

He-C 4002 NH CHILD CARE PROGRAM LICENSING RULES

Adopted 4/21/22

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He-C 4002.01 Definitions.

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

(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) “Agency administrator” means a person who meets the qualifications of a center director and is employed by the licensee to oversee multiple child care agencies by a single or the same applicant, licensee, or permittee.

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

(e) “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 4002.35.

(f) “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 4002.35.

(g) “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 4002.35.

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

(i) “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.

(j) “Child” means “child” as defined in RSA 170-E:2, II.

(k) “Child care” means “child day care” as defined in RSA 170-E:2, III,.

(l) “Child care staff” means:

- (1) All child care staff categories as specified in He-C 4002.34 and 4002.34; and
- (2) Agency administrator and site coordinator, as defined in He-C 4002.01(c) and 4002.01(bf), respectively.

(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.

(o) “Corporal punishment” means the intentional infliction of physical pain by any means for the purpose of punishment, correction, discipline, instruction, or any other reason.

(p) “Corrective action plan (CAP)” means “corrective action plan” as defined in RSA 170-E:2, VI.

(q) “Department” means “department” as defined in RSA 170-E:2, VII,

(r) “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.

(s) “Family child care home” means “family day care home” as defined in RSA 170-E:2, IV(a),

(t) “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 4002.34(f).

(u) “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.

(v) “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 4002.34(e).

(w) “Family group child care home” means “family group day care home” as defined in RSA 170-E:2, IV(b).

(x) “Full day school program” means a program administered by a public or private school that is approved by the department of education.

(y) “Group child care center” means “group child care center” as defined in RSA 170-E:2, IV(c).

(z) “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 4002.35(q).

(aa) “Guardian” means “guardian” as defined in RSA 170-E:2, VIII.

(ab) “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.

(ac) “Incident Command System” (ICS), means a standardized on-scene emergency management system specifically designed to provide for the adoption of an integrated organizational structure that reflects the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries. ICS is the combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure, designed to aid in the management of resources during incidents, in coordination with local emergency response agencies in the community in which the program is located.

(ad) “Infant” means a child from the time of birth through 12 months old, except as referenced in He-C 4002.37.

(ae) “Infant and toddler program” means “day care nursery” as defined in RSA 170-E:2, IV(d).

(af) “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 childcare staff, as specified in He-C 4002.33.

(ag) “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 4002.34(j) or He-C 4002.35(o).

(ah) “Lead teacher” means a person who is employed in or is seeking employment in a New Hampshire licensed childcare program, who meets the age, education, and experience requirements specified in He-C 4002.35(k).

(ai) “License” means “license” as defined in RSA 170-E:2, IX.

(aj) “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.

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

(al) “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.

(am) “Medication” means a drug prescribed for a child by a licensed practitioner.

(an) “Medication error” means any error in the administration of a prescribed or over-the-counter medication, or an error in the documented administration of any medication or over-the-counter medication.

(ao) “Medication order” means a document, produced electronically or in writing, for an identified child by a licensed practitioner for medications, treatments, and referrals, and signed by the licensed practitioner using terms such as authorized by, authenticated by, approved by, reviewed by, or any other term that denoted approval by the licensed practitioner.

(ap) “Monitoring visit” means “monitoring visit” as defined in RSA 170-E:2, X.

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

(ar) “Over-the-counter medications” means non-prescription medications.

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

(at) “Permit” means “permit” as defined in RSA 170-E:2, XI.

(au) “Preschool program” means “preschool program” as defined in RSA 170-E:2, IV(f).

(av) “Program” means any or all of the various types of childcare 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.

(aw) “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 4002.35(s).

(ax) “Qualified substitute director” means a person who assumes the responsibilities of a center director or site director and who meets the age, education, and experience requirements of the position for which they are substituting in order to meet the requirements under He-C 4002.35(a) and (b).

(ay) “Regularly” means “regularly” as defined in RSA 170-E:2, XII

(az) “Related coursework” unless otherwise specified, means courses completed at an accredited college or university in child growth and development, lifespan development, human growth and development, infant and toddler development, developmental psychology, family studies, early childhood, elementary, and special education, and any other coursework focused on children.

