

## RULEMAKING NOTICE FORM

Notice Number 2017-39

Rule Number He-C 4002

1. Agency Name & Address:

**Dept. of Health & Human Services  
Child Care Licensing Unit  
129 Pleasant Street  
Concord, NH 03301**

2. RSA Authority:

**RSA 170-E:11**

3. Federal Authority:

**45 CFR Part 98**

4. Type of Action:

Adoption           

Amendment           

Repeal           

Readoption           

Readoption w/amendment **X**

5. Short Title: **New Hampshire Child Care Program Licensing Rules**

6. (a) Summary of what the rule says and of any proposed amendments:

**He-C 4002 “Child Care Licensing Program Rules” is currently an interim rule which is scheduled to expire on May 18, 2017. He-C 4002 contains licensing and operating requirements for child day care programs. The Department of Health and Human Services (Department) proposes to readopt He-C 4002 with amendments, including some new provisions.**

**He-C 4002 includes:**

- **Minimum standards for licensing applicable to the different types of child day care programs and the duties of program governing bodies;**
- **Criteria for the appropriate, safe, and healthy care of children in care including:**
  - **The environmental factors required for a healthy and safe premises;**
  - **The required number of eligible staff to adequately care and supervise the number of children served;**
  - **The requirements for programs that provide food, clothing, education equipment, and supplies; and**
  - **Appropriate discipline of children;**
- **Qualifications of staff and requirements for on-going professional development;**
- **Confidentiality, release, and maintenance of information and documentation, and procedures for filing reports with the Department;**
- **Disciplinary actions, corrective action plans, and findings by the Department; and**
- **Requirements for the treatment of and dismissal of children from a program.**

**Amendments to proposed He-C 4002 include:**

- **Two amendments based on newly enacted legislation. RSA 170-E:7 was amended by 2016 158:5 (SB 453 in the 2016 Session) and now includes a requirement for an employment eligibility card and a \$50.00 fee to cover the cost of issuing the card. The proposal also implements a statutory amendment to RSA 170-E:10-a by 2014 128:2 (HB 1478 in the 2014 Session) which adds the requirement for the Department to post a program’s “reasonable response” with the findings made by the Department;**
- **The incorporation by reference of forms;**
- **Requirements under He-C 4002.02 to submit:**
  - **Documentation of the completion of professional development requirements listed in He-C 4002.30(a) with the application;**
  - **Documentation relating to the program as a business required to be filed with the NH Secretary of State, and any change of mailing address, email or phone number;**
- **The proposal also includes the following updates:**
  - **The number of hours of training and professional development required for new, full-time, and part-time personnel, and the time period for training completion; specification of additional areas of professional development and training topics; specification of qualifications for workshop or conference instructors; the formats in which training can be obtained; and a description of those exempted from certain training requirements. The rule also credits applicants for pre-service coursework in some areas not previously acceptable;**
  - **For programs currently licensed, the deadline for completion of safety training for all child care personnel which is established as September 30, 2017; and**

- Requirements relating to criminal record and fingerprint authorization forms and the requirement of an employment eligibility card for anyone, age 18 or older, listed on a “Household and Personnel Form.” The rule specifies exemptions to this requirement, and the circumstances when a new form must be filed and specifies a statutorily mandated fee of \$50.00 for the issuance of the employment eligibility card, and those exempted from the requirement;
- **Updates to documentation or reports required as follows:**
  - Each child’s daily attendance records, and staff daily attendance and records of staff room assignments throughout the day;
  - Child care personnel health records that include a specific statement regarding the individual’s ability to work in child care; and
  - Child immunization documentation and compliance with RSA 141-C:20-e;
- **Addition of health and safety requirements, including but not limited to the following:**
  - Requirements relating to a finding that a child care personnel is ineligible to work in child care;
  - Requiring programs to develop an emergency operation plan pursuant to the Department’s “New Hampshire Child Care Center and Family Child Care Emergency Operation Plan Template”;
  - Specifying how soon a program must notify parents, and report to DHHS when a child sustains a serious injury that requires medical treatment;
  - Reinstating a critical violation for crib and equipment balusters, and adding a requirement that cribs used shall have been manufactured on or after June 28, 2011;
  - Clarifying the process for elevating a violation to a critical violation;
  - Safeguards for infants using a pacifier, children wearing items that potentially pose a choking hazard, or other items in the facility that potentially present choking or tripping hazards, to infants and older children;
  - For appropriate personnel, the completion of safe sleep training for infants up to 12 months of age;
  - Requirements when programs supervise and monitor children using television, video, and other electronic devices, appropriate limitations, and precautions relating this activity including the use of specialized software, and requirements for outdoor play and required use of sunscreen;
  - Requiring written policies relating to children exhibiting extreme, challenging behaviors, appropriate discipline, suspension, and dismissal of children from a program;
  - Using a certified contractor when repairing and renovating deteriorated surfaces and areas in buildings built prior to 1978;
  - New restrictions when using common space;
  - Obtaining written documentation of the fire inspector’s approval of space heaters in use;
  - Performing fire drills, as specified;
- Clarification regarding prior DHHS approval of play areas and clarification regarding use of swimming pools;
- Clarifying and adding the water testing requirements existing in state laws and rules;
- Updating program responsibilities relating to use of non-disposable diapers;
- Hand washing, especially of infants;
- The appropriate safe storage of infant milk, breast milk, and other food; and
- Updated USDA food requirements and requirements for posting of menus;

- **Addition of requirements relating to violations and sanctions as follows:**
  - A specific violation for a program that alters a statement of findings issued by the Department;
  - In compliance with RSA 170-E:10, III, permission for programs to have a “reasonable response” published when the Department has issued a statement of findings;
  - If a program has been allowed to continue operating pending appeal of an order revoking or suspending a license, a requirement that a copy of the order be provided to new families at enrollment, and to all new staff;
  - The circumstances under which center directors, site directors, or site coordinators may be exempted from the 5 year license or permit revocation period in the current rule; and
  - Imposition of three new fines, including as follows:
    - A \$2,000 fine for continuing to operate after suspension, revocation or denial of a license or permit;
    - A \$500 fine for failing to complete criminal background checks; and
    - A \$200 fine for failing to submit a corrective action plan as required;
- **Removal of the requirement that programs be subject to a sanction requiring the hiring of a consultant to observe and suggest remedial or corrective measures;**
- **For new child care personnel, the addition in He-C 4002.30 of:**
  - The requirement to have training completed within 90 days from date of hire to complete professional development in the 13 topics listed in the rule;
  - The requirement for accommodations for new child care personnel to meet training requirements if they cannot provide documentation of having completed the 24 hours of professional development in the 12 months before becoming employed; and
  - Exceptions to the training requirements.
- **Changes in He-C 4002.31 to provider requirements to broaden fields of study for family and family group child care providers younger than 21 years of age to include 6 credits of specified college courses from a regionally accredited college;**
- **Changes in He-C 4002.32 in staffing and staff qualifications including:**
  - Limiting the requirements for lead teachers to be on the premises;
  - Establishing the conditions under which assistant teachers may be alone with a child or group of children;
  - Broadening the fields of study or qualifications for director, lead and associate teachers, and junior helpers, and site directors, in a center based program;
  - Clarifying the qualifications for a group leader and assistant group leader or project leader in school-aged programs; and
  - Changing staff titles to replace child care assistants with assistant teachers , and adding the requirement to assign a primary caregiver for each group of infants;
- **Various changes to the rule relating to school-age programs and a listing of those requirements in the rule from which school aged programs are exempted; and**
- **Editorial changes correcting a typographical error in Table 4.2.9 “Staff to Child Ratios and Staffing Requirements for School-age Children Ages 60 months & Older”.**

6. (b) Brief description of the groups affected:

**The proposed rule affects all individuals and businesses operating or seeking to be licensed to operate a child day care program. The rule also affects personnel of the licensed child day care programs, and the families and children who are served by them.**

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

<b>RULE</b>	<b>STATUTE</b>
He-C 4002.01	RSA 170-E:2
He-C 4002.02	RSA 170-E:6; RSA 170-E:11, I(l)
He-C 4002.03	RSA 170-E:11, I (h) & (m);
He-C 4002.04	RSA 170-E:7, I; RSA 170-E:11, I(a); RSA 170-E:11, I(h), and 45 CFR 18 [§98.43]
He-C 4002.05	RSA 170-E:9; RSA 170-E:11, I(l)
He-C 4002.06	RSA 170-E:8, III; RSA 170-E:11, I(h)
He-C 4002.07	RSA 170-E:11, I(a); RSA 170-E:11, I(h); RSA 170-E:11, IV; RSA 170-E:17, II, III;
He-C 4002.08	RSA 170-E:11, I(a); RSA 170-E:11, I(h); RSA 170-E:11, IV; RSA 170-E:17, II, III;
He-C 4002.09	RSA 170-E:11, I(a); RSA 170-E:11, I(h); RSA 170-E:11, IV; RSA 170-E:17, II, III;
He-C 4002.10	RSA 170-E:11, VI; RSA 170-E:11, VII; RSA 170-E:21-a
He-C 4002.11	RSA 170-E:11, IV; RSA 541-A:30-a
He-C 4002.12	RSA 541-A:29
He-C 4002.13	RSA 170-E:11, I (d) & (e)
He-C 4002.14	RSA 170-E:11, I(d) & (e) and 40 CFR 1.745.90(a) and (b)(2011)
He-C 4002.15	RSA 170-E:11, I(d), (e), (h); RSA 170-E:6
He-C 4002.16	RSA 170-E:11, I(b)
He-C 4002.17	RSA 170-E:11, I(d) & (g)
He-C 4002.18	RSA 170-E:11, I(a), (d) & (g)
He-C 4002.19	RSA 170-E:11, I(a), (d), (g), & (h) and 45 CFR 98.[§98.16(aa)]
He-C 4002.20	RSA 170-E:11, I(a) & (g)
He-C 4002.21	RSA 170-E:11, I (d)
He-C 4002.22	RSA 170-E:11, I (d) & (e) and 16 CFR Parts 1219, 1220, and 1500
He-C 4002.23	RSA 170-E:11, I (c), (d), & (e) and 45 CFR 18
He-C 4002.24	RSA 170-E:11, I(a), (d), & (e)
He-C 4002.25	RSA 170-E:11, I(a), (b), (c), (e) & (i) and 45 CFR 18
He-C 4002.26	RSA-170-E:11, I(d) & (e)
He-C 4002.27	RSA-170-E:11, I(d), & (e)
He-C 4002.28	RSA-170-E:11, I(d), & (e)
He-C 4002.29	RSA-170-E:11, I(a), (b), (c), (d) & (e) and RSA 265:107-a
He-C 4002.30	RSA-170-E:11, I(b) & (e) and 45 CFR 18 [§98.44]
He-C 4002.31	RSA 170-E:11, I(b) & (e)
He-C 4002.32	RSA 170-E:11, I(b), (d) & (e)
He-C 4002.33	RSA 170-E:11, I(a) & (c)
He-C 4002.34	RSA 170-E:11, I(a), (c) & (e)
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)

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Catherine Bernhard** Title: **Rules Coordinator**  
Address: **Dept. of Health and Human Services** Phone #: **271-9374**  
**Administrative Rules Unit** Fax#: **271-5590**  
**129 Pleasant St.** E-mail: [catherine.bernhard@dhhs.nh.gov](mailto:catherine.bernhard@dhhs.nh.gov)  
**Concord, NH 03301**

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

**The proposed rules may be viewed and downloaded at:**

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Thursday, April 27, 2017**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, April 20, 2017 at 6:00 p.m.**

Place: [\*\*DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH\*\*](#)

**Webinar: Webinar registration to join the webinar and receive information at:**

<https://attendee.gotowebinar.com/register/6711627165180835330>

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 17:030 , dated 03/17/17

**1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

When compared to the existing rules, the proposed rules may increase costs and benefits to state citizens, political subdivisions, and independently owned businesses to the extent they operate or utilize licensed child care facilities. The exact fiscal impact cannot be determined at this time. There is no impact on state funds.

