

CHILD CARE LICENSING UNIT
HE-C 4002 NH CHILD CARE PROGRAM LICENSING RULES ◊ 2017 RULES MAJOR CHANGES SUMMARY

The following is a summary of major changes of the 2017 NH Child Care Program Licensing Rules. It does not include editorial or minor changes. This document is not intended to represent all changes nor is it a substitute for the draft available for public comment, which can be found here under Child Care Licensing: <http://www.dhhs.nh.gov/oos/arul/comment.htm>

The Public Hearing date is **Thursday, April 20, 2017 starting at 6 pm** at 129 Pleasant Street, Concord, in Health and Human Services - Brown Building Auditorium, or via webinar. Please register for the webinar at: <https://attendee.gotowebinar.com/register/6711627165180835330>

Any items in *italics* are required by either federal or state laws or rules, and therefore have limitations regarding changes.

Glossary of Law/Rule Abbreviations:

45 Code of Federal Regulations (CFR) – Child Care Development Fund Program

40 CFR – US Environmental Protection Agency

16 CFR – Consumer Product Safety Commission

7 CFR - Child and Adult Care Food Program: Meal Pattern Revisions

RSA 170-E - NH State Law pertaining to Child Care Licensing

RSA 485 – NH State Law pertaining to NH Safe Drinking Water Act

He-P 1600 – NH Public Health Rules pertaining to Lead Poisoning Prevention and Control

Env-Dw – NH Rules pertaining to Public Water Systems

He-C 4002.01 Definitions	
	Several definitions have been added to reflect current terminology and to include new federal requirements.
(e), (t), (bf), (bg), (bj), & (bo)	New definition for: “assistant teacher”, “ <i>extreme challenging behavior</i> ”, “ <i>serious safety risk</i> ”, “site coordinator”, “substitute”, and “unit” (45 CFR 98)
(k) & (r)	“Child care assistant” and “Daily contact” deleted.
(l)	“Child care program personnel” has been revised to reflect changes pertaining to requirements for conducting background checks.
He-C 4002.02 Application	
(b)	Amendments have been made to identify and differentiate that there are two distinct applications to be completed for a child care license: one for Family Child Care Programs and one for Child Care Centers.
(d)(5)c.	The lower age for child care program personnel who are subject to certain background checks is being changed from 16 years to 14 years.
(d)(6), (e) & (h)	Requires the following to be submitted with an application: any documents required by the NH Secretary of State regarding

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	trade names, limited liability corporations or corporations; <i>the submission of fingerprints to the Department of Safety as part of the background check process, to align with changes to RSA 170-E:7, I-a; and documentation of completion of required professional development training</i> (See also 4002.30(a)) (45 CFR 98 [§98.43])
He-C 4002.03 Waivers of Rules	
	No major changes.
He-C 4002.04 License/Permit Requirements	
(l) - (s)	<i>Please carefully review as significant changes have been made regarding the submission of "Household and Personnel Forms" (H&P) and requirements for fingerprinting to reflect changes in RSA 170-E:7, I-a. The rules specify when a H&P form must be submitted, when fingerprinting must be done, exemptions from background checks, supervision requirements of staff pending notice of the completion of background checks, a new \$50 fee for the issuance by the Department of an employment eligibility card, and requirements for programs to maintain on file at the program a copy of each individual's "Household and Personnel Form" and a copy of their non-expired employment eligibility card. (45 CFR 98 [§98.43(a)(1)(i)])</i>
(t)	Clarifies the requirements for providing written notice to the department prior to changing the name of a program and within one business day when there is a change in mailing address, email address or phone number.
(v) and (x)	Clarifies the time limits for programs to be without a qualified director, how long a substitute may serve as director, and specifies reporting requirements for when a site director leaves his/her position.
He-C 4002.05 Renewal of License	
(b)	Removes requirements for submission of a household and personnel list and a notarized criminal record release authorization form because of the new requirements in 4002.04; deleted text is replaced by new rule clarifying that an existing license shall not expire until the department takes final action upon the renewal application, provided the application was submitted timely.
He-C 4002.06 Critical Rules, Statements of Findings and Corrective Action Plans	
Table 4.2.1	The critical rule table has been updated.
(d) and (e)	Clarifies the parameters under which a non-critical violation may be upgraded to critical and specifies that a statement of findings will be issued for each licensing and monitoring visit.
(f)	Clarifies how a program shall respond to violations of non-critical rules.
(g), (h) & (k)	<i>New rule provides for the department to issue a statement of findings via email, specifies that the statement of findings shall not be altered, provides for programs to submit a separate reasonable response to be posted on-line with the statement of findings, and defines "reasonable response." (RSA 170-E:10, III re (g)&(k))</i>
He-C 4002.07 Complaints and Investigations	
	<i>Changes prescribe the department's process when an individual has been determined ineligible to work in child care, and the notice it provides to both the employing program and the individual. (45 CFR 98)</i>
He-C 4002.08 Confidentiality	