(ba) “Repeat citation” means a citation of a specific licensing rule or law for which the program has been previously cited during the past 3 years, and which has not been removed as a result of an informal dispute resolution or overturned as a result of an adjudicatory procedure. A repeat citation does not need to include the same set of circumstances, or involve the same child care staff or the same child or children as in the original citation.

(bb) “Rough handling” means an aggressive physical act against a child, except when necessary to protect a child from harming themselves or others.

(bc) “Sanitize” means to clean to remove all organic material then wipe down or wash with a solution of chlorine bleach 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.

(bd) “School-age program” means “school-age program” as defined in RSA 170-E:2, IV(g).

(be) “Serious safety risk” means behavior of such intensity, frequency, or duration that the safety of the child or others is placed in serious jeopardy.

(bf) “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.

(bg) “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 4002.35(p).

(bh) “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.

(bi) “Substitute” means a person who assumes the responsibility of associate teachers, lead teachers, or group leaders, on a temporary basis, who meets the age requirements of the position for which they are substituting.

(bj) “Toddler” means a child 19 months to 35 months old, except as referenced in He-C 4002.37.

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

(bl) “Unit” means the child care licensing unit within the department.

(bm) “Water activity” means any activity during which children have access to swimming pools, water features, or other bodies of water, whether the children will be in, on, or near a pool or body of water.

He-C 4002.02 Licensure and Approval: Initial Applications, License Renewal, and Revisions.

(a) Any person or entity who intends to operate a program shall create an account in “NH Connections” at <https://nhpublichealth.force.com/nhccis/s/login/?ec=302&startURL=%2Fnhccis%2Fs%2F> or obtain an application packet from the unit.

(b) All applicants for licensure shall complete and submit an application by either applying online via the portal described in (a) above or by submitting “Application for Family Child Care Program” (April 2022) or "Application for Child Care Center" (April 2022) to the department, which shall not be considered complete until the department receives all of the information as specified in (d) below.

(c) Center based programs with 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 4002.35; and
- (5) In each building, there are adequate square footage and bathroom facilities for the number of children who will be cared for, in accordance with He-C 4002.22.

(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” (11/2017) 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 fire code compliance report documenting that, within the 12 months preceding the date the application for licensure is received by the department, the premises have been inspected for compliance with Saf-FMO 300 and 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) Background check forms as specified in He-C 4002.41 for:
 - a. The owner or applicant;
 - b. All household members age 10 years and older; and

c. The center director, agency administrator, site director, or site coordinator as applicable; and

(6) A copy of any documents required by the secretary of state regarding trade names, limited liability corporations, or corporations, as applicable.

(e) 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 4002.34.

(f) For all center based programs, the agency shall submit documentation that the center director, agency administrator, site coordinator, or site director meets the education and experience requirements for the applicable program type(s) as specified in He-C 4002.35.

(g) All family child care providers, center directors, agency administrators, site coordinators, and site directors shall submit with the application documentation of the completion of the professional development requirements listed in He-C 4002.33(a).

(h) The documentation of education and experience required under (e) through (g) above shall include:

(1) Copies of transcripts, certificates, diplomas, a non-expired appropriate level credential issued by the NH professional development system, or degrees as applicable; and

(2) A résumé or verification of previous experience if such experience is required to meet the qualifications for the position.

(i) In accordance with RSA 170-E:6, school-age programs which are operating in buildings in which public or private schools are currently located shall not be required to submit the documentation required in (d)(2) through (4) above.

(j) No less than 3 months prior to the expiration date of the current license, each licensee shall submit to the department the following through the “NH Connections” portal at <https://nhpublichealth.force.com/nhccis/s/login/?ec=302&startURL=%2Fnhccis%2Fs%2F> or by using the forms below:

(1) A signed and completed application “Application for Family Child Care Program” (April 2022) or “Application for Child Care Center” (April 2022) for license renewal, in accordance with He-C 4002.02;

(2) The application attachments specified in (d)(2), (3), and (6) above;

(3) A completed “Staff and Household List” (9/2018);

(4) The application attachments specified in (d)(1) and (f) above, if there has been a new center director, agency administrator, 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

(5) A diagram of the indoor and outdoor space if changed since the previous application.

