later than one year and 60 days from the date of the previous physical examination record on file at the program;

(3) For children ages 6 and older, programs shall have on file a copy of the most recent physical examination record or physical examination update which is on file in the child's school provided the examination was completed within the past 2 years; and

(4) The updated physical examination record required under (3) above shall be on file at the program no more than 2 years and 60 days after the date of the previous physical examination record on file at the program.

(e) Programs shall not be required to obtain physical examination records for children whose parents object in writing, on the grounds that such physical examination is contrary to their religious beliefs.

(f) Child care personnel shall observe each child each day upon arrival and throughout the day for injuries and symptoms of illness which:

- (1) Impair or prohibit the child's participation in the regular child care activities; or
- (2) Require more care than child care personnel are able to provide without compromising the health and safety of the ill or injured child or the other children in their care.

(g) The symptoms of illness referenced in (f) above shall include, but not be limited to, the following:

- (1) More than one episode of vomiting in one day;
- (2) More than one episode of diarrhea in one day;
- (3) Uncontrolled coughing or wheezing;
- (4) Unusual or extreme fatigue or lethargy;
- (5) Skin lesions which have not been diagnosed or treated by a licensed health care practitioner; or
- (6) An oral temperature of 101 degrees Fahrenheit or higher or an under arm temperature of 100 degrees Fahrenheit or higher combined with any of the following:
  - a. Diarrhea;
  - b. Rash;
  - c. Ear ache;
  - d. Sore throat; or
  - e. Vomiting.

(h) When a child exhibits symptoms of illness as specified in (f) or (g) above, child care personnel shall contact the child's parents and inform them of the need to remove their child from the program.

(i) Child care personnel shall provide any child who is ill an opportunity to rest or an opportunity to do a quiet activity in a comfortable, private, supervised area until parents arrive to remove the child from the program.

(j) When any child care personnel or children in the program have symptoms of or are known to have a communicable disease, the family child care provider, center director, site director or his/her designee shall contact the bureau of disease control and prevention for instructions regarding whether the ill individual is required to be excluded from the program and to determine reporting requirements in accordance with RSA 141-C:7 and He-P 301.03(d) and (e), He-P 301.03(i) and He-P 301.05(i)(1)b.

(k) When any child care personnel or children in the program have symptoms of or are known to have a communicable disease:

- (1) Any spills of bodily fluids shall be immediately cleaned and sanitized;
- (2) Persons involved in cleaning surfaces contaminated with bodily fluids shall:

- a. Wear protective disposable gloves while cleaning, disinfecting and sanitizing the contaminated surface;
- b. Immediately wash their hands with soap and running water after discarding the gloves; and

(3) Any materials, including disposable gloves and diapers contaminated by bodily fluids, shall be immediately disposed of in a plastic bag with a secure tie or in a covered, plastic bag-lined, hands-free receptacle.

He-C 4002.18 Administration and Storage of Medication.

(a) Programs shall administer any medication, treatment, or other remedy as required under the provisions of the Americans with Disabilities Act.

(b) Administration of prescription and non-prescription medications to children shall be performed by authorized staff, a registered nurse (RN), licensed practical nurse (LPN) or licensed health care practitioner, in accordance with the child's medication order.

(c) Administration of non-prescription topical substances may be performed by any child care personnel, with written permission from the child's parents.

(d) Authorized staff shall administer only those prescription medications for which there is a prescription label or written directions provided by a licensed health care practitioner, and written permission from the parent.

(e) Medication orders shall be valid for no more than one year.

(f) Each medication order shall legibly display the following information:

- (1) The child's name;
- (2) The medication name, strength, the prescribed dose and method of administration;
- (3) The frequency of administration;
- (4) The indications for usage of all medications to be used PRN; and
- (5) The dated signature of the parent or licensed health care practitioner for orders other than the prescription label.

(g) Medication orders from a parent or licensed health care practitioner regarding any medication that is to be administered PRN shall include:

- (1) The indications and any special precautions or limitations regarding administration of the medication;
- (2) The maximum dosage allowed in a 24-hour period;
- (3) The dated signature of the parent for topical substances or non-prescription medication; and
- (4) For other than the prescription label, the dated signature of the licensed health care practitioner for prescription medication.

(h) All physician medication samples shall legibly display the information described in (f) above.

(i) In the event of a medication error in the administration of medication, the family child care provider, center director, site director, or designee shall notify the child's parents immediately.

(j) In the event of a medication error in the documentation of the administration of medication, the family child care provider, center director, or designee shall notify the child's parents by the end of the day in which the error occurred.

(k) Prior to administering prescription and non-prescription medication to any child, child care personnel shall complete and document training on medication safety and administration delivered by the department, a physician, RN, or LPN practicing under the direction of an ARNP, RN or physician.

(l) Authorized staff shall complete training in medication safety and administration every 3 years.

(m) Documentation of training in medication safety and administration shall be maintained on file at the child care program and be available for review by the department.

(n) For each child receiving medication, child care personnel shall maintain medication information on file and available for review by the department, which includes, at a minimum:

(1) A written medication order, as specified in (f) above, including special considerations for administration for each prescription medication being taken by a child;

(2) Written parental authorization to administer the medication, which includes a statement that the child has received the specified medication prior to the child care program administering the medication to the child;

(3) The name and contact information of the child's parents; and

(4) Allergies, if applicable.

(o) For any chronic condition requiring medication that is to be administered for more than 6 months, the written parental authorization specified in (n)(2) above shall be updated at least every 6 months.

(p) In addition to (n) above, child care personnel shall maintain a written record for each dose of medication, excluding topical substances, administered to each child.

(q) The written record required in (p) above shall:

(1) Be maintained on file in the program, available for review by the department;

(2) Be completed by the authorized staff who administered the medication immediately after the medication is administered; and

(3) For each administered medication, include at a minimum:

a. The name of the child;

b. The date and time the medication was taken;

c. A notation of any medication error or the reason why any medication was not taken as ordered or approved;

d. The dated signature of the authorized staff who administered the medication to the child; and

e. For administration of a PRN, documentation shall also include the reason for administration.

(r) No person other than a licensed health care practitioner shall make changes to the written order of a licensed health care practitioner regarding prescribed medication.

(s) All medication maintained by the program shall be:

- (1) Inaccessible to children;
- (2) Stored at the temperature and conditions recommended by the manufacturer or as directed on the prescription label;
- (3) Stored in a secondary container separate from food if in a refrigerator; and
- (4) Labeled with the child's name to ensure correct identification of each child's medication.

(t) Medications such as insulin, inhalers and epi pens shall be permitted to be in the possession of a school-age child as long as the following are on file at the program:

- (1) Written authorization from the prescribing health care practitioner; and
- (2) Written permission from the child's parents.

(u) The only exception to (t) above shall be when a school-age child is with children younger than 6 years of age, insulin, inhalers, and epi-pens shall not be in the school-age child's possession, but shall be immediately accessible to staff.

(v) All medications belonging to staff shall be stored separate from children's medications in a locked area, or otherwise inaccessible to children.

(w) Programs may elect to have a supply of topical substances or non-prescription medication available, including but not limited to pain relievers, sunscreen, and insect repellent that may be administered to children, provided those items are stored and administered in accordance with the requirements in this section.

(x) All prescription or non-prescription medication and topical substances shall be kept in the original containers or pharmacy packaging and properly closed after each use.

(y) Any contaminated, expired or discontinued medication, whether prescription or non-prescription, and topical substances shall be returned to the child's parents or, if belonging to the program, disposed of properly by authorized staff.

He-C 4002.19 Prevention and Management of Injuries and Emergencies.

(a) Child care personnel shall supervise every child in care at all times.

(b) The only exceptions to (a) above shall be as follows:

- (1) In all center based programs child care personnel may allow children ages 5 years and older to go inside to use the bathroom when no child care personnel are inside;
- (2) Child care personnel may allow children ages 4 years and older to leave the classroom to use a bathroom located on the same level as the classroom, provided that:

- a. Child care personnel are aware of each child leaving the classroom to use the bathroom; and
- b. The level of the building that the bathroom is located on is used exclusively by the child care program.

(3) In center based programs the center director or site director may allow school-age children 6 years of age and older who are enrolled in a full day school program to leave the premises of the program, unsupervised by child care personnel, to participate in a specific activity, provided that:

- a. Written prior authorization from each child's parent(s) is on file at the program; and
- b. The written authorization required in a. above includes the following:
  1. The child's name;
  2. The date, specific activity, specific destination, mode of transportation and time period for which the program is authorized to allow the child to leave the program's supervision; and
  3. The signature of the parent and date signed; and

(4) In family and family group child care homes caring for 5 or fewer school-age children the family child care provider may allow school-age children 6 years of age and older, who are enrolled in a full day school program, to play outside when the provider is inside or to leave the premises of the program, unsupervised by child care personnel, to participate in a specific activity provided that:

- a. Written parental permission is on file for each child; and
- b. The written permission required in a. above includes the following:
  1. The child's name;
  2. The date, specific activity, specific destination or outside area in which the child is authorized to play when no child care personnel is outside, or specific destination and mode of transportation if the child is authorized to leave the premises, and time period for which the program is authorized to allow the child to play outside without an adult, or leave the premises; and
  3. The signature of the parent and date signed.

(c) Except as specified in (b) above and (d)(1) below, child care personnel shall not leave any child:

- (1) Inside the building when no child care personnel are inside; or
- (2) Outside of the building when no child care personnel are outside the building.

(d) When a program elects to use electronic monitors to supervise children, it shall do so only under the following conditions:

- (1) In family and family group child care homes child care personnel may use electronic monitors to monitor sleeping children provided that:

- a. The family child care provider shall obtain, from the parents of each child who is being monitored electronically, a signed, dated, written authorization stating that they are aware of and agreeable to the use of an electronic monitor as a means of supervising their child when he or she is asleep;
- b. Sounds from the monitor shall be easily heard by the family child care provider or family child care worker;
- c. Child care personnel responsible for supervising the sleeping children shall be able to attend to the needs of all children in their care;
- d. Every 10 minutes the family child care provider or family child care worker shall observe the sleeping infants and toddlers, in person, to ensure that each child is safe and comfortable;
- e. Video monitors do not replace a physical check by child care personnel; and
- f. Infants in cribs or playpens do not have the developmental ability to climb out of the crib or playpen if she or he awakens; and

(2) In center based programs, child care personnel may use electronic monitors to monitor only infants who are sleeping in a crib or playpen, provided that:

- a. Child care personnel shall obtain from the parents of each infant who is being monitored electronically, a signed, dated, written authorization stating that they are aware of and agreeable to the use of an electronic monitor as a means of supervising their infant when he or she is asleep;
- b. Child care personnel responsible for supervising the sleeping infant shall be in a room that adjoins the room in which the infants are sleeping;
- c. Sounds from the monitor shall be easily heard by the child care personnel responsible for supervising the sleeping infants;
- d. Child care personnel responsible for supervising the sleeping infants shall be able to attend to the needs of all children in their care;
- e. Every 10 minutes child care personnel shall observe the sleeping children, in person, to ensure that each child is safe and comfortable;
- f. Video monitors do not replace a physical check by child care personnel; and
- g. The infant does not have the developmental ability to climb out of the crib if she or he awakens.