**2. Cite the Federal mandate. Identify the impact of state funds:**

The proposed rules are in compliance with 42 USC 1131; 45 CFR 18.98.16(ee); 45 CFR 18.98.41; 45 CFR 98.44; 45 CFR 98; 40 CFR 1.745.90(a) and (b)(2011); 16 CFR 1219, 1220, and 1500; and the United States Department of Agriculture's Child and Adult Care Food Program. No impact on state funds.

**3. Cost and benefits of the proposed rule(s):**

Some costs and benefits associated with the proposed rules are attributable to RSA 141-C, RSA 170-E, RSA 485, and the federal mandates stated in 2 above. Costs and benefits are stated below are attributable to the proposed rules.

**A. To State general or State special funds:**

None.

**B. To State citizens and political subdivisions:**

State citizens who choose to utilize licensed child care facilities may experience increased costs as a result of requirements relative to the provision of sunscreen, snack and menu preparation, and filtering devices used to safeguard a child's use of some electronic devices. The proposed rules may benefit state citizens to the extent there is an increase in the number of individuals who are eligible and hired to work at licensed child care programs, which could increase the number of child care openings available.

Child care programs operated by municipalities or public schools are not required to be licensed by law, but to the extent they elect to become licensed they could incur additional costs relative to professional development, training, health and safety requirement, noticing, fines, health care screening requirements, requiring the utilization of a certified lead abatement contractor, and purchasing filtering software for electronic devices. The proposed rules may also benefit such municipalities or public schools as a result of changing professional development requirements for certain staff, allowing the ability to earn training hours on-line or through correspondence courses, increasing responsibilities for assistance teachers easing requirements on lead teachers, and broadening the fields of study acceptable for certain specific qualified positions. The exact costs and benefits cannot be determined at this time.

**C. To Independently owned businesses:**

To the extent an independently owned business operates a licensed child care facility they could experience increased costs and benefits as stated in B above.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

**The proposed rule modifies an existing program or responsibility but does not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.**





**Readopt with amendment He-C 4002, effective 11-19-16 (Document #12046, Interim), 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. The term also includes “child care program” or “program”.

(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~~(+)~~(t).

(e) “Assistant 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(o).

~~(ef)~~ “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)~~(n) for employment in center based programs.

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

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

~~(hi)~~ “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 and/ toddler program;
- (3) Night care program;
- (4) Preschool program;
- (5) School-age program; or
- (6) Any combination thereof.

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

~~(jk)~~ “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 program personnel” means the center director, site director, family child care provider, and any individual; 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.~~

~~(1) Who is employed by a child care program for compensation, including office, kitchen and janitorial staff, contract employees or self-employed individuals; or~~

~~(2) Whose activities involve the care or supervision of children for a child care program or unsupervised access to children who are enrolled in a child care program, such as household members.~~

(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.~~

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

~~(ts)~~ “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.

(t) “Extreme challenging behavior” means:

- (1) Prolonged tantrums;
- (2) Physical and verbal aggression;
- (3) Disruptive vocal and motor behavior;
- (4) Property destruction;
- (5) Self-injury;
- (6) Non-compliance; or
- (7) Withdrawal.

(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(seq).

(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 ~~and~~ 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 ~~or~~ 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(qe).

(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(m).

(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 accompanying the medication or 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 rodent 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 providing care on or off the approved licensed premises listed below:

- (1) Center based;
- (2) Infant ~~and~~ 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(us).

(az) “Qualified substitute” means a person who assumes the responsibilities of a center director or site director ~~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 56 years, which does not need to be the same set of circumstances, or involve the same child care program 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 and~~ room temperature or cool water which is mixed fresh daily per manufacturer’s directions for sanitation 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) "Serious safety risk" means behavior of such intensity, frequency, or duration that the physical safety of the child or others is placed in serious jeopardy.

(bg) "Site coordinator" means a person who is qualified as a site director and is employed to oversee multiple school age program licenses by a single applicant, licensee, or permittee.

~~(bf)~~ (bh) "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~~(rp)~~.

~~(bg)~~ (bi) "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.

(bj) "Substitute" means a person who assumes the responsibility of any child care program personnel on a temporary basis, who meets the age and experience, requirements of the position for which they are substituting.

~~(bh)~~ (bk) "Supervision" means know~~ing~~ledge of the number and identity of children in care, and being accountable~~ity~~ for the activity and whereabouts of each child in care, and having 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)~~ (bl) "Toddler" means a child 19 months to 35 months old.

~~(bj)~~ (bm) "Toileting" means to use the toilet or to assist a child in using the toilet.

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

(bo) "Unit" means the child care licensing unit with the department.

~~(bl)~~ (bp) "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)~~ (bq) "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.

~~(br)~~ (br) "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.

(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 [“Application for Family Child Care Program”](#) or [“Application for Child Care Center” \(5/2017\)](#) 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 ~~(j)~~.

(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 ~~New Hampshire state fire eCode~~~~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 Form”~~~~list (10/1/2016)~~ ~~including~~ for each of the following:
  - a. The owner or applicant;
  - b. All household members age 10 years and older;
  - c. All child care program personnel age ~~46~~14 and older; and



d. All other individuals age 10 and older, who are not enrolled in the child care program who will have ~~daily~~unsupervised contact with the children; and

(6) A copy of Any documents required to be filed with the N.H. Secretary of State regarding trade names, limited liability corporations, or corporations, as applicable. 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) Each individual age 18 and older listed on the "Household and Personnel Form" (10/1/16) in accordance with (d)(5) above shall also submit a criminal history record information authorization form and a complete set of fingerprints to the department of safety, in accordance with RSA 170-E: 7, I-a, except:-

(1) When an individual has a non-expired child care employment eligibility card, issued by the department in accordance with RSA 170-E: 7, IV-a; and

(2) The individual has been employed in a NH licensed child care program within the previous 6 months.

~~(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, site coordinator or site director meets the education and experience requirements for the applicable program type(s) as specified in He-C 4002.32.

(h) All family child care providers, center directors, site coordinators, and site directors shall submit with the application documentation of the completion of the professional development requirements listed in He-C 4002.30(a).

(h)(i) The documentation of education and experience required under (gf) ~~and~~through (ig) 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)~~(j) 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 coordinator, or 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 program 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 or 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 their child's health, safety, or well-being, including the following details:
- (1) The name of ~~W~~who was involved in, and who witnessed the incident, while keeping the identities of other children confidential;
  - (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, whether in electronic or paper format, 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 program 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 program personnel shall not:

- (1) Make false or misleading statements ~~or reports~~ to the department, whether verbal or written; 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/ or her designee shall submit a new ~~“Household and Personnel Form” list (10/1/2016)~~, completed in accordance with He-C 4002.02(d)(5) for all child care program personnel or members of the household, no later than in accordance with the as follows:

- (1) ~~Prior to the start date of any individual age 14 or older as a new child care program personnel age 16 and older;~~
  - (2) ~~Prior to the day on which an individual who is currently a child care program personnel or household member turns 18 years of age; any child care personnel reaches 14 years of age;~~
  - ~~(3) The day any household member reaches the age of 10 years; or~~
  - ~~(34) Prior to the day any individual person age 10 and older becomes a household member or when other individuals who are not enrolled in the child care program will have unsupervised contact with the children; or and~~
  - ~~(4) Three months before the 5 year anniversary date on which the current child care program personnel's state and federal criminal records checks were last completed.~~
- (m) Each individual age 18 and older listed on the "Household and Personnel Form" (10/1/2016) in accordance with (l) above, who does not have a current employment eligibility card as referenced in (q) below shall, prior to his or her start date, submit a criminal history record information authorization form and a complete set of fingerprints to the department of safety, in accordance with RSA 170-E: 7, I-a. ~~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) Exceptions from (m) above shall be for:
- (1) Volunteers who are not included in the child to staff ratio and who are never left alone with children; or
  - (2) Individuals who have been determined eligible to work by the department during the previous 5 year period and who have been employed in any New Hampshire licensed child care program during the last 6 months of that period.
- (o) Individuals shall work under the supervision of child care personnel whom the department has deemed eligible to work until the "Household and Personnel Form" (10/1/2016) for that individual is returned to the program.
- (p) Student interns or practicum students placed in a program as part of the requirements of a course of study may shall be permitted to work with children prior to submission of their his or her background check, in accordance with the following:
- (1) The student intern or practicum student shall initiate scheduling an appointment with the New Hampshire department of safety or local law enforcement in order to complete fingerprinting as required by RSA 170-E:7, I-a within the first 7 days of the state of the semester in which placement is anticipated, or placement in the program, whichever occurs first; and
  - (2) The student intern or practicum student shall not be left alone with children or included in the staff to child ratios of the program.
- (q) All individuals required to complete background checks and obtain an eligibility card in accordance with (m) shall submit an application "New Hampshire Health and Human Services Criminal History Record Information Authorization" (10/1/16) and a non-refundable \$50.00 fee to the department

for the issuance of the employment eligibility card, which shall be valid for 5 years in accordance with RSA 170-E: 7, IV-a.

(r) The only exceptions to (q) above shall be for:

(1) Family child care providers, household members, applicants, and volunteers; or

(2) Individuals whose responsibilities do not include care and supervision of children, who are always in the presence of child care program personnel, and whose purpose or objective is to carry out a specific limited role, including but not limited to:

a. An educational or clinical observation of children for a higher education class;

b. A person working as part of an internship or practicum as part of a course of study;  
or

c. Any other purpose where the person's presence is in no way related to the care or supervision of children in the program.

(s) A copy of each individual's "Household and Personnel Form" (10/1/2016) returned to the program by the department, along with a copy of his or her non-expired child care employment eligibility card, as applicable, shall be on file at the program.

~~(t)~~ (u) A licensee or permittee shall notify the department in writing ~~when:~~

(1) Prior to changing the name or advertising under a new name, including any documentation from the Secretary of State, if applicable, 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; or

(2) Within one business day when there is a change in mailing address, email address or phone number.

~~(u)~~ (v) When the center director, site coordinator, or site director on record with and approved by the department leaves the position, the licensee, permittee or his or 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, site coordinator or site director.