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(a) and (b)	Clarifies the department's process for notifying a program when it determines an individual is eligible to work with children, <i>removes the requirement to provide the program with a copy of the report of criminal convictions and, for individuals determined to be ineligible to work with children, clarifies what is kept confidential by the department.</i> (45 CFR 98)
He-C 4002.09 Enforcement Action	
(c)(2)h. & i. and (d)	Removes rules regarding the requirement to hire a consultant as a term for a conditional license.
(u)	Adds requirement for programs operating pending appeal of suspension or revocation of the license or permit to provide notice of the suspension or revocation to new families prior to enrollment of their child/children, or to staff prior to offer of employment.
(z)	Allows a center/site director or site coordinator to be eligible for employment as a director/coordinate after suspension or revocation of a license or permit, prior to the 5 year prohibition, under specific conditions.
He-C 4002.10 Administrative Fines	
(b)(5), (8), (11), & (18)	Added new fines for: continuing to operate after suspension, revocation or denial of a license or permit, failure to submit a corrective action plan, and failure to submit individuals for background checks, and clarifies that the provision of verbal or written false or misleading statements to the department, or falsification of documents or reports shall be subject to fines.
He-C 4002.11 Informal Dispute Resolution	
	<i>The process for an informal dispute resolution has been updated to reflect changes to RSA 170-E:10-a.</i>
He-C 4002.12 Time Frames for Departmental Response to Applications	
	No changes.
He-C 4002.13 License Capacity and Staff and Child Attendance	
(b) and (c)	Added specific data that must be included in the daily attendance records for both children and staff.
(d) and (e)	Amended rules relative to staff attendance records and moved some requirements for what attendance records must include. (added to (c)).
He-C 4002.14 Health and Safety in the Child Care Environment	
(e) & (f)	Updated requirements for what action must be taken when there are signs of deterioration in the form of flaking, chipping or peeling paint in buildings built prior to 1978, <i>specified the credentials of contractors employed to repair/remove/renovate, in accordance with US Environmental Protection Agency and the NH Department of Environmental Services requirements</i> , and added the requirement for programs to provide a written plan to the department outlining how children will not have access to hazardous surfaces, and the expected date of completion of work to address the deteriorating conditions. (40 CFR 1.445.90(a) & (b) (2011) & He-P 1600)
(j) & (k)	Clarifies storage and labeling requirements for toxic and flammable materials.
(r)	New requirement for programs to maintain on file documentation of the local fire inspector's approval to use portable electric

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	heaters.
(v)	Adds a new requirement that child care program staff who smoke shall wash their hands after smoking, prior to returning to work with children.
(ad)	Specifies that programs shall prohibit children from playing on equipment or structures that require energy absorptive material when the ground is frozen.
(ae) –(ag)	Clarifies the requirements for maintenance and supervision relative to the use of swimming pools.
	All rules that school age programs are exempt from have been moved to He-C 4002.36 and all rules relative to food preparation and storage have been moved to 4002.27.