(e) Programs shall be equipped with a telephone that is operable and accessible to all child care personnel during all operating hours for incoming and outgoing calls.

(f) Programs shall inform the department if there is a change in the documented phone number within one business day.

(g) Any occurrence of a missing child shall be reported to emergency police services, or 911, as soon as child care personnel have determined that the child cannot be promptly located on the premises of the child care program.

(h) The program shall report any occurrence of a missing child or a child who has been put at risk due to lack of supervision to the department within 24 hours.

(i) During all operating hours at least one staff person, per every 20 children, who is trained and currently certified in cardiopulmonary resuscitation (CPR) and first aid by the American Red Cross, American Heart Association, Emergency Care and Safety Institute, National Safety Council or other nationally recognized organization shall be present in the program.

(j) CPR and first aid training as specified in (i) above shall not be received via correspondence or on-line.

(k) CPR training required under (i) above shall include instruction in CPR and foreign body airway obstruction management for infants and children.

(l) In addition to the requirements specified in (i) above, at least one staff person who is currently certified in CPR and first aid and who has completed current water safety training shall be with any children participating in water activities on or off the premises of the program.

(m) Programs shall maintain on file, available for review by the department, copies of current CPR and first aid certificates and licenses and water safety training certificates.

(n) First aid treatment shall be provided to any child who is injured, in accordance with the following:

(1) When the injury is a minor scrape or bruise, first aid treatment, including but not limited to cleaning or applying a cold cloth or band aid shall be provided by any child care personnel; and

(2) When the injury is more than a minor scrape or bruise, first aid treatment shall be provided by a staff member who is currently certified in first aid.

(o) Programs shall have on the premises and on all field trips a selection of non-expired first aid supplies adequate to meet the needs of the children enrolled in the program and each child participating in any field trip, as determined by the center director, site director or family child care provider.

(p) Programs shall store the first aid supplies required under (o) above in a portable container, in a location that is easily accessible by staff and out of the reach of children.

(q) Programs shall develop an emergency response plan which shall:

(1) Be based on the incident command system and coordinated with the emergency response agencies in the community in which the agency is located;

(2) Contain guidelines for personnel responsible for critical tasks, including, but not limited to the role of center incident commander, child care, medical treatment, and child-parent reunification; and

(3) Include response actions for natural, human-caused or technological incidences including, but not limited to:

a. Evacuation, both within building and off-site;

b. Lockout;

c. Drop and cover;

- d. Lockdown;
- e. Reverse evacuation; and
- f. Shelter-in-place.

(r) In addition to (q) above, programs shall post a written plan near the telephone, detailing procedures for managing injuries and emergencies.

(s) The center director, site director or family child care provider shall instruct all child care personnel about the existence and location of the plans required under (q) and (r) above.

(t) The emergency plan required in (r) above shall include the following:

- (1) The location of first aid supplies;
- (2) The location of child care registration and emergency information forms;
- (3) The name, address and telephone number of the hospital to which children will be taken in case of acute emergency when the parents cannot be contacted or delay appears dangerous;
- (4) Instructions to dial 911 to access emergency police, fire department, ambulance, or rescue squad services and the New Hampshire poison center; and
- (5) The names and telephone numbers of emergency substitute staff.

(u) If a child dies while under the care of a program, the family child care provider, center director or site director shall:

- (1) Notify emergency personnel and the child's parents immediately;
- (2) Notify the department of the death within 24 hours;
- (3) Provide developmentally appropriate information for children and parents regarding the death of the child; and
- (4) Within 72 hours provide to the department a written report which details the circumstances which led up to the death.

(v) In addition to the reporting requirements under (u) above, the program shall, upon request, provide the department with any other available information regarding the death.

(w) If any child receives an injury or any incident occurs which requires first aid treatment, medical treatment or medical consultation, child care personnel shall inform the child's parents of the injury or illness on the date the child is injured or becomes ill.

(x) If CPR is performed on a child while in the care of a program, the family child care provider, center director, site director or designee shall:

- (1) Notify emergency personnel and the child's parents immediately; and
- (2) Notify the department within 24 hours.

(y) When an injury is more than a minor scrape or bruise, child care personnel shall:

- (1) Notify the parents of the injured child as soon as possible after the injury occurs; and

- (2) On the date the injury occurs, complete a written record of the injury and all first aid provided.
- (z) The injury record required under (y)(2) above shall be:
- (1) Reviewed and signed by the family child care provider, center director, site director or his/her designee;
  - (2) Provided to the parents of the child who was injured and the department; and
  - (3) Maintained in a separate file at the program, and available for review by the department for 3 years.
- (aa) All records of injury required under (y)(2) above shall include at least the following:
- (1) The name and date of birth of the child;
  - (2) The date and time of the injury;
  - (3) A description of where and how the injury occurred including what the child was doing at the time he or she was injured;
  - (4) Identification of the injury including type of injury and body part injured, such as, abrasion to left knee or bruise to left side of face;
  - (5) A description of first aid provided and any other treatment required including the identity of the individual or medical facility which provided the treatment;
  - (6) The names and dated signatures of child care personnel and others who witnessed the injury;
  - (7) The name and dated signature of the staff person who was responsible for supervising the child when the injury occurred;
  - (8) The time and method by which the child's parent(s) were notified;
  - (9) The dated signature of the parent(s) or a notation by staff that parents refused to sign; and
  - (10) The dated signature of the family child care provider, center director, site director or his/her designee, indicating that he or she has reviewed the report.
- (ab) Programs which operate year round shall conduct fire drills once a month during at least 9 months of each year, at least one of which shall be held during the winter months.
- (ac) Programs which operate less than 12 months per year shall allow no more than 60 days to lapse between fire drills, during operating months.
- (ad) Programs shall conduct fire drills at varying times during operating hours, including night time hours, if applicable, to ensure that each child attending the program experiences fire drills.
- (ae) Programs shall activate the actual fire alarm system for the building for at least 2 of the required monthly fire drills required each year and use a fire alarm or smoke detector to signal all other fire drills.
- (af) All children and child care personnel shall evacuate the building during each fire drill.

(ag) Child care personnel shall check daily attendance records to ensure that all children and staff are accounted for after the building is evacuated.

(ah) Programs shall complete a written record of fire drills which shall:

- (1) Be maintained on file at the program for one year; and
- (2) Be available for review by the fire inspector and the department.

(ai) The written record of fire drills required under (ab) and (ac) above shall include at least the following:

- (1) The date and time the drill was conducted and if the actual fire alarm system was used;
- (2) Exits used;
- (3) Number of children evacuated and total number of people in the building at the time of the drill;
- (4) Amount of time taken to evacuate the building; and
- (5) Name of the person conducting drill.

(aj) The center director, site director or family child care provider or his/her designee shall conduct a fire drill in the presence of a representative of the department or the local fire department upon request by either of those entities.

He-C 4002.20 Child Registration and Emergency Information.

(a) Child care personnel shall ensure that for each child, upon the child's first day in attendance in the program, there is a completed child registration and emergency information form or equivalent form on file which contains the following:

- (1) Full legal name of the child;
- (2) Child's date of birth;
- (3) Child's physical address and mailing address;
- (4) Child's home telephone number;
- (5) Date of enrollment in the program;
- (6) The name, physical address and mailing address of the parent(s) responsible for the child, if different from the child's address;
- (7) Work telephone numbers for the child's parents and instructions as to how the parent(s) can be contacted during the hours that the child is at the program;
- (8) Names and telephone numbers of at least one person who will assume responsibility for the child if for any reason the parent(s) cannot be reached immediately in an emergency;
- (9) Any chronic conditions, allergies or medications which could be important in case of sudden illness or injury;
- (10) Written parental permission for first aid treatment;

- (11) Written parental permission for emergency medical transportation and treatment;
- (12) The name and telephone number of the child's physician or health care provider;
- (13) Names and telephone numbers of any person(s) other than parents who are authorized to remove the child from the program; and
- (14) The signature of the parent(s) and date signed.

(b) The program shall require each child's parent(s) to review, sign and date, on an annual basis, the child registration and emergency information form to ensure that accurate, current information is on file.

(c) The program shall ensure that each child's registration and emergency information form contains the following statements:

(1) "The licensing authority for this program is the bureau of licensing and certification, child care licensing unit. Child care programs are required to post a copy of the statement of findings and corrective action plan for the most recent visit in a location which is accessible to parents, and must maintain copies of the statement of findings and corrective action plan for the preceding visit and make them available for parents to review upon request. Statements of findings and corrective action plans are also available on-line at <http://childcaresearch.dhhs.nh.gov> or by calling the bureau at 603-271-9025 or 1-800-852-3345, extension 9025"; and

(2) "During licensing, monitoring, and complaint investigation visits to licensed programs the department shall speak with children regarding the care they receive at the program if in the judgment of the licensing specialist the children's response would be valuable in determining compliance with licensing rules. Licensing staff are experienced in working with children and trained to interview in a manner that is respectful and non-leading. However, if you do not want your child interviewed, or if you wish to be informed prior to your child being interviewed you must give the family child care provider, center director, site director or designee, and update annually, a signed dated statement indicating your preference."

(d) At the start of any visit by the department, the center director, site director, family child care provider or his/her designee shall provide the department with the statement described in (c)(2) above for each child whose parents have completed such statement.

He-C 4002.21 Child Care Space.

(a) There shall be a minimum of 40 square feet of floor space per child, measured wall-to-wall, inside the rooms used by children.

(b) There shall be a minimum of 35 square feet of floor space per child for programs licensed before the effective date of these rules.