(k) Upon receipt of a complete license application and inspection by department staff, the department shall:

(1) Issue a 6-month permit to the applicant for a new license; or

(2) Issue a 3-year license to the applicant for a license renewal.

(l) The license issued in accordance with (k) above shall reflect the maximum number of children approved by the local fire inspector, health officer, and zoning officials, and in accordance with the available floor space as measured by the department in accordance with He-C 4002.22(e) and the number of available toilets and sinks in accordance with He-C 4002.22(d).

- (m) 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.
- (n) 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:
 - 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.
- (o) 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.
- (p) 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 department issues the program a revised license or permit or other written authorization by the department for the increased license capacity.
- (q) A licensee or permittee who discontinues using a space for child care shall notify the department in writing within 5 business days of the change so that it can record the change in the file and revise the license accordingly if necessary.

He-C 4002.03 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 60 days from receipt of the application, petition, or request and any additional information requested by the department.

(b) The 60 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 60 days of receipt of the completed waiver request or application for revision.

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

He-C 4002.04 Waivers of Rules.

(a) Applicants, licensees, or permittees who wish to request a waiver of rules shall contact the unit to initiate the waiver request process.

(b) Applicants, licensees, or permittees with a “NH Connections” portal account shall request a waiver through their account or by providing the following information in writing:

- (1) The program name, address, phone number, email address, and license number;
- (2) The rule numbers for which the waiver is being requested;
- (3) A brief explanation of the reason for the waiver, the length of time for which the waiver is requested, how the program will meet the intent of the rule, and any affect the granting of the waiver will have on the health and safety of the children in the program;
- (4) The number and range of ages of the children who will be affected;
- (5) The signature of the family child care provider, center director, agency administrator, site coordinator, or site director, as applicable; and
- (6) A copy of a notice which has been provided to each parent, explaining the specifics of the waiver request and informing parents that they may call the unit if they have any concerns about the requested waiver.

(c) A 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; and
- (2) Does not negatively impact the health, safety, or well-being of the children.

(d) 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.

(e) 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.

(f) The department shall deny or rescind a waiver request when:

- (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 an outstanding corrective action plan that requires submission and approval by the department;
- (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 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 4002.05 Program Administration and License and Permit Requirements.

(a) The program shall:

- (1) Abide by the provisions specified on the license or permit; and
- (2) Not alter the license or permit issued by the department.

(b) Authorization to exceed the license capacity shall be granted only when the program requests and receives prior authorization from the department to temporarily exceed its license capacity as provided under (c) below.

(c) The department shall authorize a licensee to exceed its license capacity on a temporary basis for up to a maximum of 20 workdays in a calendar year, if the department finds that the approval will not result in:

- (1) 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;
- (2) 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;
- (3) More than 2 children over license capacity in a family or family group child care home;
- (4) More than 4 children over license capacity in all other programs; or
- (5) Health or safety risks to children.

(d) In center-based programs, the licensee shall employ an identified:

- (1) Center director for center-based programs; or
- (2) A site coordinator or site director for programs licensed solely as a school-age program.

(e) The center director, agency administrator, site coordinator, or site director referenced above shall meet the qualifications specified for their position in He-C 4002.35.

(f) When the center director, agency administrator, 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 submit to the department:

- (1) Written notice of the vacancy 5 business days prior to the vacancy occurring when known, or within 5 business days of the date of the vacancy; and
- (2) The name and qualifications of the individual who will substitute in the role together with documentation that the individual accepted the position.

(g) Any individual assuming the role of center director or site director on a temporary basis who is not qualified for the position in accordance with He-C 4002.35 shall serve in that role for not more than 90 consecutive days.