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

(a)(4)-(6)	<i>There are revised requirements for determination of private wells considered to be a public water system as defined in RSA 485:1-a, XV, subject to regulation by the department of environmental services, to align with Env-DW 300, 501, and 700 and RSA 485:1-a, XV. In addition, there are significant changes to the water testing requirements for programs on a private well not considered a public water system, please review carefully.</i>
(k)(7) & (8)	Removed exemptions for center based programs relative to diaper changing areas as the deadline for compliance was December 31, 2012.
(l)	New rule specifying that double sinks equipped with only one faucet may not be used for hand washing in one basin and food preparation in the other.

He-C 4002. 16 Child Care Personnel/ Household Members Health Requirements

(b)	New rule exempting child care program personnel working in school age programs who are currently employed in a public or private school from having to provide a written record of a health screening.
(c)(2)	New rule requiring a statement by the health care provider on the health screening indicating the individual has no health conditions that would prohibit/inhibit their ability to care for children. This statement has always been part of the staff health form provided by the Child Care Licensing Unit.

He-C 4002.17 Child Health Requirements and Communicable Disease Issues

(a)	<i>Amended rule to allow 60 days to provide documentation of immunizations for children experiencing homelessness. (45 CFR 98 and 42 USC 1131 (1987))</i>
(c)	<i>New rule requiring programs to complete the department's annual immunization survey, pursuant to RSA 141-C:20-e.</i>
(e)	Amendments relative to children's health screenings, specifically, for children ages 6 and older, programs shall have on file a copy of the physical examination record completed within the year prior to enrollment. No further updated physical required for school age children after the initial physical.
(i)	Added the provision that ill children may be in certain areas not regularly considered child care space when awaiting pick up by

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	a parent, under certain conditions.
He-C 4002.18 Administration and Storage of Medication	
(e)	New rule prohibiting programs from accepting prescription medication that does not include a prescription label or written order from a licensed health care professional.
(l)	Amendments to allow the required medication training to be obtained via online training approved by the department.
(u)	Amendments requiring certain medications, such as inhalers and epi pens, to be immediately accessible to staff for children requiring such medications.
(aa)	Requires the disposal of expired medication belonging to the program be in accordance with NH Department of Environmental Services Fact Sheet "Medicine Disposal Options for School Nurses." http://www.des.nh.gov/organization/commissioner/pip/factsheets/dwgb/documents/dwgb-22-27.pdf
He-C 4002.19 Prevention and Management of Injuries and Emergencies	
(b)	Children of certain ages may be allowed to go inside to a bathroom without a staff under certain circumstances.
(e)	New rule prohibiting child care personnel from carrying a child while stepping over a low wall, gate or other similar barrier.
He-C 4002.19 Prevention and Management of Injuries and Emergencies cont.	
(i)	Changes requiring that the center/site director, family child care provider and all staff used to meet staff to child ratios shall be certified in first aid and CPR.
(k)	Amendments to allow first aid and CPR training to be obtained via on-line or correspondence course, provided the skills test for certification is performed in person.
(m)	Adds requirement that at least one staff person who is currently certified in first aid and CPR must be with any children while on or off the premises of the program.
(r) – (u)	<i>New requirements for development of an Emergency Operation Plan (template provided by the department), to educate staff about the plan and to conduct and record practice drills; provide families with information from the plan regarding communication and reunification procedures during an emergency. (45 CFR 98 [§98.16(aa)])</i>
(ab)	<i>New requirements regarding what actions a program shall take when a child sustains a serious injury (new definition) while in care. (45 CFR 98)</i>
(ai)	Exemption for school age programs operating in a public or private school from having to activate the actual fire alarm system when conducting fire drills.
He-c 4002.20 Child Registration and Emergency Information	
(a) & (c)	Incorporated the child registration form by reference. Child Care Licensing Unit form must be used.
He-C 4002.21 Child Care Space	
(b)	Specified that programs licensed prior to November 23, 2008, may continue to operate with 35 square feet of floor space per