~~(v)~~ (w) 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 a program may not be without a qualified center or site director not more than a maximum of for more than a maximum of 120 consecutive days total in a 12 month period.

~~(w)~~ (x) 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).

(x) ~~When a site coordinator leaves his or her position, the program shall:~~

(1) Replace him or her with a new site coordinator within 60 days and submit information as specified in (w)(2) above; or

(2) Submit information in (w)(2) above for each site director at each location if the site coordinator position will not be filled.

(yf) 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.

(zs) 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.

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

(abx) For the purposes of (aat) 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 program personnel, members of the board of directors, or other governing body, or children in the program, as allowed per He-C 4002.20(e)(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.

(acx) 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 or request staff or children who have been interviewed by the department 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.

(~~adw~~) Any violation of (~~acv~~) 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 (~~aau~~) and (~~abv~~) 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 "Application for Family Child Care Program" or "Application for Child Care Center" (5/2017) for license renewal, completed in accordance with He-C 4002.02;

(2) The application attachments specified in He-C 4002.02(d)(~~1~~), (2), (3), and (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, site coordinator 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 if changed since the previous application.

(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. In accordance with RSA 541-A:30, I, an existing license shall not expire until the department takes final action upon the renewal application, provided a licensee submits a timely application in accordance with this section.~~

#### 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 (e)	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 (e)	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 (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 (t)	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 (e)	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 (e)	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 (e)(1)
He-C 4002.14 (b)(8)	He-C 4002.15 (a)(5)	He-C 4002.22 (m)	He-C 4002.32 (e)(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)			
He-C 4002.04 (a)	He-C 4002.14 (x)(1)	He-C 4002.19 (h)	He-C 4002.29 (g)
He-C 4002.04 (b)(6)	He-C 4002.14 (x)(2)	He-C 4002.19 (i)	He-C 4002.29 (h)
He-C 4002.04 (c)	He-C 4002.14 (x)(3)	He-C 4002.19 (j)	He-C 4002.29 (i)
He-C 4002.04 (d)	He-C 4002.14 (x)(7)	He-C 4002.19 (m)	He-C 4002.29 (j)
He-C 4002.04 (e)	He-C 4002.14 (x)(8)	He-C 4002.19 (n)	He-C 4002.29 (k)
He-C 4002.04 (g)	He-C 4002.14 (x)(11)	He-C 4002.19 (y)(1)	He-C 4002.29 (l)(2)a.&c.2.
He-C 4002.04 (h)	He-C 4002.14 (y)	He-C 4002.19 (y)(2)	He-C 4002.29 (p)
He-C 4002.04 (k)	He-C 4002.14 (ab)	He-C 4002.19 (y)(4)	He-C 4002.29 (q)
He-C 4002.04 (l)	He-C 4002.14 (ac)	He-C 4002.19 (ab)	He-C 4002.29 (r)
He-C 4002.04 (m)	He-C 4002.14 (ae)	He-C 4002.21 (a)	He-C 4002.29 (s)(1)-(3)
He-C 4002.04 (o)	He-C 4002.14 (af)	He-C 4002.21 (b)	He-C 4002.29 (t)

<u>He-C 4002.04 (p)</u>	<u>He-C 4002.14 (ag)</u>	<u>He-C 4002.21 (i)</u>	<u>He-C 4002.29 (v)</u>
<u>He-C 4002.04 (q)</u>	<u>He-C 4002.14 (ah)</u>	<u>He-C 4002.21 (l)</u>	<u>He-C 4002.29 (x)</u>
<u>He-C 4002.04 (s)</u>	<u>He-C 4002.14 (ai)</u>	<u>He-C 4002.21 (m)</u>	<u>He-C 4002.29 (y)</u>
<u>He-C 4002.04 (w)</u>	<u>He-C 4002.14 (ad)</u>	<u>He-C 4002.21 (n)</u>	<u>He-C 4002.30 (a)</u>
<u>He-C 4002.04 (aa)</u>	<u>He-C 4002.14 (ae)</u>	<u>He-C 4002.22 (a)(4)&amp;(6)</u>	<u>He-C 4002.30 (b)</u>
<u>He-C 4002.04 (ab)</u>	<u>He-C 4002.14 (ah)(1)</u>	<u>He-C 4002.22 (c)</u>	<u>He-C 4002.30 (d)</u>
<u>He-C 4002.04 (ac)</u>	<u>He-C 4002.15 (a)(3)-(5)</u>	<u>He-C 4002.22 (h)</u>	<u>He-C 4002.30 (e)</u>
<u>He-C 4002.06 (h)</u>	<u>He-C 4002.15 (b)(1)&amp;(2)</u>	<u>He-C 4002.22 (j)</u>	<u>He-C 4002.31 (b)</u>
<u>He-C 4002.06 (j)(1)</u>	<u>He-C 4002.15 (b)(3)d.&amp;e.</u>	<u>He-C 4002.22 (o)</u>	<u>He-C 4002.31 (d)(2)</u>
<u>He-C 4002.06 (r)</u>	<u>He-C 4002.15 (c)</u>	<u>He-C 4002.22 (s)</u>	<u>He-C 4002.31 (g)</u>
<u>He-C 4002.08 (f)(1)</u>	<u>He-C 4002.15 (d)</u>	<u>He-C 4002.22 (y)</u>	<u>He-C 4002.31 (i)</u>
<u>He-C 4002.14 (b)(1)</u>	<u>He-C 4002.15 (g)</u>	<u>He-C 4002.22 (z)</u>	<u>He-C 4002.31 (j)</u>
<u>He-C 4002.14 (b)(4)b.&amp;c.</u>	<u>He-C 4002.15 (j)(3)&amp;(4)</u>	<u>He-C 4002.23 (h)</u>	<u>He-C 4002.31 (l)</u>
<u>He-C 4002.14 (b)(5)</u>	<u>He-C 4002.15 (k)(1)</u>	<u>He-C 4002.23 (i)</u>	<u>He-C 4002.31 (m)</u>
<u>He-C 4002.14 (b)(8)</u>	<u>He-C 4002.15 (k)(5)</u>	<u>He-C 4002.23 (j)</u>	<u>He-C 4002.31 (n)</u>
<u>He-C 4002.14 (b)(9)</u>	<u>He-C 4002.15 (l)</u>	<u>He-C 4002.23 (k)</u>	<u>He-C 4002.31 (o)</u>
<u>He-C 4002.14 (b)(11)</u>	<u>He-C 4002.18 (b)</u>	<u>He-C 4002.23 (n)</u>	<u>He-C 4002.32 (c)(1)</u>
<u>He-C 4002.14 (b)(13)</u>	<u>He-C 4002.18 (d)</u>	<u>He-C 4002.23 (s)(1)</u>	<u>He-C 4002.32 (c)(4)</u>
<u>He-C 4002.14 (b)(14)</u>	<u>He-C 4002.18 (j)</u>	<u>He-C 4002.24 (a)</u>	<u>He-C 4002.32 (j)</u>
<u>He-C 4002.14 (b)(16)</u>	<u>He-C 4002.18 (s)</u>	<u>He-C 4002.25 (a)</u>	<u>He-C 4002.32 (l)(1)-(4)</u>
<u>He-C 4002.14 (b)(19)</u>	<u>He-C 4002.18 (t)(1)</u>	<u>He-C 4002.25 (b)</u>	<u>He-C 4002.32 (l)(5)e.4.</u>
<u>He-C 4002.14 (b)(20)</u>	<u>He-C 4002.18 (t)(4)</u>	<u>He-C 4002.25 (e)</u>	<u>He-C 4002.32 (o)(2)</u>
<u>He-C 4002.14 (b)(21)</u>	<u>He-C 4002.18 (u)</u>	<u>He-C 4002.25 (f)</u>	<u>He-C 4002.32 (q)(2)&amp;(3)</u>
<u>He-C 4002.14 (b)(22)</u>	<u>He-C 4002.18 (x)</u>	<u>He-C 4002.27 (j)</u>	<u>He-C 4002.32 (r)</u>
<u>He-C 4002.14 (e)</u>	<u>He-C 4002.19 (a)</u>	<u>He-C 4002.27 (an)(1)</u>	<u>He-C 4002.32 (t)(2)</u>
<u>He-C 4002.14 (f)</u>	<u>He-C 4002.19 (c)</u>	<u>He-C 4002.28 (c)</u>	<u>He-C 4002.32 (w)</u>
<u>He-C 4002.14 (h)</u>	<u>He-C 4002.19 (f)</u>	<u>He-C 4002.28 (l)</u>	<u>He-C 4002.37 (a)</u>
<u>He-C 4002.14 (i)</u>	<u>He-C 4002.19 (g)</u>	<u>He-C 4002.29 (f)</u>	

(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 ~~;~~ or

(6) The program is moving to a new location and the cited violations do not include health or safety violations that would endanger children at the new location.

(d) The department shall upgrade the violation of a non-critical rule to critical status and respond to that violation in the same manner as a violation of a critical rule ~~W~~when:

(1) It determines the department finds that, due to the nature, ~~or~~ degree ~~or repetition~~ of a violation, ~~a violation of a rule not designated as critical has jeopardized or has there is~~ the potential to jeopardize or has jeopardized 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;~~ or

(2) An applicant, licensee, or permittee is unable or unwilling to come into compliance with a rule not designated as critical.

(e) The department shall issue a statement of findings to an applicant, licensee or permittee for each licensing and monitoring visit ~~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 Critical rule violations~~ shall not require a corrective action plan as specified in (i) below ~~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 New Hampshire state firelife safety ~~code~~ violation; and

(5) The violation ~~is a health or safety issue, in accordance with He C 4002.14, but~~ does not, immediately jeopardize the health, safety, or well-being of a child or children in care.

(g) In accordance with RSA 170-E: 10, III, the department shall issue the statement of findings via email if a valid email address has been provided by the program, or by U.S. mail if an email address has not been provided.

(h) The statement of findings shall not be altered by the program, including but not limited to evidence or dates as documented by the department.

(ig) 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.

(jh) 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.

(k) If, in addition to the corrective action plan, the program submits a separate reasonable response to the department's findings, the response shall be posted with the corrective action plan on the website, in accordance with RSA 170-E: 10, III. A "reasonable response" shall be factually correct, and shall not include information in the corrective action plan but shall include mitigating circumstances that explain, but do not attempt to excuse or deny the circumstances surrounding the department's findings, and that do not include any personal identifying information or names of others, profanity, derogatory, or inflammatory content.

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

(mj) Notwithstanding (ig), ~~through~~ (ji) and (l) 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.

(nk) When a program receives a corrective action plan issued by the department, in accordance with (li) or (mj) 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 (ig)(5) and (jh) above.

(ol) Notwithstanding (e) through (nk) 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.

(pm) 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 ~~or~~ her designee, a summary of any violations of critical or non-critical rules found during the visit.

(qn) 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.