(c) Programs referenced in (b) above shall be required to comply with the requirements in (a) above if:

- (1) The licensee or permittee lets the license lapse due to late submission of renewal application materials; or
- (2) The program relocates to new space or does major renovations to their current child care space, such as adding or removing walls or otherwise changing, reducing or expanding space.

(d) The department shall not consider hallways, lockers, wash and toilet rooms, unheated rooms, cooking areas of the kitchen, closets or offices as child care space.

(e) Child care space shall not be overcrowded by adult-sized furniture or other items for use only by adults or stored items.

(f) Center based programs licensed before the effective date of these rules which, in addition to classroom space, have common space which is used in accordance with (h) below, and which would otherwise need to reduce the number of children to a lower number than they were authorized by license to care for, before the effective date of these rules, in order to comply with (b) above, may have up to 2 children over the classroom capacity, regularly assigned to each classroom, as determined in accordance with (b) above, except as noted in (i) below.

(g) Programs that were licensed on or before May 30, 1998 which have common space that is used in accordance with (h) below and which would otherwise need to reduce the number of children to a lower number than they were authorized by license to care for before the effective date of these rules in order to comply with (b) above, may have up to 4 children regularly assigned to each classroom over the classroom capacity as determined in accordance with (b) above except as noted in (i) below.

(h) In center based programs the department shall consider common areas including but not limited to gymnasiums, libraries, cafeterias and gross motor activity areas not used as classrooms but used at least 25 percent of the operating hours by different groups of children as child care space for purposes of determining license capacity, as limited by (f) and (g) above.

(i) Any program allowed to have any number of children over the room capacity in accordance with (f) or (g) above shall no longer be permitted to be over the room capacity, and shall be required to reduce the number of enrolled children to comply with (a) above if:

(1) The licensee or permittee lets the license lapse due to late submission of renewal application materials; or

(2) The program relocates to new space or does major renovations to their current child care space, such as removing walls or otherwise adding or expanding space.

(j) Prior to allowing any child to be cared for in any basement, or on second or higher floors, programs shall:

(1) Obtain written approval from the local fire authority, which specifically grants approval for children to be cared for in basements or on second or higher floors, including any restrictions on the ages of children; and

(2) Submit the approval in (1) above to the department for review and approval.

(k) Prior to being used for child care, all indoor and outdoor child care space shall be:

(1) Inspected and approved by the local fire inspector, in accordance with RSA 170-E:6 and He-C 4002.02(d)(3);

(2) Inspected and approved by the local health officer, in accordance with RSA 170-E:6 and He-C 4002.02(d)(2);

(3) Inspected by the department in accordance with RSA 170-E:8, III, and RSA 170-E:9, II; and

(4) Approved by the department based upon compliance with the requirements under He-C 4002.14, He-C 4002.15 and this section.

(l) Programs shall report any changes to indoor or outdoor child care space, or addition of new space, to the department for approval in accordance with the following:

(1) Prior to the change; or

(2) Within 24 hours of the change if, due to an emergency, approved child care space cannot be used due to reasons including, but not limited to, damages which make an area unsafe for children.

(m) Programs shall be equipped with an outside play area which:

(1) Directly adjoins the indoor space of the facility; and

(2) Contains a minimum of 50 square feet of outdoor play area for each child based upon the program's license capacity.

(n) The only exceptions to (m) above shall be as follows:

(1) Programs which cannot comply with (m)(1) above may utilize department approved outdoor play space which is located within  $\frac{1}{8}$  of a mile from the program, provided the program submits a written plan to the department showing that children can safely travel to and from the play area and the program;

(2) Center based programs which cannot comply with (m)(2) above may operate with 50 square feet of outdoor play area per child for one third of the program's license capacity, provided that no more than  $\frac{1}{3}$  of the license capacity is in the play area at one time; and

(3) The department shall not require outdoor play space in programs which operate 5 or fewer hours per day which are licensed solely as preschool programs, if the curriculum includes at least 20 minutes of gross motor activities including, but not limited to:

a. Active games;

b. Walking;

c. Running;

d. Jumping;

e. Marching;

f. Climbing;

g. Exercises; and

h. Other activities which allow children to use and develop their strength and coordination; and

(4) A written plan for and documentation of the gross motor curriculum required in (n)(3) above shall be available for review by the department.

He-C 4002.22 Learning Materials, Toys and Equipment.

(a) Programs shall provide toys, equipment and learning materials that are:

- (1) Age and developmentally appropriate;
- (2) Of sufficient quantity and variety to meet the needs of the children cared for in the program;
- (3) Available and accessible to children;
- (4) Safe and in good repair;
- (5) Free of lead paint or other poisonous material; and
- (6) Cleaned on a regular basis.

(b) In addition to the regular cleaning required in (a)(6) above, toys which are routinely mouthed by children, including but not limited to infant and toddler toys, shall be cleaned and sanitized after each use by a child, and at the end of each day.

(c) Baby walkers with wheels shall be prohibited in all programs.

(d) Toy boxes accessible to children used to store any child care materials and equipment shall have a safety lid support or not have a lid.

(e) Child care personnel shall not allow children younger than 3 years of age to have access to toys, toy parts and other materials which pose a choking risk or are small enough to be swallowed, such as, but not limited to, coins, balloons or exposed foam padding.

(f) The only exception to (e) above shall be that children younger than 3 years may use materials with small parts during a teacher-directed activity and under direct supervision by child care personnel.

(g) Child care personnel shall closely supervise children age 3 years or older who, due to their development level or medical condition are likely to put objects in their mouths, when they have access to the items noted in (e) above.

(h) Children may have access to toys with strings or cords in accordance with the following:

- (1) For infants, strings and cords may be up to 6 inches in length;
- (2) For toddlers and children age 3 years through 5 years, strings and cords may be up to 12 inches in length, or any length for an adult-directed activity; and
- (3) For children over 5 years of age, strings and cords may be any length.

(i) The only exception to (h)(2) above is children 3 years of age and older may have use of housekeeping or dramatic play items, including, but not limited to aprons and purses with ties or straps greater than 12 inches, provided these items are not accessible to children younger than 3 years of age.

(j) There shall be a sufficient number of sturdy tables and chairs to ensure each child's comfort for meals, snacks and for work or play at tables.

(k) There shall be adequate space for each child's possessions, such as individual cubbies, lockers, baskets or bins.

(l) Children's toothbrushes shall be stored separately to air dry and be labeled with each child's name.

(m) The fall zone under and around all indoor swings and climbing equipment, including slides, which would allow a fall from a height of more than 29 inches shall extend at least 39 inches and be covered with mats designed for gymnastics.

(n) Full day programs shall provide a sleeping bag, crib, cot, bed or mat for each child requiring a rest.

(o) Cribs, cots, beds, mats, or playpens used for sleeping shall be arranged in a manner that ensures that:

(1) Passageways and exit routes are not blocked, to allow for emergency evacuation and access to each child by staff;

(2) They are spaced at least 2 feet apart while in use or separated by a solid divider on one side only, allowing for adequate supervision by staff and air circulation; and

(3) Children are placed head to toe.

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

(q) All bedding shall be cleaned at least once a week and more frequently if soiled.

(r) There shall be an individual crib or play pen for each child 12 months of age and younger, except for siblings for whom co-sleeping is part of their family culture and written authorization is given by the children's parents and the child's primary health care provider.

(s) Cribs and playpens required under (r) above shall:

(1) Not be stacked;

(2) Be free of cracked or peeling paint, splinters, and rough edges;

(3) Have no more than  $2\frac{3}{8}$  inches between slats;

(4) Have no missing, loose, broken, or improperly installed parts, screws, brackets, baseboards or other loose hardware or damaged parts on the crib or mattress supports;

(5) Not have corner posts which extend more than  $1/16$  of an inch above the end panels;

(6) Not have cutouts in the head board or foot board;

(7) Not have holes or tears in the mesh walls or in the material that connects the walls to the bottom of the crib or play pen;

(8) Not have pillows, quilts, comforters, sleep positioners, or soft any soft items or toys; and

(9) Have mattresses which:

a. Are in good repair, free of rips or tears; and

b. Fit the crib or playpen so that the space between the mattress and crib or playpen is not more than two adult fingers wide and does not create a suffocation hazard.

(a) Programs shall consult with the parents of each child and observe children on an ongoing basis to determine each child's resting or napping needs.

(b) Programs shall provide children who are in attendance for more than 5 hours with an opportunity for at least one hour of rest, relaxation or sleep, depending on the needs of each child.

(c) Programs shall accommodate the individual sleeping patterns of infants and children who are unable to adjust to a scheduled nap or rest time.

(d) Programs shall allow children who are able to adjust to a scheduled nap or rest time to fall asleep and awaken at their own pace within a block of time set aside as nap or rest time.

(e) Programs shall provide children who do not fall asleep after 30 minutes with an opportunity to do a quiet activity.

(f) Child care personnel shall not require that children who are awake stay on mats, sleeping bags, cots, or beds for more than 60 minutes.

(g) To reduce the risk of Sudden Infant Death Syndrome (SIDS), infants shall be placed on their backs to sleep, unless there are written medical orders requiring alternate positioning.

(h) Child care personnel shall check on infants in cribs, in person, at least every 10 minutes.

(i) For children 24 months through 5 years, during naptime, a center based program may have one less staff person in a classroom than required to meet ratios in accordance with He-C 4002.33 through He-C 4002.36 provided that:

(1) The total number of child care personnel required to maintain all ratios are on the premises of the program;

(2) The ratio of awake children to staff in the classroom shall be no more than half the number of children as stated in He-C 4002.33 through He-C 4002.36;

(3) Rooms in which staff is reduced shall be equipped with a two-way communication system, such as an intercom, to allow for immediate contact for assistance and response; and

(4) There is a safety plan on file for review by the department, child care personnel and parents which includes plans or procedures for the following:

a. Evacuation;

b. Supervision;

c. Environment;

d. Schedule;

e. Naptime policy; and

f. Staff training and support.

(j) Ratios for children under 24 months shall always be maintained, in accordance with He-C 4002.33 and 4002.34, except as specified in (k) below.

(k) Ratios for children under 24 months in mixed age groups with children 24 months and older shall be based on the average age of the children in each group during naptime, in accordance with (i) above.

(l) Programs shall base the staff to child ratio on the average age of the children in each group when there are mixed age groups in the same room in accordance with (i) above.