(h) Not more than 90 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 information and documents for the new qualified center director or site director, including:

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) and (h).
- (i) When an agency administrator or site coordinator leaves his or her position, the program shall:
- (1) Replace him or her with a new agency administrator or site coordinator within 90 days and submit information as specified in (h)(2) above; or
 - (2) Submit information in (h)(2) above for each center director or site director at each location if the agency administrator or site coordinator position will not be filled.
- (j) In accordance with RSA 170-E:6-b, each licensee and permittee shall either maintain liability insurance or provide disclosure to parents that the program is uninsured.
- (k) All documentation required by the department, whether maintained by the program in electronic or paper format, shall be complete, legible, and:
- (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.
- (l) The applicant, licensee, permittee, or any child care staff shall submit any reports or make available to the department any records or information required by the department for investigation, monitoring or licensing purposes within 2 business days of a written request from the department.
- (m) The applicant, licensee, permittee, or any child care staff shall not:
- (1) Make false or misleading statements to the department, whether verbal or written; or
 - (2) Falsify any documents, other written information, or reports issued by or required by the department under He-C 4002.
- (n) Applicants, licensees, permittees, and child care staff shall allow representatives of the department to:
- (1) Enter and complete an inspection of the premises;
 - (2) Document evidence or findings through written records, audio recording of conversations or statements with individuals who have consented to the recording, and by photographing inside or outside child care space, other areas of the premises, toys, equipment, and learning materials;
 - (3) Interview child care staff, members of the board of directors or other governing body, or children 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.
- (o) Administrators, other program staff, or other individuals shall not:
- (1) Require or request that the individual being interviewed by department staff ask that another person be present for or be recorded during the interview unless the individual being interviewed requests that another person be present with them;

He-C 4002.05 Program Administration and License and Permit Requirements

- (2) Attempt to influence the response of any individual whom department staff is interviewing 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; or
- (4) Require or encourage parents to refuse granting permission for their child to be interviewed by representatives of the department.

(p) In accordance with RSA 170-E:3, IV, when licensed child day care entity ceases operating as a licensed program and continues to provide child care services as a legally licensed exempt provider, it shall notify the department of the date it ceased being licensed, return its license to the department, and notify the parent or legal guardian of all children in the program or who enroll in the program that it is no longer licensed by the department.

(q) A licensee who has an unplanned temporary closure shall notify the department of such closure as soon as practicable.

He-C 4002.06 Statements of Finding and Corrective Action Plan.

(a) The department shall issue a statement of findings to an applicant, licensee, or permittee for each licensing and monitoring visit, and each investigatory visit which results in non-compliance.

(b) A non-compliance under He-C 4002.23, He-C 4002.24, or He-C 4002.25 shall not require a corrective action plan as specified in (g) below when the department determines that all of the following conditions are met:

- (1) The citation is not a repeat citation;
- (2) The non-compliance is corrected prior to or immediately during the visit;
- (3) The non-compliance is not a New Hampshire state fire code violation; and
- (4) The non-compliance does not immediately jeopardize the health, safety, or well-being of a child or children in care.

(c) 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 citations of rules found during the visit.

(d) Within 21 calendar days of the visit review in (c) above, and in accordance with RSA 170-E: 10, III, the department shall provide the statement of findings via email, if a valid email address has been provided by the program, by uploading to the programs "NH Connections" portal, if applicable, or by U.S. mail if an email address has not been provided.

(e) The program shall not alter the statement of findings including but not limited to revising evidence or dates as documented by the department.

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

- (1) The action the program has taken or will take to correct the citation(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 citations was corrected or will be corrected;
- (4) The interim measures the program has implemented to protect the health and safety of children, when the citation cannot be corrected immediately; and
- (5) The signature of the provider for family and family group child care homes and of the center director, agency administrator, site director, or site coordinator for center-based programs.

(g) The family child care provider, center director, agency administrator, site director, or site coordinator 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 21 calendar days of the date the department issues the statement of findings; and
- (2) The names of individuals shall not be included in the corrective action plans.