(re) 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 is ineligible to work in child care ~~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 be ineligible to work in child care~~pose a threat to the safety of a child or children; and~~
  - (2) The basis for the determination that the individual is ineligible to work in a child care program; and
  - (3) The individual's right to challenge his or her criminal record pursuant to Saf-C 5703.12.  
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) When the department determines that an individual is ineligible to work in child care, in accordance with RSA 170-E:7, III or IV, it shall provide notice to the child care program that:
- (1) The individual has been determined by the department to be ineligible to work in child care;
  - (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; and
  - (3) The need for the child care program to inform the department in writing of the specific action it has taken as required under (2) above.

~~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~~ is eligible to work with 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~~ is ineligible to work with 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~~ be ineligible to work with 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; and
- ~~(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~~

(23) 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~~ specify that the individual was determined by the department to be ineligible to work with children.

(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/ his or her 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 to release, destroy, or take any action relating to the information 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 program 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 program 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 program 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 program 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 program 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).

#### 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 shall:

- (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 program 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~~/~~ or 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 program 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 or her license capacity, or any addition of new program types to an existing license or permit, until he or she achieves and maintains compliance with He-C 4002; or

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.~~

~~(de)~~ 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.

~~(ef)~~ 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.

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

(gh) 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.

(hi) 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.

(ij) The department shall revoke, suspend, or deny an application for a new license, license renewal, or license revision in accordance with RSA 170-E:12 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, or 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~~(ig)~~ through ~~(nh)~~;

(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).

~~(jk)~~ 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.

~~(kl)~~ 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.

~~(lm)~~ 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.

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

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

~~(op)~~ 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 ~~(pq)~~ below.

~~(pq)~~ 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.

~~(qf)~~ 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.

(rs) 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.

(st) 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.

(tu) Based upon information provided under (st) 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.

(u) When a program is allowed to continue operating pending appeal as provided in (o) above, the program shall provide the suspension or revocation notice to any new families prior to enrollment of their child(ren) or staff prior to offer of employment.

(v) The department shall send a notice equivalent to the notice specified in (tu) 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 determines~~se~~ 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 a request for a center director, site coordinator, or site director, prior to the expiration of the 5 years, to be considered eligible to be employed as a center director, site coordinator, or site director for another applicant or licensee, or to become an applicant for a license, only under the following circumstances:

(1) The revocation or denial was based on the center director's, site coordinator's, or site director's inability to correct a violation due to the applicant or licensee's refusal or inability to correct the violation; and

(2) The center director, site coordinator, or site director employed by the applicant or licensee whose license was revoked or application was denied shows that circumstances have substantially changed such that the department now has a good cause to believe that the center director, site coordinator or site director 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)~~ 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.

~~(aba)~~ 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.

#### 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~~200.00 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~~500.00, 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~~500.00 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~~1,000.00 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 continuing to operate a child care program after suspension, revocation, or denial of a license or permit, in violation of RSA 170-E:4, I, the fine for an unlicensed individual or entity shall be \$2,000.00 and an additional fine of \$500.00 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;

~~(6)~~ 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;

(76) For the purposes of (65) above, each different type of report or record requested but not provided shall constitute a separate violation subject to a separate fine;

(87) For furnishing or making false or misleading statements, either verbal or written, or reports to the department, or directing, requiring, or knowingly allowing any child care program personnel to furnish, or make false or misleading statements or report to the department, or falsify any documents, other written information, or reports issued by or required by the department, in violation of He-C 4002.04(h), the fine shall be \$1000.00;

(98) For the purposes of (87) above, each false or misleading statement or report furnished or made by any applicant, licensee, permittee, or furnished or made by any child care program personnel with the knowledge of, at the direction of or on behalf of the applicant, licensee or permittee shall constitute a separate violation;

(109) For failure by the applicant, licensee, or permittee, or by any child care program 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(aat) the fine shall be \$1000.00;

(11) For failure to submit a corrective action plan, in violation of He-C 4002.06(i), the fine shall be \$200.00;

(12+0) For failure to comply with an approved corrective action plan, in violation of He-C 4002.06(re), the fine shall be \$250.00 per violation;

(13+1) For failure to supervise each child in care, in violation of He-C 4002.19(a), the fine shall be \$500750.00;

(14+2) 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;

(15+3) 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 program 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;

(16+4) 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 program 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;



~~(1745)~~ For failure to comply with the qualifications for a site director, in violation of He-C 4002.32(~~rp~~), 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;

(18) For failure to submit an employee, household member, or other individual required to complete the criminal background check process, in violation of He-C 4002.04(1), the fine shall be \$500.00 and an additional fine of \$100.00 per day when the violation is not corrected within 5 business days and the employee, household member, or other individual continues to work in the program without having completed the criminal background check process;

~~(1946)~~ 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 ~~(1945)~~ 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;

~~(2047)~~ For a repeat violation, as defined in He-C 4002.01(bc), of any critical rule not specified in (b)(1) through ~~(1946)~~ above, or any rule upgraded to critical status, in accordance with He-C 4002.06(d), the fine shall be ~~\$100~~200.00;

~~(2148)~~ Notwithstanding (a)(2)c. above, the minimum fine the department shall assess shall be \$100.00;

~~(2249)~~ 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 ~~(1946)~~ above, the fine shall be twice the amount as the original fine assessed, not including any applicable daily rates;

~~(2320)~~ For the purposes of (b)~~(2047)~~ through ~~(2249)~~ above, each incident of non-compliance shall constitute a separate violation subject to a separate fine; and

~~(2424)~~ 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 ~~(2047)~~ above, assess a fine of ~~\$1000~~2,000.00 for each violation and an additional ~~\$100~~500.00 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, per RSA 170-E:10-a.

(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 and shall include information and any additional documentation, if applicable, the applicant, licensee, or permittee believes is needed to show regarding why the applicant, licensee, or permittee believes he or she is not in violation as noted in the statement of findings issued by the department in accordance with (a) above.



(c) In accordance with RSA 170-E:10-a, Written notice of the department's decision shall be provided to the applicant or licensee within 30 days from receipt of the request and receipt of any and all information from the applicant, licensee, or permittee.

(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) Include the full name of each child;

(2) Include the birth date of each child, either on the records or kept with the records;

(3) Be maintained and available separately in each group or classroom so that staff have an accurate list of all of the children they are responsible for at all times; 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;

(24) Include time of arrival and departure to be filled in as each child arrives at or departs from the program; At all times during operating hours, accurately reflect the number of and identity of the children who are present in the program;

(35) Be maintained for 6 months; and

(46) 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 include:

(1) Full name;

(2) Scheduled work hours;

(3) The time the individual arrived at and departed from the program;

(4) An indication of which staff are not qualified to be left alone with children in accordance with He-C 4002.32; and

(5) Age group or classroom of children with whom the individual is primarily assigned to work or indication that the individual has no primary assignment.

~~(d)~~ Staff attendance records shall ~~Be~~ filled in by each individual as she or ~~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;~~

(e) Individual staff shall sign in and sign out documenting the time when she or he enters or leaves a classroom, including when leaving or returning from all breaks.

~~(f)~~ Staff attendance records shall:

(1) Be maintained for 6 months; and

(2) 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.~~

~~(g)~~ 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 (h) below.

(h) 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) ~~“New Hampshire FireLife safety eCode”~~ violations or hazards such as blocking doorways, hallways and stairs that are a means of egress, and failure to maintain working smoke detectors;
  - (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 e~~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 balusters, 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, or other items such as cords, 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 demonstrates 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; and

(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 of a building built prior to 1978 are in a deteriorating condition, including flaking, chipping, and peeling paint, ~~and the building was built prior to 1978, or are subject to renovations or construction, a U.S. Environmental Protection Agency certified Renovation, Repair, and Painting (RRP) contractor shall be utilized to make the deteriorated surfaces intact, in accordance with 40 CFR1.745.90(a) and (b)(2011) and He-P 1600.~~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) In addition to (e) above, until such time as the deteriorated surfaces can be made intact, the program shall provide the department with a plan, in writing, that ensures children will not have access to those surfaces and includes the expected date of completion of the work.

(gf) 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.

(hg) 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.

(ih) 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.

(ji) All ~~containers of~~ toxic and flammable materials shall be stored in cabinets which are locked, or secured with child proof latches, or otherwise out of reach of children, which materials shall clearly labeled with the name of the product they contain, including but not be 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) ~~Insect repellent~~ ~~Materials labeled, "Keep out of Reach of Children"~~.

(~~k~~j) All items listed in (~~j~~i) above shall be:

- (1) ~~Clearly labeled with the name of the product they contain; Stored separate from food items in a manner to prevent contamination of food items in case of leakage; and~~
- (2) ~~Stored separate from food items in a manner to prevent contamination of food items in case of leakage In cabinets which are locked or secured with child proof latches or otherwise out of reach of children.~~

(~~l~~k) Such materials listed in (~~j~~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.

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

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

(~~o~~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.

~~(pe)~~ 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.

~~(qp)~~ Portable electric space heaters shall be approved in writing 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.

(r) Programs shall maintain on file the local fire inspector's written approval required in (q) above.

~~(se)~~ Except for ~~(qp)~~ above, all other portable heating devices shall be prohibited.

~~(tf)~~ Smoking shall not be permitted in the building anytime for center based programs or during operating hours for family or family group child care homes.

~~(us)~~ Notwithstanding ~~(tf)~~ above, child care program personnel shall not smoke in view of children or while personnel are responsible for the care of children.

~~(vt)~~ Child care program personnel who ~~choose to~~ smoke on their breaks shall wash their hands and 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.

~~(wt)~~ 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.

~~(x\*)~~ 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;
- ~~(10) Tripping hazards from items not in use;~~ and
- ~~(11) Other dangerous items or substances.~~

~~(yw)~~ ~~Except as specified in (z) below, p~~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.

~~(z\*)~~ 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.

~~(aay)~~ 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.~~



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

- (1) Be designed to restrain ~~preschool~~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.

(~~acab~~) 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 is a unitary surface tested to ASTM F1292 and installed per manufacturer's instructions, 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) To prevent injury, when the ground is frozen programs shall not allow children to play on equipment or structures that require energy absorptive material pursuant to (ac) above.~~

(~~acaa~~) All swimming pools ~~or wading pools~~ on the premises of the child care program ~~or~~and used as part of the child care operations shall be clean, and maintained in accordance with the manufacturer's or installer's printed instructions regarding cleaning, filtration and chemical treatment~~and supervised in accordance with the following:~~

(af) All swimming pools and wading pools on the premises of the child care program and used as part of the child care operations shall be 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; and
- (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:~~

(ag) All swimming pools on the premises of the child care program shall be inaccessible to children in accordance with 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; and
- e. The keys, combinations, or other means to open the locks required in a. through d. above shall not be accessible to children; ~~and~~

(ah) 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.

(aiae) 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.