(m) Programs that choose to reduce staff in accordance with (i) through (l) above shall notify parents in writing of the reduction of staff.

He-C 4002.24 Program Requirements.

(a) Parents shall be allowed unannounced access to their children at all times, including but not limited to observation of their children interacting with the children in his/her assigned classroom and with the child care personnel responsible for his/her care.

(b) The only exceptions to (a) above are if there is a court order or other legal documentation limiting parental access.

(c) During the operating hours of the program, parents shall have an opportunity to communicate with the child care personnel who care for their child.

(d) Programs shall have available for review by the department and parents a written schedule or plan which details the daily activities offered to children.

(e) All programs shall:

(1) Provide children of all ages, on a regular basis, developmentally appropriate opportunities for individual and group activities for each child including time for meals, snacks, sleep and indoor and outdoor activities;

(2) Provide prompt attention to the individual physical needs of each child, such as diapering, toileting, feeding, sleeping, washing and first aid;

(3) Provide each child with opportunities to safely practice the wide range of movements appropriate to their developmental level;

(4) Protect younger or less mobile children from accident or injury which could be caused by older or more physically active children; and

(5) Provide each child with developmentally appropriate opportunities and experiences that support:

a. Cognitive development;

b. Health and safety;

c. Communication and literacy;

d. Creative expression and aesthetic awareness;

e. Approaches to learning;

f. Social and emotional development; and

g. Physical development.

(f) In addition to the requirements in (e) above, center based programs caring for children younger than 3 years of age shall:

- (1) Not combine children younger than 24 months in a mixed age group which includes children older than 47 months, except:
  - a. For time limited, specific activities;
  - b. When there are 17 or fewer children present in the program, including a maximum of 12 preschool children, and 4 or fewer of the 17 children are younger than 3 years of age; or
  - c. With a department approved plan for multi-age classrooms;
- (2) Not leave infants or toddlers unattended in seating, carrying or holding devices placed on counter tops, tables or other elevated surfaces; and
- (3) Provide stimulating activities for infants or toddlers, who are awake in infant seats, swings, high chairs, cribs, play pens or other similar equipment, and shall not keep them confined in such equipment for longer than 30 minutes.

(g) Programs that are authorized by license or permit to care for children as young as 6 weeks of age may care for a child younger than 6 weeks of age for a maximum of 12 hours per week per child with prior approval from the department and their local fire officer.

(h) In a family or family group child care home, which is licensed to care for children 6 weeks of age, the restriction specified in (g) above shall not apply to the family child care provider's own biological or adopted infant younger than 6 weeks of age or an infant younger than 6 weeks of age who resides in the provider's home.

He-C 4002.25 Behavior Guidance and Treatment of Children.

(a) Child care personnel shall nurture and encourage each child in care and provide each child with a variety of developmentally appropriate learning and social experiences.

(b) Child care personnel shall establish and maintain a learning environment which provides for the emotional well-being of each child.

(c) Child care personnel shall guide children's behavior using the following techniques:

- (1) Providing positive guidance;
- (2) Establishing developmentally appropriate rules or limits for acceptable behavior which are fair, consistently applied, realistic, and designed to promote cooperation and respect;
- (3) Providing children with reasons for limits and rules;
- (4) Giving positively worded directions;
- (5) Acting as a role model to demonstrate desired behavior and problem-solving skills and then redirecting children to acceptable behavior;
- (6) Arranging equipment, materials, activities and schedules in a way that promotes desirable behavior; and

(7) Implementing safe, logical and natural consequences related to the misbehavior and enforcing those consequences as soon as possible after the misbehavior has occurred.

(d) Separation, or time out, shall only be used as a method to enable a child to regain control of his or herself, not as a punitive disciplinary technique, and the following requirements shall apply:

(1) Separation shall be brief and appropriate to the child's developmental level and circumstances;

(2) When a child is separated from the group, he or she shall be:

a. Able to see and hear the other children; and

b. Within hearing and vision of child care personnel; and

(3) The only exception to (2) above shall be when child care personnel remove a child from the classroom to a quieter area which is visible by other child care personnel, to provide one-on-one attention.

(e) Child care personnel and household members, if the program is to be located in a home, shall not:

(1) Abuse or neglect children;

(2) Use corporal punishment;

(3) Attempt to control children's behavior by actions which are humiliating, threatening, shaming, frightening or otherwise damaging to children, including but not limited to:

a. Requiring children to stand or sit facing walls or corners;

b. Verbally shaming children;

c. Belittling children;

d. Ridiculing children;

e. Yelling at children;

f. Name calling;

g. Making verbal threats to children;

h. Confining infants or toddlers in high chairs or other seating devices or equipment, which restricts their movement, as a disciplinary technique; and

i. Placing or confining children in equipment that is not appropriate for their age, including but not limited to cribs, playpens or highchairs;

(4) Withhold food from children or forcibly feed children;

(5) Discipline children for not eating;

(6) Shame, humiliate or discipline any child for toileting accidents or lapses in toileting habits;

(7) Use isolation as a form of discipline;

- (8) Prohibit children from using the toilet as a form of discipline;
- (9) As a means of discipline, require children to:
  - a. Sleep or rest; or
  - b. Go to their cot, mat, crib, bed or playpen or other sleeping or rest facilities; and
- (10) Discipline a child for not sleeping at rest or nap time.

(f) The applicant, licensee, permittee, center director or site director and all other child care personnel shall take prompt action to protect children from abuse, neglect, corporal punishment, or other mistreatment by any individual.

He-C 4002.26 Hand Washing.

(a) Child care personnel and children shall wash their hands with liquid soap and warm running water as needed and:

- (1) After each diaper change or toileting;
- (2) After handling any bodily fluid;
- (3) After cleaning up or handling the garbage;
- (4) After playing outdoors;
- (5) Before and after administering medication;
- (6) Before and after eating; and
- (7) Before and during any food preparation or service as often as necessary to remove soil and contamination and prevent cross contamination when changing tasks or from raw to ready to eat foods.

(b) Child care personnel shall:

- (1) Teach children the importance of hand washing with liquid soap and warm running water; and
- (2) Instruct, encourage, remind or assist children throughout each day to wash their hands as necessary to comply with (a) above.

(c) Child care personnel shall wash the hands of infants as necessary to comply with (a) above.

(d) Sinks that are used for food preparation or clean up shall not be used for hand washing after toileting or diaper changing.

He-C 4002.27 Nutrition, Food Service and Food Safety.

(a) Programs shall provide individual eating utensils for each meal and snack.

(b) Child care personnel shall serve food items, including snack foods, on a plate or napkin, except that foods for infants can be served on a chair tray or table which has been cleaned and sanitized before being used as an eating surface.

(c) Child care personnel shall sanitize:

- (1) All tables used for meals and or snacks, before and after meals or snacks are served; and
- (2) All re-usable eating and drinking utensils after each use.

(d) Children shall have access to drinking water and be encouraged to drink water throughout the day.

(e) Child care personnel shall thoroughly wash all fruit and vegetables before cutting or serving those foods to children.

(f) Child care personnel shall follow individual feeding schedules provided by the parent of each child who has not reached a developmental level which enables them to eat on schedule.

(g) Child care personnel shall comply with dietary restrictions as requested in writing by the parents of each child, due to food allergies, religious or philosophical beliefs.

(h) Notwithstanding (g) above, the center director, site director or family child care provider may require the parents of any child to obtain and provide to the program a written note from the child's licensed health care practitioner authorizing the dietary restrictions requested by a parent, when the restrictions are so severe that the center director, site director or family child care provider believes that complying with them would jeopardize the health of a child.

(i) Child care personnel shall cut food into small bite-sized pieces which are appropriate for each child's chewing and swallowing capability.

(j) Child care personnel shall not serve foods which can cause a choking hazard to children younger than 3 years of age or to children who have been identified as having chewing and swallowing difficulties, including, but not limited to:

- (1) Spoonfuls of peanut butter;
- (2) Whole or rounds of hot dogs;
- (3) Whole grapes;
- (4) Hard candy;
- (5) Raw carrot rounds, peas or celery;
- (6) Chips or hard pretzels;
- (7) Marshmallows;
- (8) Nuts or seeds;
- (9) Popcorn; and
- (10) Other foods that may pose a choking hazard.

(k) Child care personnel shall serve low fat or non-fat milk to children younger than 2 years of age only when authorized to do so in writing by the child's parent and the child's licensed health care practitioner.

(l) Programs that provide formula or cereal for infants shall provide iron fortified formula or cereal unless restricted in writing by a child's parent and the child's licensed health care practitioner.

(m) Child care personnel shall not allow children to walk around with a bottle or sippy cup.

(n) Milk, expressed breast milk and prepared formula shall be:

(1) Stored in covered containers, labeled with the child's name and dated;

(2) Used immediately or stored in the refrigerator no longer than 48 hours;

(3) Discarded if not fed to an infant and left un-refrigerated for an hour or more; and

(4) Discarded after each feeding, if there is any left over in the bottle.

(o) Frozen expressed breast milk shall be dated and stored in a freezer at 0 degrees Fahrenheit and discarded after 3 months.

(p) Infants who are unable to sit in feeding chairs shall be held while being fed.

(q) Child care personnel shall not prop bottles.

(r) Children shall not be fed in a crib, or while on rest cots, beds, mats or sleeping bags.

(s) New or solid foods that have not been previously served to individual infants shall not be introduced to individual infants without the consent of their parent(s), and as appropriate based upon their chewing and swallowing capability.

(t) Programs that provide meals to children ages one year and older shall have weekly written menus for all meals served to children which are available for review by the department and parents upon request.

(u) The written menus required in (t) above shall demonstrate compliance with the meal requirements in (x) below.

(v) Child care personnel shall not allow more than 3 hours to elapse between meals and snacks offered to the children.

(w) Child care personnel shall provide nutritious meals or snacks to any child in attendance whose parents are responsible for providing those foods, but have forgotten or failed to provide those meals and snacks.

(x) Notwithstanding (s) above, programs which provide food shall ensure that meals and snacks meet the daily meal patterns as set forth in Tables 4.2.3 and 4.2.4 below.