(h) In addition to the corrective action plan, the program may submit a separate 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, II and III.

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

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

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

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

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

(l) The department shall initiate enforcement action without first requesting that the program submit a corrective action plan when a program has repeatedly been out of compliance with licensing rules or statute or has been cited for 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.

(m) Programs shall comply with approved corrective action plans and corrective action plans issued in accordance with (i) and (j) above.

(n) Programs shall 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 or issued by the department for the visit immediately preceding the visit represented on the statement of findings posted in accordance with He-C 4002.14(a)(2).

He-C 4002.07 Informal Dispute Resolution.

(a) An opportunity for informal dispute resolution shall be available to the licensee or permittee who disagrees with a citation issued by the department, per RSA 170-E:10-a.

(b) When requesting an informal dispute resolution, the applicant, licensee, center director, or site director shall:

(1) Submit a written notice to the department requesting an informal dispute resolution no later than 14 days from the date of issuance of the statement of findings; and

(2) Include in the notice why the applicant, licensee, or permittee believes that the citation was issued erroneously as noted in the statement of findings.

(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, unless the applicant, licensee, or permittee waives their right to the appeal the action initiated.

He-C 4002.08 Staff and Child Attendance Records.

(a) The program shall maintain daily child attendance records, in either paper or electronic format, including the child's full name, date of birth, and their arrival and departure times in the program and each room or group throughout the day, as applicable, recorded in real time by staff or parents.

(b) The program shall maintain daily staff attendance records, in either paper or electronic format, including the staff's full name, scheduled work hours, their position as identified under He-C 4002, and their arrival and departure times at the program and in each room or group throughout the day, as applicable, recorded in real time by the staff.

(c) The only exception to (b) above is staff shall not be required to sign in and out for breaks lasting fewer than 15 minutes when the staff remains in the building, or to conduct necessary tasks on the premises.

(d) The licensee shall maintain all child and staff attendance records available for review by the department for 6 months.

He-C 4002.09 Staff Record Requirements.

- (a) The program shall maintain on file for each staff member:
 - (1) Documentation of the staff's qualifications, including a resume, transcripts, diplomas, or any other documentation, which demonstrates their qualifications;
 - (2) Documentation of a completed background check in accordance with He-C 4002.41;
 - (3) A record of health screening, in accordance with (b) below;
 - (4) Documentation of orientation, certifications, training, and professional development, as applicable;
 - (5) Documentation verifying the staff reviewed the program's emergency operations plan in accordance with He-C 4002.16(j);
 - (6) Documentation verifying the staff reviewed their job description required in He-C 4002.16(e); and
 - (7) Documentation of supervision regarding disciplinary actions or investigations specific to the staff member.
- (b) A written record of a health screening for all child care staff, household members and other individuals who have 5 or more hours per week of contact with children shall:
 - (1) Be on file at the program and available for review by the department for all child care staff within 60 days of the date of hire or the date the household member or individual begins having daily contact with children; and
 - (2) Include, at a minimum, the information on the "Child Care Personnel Health Form" (11/2017) provided by the department, or its equivalent.
- (c) The only exception to (b) above shall be for child care staff working in school age programs who are currently employed in a public or private school.
- (d) The initial record of the health screening required in (b) above for newly hired child care staff shall:
 - (1) Have been completed not more than 12 months preceding the date of hire or the date the individual began having 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.
- (e) Health screenings required under (b) 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 4002.10 Child Record Requirements.

(a) Child care staff shall ensure that for each child, upon the child's first day in attendance in the program, there is a "Child Care Registration and Emergency Information" (April 2022) form or an equivalent form provided by the child care program completed and signed by the parent, on file, which contains:

- (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) Telephone numbers for the child's parents and instructions as to how the parents can be contacted during the hours that the child is at the program;
- (8) Email addresses for the parents, if available;
- (9) Names and telephone numbers of at least one person who will assume responsibility for the child, if for any reason, the parents cannot be reached immediately in an emergency;
- (10) Any chronic conditions, allergies, or medications in case of sudden illness or injury;
- (11) Written parental permission for first aid treatment;
- (12) Written parental permission for emergency medical transportation and treatment;
- (13) The name and telephone number of each child's physician or health care provider; and
- (14) Names and telephone numbers of any person(s) other than parents who are authorized to remove the child from the program.