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	child.
(i)	New rule specifying that common space may not be occupied by more children than there is square footage for.
(k)	Provides exceptions to square footage requirements to allow children to be in one room for time-limited activities, provided they have sufficient room for the activity.
He-C 4002.22 Toys, Equipment & Learning Materials	
(c)	Disallows infants from being placed in equipment that requires them to support their heads on their own if they are not yet capable of doing so.
(d) - (g)	New rules regarding the use of pacifiers; please review closely.
(o)	Prohibits children younger than 6 years old from wearing necklaces while in care, unless it cannot be removed.
(y), (z)(7)	<i>Requirement that cribs be manufactured on or after June 28, 2011; cribs and playpens shall have properly fitted sheets. (Consumer Product Safety Commission; 16 CFR Parts 1219, 1220 & 1500)</i>
He-C 4002.23 Rest and Sleep	
(g) – (m)	<i>New rules relative to staff training requirements on safe sleep practices</i> and where and how infants shall be put down for sleep. There are several new requirements added to the rule to reduce the risk of SIDS so this section should be closely reviewed. (45 CFR 18)
(s)(2)	New rule requiring programs to maintain documentation of notice to parents if they choose to reduce the staff to child ratios during nap time, as allowed by this rule.
He-C 4002.24 Program Requirements	
(f)	New requirement to provide at least 60 minutes daily of gross motor activities for children 18 months and older.
(g)	New parameters regarding outdoor play and upper and lower temperature requirements.
(h)	New requirements regarding the use of sunscreen, including the SPF, the UV index, and how frequently it must be applied.
(i) – (o)	New rules regarding children's time viewing television and use of electronic devices. Please review these new rules closely.
(p)(3)	Amends the rule to limit the time children may be in infant swings, high chairs, playpens, etc. to 30 minutes total per day, except when eating.
(s)	New rule specifying that licensed programs that share space with license exempt programs shall not be responsible for children not enrolled in their program, not allow the populations to mix, and not allow children from the license exempt program to share space that is being used by the children enrolled in the licensed program.
He-C 4002.25 Behavior Guidance and Treatment of Children	
(g) – (l)	New rules regarding how programs will address children exhibiting persistent and extreme challenging behaviors and <i>the requirement to have written policies regarding such behaviors</i> . Please review these rules closely. (45 CFR 18 [§98.16(ee)])

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He-C 4002.26 Hand Washing	
(d)	New requirement regarding washing infants' hands using 3 disposable or individual cloths.
He-C 4002.27 Nutrition, Food Service and Safety	
(o) – (x)	There are many new rules regarding expressed breast milk and prepared formula. Please review this section closely.
Tables 4.2.3 & 4.2.4	<p>The tables for meal patterns have been deleted and updated meal patterns are included in the Appendices to the rule. (USDA Child and Adult Care Food Program 7 CFR Parts 210, 215, 220)</p> <p>Infants: https://www.fns.usda.gov/sites/default/files/cacfp/CACFP_infantmealpattern.pdf Children: https://www.fns.usda.gov/sites/default/files/cacfp/CACFP_childmealpattern.pdf</p>
	Rules regarding food storage and preparation have been moved here from 4002.14.
He-C 4002.28. Diaper Changing and Toileting	
	Rules now allow for the use of non-disposable diapers and no longer require the use of a commercial diaper service.
He-C 4002.29 Water Activities, Field Trips/ Transportation	
(i)	When children are engaged in water activities (see definition) an adult who is able to swim shall be present.
He-C 4002.29 Water Activities, Field Trips/ Transportation (continued)	
(l) through (p)	Group sizes and ratios for these activities have been revised. Please note exceptions.
(b)	New rule requiring approval by the department of space, such as driveway or parking lot, prior to allowing children to use the space.
He-C 4002. 30 Professional Development	
	<p>There are significant changes in this section regarding pre-service and on-going professional development training requirements. <i>Those required by 45 CFR 18 [§98.44] include:</i></p> <p><i>4002.30(a) (but not child care licensing orientation)</i></p> <p><i>4002.30(b) all current staff need the trainings identified in 4002.30(a) by September 30, 2017.</i></p> <p><i>4002.30(d) – requires that staff have ongoing professional development, including in the health and safety topics required in (a), but does not require a certain number of hours (recommends Caring For Our Children as a guide, which recommends 24 hours after the first year: http://cfoc.nrckids.org/StandardView/1.4.4.1)</i></p> <p>Please review closely.</p>
He-C 4003.31 Family Based Programs	
(b)	The pre-service training requirements have been expanded to include additional courses.
He-C 4003.32 Requirements for Child Care Personnel in Center Based Programs	
(e)	Allows exemption from the requirement to have one out of every 6 child care personnel meet the minimum requirements of a