Table 4.2.3 Meal Patterns for Children Ages 3 Months Through 11 Months

MEAL COMPONENTS	SERVINGS PER AGE GROUP		
	0 to 3 Months	4 to 7 Months	8 to 11 Months
<b>BREAKFAST</b>			
Breast milk or iron-fortified formula	4-6 oz	4-8 oz	6-8 oz
Iron-fortified breakfast cereal*		0-3 tablespoons dry (optional; if introduced, do so at 6 months or later)	2-4 tablespoons dry
Strained fruit or vegetable			1-4 tablespoons
<b>SNACK (SUPPLEMENT)</b>			
Breast milk or iron-fortified formula	4-6 oz	4-6 oz	2-4 oz
100% fruit juice			2 oz, if breast milk or formula not given
Toast; or Hard crackers/teething biscuits (optional)			0-1/2 slice 2
<b>LUNCH OR SUPPER</b>			
Iron-fortified formula or whole milk**	4-6 oz	4-8 oz	6-8 oz
Iron-fortified cereal		0-3 tablespoons dry	2-4 tablespoons dry*
Strained fruit and/or strained vegetable		0-3 tablespoons (optional; if introduced, do so as close to 6 months as possible)	1-4 tablespoons
<p>* The following may be given in addition to or instead of cereal:  1-4 tablespoons meat, poultry, legumes (cooked, dried peas/dried beans); or  1/2 to 1 1/2 oz cheese or 1-3 oz cottage cheese or 1 egg yolk (introduce egg yolk @ 11 months).  **Low fat and non-fat milk shall be served to children younger than 2 years of age only with written authorization from the child's parent and the child's licensed health care practitioner.</p>			

Table 4.2.4 Meal Patterns for Children Ages One Year to 12 Years

MEAL COMPONENTS	SERVINGS PER AGE GROUP		
	Ages 1 to 2	Ages 3 to 5	Ages 6 to 12
<b>BREAKFAST</b>			
Milk or milk alternate*	1 serving	1 1/2 servings	2 servings
Fruit or vegetable or 100% fruit or vegetable juice	1/4 cup	1/2 cup	1/2 cup
Bread; or Cereal, cold dry; or Cereal, hot cooked; or Bread alternate	1/2 slice 1/4 cup or 1/3 oz 1/4 cup 1 serving	1/2 slice 1/3 cup or 1/2 oz 1/4 cup 1 serving	1 slice 3/4 cup or 1 oz 1/2 cup 2 servings
<b>SNACK (select 2 out of 4 components)</b>			
Milk or milk alternate*	1 serving	1 serving	2 servings
Fruit or vegetable or 100% fruit or	1/2 cup	1/2 cup	3/4 cup

vegetable juice			
Meat or meat alternate	1 serving	1 serving	1 serving
Bread; or Cereal, cold dry; or Cereal, hot cooked; or Bread alternate	1/2 slice 1/4 cup or 1/3 oz 1/4 cup 1 serving	1/2 slice 1/3 cup or 1/2 oz 1/4 cup 1 serving	1 slice 3/4 cup or 1 oz 1/2 cup 2 servings
<b>LUNCH OR SUPPER</b>			
Milk or milk alternate*	1 serving	1 1/2 servings	2 servings
Meat or meat alternate	2 servings	3 servings	4 servings
Fruit or vegetable or 100% fruit or vegetable juice	1/4 cup	1/2 cup	3/4 cup
Bread; or Bread alternate	1/2 slice 1 serving	1/2 slice 1 serving	1 slice 2 servings
* Low fat and non-fat milk shall be served to children younger than 2 years of age only with written authorization from the child's parent and from the child's licensed health care practitioner.			

(y) Programs that provide meals and snacks may substitute fruit juice or water for milk at lunch or supper, provided the required serving of milk is provided to the child at some other time during the day.

He-C 4002.28 Diaper Changing and Toileting.

- (a) Programs shall use disposable diapers or diapers from a commercial diaper service.
- (b) Programs shall use home laundered cloth diapers only when disposable diapers are restricted in writing by a child's parent and the child's licensed health care practitioner, and a commercial diaper service is not available.
- (c) During each diaper change, soiled areas of children in diapers shall be washed and dried with disposable, single use cleansing articles such as baby wipes or soft paper towels that have been moistened with water.
- (d) At least every 2 hours, child care personnel shall check children in diapers and change diapers and clothing if they are soiled or wet.
- (e) Children shall not be left unattended on a diaper changing surface.
- (f) For each child there shall be a supply of clean diapers, clothing and bedding for use as needed.
- (g) Soiled disposable diapers and cleansing articles shall immediately be placed in a plastic bag lined, hands-free receptacle.
- (h) The plastic bag containing the soiled diapers and cleansing articles shall be removed daily, securely closed, and placed outside in covered garbage cans for collection or removal at regular intervals.
- (i) Covered hands-free receptacles used to dispose of diapers and cleansing articles shall be cleaned and sanitized at least once each day.
- (j) When home laundered cloth diapers are allowed in accordance with (b) above, soiled cloth diapers shall be immediately placed in an individual plastic bag which shall be securely closed and returned to the parent at the end of each day.
- (k) Soiled diapers from a commercial diaper service shall be handled in accordance with written instructions from the commercial diaper service.

(l) Programs using a commercial diaper service shall have a copy of the written instructions required in (k) above available for review by the department upon request.

(m) Toilet learning shall be:

- (1) Individualized;
- (2) Developmentally appropriate;
- (3) Conducted in accordance with a plan developed by each child's parents and child care personnel; and
- (4) Never forced.

He-C 4002.29 Field Trips, Water Activities and Transportation.

(a) In all programs, child care personnel who wish to take children on routine or unplanned local trips, such as walks in the neighborhood, trips to the local library, or other routine errands, shall obtain a signed and dated general permission slip from each child's parent, which specifies all approved destinations and activities.

(b) In all programs, child care personnel who take the children off the premises for trips under (a) above shall, by phone call to parents or notice posted at the program, inform parents of:

- (1) The destination of any unplanned trips; and
- (2) The estimated time that the parents can expect the child to return to the program.

(c) In all programs, prior to allowing a child to participate in any water activities on or off the premises of the program or any field trip off the premises of the program, other than routine or unplanned local trips as described in (a) above, the center director, site director, family child care provider or his/her designee shall obtain a signed, dated, written authorization form from each child's parents.

(d) The parental authorization form required in (c) above shall:

- (1) For water activities, indicate the dates and destinations covered by the permission slip, whether the child can swim, and the child's fear or lack of fear about swimming or being in or near the water;
- (2) For all other field trips, include the dates, destinations, and activities covered by the permission slip; and
- (3) Be retained by the program and available for review by the department for a minimum of 6 months after the date of the last water activity or field trip covered by the permission slip.

(e) The following shall be completed and taken by child care personnel to any water activity on or off the premises of the program and on all field trips:

- (1) An attendance record which includes the name and age of each child who is participating in the water activity or field trip and the name of the staff person who will have primary responsibility for that child;
- (2) Copies of the registration and emergency information form required in He-C 4002.20(a), for each child participating in the water activity or field trip; and

(3) Copies of the parental permission slip required in (c) above for each child participating in the water activity or field trip.

(f) The field trip or water activity attendance records required under (e)(1) above and the parental permission slips required under (c) above shall be retained by the program and available for review by the department for a minimum of 6 months after the date of the field trip or water activity.

(g) During any field trip, a visual inspection of the destination shall be conducted prior to use by children to assure the area is free of obvious hazards such as broken glass, animal feces, unsafe water conditions or posted health warnings.

(h) During any field trip, at least one child care personnel or volunteer shall have access to a phone in case of emergency and that phone number shall be available to staff remaining at the program or to parents if the entire program is on the field trip.

(i) When children are engaged in water activities, an adult who is able to swim shall be present with children all times.

(j) Child care personnel who are responsible for children engaged in water activities shall be able and willing to immediately respond to any child in the water who needs assistance.

(k) In all programs, lifeguards and swimming instructors and similar individuals not employed by the program shall not be considered as staff to meet required staff to child ratios and supervision unless the lifeguard, swimming instructor or other individual is responsible only for the children participating in the field trip.

(l) In center based programs, the center director or site director shall require that:

(1) For routine daily transportation and other routine or unplanned trips such as walks in the neighborhood and trips to the local library, child care personnel comply with the staff to child ratios and minimum staffing requirements specified in:

- a. He-C 4002.34 for infant/toddler programs;
- b. He-C 4002.36 for school-age programs; and
- c. He-C 4002.33 for all other center based programs; and

(2) For all other field trips and for all water activities:

- a. For each group of children specified in Tables 4.2.5 and 4.2.6 below, at least one staff person shall meet the qualifications for the position of group leader for school-age programs and associate teacher for all other center based programs as specified in He-C 4002.32 or be a child care assistant or volunteer and at least 21 years of age;
- b. Notwithstanding (a) above and with the exception of child care personnel, other adults present to meet staff to child ratios shall be at least 18 years of age; and
- c. Center based child care personnel shall comply with:
  1. The staff qualification requirements specified in He-C 4002.32; and
  2. The minimum staff to child ratios and staffing levels specified in Table 4.2.5 below for water activities, and Table 4.2.6 below for all other field trips.

Table 4.2.5 Center Based Program Staff to Child Ratios and Staffing Requirements for Water Activities

<b>AGE OF CHILDREN</b>	<b>MAXIMUM GROUP SIZE</b>	<b>MINIMUM STAFF TO CHILD RATIOS</b>
24 to 35 months	8 children	1 staff to 2 children
36 to 47 months	12 children	1 staff to 4 children
48 to 59 months	18 children	1 staff to 6 children
56 months and older (in a program licensed as a school-age program)	24 children	1 staff to 8 children

Table 4.2.6 Center Based Program Staff to Child Ratios and Staffing Requirements for Field Trips

<b>AGE OF CHILDREN</b>	<b>MAXIMUM GROUP SIZE</b>	<b>MINIMUM STAFF TO CHILD RATIOS</b>
18 months and younger	6 children	1 staff to 3 children
19 to 35 months	12 children	1 staff to 4 children
36 to 47 months	18 children	1 staff to 6 children
48 to 59 months	20 children	1 staff to 8 children
56 months and older (in a program licensed as a school-age program)	24 children	1 staff to 10 children

(m) In a center based program, the staff to child ratio and maximum group size for a mixed age group of children participating in any field trip or water activity shall be based on the age of the youngest child in the group.