(b) The program shall require each child's parent(s) to review, sign, and date, on an annual basis, the "Child Care Registration and Emergency Information" (April 2022) form, or its equivalent, to ensure that accurate, current information is on file.

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

- (1) **"NOTE TO PARENT/S or GUARDIAN/S:** 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: https://nhpublichealth.force.com/nhccis/NH_ChildCareSearch or by calling the unit at 603-271-9025; or 1-800-852-3345 ext. 9025";
- (2) "During visits to programs, licensing staff speak with children regarding the care they receive at a program if in the judgment of the licensing staff the children's response would be valuable in determining compliance with licensing rules. Licensing staff are experienced in working with children and trained to speak with children in a manner that is respectful and non-leading. Children will remain with their class or group during these

conversations with licensing staff, and at no time will a child be forced to speak with a licensing coordinator. Please indicate whether licensing staff may speak with your child while they are with their class or group:

- a. I give permission for child care licensing staff to speak with my child while with their class or group;
- b. I do not give my permission for child care licensing staff to speak with my child while with their class or group.”; and

(3) “If licensing staff believes your child may have specific information regarding an alleged event at the program, and determines that it is best to interview your child separately and not with their class or group, please indicate your preference among the following options:

- a. I give permission for child care licensing staff to interview my child at the child care program separate from their class or group;
- b. I wish to be notified prior to child care licensing staff interviewing my child at the child care program separate from their class or group;
- c. I do not give my permission for child care licensing staff to interview my child at the child care program separate from their class or group.”

(d) The program shall request and maintain on file for each child documentation of immunizations in accordance with RSA 141-C:20-a, RSA 141-C:20-b, and He-P 301.14.

(e) The documentation described in (d) above shall be on file on the first day the child is in attendance at the program or, pursuant to 45 CFR § 98, 41(a)(1)(i)(C), for children experiencing homelessness or for children in foster care within 60 days of the first date of attendance, to allow families or persons responsible for their care to obtain and provide documentation of immunizations.

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

(g) Programs shall complete the department’s annual report of children’s immunizations in accordance with RSA 141-C:20-e and He-P 301.15(d).

(h) The program shall maintain on file a completed child health screening form “New Hampshire Early Childhood Health Assessment Record” (May 2012) provided by the department, or an equivalent record of physical examination which is available for review by the department for each child no more than 60 calendar days after the date of admission.

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

- (1) For children younger than 6 years of age, programs shall have on file a copy of a physical examination completed within 60 days of the date of expiration of the last record of physical exam on file; and
- (2) For children ages 6 and older, programs shall have on file a copy of the physical examination record completed within the year prior to enrollment.

(j) 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.

He-C 4002.11 Children Who Are Ill.

(a) Child care staff 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 staff are able to provide without compromising the health and safety of the ill, or injured child, or the other children in their care.

(b) Unless a program is following guidance issued by the department's division of public health as a result of a disease outbreak or public health emergency, the program shall not deny admission or dismiss a child due to illness, unless one of the following conditions exist:

- (1) An oral or forehead temperature of 101 degrees Fahrenheit or greater, or 100 degrees Fahrenheit or greater when taken via the armpit, accompanied by behavior changes or signs or symptoms of illness until medical evaluation indicates inclusion in the program;
- (2) Symptoms and signs of possible severe illness such as unusual lethargy, uncontrolled coughing, irritability, persistent crying, difficult breathing, wheezing, or other unusual signs until medical evaluation allows inclusion;
- (3) Uncontrolled diarrhea, that is, increased number of stools, increased stool water, and/or decreased form that is not contained by the diaper, until diarrhea stops;
- (4) Vomiting illness, including two or more episodes of vomiting in the previous 24 hours, until vomiting resolves or until healthcare provider determines illness to be non-communicable, and the child is not in danger of dehydration;
- (5) Rash with fever or behavior change, until a healthcare provider determines that these symptoms do not indicate a communicable disease; or
- (6) The conditions in (a)(1) or (a)(2) are met.