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

(akeg) 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~~60 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~~ Env-DW 501.04(c), 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-public~~ water system as defined in RSA 485:1-a, XV, 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~~ that have their own independent water supply and ~~are caring for 24 or fewer children, are not considered to be public water systems as defined in RSA 485:1-a, XV,~~ shall ~~maintain on file, available for review, evidence that test~~ their water supply ~~has been tested~~ in accordance with the following:
  - a. ~~In accordance with Env-C 300, w~~Water testing shall be performed by ~~the department of environmental services a~~ laboratory accredited under the environmental laboratory accreditation program 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. For new applicants, not more than 90 days prior to the date the application is submitted to the department, water testing shall be conducted for arsenic, Water testing for bacteria, and nitrates, nitrite, lead (stagnant and flushed), copper (stagnant and flushed), fluoride, and uranium and results provided to the department with the application 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. Ongoing water testing shall be conducted as follows and results maintained on file at the program, available for review by the health officer and the department:
    1. Once every three months for bacteria;
    2. Annually for arsenic, nitrate, and nitrite;
    3. At least once every three years for lead (stagnant), copper (stagnant), flouride, and uranium;

~~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;~~

~~(6) d. The results of water tests required by (a)(5)b. and c. above, and results of any other water tests shall be in compliance with the maximum contaminant levels established in Env-Dw 700 for bacteria, nitrates, nitrites, arsenic, and fluoride, and shall not exceed the action levels established in Env-Dw 714 for lead and copper. 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;~~

~~(7) e. Any program whose water has been tested result has exceeded maximum contaminant levels or action levels and has failed to meet the acceptable levels identified in this section or as required by the department of environmental services, shall:~~

~~a.1. Immediately contact the department to report that finding, and provide the department with a plan acceptable to the department for how it will ensure that children will not be at risk from exposure to the unsafe water; and~~

~~b.2. Within 4030 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)1. The program demonstrates that it has made a good faith effort to develop and submit the corrective action plan within the 4030 day period but has been unable to do so; and~~

~~(ii)2. The department determines that the health, safety or well-being of children will not be jeopardized as a result of granting the extension; and~~

~~(8) f. When a program fails to submit a written proposed corrective action plan within 4030 days of receiving the unacceptable test result under (a)(57)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 program 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 program 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; and

(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.~~

(l) To prevent cross-contamination, programs shall not use a double sink equipped with only one faucet for hand washing in one basin and food preparation in the other, regardless of the presence of a barrier between the basins.

#### 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~~5 or more hours per week of 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 only exception to (a) above shall be for child care program personnel working in school age programs who are currently employed in a public or private school.

~~(c)~~ The initial record of the health screening required in (a) above for newly hired child care program personnel shall:

(1) ~~H~~ave been completed not more than 12 months preceding the date of hire or the date the individual began having ~~daily~~ contact with children; and

(2) Include a statement by the health care provider that indicates the individual has no apparent health conditions that would prohibit or inhibit his or her ability to care for children.

~~(d)~~ 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, except that, pursuant to the McKinney-Vento Homeless Education Assistance Improvement Act, for children experiencing homelessness, programs shall be permitted to enroll children and allow for 60 days for families to obtain and provide documentation of immunizations.

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

(c) Programs shall complete the department's annual survey of children's immunizations in accordance with RSA 141-C:20-e.

~~(d)~~ A child health screening form "New Hampshire Early Childhood Health Assessment Record" (May 2012) 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.

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

(1) For children not yet enrolled in public kindergarten or public school~~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; and~~

(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~~year prior to enrollment; 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.~~

(fe) 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.

(gf) 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.

(hg) The symptoms of illness referenced in (gf) 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.

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

(j) 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, including areas not regularly considered child care space, such as offices, provided the space is safe for children to occupy, until parents arrive to remove the child from the program.

(k) 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/ or 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.

(l) 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) Programs shall not accept any prescription medications that do not include a prescription label or written order from a licensed health care professional.

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

(g) 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.

(~~hg~~) 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.

(~~ih~~) All physician medication samples shall legibly display the information described in (~~gf~~) above.

(~~ji~~) 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.

(~~kj~~) 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.

(~~lk~~) Prior to administering prescription and non-prescription medication to any child, child care personnel shall complete and document training on medication ~~safety and administration~~, as required by He-C 4002.30(a)(4), delivered by the department, a physician, RN, or LPN practicing under the direction of an ARNP, RN or physician, or online training approved by the department.

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

(~~nm~~) 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.

(~~oh~~) 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 (~~gf~~) 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.

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

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

(rq) The written record required in (qp) 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 pro re nata (PRN), documentation shall also include the reason for administration.

(sf) 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.

(ts) 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.

(ut) Medications such as insulin, inhalers and epi pens shall be immediately accessible to child care personnel caring for children requiring such medications.

(v) Medications described in (u) above 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.

(wt) The only exception to (vt) 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.

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

(~~yw~~) If 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, ~~these items shall provided those items are~~ stored and administered in accordance with the requirements in this section.

(~~zx~~) 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.

(~~aa~~) 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, as per NH Environmental Services Environmental Fact Sheet "Medicine Disposal Options for School Nurses" WD-DWGB-22-27 (2009) available as listed in Appendix A.

#### 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 provided that child care personnel:

a. Are aware of each child going inside to use the bathroom; and

b. Have a plan in place to keep track of children who have gone inside and to check on children who have not returned in a timely manner;

(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 on the same level 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~~ children, 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~~infants, in person, to ensure that each ~~child~~infant 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) Child care personnel shall not carry a child while stepping over a low wall, gate, or other similar barrier.~~

~~(f) 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) The center director, site director, family child care provider, and all staff used to meet staff to child ratios shall be certified 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) During all operating hours there shall be at least one staff person, per every 20 children, who is trained and currently certified as specified in (j) above.~~

~~(k) CPR and first aid training as specified in (i) above shall not may be received via correspondence or on-line, provided a skill test is required to be performed in person prior to becoming certified.~~

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

(~~ml~~) In addition to the requirements specified in (i) above, at least one staff person who is currently certified in CPR and first aid shall be with any children while on or off the premises of the program. 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.

(~~nm~~) 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.~~

(~~on~~) 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 in accordance with standards from organizations as referenced in (i) above.

(~~pe~~) 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.

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

(~~rq~~) Programs shall develop an emergency ~~response~~operation plan by completing using "New Hampshire Child Care Center and Family Child Care Emergency Operation Plan Template" (March 2017 v.1) which shall include response actions for natural, human-caused, or technological incidences including, but not limited to:

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

b. Secure campus~~Lockout~~;

c. ~~Drop and e~~Cover and hold;

d. Lockdown;

e. ~~Reverse e~~Evacuation; ~~and~~

f. Shelter-in-place;

g. Scan procedure; and

h. Communication and reunification procedures.

(s) Programs shall practice their emergency operation plan, as described in Form [New Hampshire Child Care Center and Family Child Care Emergency Operation Plan Template" (March 2017 v. 1) above, with all staff and children, when appropriate, but no less than twice per year.



(t) All staff shall review the program's emergency operation plan within the first 30 days of employment, which shall be documented in the personnel file.

(u) Upon enrollment, programs shall provide families with information from the plan that addresses communication and reunification procedures, as specified in (r)(4)h. above.

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

(ws) The center director, site director, or family child care provider shall instruct all child care program personnel about the existence and location of the plans required under (rq) and (vf) above.

(xt) The emergencywritten plan required in (vf) 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 shallwill 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.

(yh) 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.

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

(aaw) 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.

(ab) If any child has serious injury while in the care of the program that resulted in medical treatment by a physician, or other health care professional, or required hospitalization, or if CPR is performed on a child while in the care of the program, the family child care provider, center director, or site director shall:

- (1) Notify the child's parents immediately;
- (2) Notify the department within 48 hours; and

(3) Within one week provide to the department a written report which details the nature and circumstances of the serious injury.

~~(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.~~

(acy) 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.

(adz) The injury record required under (acy)(2) above shall be:

(1) Reviewed and signed by the family child care provider, center director, site director, or his or 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.

(acaa) All records of injury required under (acy)(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 or her designee, indicating that he or she has reviewed the report.

(afab) 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.~~

(agad) 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.

(ahae) 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.

(ai) The only exception to (ah) above shall be for school age programs operating in a public or private school, use of the actual fire alarm system for the building shall not be required for the monthly fire drills.

(ajaf) All children and child care personnel shall evacuate the building during each fire drill.

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

(alah) 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.

(amai) The written record of fire drills required under (alab) ~~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) The Exits used;
- (3) The Number of children evacuated and total number of people in the building at the time of the drill;
- (4) The Amount of time taken to evacuate the building; and
- (5) The Name of the person conducting drill.

(anaj) The center director, site director, or family child care provider or his or 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 "Child Care Registration and Emergency Information" (5/2017) ~~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 November 23, 2008~~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 p~~Programs licensed before November 23, 2008~~the effective date of these rules~~ which, ~~in addition to classroom space,~~ have common space ~~which that~~ is used in accordance with (h) and (i) 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 as of November 23, 2008~~the effective date of these rules, in order to comply with (b) above, ~~may shall be allowed to~~ have no more than 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) and (j) below.

(g) Programs ~~that were~~ licensed on or before May 30, 1998 which have common space that is used in accordance with (h) and (i) 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 as of May 30, 1998~~before the effective date of these rules~~ in order to comply with (b) above, ~~may shall be allowed to~~ have no more than up to 4 children over the classroom capacity, regularly assigned to each classroom, ~~over the classroom capacity~~ as determined in accordance with (b) above except as noted in (i) and (j) 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) Common space shall not be occupied by more than the number of children allowed per the square footage in (b) above, as measured by the department.

(j) 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 the ~~current~~ current child care space, such as removing walls, or otherwise adding, or expanding space.

(k) For all other programs not described in (f) or (g) above, ~~The only exception to (b) or (i) above shall be when children combine for time-limited activities, such as meals, or snacks, daily meetings, short stories, special guest presentations, or other special events, provided that all children have sufficient room for the activity.~~

(l) 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.

(m) 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.

(n) 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.

(o) 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.

(p) The only exceptions to (o) above shall be as follows:

(1) Programs which cannot comply with (o)(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 ~~(om)~~(2) above may operate with 50 square feet of outdoor play area per child for ~~1/3one-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 ~~(18)~~(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, including but not limited to using items per manufacturer's instructions;
- ~~(5)~~ and in good repair;
- ~~(65)~~ Free of lead paint or other poisonous material; and
- ~~(76)~~ Cleaned on a regular basis.

(b) In addition to the regular cleaning required in (a)~~(76)~~ 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) Infants shall not be placed in any equipment, including but not limited to stationary activity centers that require them to support their heads on their own if they have not yet acquired that ability.

(d) Pacifiers shall:

(1) Only be used with parent's permission;

(2) Be inspected for tears or cracks and for fluid in the nipple before each use;

(3) Be cleaned with soap and water before each use;

(4) Not have attachments; and

(5) Not be clipped, pinned, or tied to an infant's clothing, and shall not be tied around an infant's neck, wrist, or other body part.

(e) If an infant refuses the pacifier, he or she shall not be forced to take it.

(f) Pacifiers shall not be coated in any sweet solution.

(g) Pacifiers shall be cleaned and stored open to air, separate from the diapering area, diapering items, or other children's personal items.

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

(id) 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.

(je) 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.

(kf) The only exception to (je) 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.

(lg) 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 (je) above.

(mh) Children ~~may~~shall only 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.