(n) Programs may exceed the maximum group size specified in Table 4.2.5 above for water activities, and Table 4.2.6 above for all other field trips only:

- (1) During transportation to the field trip or water activity;
- (2) At snack or meal times during the field trip or water activity; and
- (3) During water activities where certified lifeguards or water safety instructors are present and exclusively supervising the water activities of the children in care of the program.

(o) In a family or family group child care home, for all field trips and for water activities in swimming pools located on the premises of a private residence, child care personnel shall comply with the staffing requirements specified in He-C 4002.31.

(p) In a family or family group child care home, for all water activities on or off the premises of the program, other than water activities specified in (o) above, child care personnel shall comply with the staffing requirements specified in He-C 4002.31, and the minimum staff to child ratios and staffing levels as follows:

- (1) There shall be one staff member for every 2 children, 35 months and younger, and the staff for this age group shall be responsible only for the children in this age group; and
- (2) For children age 36 months and older:
  - a. There shall be one staff member for up to 6 children;

- b. There shall be 2 staff members for 7 to 12 children; and
  - c. There shall be 3 staff members for 13 to 17 children.
- (q) All programs shall comply with the following:
- (1) Child care personnel meeting the requirements of at least a group leader in a school-age program, associate teacher in all other center based programs as specified in 4002.32, or family child care worker in family based programs as specified in 4002.31 shall be designated as in charge and present during any water activity or field trip;
  - (2) All personnel participating in any water activity or field trip shall be aware of the identity of the person designated in charge;
  - (3) At least one staff person who has successfully completed a basic water safety course within 3 years prior to the water activity shall be present during any water activity for every 12 children; and
  - (4) Each child care personnel and other adult participating in any field trip or water activity shall:
    - a. Be assigned primary responsibility for a specific group of children;
    - b. Be provided with and bring with them during the field trip or water activity a written list of the names of the children for whom they have been assigned primary responsibility;
    - c. Conduct head counts of children they are responsible for as often as is necessary to ensure that all children are present and accounted for at all times; and
    - d. Be trained or instructed in supervision requirements and all requirements specified in this section.
- (r) Except during swimming activities conducted by a qualified swim instructor, a person certified in water safety and rescue, or a lifeguard, child care personnel in all programs shall prohibit each child who cannot swim from going into water that reaches higher than his or her navel.
- (s) Children who are transported by the program or during any program sponsored activity shall be transported in vehicles which are:
- (1) Registered, insured and inspected in accordance with the laws of the state of New Hampshire;
  - (2) Driven by individuals who are at least 18 years of age and hold a valid driver's license;
  - (3) Maintained in a safe operating condition; and
  - (4) Clean and free of obstructions on the floors and seats.
- (t) Child care personnel are prohibited from using cell phones while operating a vehicle to transport children.
- (u) In case of emergency during transport, child care personnel shall park the vehicle in a safe location prior to using a cell phone to call for help.

(v) Child care personnel in all programs shall not permit any child to remain in any vehicle unattended by child care personnel.

(w) The number of persons who are transported by the program or in any vehicle during any program sponsored activity shall be limited to the number of persons the vehicle is designed to carry.

(x) Children younger than 5 years of age who are transported by the program or during any program sponsored activity shall not be transported in any vehicle exempted from seat belt requirements under RSA 265:107-a, II(a) and (b).

(y) In all programs individual, age appropriate child restraints or seat belts shall be provided for and used by each child in accordance with RSA 265:107-a.

He-C 4002.30 Professional Development.

(a) All child care personnel in family based programs and center based programs shall complete the following number of hours of in-service professional development every 12-month period:

- (1) 6 hours on or before the effective date of these rules;
- (2) 9 hours effective July 1, 2009;
- (3) 12 hours effective July 1, 2010; and
- (4) 18 hours effective July 1, 2012.

(b) The only exception to (a) above shall for child care personnel who work with children only when under the supervision and observation as specified in He-C 4002.31(d)(2), He-C 4002.32(n)(2) and (r)(2) and who works 5 or fewer hours per week.

(c) Professional development shall include:

- (1) Trainings, workshops or college courses, totaling at least 2/3 of the total of professional development hours;
- (2) Self-study projects which:
  - a. Are based on current research in child development or early childhood;
  - b. Demonstrate developmentally appropriate practice;
  - c. Support the knowledge and skills needed to care for young children; and
  - d. Include an evaluation component; and
- (3) Meetings and volunteer activities with early childhood education organizations.

(d) New child care personnel shall complete a child care licensing orientation as provided by or approved by the bureau prior to employment, effective July 1, 2009.

(e) Child care personnel currently employed in a licensed child care program shall complete a child care licensing orientation as provided by or approved by the bureau no later than September 1, 2009.

(f) CPR, first aid, medication administration, water safety or water rescue trainings shall not be included in the annual required professional development hours specified in (a) above.

(g) Trainings and workshops, as specified in (c)(1) above, shall be in any of the following areas:

- (1) Child development;
- (2) Health and safety or life safety;
- (3) Caring for children with special needs;
- (4) Nutrition;
- (5) Any child care related courses sponsored or funded by the department, including, but not limited to, child care basics or beyond the basics;
- (6) Indoor and outdoor learning environments;
- (7) Behavior guidance;
- (8) Staff supervision;
- (9) Leadership, child care administration, or mentoring in early childhood;
- (10) Financial management;
- (11) Working with families;
- (12) Legal issues in child care; and
- (13) Child welfare.

(h) The department shall accept the following education and training and workshops toward meeting in-service professional development requirements:

- (1) Credit courses offered by a regionally accredited college or university;
- (2) Non-credit early childhood education or school-age education courses which are offered by a regionally accredited college or university;
- (3) Conference sessions or workshops, which are related to early childhood education or school-age education and are presented by an instructor who meets one of the following criteria:
  - a. Is credentialed as at least a trainer, mentor, or faculty level one by the NH early childhood professional development system;
  - b. Has at least a bachelor's degree in the subject area which she or he is teaching;
  - c. Meets the minimum qualifications for the position of center director; or
  - d. Is certified as a trainer or instructor for the subject matter which she or he is offering training; and
- (4) Early childhood education training which is developed and presented by an employee of the program or someone hired by the program as a trainer, shall be equivalent to conference sessions or workshops as specified in (3) above, provided that:
  - a. The training is conducted during hours that the trainees are not responsible for children; and

b. Information regarding credentials of the trainer, training methods, content and objective, dates and times of trainings and a list of participants is on file at the program and available for review by the department to assist the department in determining that:

1. The presenter meets the requirements specified in (3)(a) through (d) above; and
2. The training is designed to increase the knowledge or skills of an individual in order to prepare him/her to more effectively work with children in a program.

(i) The department shall accept correspondence and on-line training or workshops related to family child care, early childhood education and school-age education, toward meeting in-service professional development requirements for all child care personnel not to exceed six of the total required annual in-service training hours.

(j) Correspondence and on-line trainings and workshops allowed in (i) above shall be approved by the department.

He-C 4002.31 Family Based Programs.

(a) Family and family group child care homes shall comply with He-C 4002.01 through He-C 4002.30 and this section.

(b) To qualify as a family child care provider, an individual shall be:

- (1) At least 21 years of age; or
- (2) At least 18 years of age and submit with his/her application documentation that he or she has a high school diploma or general equivalency diploma and at least one of the following:
  - a. Successful completion of a 2 year child care curriculum approved by the NH department of education; or
  - b. College courses, totaling 6 credits, in human growth and development or early childhood education.

(c) A family child care worker shall be 18 years of age or older.

(d) A family child care assistant, whether paid or volunteer, shall:

- (1) Be 16 years of age or older; and
- (2) Work under the direct observation and supervision of the family child care provider or a family child care worker at all times.

(e) A family based program may employ substitute staff who meet the age requirements of the staff position for whom they are substituting and assume the responsibilities of any child care personnel on an emergency or temporary basis for not more than 60 consecutive days and not more than a maximum of 120 consecutive days in a 12 month period.

(f) Family child care providers and family child care workers shall complete professional development requirements in accordance with He-C 4002.30.

(g) Documentation of professional development requirements shall be maintained at the program and available for review by the department.

(h) A junior helper in any family based program, whether paid or volunteer, shall:

- (1) Be at least 14 years of age;
- (2) Work with children only under the direct supervision and observation of a staff person who meets at least the minimum qualification of an associate teacher;
- (3) Not be calculated in staff to child ratios as specified in He-C 4002.31(m)-(p); and
- (4) Not be required to complete professional development hours as specified in He-C 4002.30.

(i) The family child care provider shall have on file at the program for all child care personnel, documentation demonstrating all required pre-service professional development and education, and in-service professional development, including but not limited to a high school diploma or general equivalency diploma.

(j) Except in emergencies, a family or family group child care provider, worker, assistant or aide shall not provide family or family group child care services for more than 12 hours in any 24 hour period.

(k) When determining the number of children they are authorized to care for, in accordance with the license capacity, family or family group child care homes, shall include the provider's own, foster, and resident children up to 10 years of age, when they are present.

(l) The department shall allow family and family group child care homes to fill vacant slots for preschool-age children with school-age children who are enrolled in and attending a full day school program, up to their maximum license capacities.

(m) In a family child care home the maximum number of children that one family child care provider or family child care worker can care for shall be 6 preschool children plus 3 school-age children who are enrolled in and attending a full day school program, provided that:

- (1) Of the 6 preschool children, no more than 4 children are younger than 36 months of age; and
- (2) Of the 6 preschool children, no more than 2 children are younger than 24 months of age.

(n) In a family child care home the maximum number of children that a family child care provider and a family child care worker or assistant can care for shall be 6 preschool children plus 3 school-age children who are enrolled in a full day school program, provided that, of the 6 preschool children, no more than 4 children are younger than 36 months of age.

(o) Family group child care homes in which a family child care provider or family child care worker is working alone shall comply with the limits for a family child care home with one provider as specified in (m) above.

(p) In a family group child care home the maximum number of children that a family group child care provider and a family child care worker or assistant may care for shall be 12 preschool children plus 5 school-age children enrolled in a full day school program, provided that, of the 12 preschool children, no more than 4 children are younger than the age of 36 months.

(q) Family based programs may care for a child in the foster care system who is younger than 6 weeks of age provided:

- (1) They have received prior approval from the department and local fire inspector; and

- (2) In doing so, they will not exceed the limits in (m) and (n) above.
- (r) The department shall not grant approval for (q) above if:
- (1) The program has not corrected violations identified on a statement of findings;
  - (2) The program has violated any of the requirements in (j) through (p) above in the previous 3 years; or
  - (3) The program has a history of repeat violations of (j) through (p) above.