(c) Child care staff 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.

(d) The family child care provider, center director, site director, or designee shall contact the bureau of disease control and prevention for instructions in accordance with the following:

- (1) When child care staff or children in the program have symptoms of or are known to have a communicable disease to determine whether the ill individual is required to be excluded from the program; and
- (2) To determine reporting requirements in accordance with RSA 141-C:7, He-P 301.03(c) and (d), and He-P 301.03(h).

(e) When any child care staff 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; and

- 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 4002.12 Record of Injury.

(a) If any child has a serious injury while in the care of the program, consisting of fractures, dislocations, stitches, second or third degree burns, concussions, loss of consciousness, or requires emergency medical treatment or hospitalization, the family child care provider, center director, or site director shall:

- (1) Immediately notify emergency personnel and the child's parents;
- (2) Notify the department within 48 hours via e-mail, fax, or the NH Connections portal; and
- (3) Within 7 days, provide the department a written report via e-mail, fax, or the NH Connections portal, detailing the nature and circumstances of the serious injury.

(b) Child care staff shall administer first aid treatment to any injured child:

- (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 staff; and
- (2) When the injury is more than a minor scrape or bruise, a staff member who is certified in first aid in accordance with standards from organizations as referenced in He-C 4002.20(m)(2) shall administer first aid treatment.

(c) Child care staff shall complete a written record of the injury and all first aid provided.

(d) All records of injury shall include:

- (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, body part injured, and side of body, if applicable;
- (5) A description of first aid provided and any other treatment required including the identity of the individual or medical facility that provided the treatment;
- (6) The names and dated signatures of child care staff 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.

(e) The injury record required under (c) above shall be:

- (1) Provided to the parents of the child who was injured;
- (2) Provided to the department only for all serious injuries; and
- (3) Maintained in a separate file at the program, and available for review by the department for 3 years.

He-C 4002.13 Children With Disabilities.

- (a) The licensee shall accept and make reasonable accommodations to welcome and serve, or continue to serve, any child with a disability.
- (b) In determining whether accommodations are reasonable and necessary, the program shall:
 - (1) Refer to the Americans with Disabilities Act; and
 - (2) If applicable, request parental release of information from professionals providing services to the child specific to the disability.

He-C 4002.14 Required Postings.

(a) The program shall post in a prominent location:

- (1) The current license or permit, visible to parents, staff, and visitors;
- (2) The most recent statement of findings and corrective action plan approved by the department, where it is visible to parents, staff, and visitors;
- (3) A written plan for emergency procedures and managing injuries, which shall include:
 - a. The location of first aid supplies;
 - b. The location of child care registration and emergency information forms;
 - c. The name, address, and telephone number of the hospital to which children will be taken in case of acute emergency when parents cannot be contacted or delay of treatment appears dangerous;
 - d. Instructions to dial 911 to access emergency responders;
 - e. The Northern New England Poison Center at 1-800-222-1222; and
 - f. The names and telephone numbers of emergency substitute staff;
- (4) Emergency and evacuation procedures, posted next to each exit;
- (5) With permission of the parent, each child's allergy care plan and treatment plan, in the kitchen or food preparation area, the child's classroom, and wherever the child may have contact with the allergen(s); and
- (6) For programs that provide meals or snacks to children ages one year and older, the weekly written menus which reflect all meals and snacks served to children in a location where it is accessible to parents.

(b) In the event a parent does not authorize posting of their child's allergy care plan as required in (a)(5) above, the program shall ensure the plan is located in those locations and all staff working in those locations know where the plans are and review the plan upon entering those locations.

He-C 4002.15 Notice and Reporting Requirements to the Department and Parents.