(ni) ~~Children 3 years of age and older shall be allowed to~~ The only exception to (hm)(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 as an exception to (m)(2) above, only if provided these items are not accessible to children younger than 3 years of age.

(o) Children younger than 6 years of age may shall not wear necklaces while in care, unless the necklace is such that it cannot be removed.

(pj) 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.

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



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

(~~sm~~) The fall zone under and around all indoor swings and climbing equipment, including slides, or lofts 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.

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

(~~ue~~) 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.

(~~vp~~) 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.

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

(~~xf~~) 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.

(y) Cribs shall be manufactured on or after June 28, 2011.

(zs) Cribs and playpens required under (~~xf~~) 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;~~

~~(67)~~ 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;~~

(7) Have properly fitted sheets which do not have excess fabric or that compress the mattress; and

(89) 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.

He-C 4002.23 Rest and Sleep.

(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) Pursuant to He-C 4002.30(a)(3), all child care personnel in programs licensed for children 12 months and younger shall complete training on safe sleep practices prior to working with infants.

(hg) To reduce the risk of Sudden Infant Death Syndrome (SIDS), infants up to 12 months shall be placed on their backs to sleep in a crib or playpen, unless there are written medical orders from the infant's primary health practitioner requiring alternate positioning.

(i) Infants up to 12 months shall not nap or sleep in a car safety seat, bean bag chair, bouncy seat, infant seat, swing, jumping chair, highchair, chair, futon, or any other type of furniture or equipment that is not a play pen or safety-approved crib.

(j) If an infant up to 12 months falls asleep in any place that is not a safe sleep environment, including entering the program asleep in a car safety seat, staff shall immediately move the infant and place them in the supine position in their crib or play pen.

(k) Cribs or play pens used by infants up to 12 months shall not have bumper pads, blankets, flat sheets, pillows, quilts, comforters, sleep positioners, or any soft items or toys;

(l) When child care personnel place infants in their crib or play pen for sleep, they should check to ensure that the temperature in the room is comfortable for a lightly clothed adult, check the infants to ensure that they are comfortably clothed and not overheated or sweaty, and that bibs and garments with ties or hoods are removed.

(m) Infants and children shall not be swaddled or placed in restrictive or weighted sleep suits or devices unless there are written medical orders from the child's primary health practitioner.

(nh) Child care personnel shall check on infants in cribs or play pens, in person, at least every 10 minutes.

(~~oi~~) 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.

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

(~~qk~~) 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 (~~oi~~) above.

(~~rl~~) 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 (~~oi~~) above.

(~~sm~~) Programs that choose to reduce staff in accordance with (~~oi~~) through (~~rl~~) above shall:

(1) ~~Notify~~ Notify parents in writing of the reduction of staff; and

(2) Maintain documentation of the written notice in (1) above for review by department staff. Written notice may be in the form of a posted document, a policy statement that is individually signed by parents or other method of documentation that is kept in the child's record.

#### 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/ or her assigned classroom and with the child care personnel responsible for his or 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) On a daily basis Provide children of all ages, ~~on a regular basis,~~ with developmentally appropriate opportunities for individual and group activities for each child including time for meals, snacks, sleep or rest, 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) Regularly interact with children at their level, maintain eye contact, and whenever appropriate, sit on the floor with them;

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

(6) 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) Programs shall provide at least 60 minutes daily of gross motor activity for children age 18 months and older.

(g) Children shall go outside when the temperatures are above 15° F, which factors in the wind chill, and below 90° F, limiting outdoor time to 30 minutes when temperatures are between 16-32° F.

(h) Sunscreen shall have UVB-ray and UVA-ray protection of SPF 15 or higher and shall be applied when the UV index is reported to be 3 or higher by the United States National Weather Service at least 30 minutes before sun exposure, every two hours, and after swimming, towel drying and sweating.

(i) In center-based programs:

(1) Children younger than 2 years of age shall not view television, video, or electronic devices; and

(2) Children older than 2 years of age shall not view more than 120 minutes of television, video, or electronic devices every two weeks.

(j) The only exception to (i)(2) above shall be:

(1) School age children completing homework assignments; or

(2) Children with special health care needs whom require and consistently use assistive and adaptive computer technology.

(k) In family based programs, children shall view no more than 120 minutes of television, video, or electronic devices every two weeks.

(l) Other activity choices shall be available to children during use of television, video or electronic devices.

(m) All media shall be age and developmentally appropriate.

(n) When in use, electronic devices shall be located in view of child care personnel for monitoring purposes.

(o) Electronic devices which allow internet access by the children shall be equipped with monitoring or filtering software which limits children's access to inappropriate web sites, e-mail, and instant messages.

(pf) In addition to the requirements in (e) above, eCenter 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 1530 minutes at a time, and no more than 30 minutes total per day, except for children in high chairs shall remain seated in the high chair provided they are actively engaged in eating and not being confined for any other reason.

(qg) 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.

(rh) In a family or family group child care home, which is licensed to care for children 6 weeks of age, the restriction specified in (qg) 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.

(s) Programs which are located in the same building with other entities that operate under another license number or operate programs for children that are license exempt, pursuant to RSA 170-E:3, shall:

- (1) Not be responsible for or supervise any children not enrolled in the licensed program;
- (2) Not allow children from the license exempt program to mix with children enrolled in the licensed program; and
- (3) Not allow children from the license exempt program to share space that is being used by children enrolled in the licensed program.

#### 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) Redirecting a child's attention to a desirable activity when a child is engaging in unacceptable behavior;
- (2) Providing positive guidance;
- (32) Establishing developmentally appropriate rules or limits for acceptable behavior which are fair, consistently applied, realistic, and designed to promote cooperation and respect;
- (43) Providing children with reasons for limits and rules;
- (54) Giving positively worded directions;
- (65) Acting as a role model to demonstrate desired behavior and problem-solving skills and then redirecting children to acceptable behavior;
- (76) Arranging equipment, materials, activities, and schedules in a way that promotes desirable behavior; and
- (87) 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, site coordinator, 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.

(g) Programs shall have a written policy which shall be provided to parents at enrollment, which clearly states that expulsion and suspension may be used only as a last resort for children exhibiting persistent and extreme challenging behaviors.

(h) Incidents of challenging behaviors shall be documented in writing daily to include:

- (1) The name and date of birth of the child;
- (2) The date and approximate time(s) of the incident(s);
- (3) A description of the incident(s) including the activity(s) the child was involved in;
- (4) A description of the intervention(s) provided including the identity of all adults involved;
- (5) The name(s) and dated signature(s) of child care personnel who witnessed the incident(s);
- (6) The name(s) and dated signature(s) of child care personnel responsible for the child at the time of the incident(s); and
- (7) The dated signature of the family child care provider, center director, site director, or his or her designee, indicating that he or she has reviewed the report.

(i) Programs shall document their efforts to maintain enrollment of the child through one or more of the following strategies:

- (1) Involving the child's parents, including but not limited to providing the incident reports in (h) above;
- (2) Using multiple intervention strategies pursuant to 4002.25(c) above;
- (3) Seeking out additional resources; or
- (4) Providing staff with professional development related to challenging behaviors.

(j) If after (i) above, the program determines that they are unable to provide the appropriate environment for the child or other children in the classroom, the program shall give the parents copies of the incident reports in (h) above if not yet provided, and no less than a 2-week notice to find alternate child care and shall provide the child care resource and referral information.

(k) The only exception to (j) above shall be if a serious safety risk exists for the child or others in the program, the program may choose to immediately expel the child with extreme challenging behaviors.

(l) The program may choose to suspend the child for the remainder of the day if an extreme challenging behavior poses a serious safety risk for the child or others in the program.

#### 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) For infants unable to wash hands with assistance, child care personnel shall use three disposable or individual cloths to wash infant's hands as follows:

- (1) Dampened and soapy for washing;
- (2) Dampened with water for rinsing; and
- (3) Dry for drying hands.

(e4) Sinks that are used for food preparation or clean up, including sinks used for getting water for baby bottles, rinsing bottles, or dishes, and washing toys, 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, cups and bottles, as applicable, for each meal and snack, which shall not be shared.
- (b) Child care program 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 program 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 program personnel shall thoroughly wash all fruit and vegetables before cutting or serving those foods to children.

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

(j) Child care program 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 or sausage;
- (3) Whole grapes;
- (4) Hard candy and chewing gum;
- (5) Raw carrot rounds, peas or celery;
- (6) Chips or hard pretzels;
- (7) Marshmallows;
- (8) Nuts or seeds;
- (9) Popcorn; and
- (10) Other hard or cylinder shaped foods that may pose a choking hazard.

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

(n) ~~Milk, e~~Expressed breast milk and prepared formula shall be:

- ~~(+)~~ Stored in covered containers, labeled with the child's name and dated. ~~;~~

(o) Expressed breast milk shall be:(12) Used immediately or stored in the refrigerator no longer than ~~72~~48 hours;(23) Labeled as used and returned to the refrigerator after each feeding if there is any left-over in the bottle, to be returned to the parent; and Discarded if not fed to an infant and left un-refrigerated for an hour or more; and(3) Not fed to the child if left unrefrigerated for more than 1 hour.(p) Prepared formula shall be:(1) Used immediately or stored in the refrigerator no longer than 24 hours;(2) Discarded if not fed to an infant and left unrefrigerated for more than 1 hour; and(34) Discarded after each feeding, if there is any left-over in the bottle.(q~~e~~) Frozen expressed breast milk shall be labeled and dated and stored in a freezer at 0 degrees Fahrenheit ~~for no longer than 6 months~~and discarded after 3 months.(r) Thawed breast milk shall be used within 24 hours.(s) To thaw breast milk:(1) Place in refrigerator overnight; or(2) Defrost in a container of running cool tap water.(t) To warm formula or breast milk:(1) Hold under cool or warm running water; or(2) Place in a bowl of cool or warm water; and(3) Gently swirl bottle to recombine contents.(u) If a slow-cooking device, such as a crock pot, is used for warming infant formula, breast milk, or infant food:(1) It shall be out of children's reach;(2) The water temperature shall not exceed 120°F; and(3) It shall be emptied, cleaned, sanitized, and refilled with fresh water daily.(v) If a bottle warmer is used for warming infant formula, breast milk, or infant food, it shall be out of children's reach and used according to manufacturer's instructions.(w~~p~~) Infants younger than 6 months of age or who are unable to sit in feeding chairs shall be held while being fed.(x) Notwithstanding (w) above, child care personnel shall not hold more than one infant at a time to bottle feed.

(y) Infants shall be introduced to drinking fluids from a cup only after receiving consent of the parent(s) and provided the infant is developmentally ready.

(~~zq~~) Child care personnel shall not prop bottles.

(~~aa\*~~) Infants and Cchildren shall not be fed in a crib, or while on rest cots, beds, mats or sleeping bags.

(~~abs~~) 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.

(~~act~~) Programs that provide meals or snacks to children ages one year and older shall have weekly written menus posted in a prominent location which is accessible to parents which reflects for all meals and snacks served to children ~~which are available for review by the department and parents upon request.~~

(ad) The written menus required in (ac) above shall be maintained and available for review by the department for 6 months.