He-C 4002.32 Requirements for Child Care Personnel in Center Based Programs.

- (a) All center based programs, other than those operating solely as a school-age program, shall have a center director who meets the following conditions:
- (1) The center director or qualified substitute shall be on the premises for at least 2/3 of each day's day time operating hours; and
  - (2) For programs operating as night care programs, the center director or qualified substitute shall be on the premises for at least 2/3 of the program's evening and night time operating hours.
- (b) School-age programs shall have a site director who meets the following conditions:
- (1) For school-age programs operating 5 or fewer hours per day, a site director or qualified substitute shall be on the premises during all operating hours; or
  - (2) For school-age programs operating more than 5 hours per day a site director or qualified substitute shall be on the premises for at least 2/3 of each day's day time operating hours.
- (c) Center directors and site directors shall:
- (1) Be responsible for the daily operation of the program and ensure the program's compliance with He-C 4002;
  - (2) Designate a staff person who meets at least the minimum qualifications of group leader in school-age programs and associate teacher in all other center based programs, in accordance with this section, who will be in charge and assume the responsibilities of the center director or site director as follows:
    - a. During any unplanned or emergency absence of the center director or site director;
    - b. In school-age programs operating more than 5 hours per day and all other center based programs operating during day time hours, for the remaining 1/3 of the day time operating hours that the center director or site director is not required to be present under (a)(1) and (b)(1) above; and
    - c. In night care programs, for the remaining 1/3 of the night time hours that the center director is not required to be present under (a)(2) above;
  - (3) Make all child care personnel aware of the identity and scope of responsibility of the individual who will be in charge in the center director's or site director's absence;

(4) Engage child care personnel who are qualified for the position they are assigned to in accordance with this section; and

(5) Engage child care personnel who have completed professional development requirements in accordance with He-C 4002.30.

(d) One out of every 6 child care personnel who are required to be on the premises in order to meet minimum staff to child ratios shall meet the minimum qualifications of a lead teacher, in accordance with this section in all center based programs other than those operating solely as school-age programs.

(e) Center based programs that wish to apply for or have been issued a single license for multiple buildings shall not be required to have an additional center director or site director in each building provided they are in compliance with the requirements specified in (f) below.

(f) Center based programs that wish to apply for or have been issued a single license for multiple buildings and which choose not to have a center director or site director in each building shall:

(1) Designate a staff person to be in charge in each building who reports to the center director or site director and meets the following requirements:

a. In group child care centers, infant/toddler programs, preschool programs and center based night care programs, the designated staff person shall be qualified as a lead teacher in accordance with He-C 4002.32(l); and

b. In school-age programs, the designated staff person shall be qualified as a group leader in accordance with He-C 4002.32(q); and

(2) Identify the scope of responsibility of the individual who has been designated as in charge.

(g) Programs shall notify the department in writing when they have more than one center director or site director.

(h) The written notice required under (g) above shall include:

(1) The hours and responsibilities of each center director or site director;

(2) A record of a health screening in accordance with He-C 4002.02; and

(3) Documentation of education and experience which shows compliance with the qualifications for center director or site director as described in this section.

(i) The center director, site director or his/her designee shall have on file at the program for all child care personnel, documentation of:

(1) All required pre-service training and education and in-service professional development, including but not limited to a high school diploma or general equivalency diploma, transcripts, certificates or degrees; and

(2) All required pre-service experience, including but not limited to a resume and letters of reference.

(j) Center based programs may employ substitute staff who:

(1) Meet the age requirements of the staff position for whom they are substituting and assume the responsibilities of any child care personnel on an emergency or temporary basis

for not more than 60 consecutive days and not more than a maximum of 120 days in a 12 month period; or

(2) Meet the age requirements and hours of experience requirements of the staff position for whom they are substituting when needed to ensure a qualified staff person is assigned to each group of children or to direct the program, and assume the responsibilities of any child care personnel on an emergency or temporary basis for not more than 60 consecutive days and not more than a maximum of 120 days in a 12 month period.

(k) A center director in a center based program shall:

(1) Be at least 21 years of age;

(2) Have a high school diploma or general equivalency diploma;

(3) Have documentation of successful completion of at least 3 credits in child care administration or early childhood leadership and supervision awarded by a regionally accredited college or university;

(4) Have a minimum of 1500 hours experience working with children in a licensed child care program or public or private elementary school; and

(5) Meet one of the following pre-service training/education options:

a. An associate's degree in early childhood education, awarded by a regionally accredited college or university;

b. An additional 3000 hours of experience working with children in a licensed child care program or in a public or private elementary school and documentation of a non-expired child development associates (CDA) in center based programs awarded by the council for professional recognition;

c. A bachelor's degree in elementary education, awarded by a regionally accredited college or university;

d. Certification of successful completion of training as a Montessori Director issued by the American or International Montessori Institute;

e. Documentation of 60 credits, awarded by a regionally accredited college or university, of which at least 24 shall be in early childhood education, including at least 3 credits in each of the following core knowledge areas:

1. Children with special needs;

2. Child growth and development; and

3. Curriculum for early childhood education; or

f. Written documentation from or on file with the department that she or he was qualified for the position of center director on or before the effective date of these rules.

(l) A lead teacher in a center based program shall have a high school diploma or general equivalency diploma, be at least 21 years of age, have a minimum of 1000 hours experience working with children in a licensed child care program, and meet one of the following pre-service training/education options:

- (1) A minimum of 18 credits in early childhood education from a regionally accredited college or university, including at least 3 credits child growth and development; or
  - (2) Documentation from or on file with the department that she or he was qualified for the position of lead teacher on or before the adoption of these rules.
- (m) An associate teacher in a center based program shall be at least 18 years of age, have a high school diploma or general equivalency diploma, and meet one of the following options:
- (1) A minimum of 9 early childhood credits, including at least one 3 credit course in child growth and development, from a regionally accredited college;
  - (2) A minimum of 1500 hours of supervised child care experience in a licensed child care program or public or private elementary school, with written recommendation from the center director or school administrator, documentation of at least 3 early childhood education credits awarded by a regionally accredited college or university, and the following:
    - a. A written plan for completion of at least 6 additional early childhood education credits from a regionally accredited college or university; and
    - b. Within 12 months of the date the individual begins working as an associate teacher, documentation of qualification as specified in (1) above available for review by the department;
  - (3) A minimum of 1000 hours of supervised child care experience in a licensed child care program and documentation of successful completion of a 2 year vocational child care course; or
  - (4) Written documentation from or on file with the department that she or he was qualified for the position of associate teacher on or before the date of the adoption of these rules.
- (n) Child care assistants in a center based program, whether paid or volunteer, shall:
- (1) Be at least 16 years of age; and
  - (2) Work with children only under the direct supervision and observation of a staff person who meets at least the minimum qualifications of an associate teacher.
- (o) A junior helper in any center based program, whether paid or volunteer, shall:
- (1) Be at least 14 years of age;
  - (2) Work with children only under the direct supervision and observation of a staff person who meets at least the minimum qualification of an associate teacher;
  - (3) Not be calculated in staff to child ratios as specified in He-C 4002.33, 4002.34, and 4002.36; and
  - (4) Not be required to complete professional development hours as specified in He-C 4002.30.
- (p) A site director in a school-age program shall be at least 20 years of age, have a high school diploma or general equivalency diploma, and have at least one of the following:
- (1) A bachelor's degree in elementary education or recreation, awarded by a regionally accredited college or university;

- (2) An associate's degree in early childhood education, awarded by a regionally accredited college or university;
  - (3) Certification of successful completion of training as a recreation director plus 1000 hours experience working with children in a licensed child care program, recreation program or elementary school;
  - (4) A total of 12 credits in early childhood education, human growth and development, education or recreation, from a regionally accredited college plus 1000 hours of experience working with children;
  - (5) Current certification as an educator by the NH department of education;
  - (6) Experience working with children totaling 2000 hours and the following:
    - a. Documentation of enrolment in a course for at least 3 credits in elementary education, human growth and development, recreation, or early childhood education through a regionally accredited college or university and a written plan on file for completion of at least 3 additional credits as specified; and
    - b. Within 12 months of the date the individual begins working as a site director, documentation of successful completion of a total of at least 6 credits as specified in (a) shall be on file for review by the department; or
  - (7) Written documentation from or filed with the department that she or he was qualified as a center director in a school-age program on or before the effective date of these rules.
- (q) A group leader in a school-age program shall be at least 18 years of age, have a high school diploma or general equivalency diploma, and one of the following:
- (1) Experience working with school-age children, totaling 600 hours;
  - (2) Documentation of at least 3 credits in elementary education, human growth and development, behavior management or recreation or early childhood education, awarded by a regionally accredited college or university;
  - (3) Documentation that she or he is a certified coach; or
  - (4) Documentation from or filed with the department that she or he was qualified as an associate teacher in a school-age program on or before the adoption of these rules.
- (r) An assistant group leader in a school-age program, whether paid or volunteer, shall:
- (1) Be at least 16 years of age; and
  - (2) Work with children only when under the supervision and observation of a site director, or group leader as described in this section.
- (s) A project leader in a school-age program shall:
- (1) Be at least 15 years of age;
  - (2) Be certified in CPR and first aid;

(3) Be recommended by an elementary school, established youth-related organization or agency; and

(4) Have a written plan for the project she or he is leading, identifying the following:

- a. Description of the project;
- b. Objective and expected outcomes of project;
- c. Location, time and length of group meetings; and
- d. Evaluation process of the project.

(t) Project leaders shall not be required to complete in-service professional development hours as specified in He-C 4002.30.

(u) Site directors in programs with a project leader shall:

- (1) Inform the project leader of program policies and child care licensing rules;
- (2) Require child care personnel to observe or check on the project leader every 20 minutes;
- (3) Supervise, or require that the group leader supervise, the project leader; and
- (4) Have a consent form on file for review by the department that is signed by the parent of each child participating in an activity with a project leader.

(v) Project leaders shall not be calculated in staff to child ratios as specified in He-C 4002.33, 4002.34, and 4002.36.

He-C 4002.33 Group Child Care Center.

(a) Group child care centers shall comply with He-C 4002.01 through He-C 4002.30, He-C 4002.32, and this section, unless otherwise specified.