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	lead teacher for the first and last hour of each day; may be an associate teacher only for center based programs operating more than 5 hours per day.
(l) – (n), (r) & (s)	The pre-service training requirements for certain staff have been expanded to include additional courses.
(p)	New rule allowing assistant teachers to be alone with a child/children under certain, specific conditions.
He-C 4002.33 and .34 Group Child Care Center and Infant/Toddler Program	
	Ratios remain the same, however the charts have been removed and the ratios added to rule in the form of paragraphs.
(e)	Clarified rule regarding requirement to assign a primary caregiver for each group of infants between 5 weeks and 18 months of age.
He-C 4002.35-.37 Preschool Program, School Age Program and Night Care Program	
35(d)	Updated curriculum requirements to align with the “NH Early Learning Standards.”
36(b)-(f)	<p>Moved all current exemptions from rules for school age programs to here, and added new ones. Exemptions include:</p> <p>(b) All school age programs shall be exempt from He-C 4002.13(b)(2)b. relative to recording birth dates on attendance records.</p> <p>(c) School age programs which serve only children attending part day public kindergarten or full day public school and operate in buildings which currently house public or private schools shall be exempt from the following:</p> <ul style="list-style-type: none"> (1) He-C 4002.21(m) regarding outside play areas; (2) He-C 4002.14(b)(4)a. regarding unshielded, or unprotected electrical outlets; (3) He-C 4002.14(b)(5) regarding long cords and strings; (4) He-C 4002.14(b)(6) regarding handrails on steps or stairs; (5) He-C 4002.14(b)(7) regarding gaps in balusters, rails, etc.; (6) He-C 4002.14(b)(9) regarding access to sharp objects such as scissors for arts and crafts or knives for cooking; (7) He-C 4002.14(b)(14) regarding open doors which are not equipped with a sturdy screen door equipped with a latch; (8) He-C 4002.14(b)(23) relative to access to items labeled “keep out of reach of children”; (9) He-C 4002.14(j)(6) relative to access to sunscreen;

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	<ul style="list-style-type: none">(10) He-C 4002.14(aa) regarding fencing requirements for playgrounds;(11) He-C 4002.14(ab) regarding energy absorptive materials;(12) He-C 4002.14(ac) regarding covered trash containers;(13) He-C 4002.21(ai), (m) and (n) relative to inspections and approvals by the department needed prior to using space; and(14) He-C 4002.22(q) regarding space for each child's possessions.
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(d) Programs that serve only children attending part day public kindergarten or full day public school shall be exempt from the following:

- (1) He-C 4002.14(b)(5) regarding long cords and strings;
- (2) He-C 4002.14(b)(9) regarding access to sharp objects such as scissors or knives for cooking;
- (3) He-C 4002.14(af) regarding covered trash containers;
- (4) He-C 4002.22(k) regarding space for each child's possessions.

(e) In lieu of He-C 4002.23(b), school-age programs operating for more than 5 hours per day shall provide children with an opportunity for at least 30 minutes of quiet activities, rest, or relaxation.