(~~aeu~~) The written menus required in (~~act~~) above shall demonstrate compliance with the meal requirements in (~~ah\*~~) below.

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

(~~agw~~) Child care program 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 for the day.

(~~ah\*~~) ~~Notwithstanding (s) above, p~~Programs which provide food shall ensure that meals and snacks meet the daily meal patterns as ~~set forth~~listed in Appendix B, "Child Meal Patterns" and "Infant Meal Patterns", as listed in Appendix C. 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).</p> <p>** 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 vegetable juice	1/2 cup	1/2 cup	3/4 cup
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.			

(aiy) 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.

(aj) Programs may only serve 100% fruit juice to children age one year and older, with no more than 4 ounces of 100% fruit juice served daily.

(ak) Frying is not allowed as a method of on-site food preparation.

(al) Food shall not be used as a reward or punishment.

(am) Children shall be encouraged to try all foods, but shall not be required to try or to eat any food before they are served other food components or additional servings, or before they are allowed to be done with their meal or snack.

(an) 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, with the date opened and date of expiration.

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

(ap) Child care program 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.

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

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

(as) 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.

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

(au) Child care program personnel shall not serve to children:

(1) Any leftover perishable foods which have been stored in the refrigerator for more than 2 days; or

(2) Any food for which the expiration date has passed.

(av) Child care program 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.

(aw) Child care program 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.

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

#### 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.~~

~~(ae) At least every 2 hours, child care personnel shall check children in diapers and change diapers and clothing if they are soiled or wet. 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.~~

~~(bd) 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. At least every 2 hours, child care personnel shall check children in diapers and change diapers and clothing if they are soiled or wet.~~

~~(ce) Child care personnel shall remain at the elevated diaper changing surface and keep one hand on the child at all times while a child is on it. Children shall not be left unattended on a diaper changing surface.~~

~~(df) For each child there shall be a supply of clean diapers, clothing and bedding for use as needed.~~

(e) When non-disposable diapers are used, the following shall apply:

(1) The diaper shall have an absorbent inner lining completely contained within an outer covering made of waterproof material that prevents the escape of feces and urine; or

(2) The diaper shall contain a waterproof cover that is adherent to the cloth material; or

(3) When a diaper with a separate lining is used, the outer covering and inner lining should be changed together at the same time as a unit.

(fe) Soiled disposable diapers and cleansing articles shall immediately be placed in a plastic bag lined, hands-free receptacle.

(gh) 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.

(hi) Covered hands-free receptacles used to dispose of diapers and cleansing articles shall be cleaned and sanitized at least once each day.

(ij) ~~When home laundered cloth~~ Soiled non-disposable diapers ~~are allowed in accordance with (b) above, soiled cloth diapers~~ shall:

(1) ~~Be~~ immediately placed in an individual sealed plastic bag which shall be ~~securely closed inaccessible to children and not in contact with other's belongings;~~ and

(2) Be returned to the parent at the end of each day.

(jk) ~~Programs Soiled diapers from using~~ a commercial diaper service shall ~~be handled soiled~~ diapers in accordance with written instructions from the ~~commercial diaper~~ service.

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

(lm) 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) For any activities or destinations in (a) above, if it is on the same property as the licensed premises but not previously approved by the department for use as child care space, such as a driveway or parking lot, the program shall obtain approval from the department prior to allowing children to use the space.

(cb) 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.



~~(de)~~ 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.

~~(ed)~~ The parental authorization form required in ~~(de)~~ 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.

~~(fe)~~ 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 ~~(de)~~ above for each child participating in the water activity or field trip.

~~(gf)~~ The field trip or water activity attendance records required under ~~(fe)~~(1) above and the parental permission slips required under ~~(de)~~ 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.

~~(hg)~~ 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.

~~(ih)~~ 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.

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

~~(kj)~~ 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.

~~(lk)~~ 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.

~~(ml)~~ 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/ and 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 an child-care-assistant assistant teacher 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

AGE OF CHILDREN	MAXIMUM GROUP SIZE	MINIMUM STAFF TO CHILD RATIOS
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

AGE OF CHILDREN	MAXIMUM GROUP SIZE	MINIMUM STAFF TO CHILD RATIOS
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

(~~nm~~) 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.

(~~on~~) 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.

(~~pe~~) 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.

(~~qp~~) 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 (~~pe~~) 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.

(~~rq~~) 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 program 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.

(~~sf~~) 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.

(~~ts~~) 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.

(~~ut~~) Child care program personnel are prohibited from using ~~cell phones~~ mobile electronic devices while operating a vehicle to transport children, including hands-free operation.

(~~vt~~) In case of emergency during transport, child care program personnel shall park the vehicle in a safe location prior to using a cell phone to call for help.

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

(~~xw~~) 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.

(~~y\*~~) 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).

(~~zy~~) 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) Within 90 days of the first date of employment, all center directors, site coordinators, or site directors, and all other child care personnel providing supervision of children or required to meet staff to child ratios, shall have on file documentation of completion of a minimum of 6 hours of professional development which includes all topics listed below:

(1) Child care licensing orientation;

(2) Prevention and control of infectious diseases, including immunizations, provided that personnel are supervised at all times until this training is completed;

(3) Prevention of sudden infant death syndrome (SIDS) and use of safe sleep practices, provided that personnel complete this training prior to working with infants 12 months and younger;

- (4) Medication administration;
- (5) Prevention of and response to emergencies due to food and other allergic reactions;
- (6) Building and safety of physical premises, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
- (7) Prevention of shaken baby syndrome and abusive head trauma, provided that personnel are supervised at all times until this training is completed;
- (8) Emergency preparedness and response planning;
- (9) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants, provided that personnel are supervised at all times until this training is completed;
- (10) Appropriate precautions in transporting children for child care personnel who will provide transportation or accompany children during transportation;
- (11) First aid and CPR, provided that personnel are supervised at all times until this training is completed;
- (12) Recognition and reporting of child abuse and neglect; and
- (13) Child Development.

(b) All currently employed staff must have documentation of the above trainings by September 30, 2017.

(c) Child care personnel employed in programs which are not licensed to care for children younger than 18 months of age shall be exempt from the requirements of (a)(3) and (a)(7).

~~(d)~~ All child care personnel in family based programs and center based programs shall complete 24 hours the following number of hours of in-service professional development every 12-month period, a minimum of 6 hours of which shall be in health and safety topics listed in (a)(2)-(13) above, and the remaining hours shall be in any other areas listed in (k) below. 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.~~

~~(e)~~ The only exceptions to ~~(d)~~ above shall be:

- (1) for child care personnel Assistant teachers, group leaders, assistant group leaders, family child care workers, and family child care assistants -who work fewer than 25 hours per week for the same licensee shall obtain 12 hours of professional development every 12-month period, with a minimum of fourthree hours in any of the health and safety areas listed in (a)(2)-(14) above, and the remaining hours shall be in any areas in (k) below 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; or~~

(2) Child care personnel attending high school or college full time shall obtain 3 hours of professional development in health and safety areas listed in (a)(2)-(13) above, every 12-month period. Full time college attendance shall be a minimum of 12 credit hours.

~~(fe)~~ Professional development shall include:

~~(1) Trainings, workshops, technical assistance, self-study, or college courses, totaling at least 2/3 of the total of professional development hours;~~

~~(g) (2)~~ Self-study projects shall:

(1) Not exceed 6 of the required 24 hours of professional development; and

(2) Not be utilized to obtain the professional development training in health and safety requirements in (a)(2)-(13) above.

~~(h)~~ Self-study projects referenced in (g) above and shall: ~~which:~~

- a. ~~Be~~ 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.~~

(i) Newly hired child care personnel who:

(1) Are required to obtain professional development hours per (d) above and cannot provide documentation of 24 hours of professional development obtained in the previous 12 months shall obtain a minimum of 2 hours of professional development per month during the first year of employment; or

(2) Are required to obtain professional development hours per (e)(1) above and cannot provide documentation of 12 hours of professional development obtained in the previous 12 months shall obtain a minimum of one+ hour of professional development per month during the first year of employment.

~~(jf)~~ CPR, and 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.

~~(kg)~~ Professional development ~~Trainings and workshops~~, as specified in ~~(e)-(f)~~ through (h) above, shall be in any of the following areas:

- (1) Child development;
- (2) Health and safety or lifefire safety;
- (3) Caring for children with exceptionalities~~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 abuse and neglect~~welfare~~.

~~(14)~~ 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 which~~ 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 as a master professional, administrator or master teacher, or by the NH after school professional development system as a master professional;
  - 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~~when 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 or ~~her~~ to more effectively work with children in a program;  
and

(5) Online training and correspondence courses, provided documentation of completion includes:

a. The title of the training;

b. The completion date;

c. The hours awarded; and

d. A description which indicates the training is designed to increase the knowledge or skills of an individual in order to prepare him or her to more effectively work with children in a program.

(m) All child care personnel required to obtain professional development shall create an account in the New Hampshire Professional Registry at <https://nhportal.naccrraware.net/nh/>.

~~— (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 child development, early childhood, or elementary education, or other field of study focused on children, including at least one



3 credit course in child growth and development, from a regionally accredited college;~~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 a family child care worker~~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.

~~(jk)~~ The license capacity for family or family group child care homes shall include~~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.

~~(kl)~~ 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.

~~(lm)~~ 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.

~~(mn)~~ 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.

~~(ne)~~ 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.

~~(op)~~ 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.

~~(pf)~~ 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.

~~(qf)~~ 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, site coordinators 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 program 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; and

(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) There shall be at least one child care personnel qualified as a lead teacher on the premises at all times during operating hours, and 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) The only exception to (d) above shall be for the first and last hour of a center based program operating more than 5 hours per day, provided that an associate teacher as described in (n) below is on the premises.

(fe) 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 (gf) below.

(gf) 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(mt); and

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

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

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

(~~ih~~) The written notice required under (~~hg~~) 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.

(~~ji~~) The center director, site coordinator or site, director or his or/~~her~~ designee shall have ~~on file~~available for review 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.

(~~kj~~) Center based programs ~~may~~shall employ substitute staff only if the individuals: 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.

(~~lk~~) 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~~ child development, and 3 credits in management or supervision, awarded by a regionally accredited college or university, or a minimum of 2 years' experience in a supervisory or management position in lieu of the 3 credits in management and supervision;

(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 or~~ Have one of the following ~~pre-service training/education options~~:

- a. ~~An~~ minimum of an associate's degree in ~~early childhood education~~ child development, early childhood or elementary education, or other field of study focused on children, 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. Current certification in early childhood, elementary, or special education by the NH department of education ~~A bachelor's degree in elementary education, awarded by a regionally accredited college or university;~~
- d. Certification ~~of successful completion of training in a teacher preparation program accredited by the~~ as a Montessori Accreditation Council for Teacher Education (MACTE) in infant/ and toddler, early childhood or elementary I, together with 60 credits, awarded by a regionally accredited college or university. ~~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 child development, early childhood, or elementary education, or other field of study focused on children ~~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

~~(6) f. Written documentation from or Be~~ on file with the department ~~that as a center director working in that position she or he was qualified for the position of center director~~ on or before the effective date of these rules.