(b) Programs shall staff group child care centers in compliance with the minimum staff to child ratios and staffing levels specified in Table 4.2.7 below.

Table 4.2.7 Staff to Child Ratios and Staffing Requirements for Preschool Children Ages 36 to 60+ months

Age of Children	Maximum Group Size Per Room	Minimum Staff to Child Ratios and Staffing Requirements	
36 to 47 months	24	1 to 8 children	1 associate teacher
		9 to 16 children	1 associate teacher & 1 child care assistant
		17 to 24 children	1 lead teacher & 2 child care assistants
48 to 59 months	24	1 to 12 children	1 associate teacher*
		13 to 24 children	1 associate teacher & 1 child care assistant
60 months and over	30	1 to 15 children	1 associate teacher*
		16 to 30 children	1 associate teacher & 1 child care assistant

\* A second staff person shall be in the building in accordance with (c)(2) below when 11 or more children are present.

(c) In addition to the staffing requirements under (b) above, group child care centers shall:

- (1) Staff each room with a staff person who meets at least the minimum qualifications of an associate teacher;
- (2) Have a second staff person in the building when 11 or more children are present;
- (3) Base the staff to child ratio and group size on the average age of the children in the group when there are mixed ages in the same group; and
- (4) Comply with staff to child ratios and requirements specified in He-C 4002.34(b) and (d) when the average age of children is younger than 36 months.

He-C 4002.34 Infant/Toddler Program.

(a) Infant/toddler programs shall comply with He-C 4002.01 through He-C 4002.30, He-C 4002.32, and this section, unless otherwise specified.

(b) Programs shall staff infant/toddler programs in compliance with Table 4.2.8 below.

Table 4.2.8 Staff to Child Ratios and Staffing Requirements for Children Ages 6 Weeks to 35 Months

Age of Children	Maximum Group Size Per Room	Minimum Staff to Child Ratios and Staffing Requirements	
6 weeks to 12 months	12	1 to 4 children	1 associate teacher
		5 to 8 children	1 associate teacher & 1 child care assistant
		9 to 12 children	1 lead teacher & 2 child care assistants
13 to 24 months	15	1 to 5 children	1 associate teacher*
		6 to 10 children	1 associate teacher & 1 child care assistant
		11 to 15 children	1 lead teacher & 2 child care assistants
25 to 35 months	18	1 to 6 children	1 associate teacher*
		7 to 12 children	1 associate teacher & 1 child care assistant
		13 to 18 children	1 lead teacher & 2 child care assistants
* A second staff person shall be in the building in accordance with (c)(2) below when 5 or more children are present.			

(c) In addition to the staffing requirements under (b) above, programs licensed as infant/toddler programs shall:

- (1) Staff each room with a staff person who meets at least the minimum qualifications of an associate teacher;
- (2) Have a second staff person in the building when 5 or more children are present;

(3) Base the staff to child ratio on the average age of the children in each group when there are mixed age groups in the same room; and

(4) Limit the maximum number of children in a mixed age group under (3) above to 16.

(d) Programs shall assign a staff person as primary caregiver to each group of children between 6 weeks and 18 months of age.

(e) The staff member assigned under (d) above shall have the primary responsibility for meeting the emotional and physical needs of the children to whom he or she is assigned, for the majority of the time the children are in his or her care.

He-C 4002.35 Preschool Program.

(a) Preschool programs shall comply with He-C 4002.01 through He-C 4002.30, He-C 4002.32, and this section.

(b) Preschool programs shall meet the staff to child ratio requirements specified in Table 4.2.7.

(c) Preschool programs shall, in accordance with RSA 170-E:2, IV(f), operate 5 or fewer hours per day.

(d) The curriculum shall provide a variety of hands-on activities to:

(1) Foster positive self concept;

(2) Develop social skills;

(3) Encourage children to:

a. Think;

b. Reason;

c. Question; and

d. Experiment;

(4) Enhance physical and emotional development;

(5) Teach sound health, safety, and nutritional practices; and

(6) Encourage creative expression and appreciation for the arts including music, dance, drama, and the visual arts.

He-C 4002.36 School-Age Program.

(a) School-age programs shall comply with He-C 4002.01 through He-C 4002.30, He-C 4002.32, and this section, unless otherwise specified.

(b) Programs shall staff school-age programs in compliance with the minimum staff to child ratios and staffing levels specified in Table 4.2.9 below.

Table 4.2.9 Staff to Child Ratios and Staffing Requirements for School-age Children Ages 60 months & Older

Age of	Maximum	Minimum Staff to Child Ratios and Staffing Requirements
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Children	Group Size Per Room		
60 months and older	45	1 to 5 children	1 group leader
		16 to 30 children	1 group leader & 1 assistant group leader
		31 to 45 children	1 site director & 2 assistant group leaders

(c) In addition to the staffing requirements in (b) above, programs licensed as school-age programs shall:

- (1) Have a staff person who meets at least the minimum qualifications of an associate teacher in each room; and
- (2) Have a second staff person in the building when 13 or more children are present.

(d) A school-age program may employ substitute staff who meet the age requirements of the staff position for whom they are substituting and assume the responsibilities of any child care personnel on an emergency or temporary basis for not more than 60 consecutive days and not more than a maximum of 120 consecutive days in a 12 month period.

(e) School-age programs which hold combination licenses with multiple program types shall provide separate space for the school-age children during the hours of operation of the school-age program.

(f) The only exception to (e) above shall be when there are 8 or fewer school-age children present, programs may, if they so desire, combine school-age children with children 4 years of age and older.

(g) Programs shall develop and maintain on file for review by parents and the department a written schedule of daily activities which ensures that the curriculum includes the following:

- (1) Opportunities for children to help in planning their own activities;
- (2) Time for structured and unstructured play, both indoors and outdoors;
- (3) Opportunities for active and quiet activities; and
- (4) Opportunities for individual and group experiences, both child initiated and staff directed.

He-C 4002.37 Night Care Program.

(a) Any program which intends to provide child care services during the evening or night time hours, between 7:00 PM and 6:00 AM shall be licensed to operate as a night care program.

(b) Center based night care programs shall comply with He-C 4002.01 through He-C 4002.30, He-C 4002.32, and the requirements applicable to the specific program type(s) for which they are licensed as well as the requirements in this section.

(c) Night care programs operating in private homes which comply with all of the requirements for family and family group child care homes shall not be required to comply with the requirements specified in He-C 4002.32.

(d) Child care personnel shall not allow children attending a night care program to remain in the program for more than a total of 12 hours in any 24 hour period, except in an emergency.

(e) Child care personnel shall schedule activities in night care programs that address the basic and individual needs of children, including but not limited to relaxation, meals, play, and sleep.

(f) Child care personnel shall provide for privacy and separation by gender for bathing, toileting and sleeping for all children.

(g) Child care personnel shall provide each child in a night care program with clean bedding and a bed or crib with a mattress, a cot or sleeping bag on a rest mat.

(h) Child care personnel shall make sleeping arrangements that ensure that children who stay all night are not disturbed by the departure or arrival of those who stay only a portion of the night.

#### APPENDIX

<b>RULE</b>	<b>STATUTE</b>
He-C 4002.01	RSA 170-E:6
He-C 4002.02	RSA 170-E:6
He-C 4002.03	RSA 170-E:11, IV; RSA 170-E:11, I(g) and (h); RSA 170-E:7, I, II, III and IV; RSA 170-E:11, I(k); RSA 170-E:6; RSA 170-E:11, I(b), (h) & (k); RSA 170-E:6-b; RSA 170-E:11, I(h); RSA 170-E:11, I(a)
He-C 4002.04	RSA 170-E:11, IV, V, VI, & VII; RSA 170-E:11, VI & VII; RSA 170-E:21-a
He-C 4002.05	RSA 170-E:11, IV; RSA 170-E:5
He-C 4002.06	RSA 170-E:11, III & VII; RSA 170-E:13, II, III & IV; RSA 170-E:14; RSA 170-E:21-a; RSA 541-A
He-C 4002.07	RSA 170-E:6; RSA 170-E:8, III; RSA 170-E:11, I(h) & (l); RSA 170-E:11, IV; RSA 541-A:29
He-C 4002.08	RSA 170-E:11, I(a), (c) & (g)
He-C 4002.09	RSA 170-E:11, I(d) & (e)
He-C 4002.10	RSA 170-E:11, I(d) & (e)
He-C 4002.11	RSA 170-E:11, I(b) & (d)
He-C 4002.12	RSA 170-E:11, I(a) & (g)
He-C 4002.13	RSA 170-E:11, I(a), (b), (d), (g) & (h)
He-C 4002.14	RSA 170-E:11, I(a), (b) & (g)
He-C 4002.15	RSA 170-E:11, I(a), (d), (h); RSA 170-E:6
He-C 4002.16	RSA 170-E:11, I(d) & (e)
He-C 4002.17	RSA 170-E:11, I(a) & (e)
He-C 4002.18	RSA 170-E:11, I(a) & (e)
He-C 4002.19	RSA 170-E:11, I(a), (b), (c), (e) & (i)
He-C 4002.20	RSA 170-E:11, I(a) & (e)
He-C 4002.21	RSA 170-E:11, I(a), (d) & (e)
He-C 4002.22	RSA 170-E:11, I(a), (d) & (e)
He-C 4002.23	RSA 170-E:11, I(a), (b), (c), (d), (e), (g), (h)
He-C 4002.24	RSA 170-E:11, I(a), (b), (c) & (h) and RSA 170-E:11, IV
He-C 4002.25	RSA 170-E:11, I(a) & (c)
He-C 4002.26	RSA-170-E:11, I(a) & (c)
He-C 4002.27	RSA-170-E:11, I(a), (c) & (e)
He-C 4002.28	RSA-170-E:11, I(a), (c) & (e)
He-C 4002.29	RSA-170-E:11, I(a) & (c)
He-C 4002.30	RSA-170-E:11, I(b) & (k)
He-C 4002.31	RSA 170-E:11, I(a) & (c)

He-C 4002.32	RSA 170-E:11, I(a), (c) & (e)
He-C 4002.33	RSA 170-E:11, I(a) & (c)
He-C 4002.34	RSA 170-E:11, I(a) & (c)
He-C 4002.35	RSA 170-E:11, I(a), (c) & (e)
He-C 4002.36	RSA 170-E:11, I(a), (c) & (e)
He-C 4002.37	RSA 170-E:11, I(a) & (c)