~~(m)~~ A lead teacher in a center based program shall have a high school diploma or general equivalency diploma, be at least ~~2021~~ 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 child development, early childhood or elementary education, or other field of study focused on children ~~early childhood education~~ from a regionally accredited college or university, including at least 3 credits child growth and development; ~~or~~
- (2) Documentation of a non-expired child development associates (CDA) in center based programs awarded by the council for professional recognition;
- (3) A credential from a teacher preparation program accredited by MACTE; or

~~(42)~~ Documentation from or on file with the department that she or he was qualified for and employed in the position of lead teacher on or before the ~~adoption~~effective date of these rules.

~~(nm)~~ 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 in child development, early childhood, or elementary education, or other field of study focused on children, 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 in child development, early childhood or elementary education, or other field of study focused on children 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 in child development, early childhood or elementary education, or other field of study focused on children 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) Current certification as para-educator by the NH department of education; or

~~(54)~~ Written documentation from or on file with the department that she or he was qualified and employed as an ~~for the position of~~ associate teacher on or before the date of the adoption of these rules.

~~(on)~~ ~~Child care assistants~~ Assistant teachers 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.

(p) Notwithstanding (o)(2) above, assistant teachers shall only be alone with a child or group of children if the following conditions are met:

(1) The center director has approved the specific assistant teacher to do this, with approval documented in the employee's file;

(2) The employee has been deemed eligible to work pursuant to RSA 170-E:7, III;

(3) The employee has at least three months of experience at the program;

(4) The employee has completed the required trainings pursuant to He-C 4002.30(a); and

(5) The specific activities that the assistant teacher shall be alone with children include:

a. Walking children:

i. To or from a bathroom;

ii. To or from receiving first aid treatment;

iii. To or from a bus stop;

iv. From one classroom or area to another within the licensed premises;

b. Supervising an ill child while waiting for pick-up by a parent;

c. Supervising a group of children for up to five minutes when other child care personnel leave the classroom to do a task that cannot be completed by the assistant teacher; or

d. Supervising any children that may otherwise be without direct staff supervision pursuant to He-C 4002.19.

(q) 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.

(r) 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) A minimum of an associate's degree in child development, education, recreation, or other field of study focused on children; 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 a public or private elementary school;~~

~~(4) A total of 12 credits in child development, education, recreation, or other field of study focused on children; early childhood education, human growth and development, education or recreation,~~ from a regionally accredited college plus 1000 hours of experience working with children;

~~(5)~~(4) Current certification as an educator by the NH department of education;

~~(6)~~(5) Experience working with children totaling 2000 hours and the following:

a. Current certification as a para-educator by the NH department of education; or

~~ba.~~ Documentation of enrollment in a course for at least 3 credits in child development, education, recreation, or other field of study focused on children, 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

~~cb.~~ 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)~~(6) Written documentation from or on file with the department that she or he was qualified and employed as a center site director in a school-age program on or before the effective date of these rules.

~~(sq)~~ 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 child development, education, recreation, or other field of study focused on children, 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 on file with the department that she or he was qualified and employed as a group leader ~~associate teacher~~ in a school-age program on or before the adoption of these rules.

~~(tf)~~ 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.

~~(us)~~ 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.

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

(u)(w) 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.

(x\*) 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.			

~~Programs shall staff group child care centers in accordance with the following:~~

- ~~(1) For children ages 36 to 47 months the maximum group size shall be 24 with the following minimum staffing levels:~~

a. One associate teacher with up to 8 children;

b. One associate teacher and 1 assistant teacher with 9 to 16 children; and

c. One lead teacher and 2 assistant teachers with 17 to 24 children;

(2) For children ages 48 to 59 months the maximum group size shall be 24 with the following minimum staffing levels:

a. One associate teacher with up to 12 children; and

b. One associate teacher and 1 assistant teacher with 13 to 24 children; and

(3) For children ages 60 months and over the maximum group size shall be 30 with the following minimum staffing levels:

a. One associate teacher with up to 15 children; and

b. One associate teacher and 1 assistant teacher with 16 to 30 children.

(c) Notwithstanding (b) above, a second staff person shall be in the building when 11 or more children are present.

(de) In addition to the staffing requirements under (b) above, group child care centers shall:

(1) Staff each ~~room~~group 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 and /Toddler Program.

(a) Infant~~/~~and 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.			

Programs shall staff infant and/ toddler programs in accordance with the following:

(2) For children ages 6 weeks to 12 months the maximum group size shall be 12 with the following minimum staffing levels:

- a. One associate teacher with up to 4 children;
- b. One associate teacher and one assistant teacher with 5 to 8 children; and
- c. One lead teacher and 2 assistant teachers with 9 to 12 children;

(3) For children ages 13 to 24 months the maximum group size shall be 15 with the following minimum staffing levels:

- a. One associate teacher with up to 5 children;
- b. One associate teacher and one assistant teacher with 6 to 10 children; and
- c. One lead teacher and 2 assistant teachers with 11 to 15 children;

(4) For children ages 25 to 35 months the maximum group size shall be 18 with the following minimum staffing levels:

- a. One associate teacher with up to 6 children;
- b. One associate teacher and one assistant teacher with 7 to 12 children; and
- c. One lead teacher and 2 assistant teachers with 13 to 18 children.

(c) Notwithstanding (b) above, a second staff person shall be in the building when 5 or more children are present.

(de) In addition to the staffing requirements under (b) above, programs licensed as infant/toddler programs shall:

- (1) Staff each ~~grouproom~~ 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; and
- (3) Base the staff to child ratio and group size 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.~~

(ed) To assure that the emotional well-being and physical needs of infants between 6 weeks and 18 months of age are met, programs shall assign one child care personnel as primary caregiver, based upon the staff-to-child ratio, who shall be responsible for meeting the children's needs for the majority of time the children are in his or her care.

~~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 He-C 4002.33(b), as applicable.

(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 foster:

- (1) Social and emotional development~~Foster positive self concept~~;
- (2) Language development and emergent literacy~~Develop social skills~~;
- (3) Cognitive development, including~~Encourage children to~~:
  - a. Early numeracy~~Think~~;
  - b. Science and social studies~~Reason~~; and
  - c. Approaches to learning~~Question~~; and
  - ~~d. Experiment~~;
- (4) Physical development and health~~Enhance physical and emotional development~~; and

~~(5) Creative expression and aesthetic appreciation 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) All school age programs shall be exempt from He-C 4002.13(b)(2)b. relative to recording birth dates on attendance records.~~

~~(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:~~

~~(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;~~

~~(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.~~

(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.

(bf) The staff to child ratios for Programs shall staff school-age programs in shall be 1 staff for 15 children age 56 months or older, with a maximum group size of 45, with the following minimum staffing levels:

- (1) One group leader with up to 15 children;
- (2) One group leader and one assistant group leader with 16 to 30 children; and
- (3) One site director and 2 assistant group leaders with 31 to 45 children.

~~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 Children	Maximum Group Size Per Room	Minimum Staff to Child Ratios and Staffing Requirements	
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

(eg) In addition to the staffing requirements in (bf) above, programs licensed as school-age programs shall:

- (1) Have a staff person who meets at least the minimum qualifications of an associate teacher group leader in each room; and
- (2) Have a second staff person in the building when 13 or more children are present.

(dh) 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.

(ei) 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.

(fj) The only exception to (ei) above shall be when there are 8 or fewer school-age children present, ~~programs may, if they so desire,~~ programs shall have the option to combine school-age children with children 4 years of age and older.

(gk) 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:2
He-C 4002.02	RSA 170-E:6; RSA 170-E:11, I(l)
He-C 4002.03	RSA 170-E:11, I (h) & (m);
He-C 4002.04	RSA 170-E:7, I; RSA 170-E:11, I(a); RSA 170-E:11, I(h), and 45 CFR 18 [§98.43]
He-C 4002.05	RSA 170-E:9; RSA 170-E:11, I(l)
He-C 4002.06	RSA 170-E:8, III; RSA 170-E:11, I(h)
He-C 4002.07	RSA 170-E:11, I(a); RSA 170-E:11, I(h); RSA 170-E:11, IV; RSA 170-E:17, II, III;
He-C 4002.08	RSA 170-E:11, I(a); RSA 170-E:11, I(h); RSA 170-E:11, IV; RSA 170-E:17, II, III;
He-C 4002.09	RSA 170-E:11, I(a); RSA 170-E:11, I(h); RSA 170-E:11, IV; RSA 170-E:17, II, III;
He-C 4002.10	RSA 170-E:11, VI; RSA 170-E:11, VII; RSA 170-E:21-a
He-C 4002.11	RSA 170-E:11, IV; RSA 541-A:30-a
He-C 4002.12	RSA 541-A:29
He-C 4002.13	RSA 170-E:11, I (d) & (e)
He-C 4002.14	RSA 170-E:11, I(d) & (e) and 40 CFR 1.745.90(a) and (b)(2011)
He-C 4002.15	RSA 170-E:11, I(d), (e), (h); RSA 170-E:6
He-C 4002.16	RSA 170-E:11, I(b)
He-C 4002.17	RSA 170-E:11, I(d) & (g)
He-C 4002.18	RSA 170-E:11, I(a), (d) & (g)
He-C 4002.19	RSA 170-E:11, I(a), (d), (g), & (h) and 45 CFR 98.[§98.16(aa)]
He-C 4002.20	RSA 170-E:11, I(a) & (g)
He-C 4002.21	RSA 170-E:11, I (d)
He-C 4002.22	RSA 170-E:11, I (d) & (e) and 16 CFR Parts 1219, 1220, and 1500
He-C 4002.23	RSA 170-E:11, I (c), (d), & (e) and 45 CFR 18
He-C 4002.24	RSA 170-E:11, I(a), (d), & (e)
He-C 4002.25	RSA 170-E:11, I(a), (b), (c), (e) & (i) and 45 CFR 18
He-C 4002.26	RSA-170-E:11, I(d) & (e)
He-C 4002.27	RSA-170-E:11, I(d), & (e)
He-C 4002.28	RSA-170-E:11, I(d), & (e)
He-C 4002.29	RSA-170-E:11, I(a), (b), (c), (d) & (e) and RSA 265:107-a
He-C 4002.30	RSA-170-E:11, I(b) & (e) and 45 CFR 18 [§98.44]
He-C 4002.31	RSA 170-E:11, I(b) & (e)
He-C 4002.32	RSA 170-E:11, I(b), (d) & (e)
He-C 4002.33	RSA 170-E:11, I(a) & (c)
He-C 4002.34	RSA 170-E:11, I(a), (c) & (e)
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)

## Appendix A

Location of Incorporated by Reference Document	Title of Document to be Incorporated by Reference	Cost and How to Obtain the Document
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He-C 4002.18(aa)	“NH Environmental Services Env Fact Sheet (2009) “Medicine Disposal Options for School Nurses” WD-DWGB-22-27 (2009)	

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