(a) A licensee or permittee shall notify the unit:

- (1) Using the “NH Connections” portal or in writing 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;
- (2) Using the “NH Connections” portal or in writing within 2 business days when there is a change in mailing address, email address, or phone number;
- (3) Using the “NH Connections” portal or in writing within 5 business days when child care staff, other staff, or household members are no longer working in the program or part of the household, to include their full name and the date he or she left the program;
- (4) In writing 5 business days prior to the vacancy when known, or within 5 business days of the date of the vacancy of the center director, agency administrator, site coordinator, or site director, pursuant to He-C 4002.05(f);
- (5) Within one business week when the licensee voluntarily ceases operations, pursuant to He-C 4002.05(p);
- (6) When a licensee ceases operations as a licensed provider and operates legally licensed exempt, pursuant to He-C 4002.05(p);
- (7) When a licensee temporarily closes for longer than 30 days, pursuant to He-C 4002.05(q);
- (8) Within 48 hours of a child sustaining a serious injury, pursuant to He-C 4002.12(a)(2);
- (9) Prior to making any structural changes to indoor or outdoor child care space that would create a wall, change room capacity, or egress, or adding new space, pursuant to He-C 4002.22(c)(1);
- (10) Within 24 hours of any changes in indoor or outdoor space due to an emergency, pursuant to He-C 4002.22(c)(2);
- (11) In writing within 5 business days regarding changes pursuant to He-C 4002.02(q) and He-C 4002.22(c)(3);
- (12) No later than the next business day after calling law enforcement or emergency responders to the program for incidents or events involving enrolled children;
- (13) When there is a motor vehicle accident involving program staff and children, or when children are involved in a motor vehicle accident during a program-sponsored trip involving a driver not employed by the program or licensee;
- (14) Within 24 hours of any occurrence of a missing child or a child who has been put at risk due to lack of supervision; and
- (15) Within 24 hours of the death of a child, and provide the department a written report detailing the circumstances that led up to the death within 72 hours.

(b) A licensee, permittee, or his or her designee shall:

- (1) As mandated reporters, report to the division for children, youth, and families at 1-800-894-5533, if the licensee, permittee, child care staff, or other person involved with a program suspects that a child is being abused or neglected, in accordance with RSA 169-C:29; and

- (2) Contact the bureau of disease control and prevention in accordance with He-C 4002.11(d).
- (c) The center director, site director, family child care provider, or designee shall notify a child's parent(s):
- (1) Immediately to report any allegation of abuse or neglect involving their child while in the care and custody of the licensee;
 - (2) Immediately to report that their child was the victim of corporal punishment, rough handling, or other harsh treatment by child care staff;
 - (3) Immediately to report that child care staff failed to supervise their child;
 - (4) Immediately to report that their child's health, safety, or well-being was seriously jeopardized due to non-compliance with He-C 4002 or RSA 170-E;
 - (5) Immediately to report that their child sustained a serious injury that required emergency medical treatment or hospitalization, in accordance with He-C 4002.12(a)(1);
 - (6) Immediately if their child sustains a bump or injury to their head or face that is more than a minor injury such as a scrape or scratch, resulting in any one of the following:
 - a. Excessive bruising or swelling;
 - b. An increase in fussiness or sleepiness;
 - c. Dizziness, clumsiness, or trouble with coordination;
 - d. Nausea or vomiting;
 - e. Loss of consciousness;
 - f. Headache;
 - g. Speech, vision, or hearing impairment; or
 - h. Discharge or blood from the bump.
 - (7) Except as required in (6) above, as soon as possible on the date their child sustains an injury that is more than a minor scrape or bruise which requires first aid treatment, medical treatment, or medical consultation;
 - (8) Immediately in the event of a suspected allergic reaction or ingestion of or contact with a known allergen, even if a reaction did not occur;
 - (9) Immediately in the event of a medication error, and by the end of the day in the event of an error in documentation the administration of medication;
 - (10) Immediately after calling the police when the program determines that their child is missing;
 - (11) Immediately if their child dies while under the care of the program;
 - (12) Upon determining the need to remove their child from the program due to illness, in accordance with He-C 4002.11(b);
 - (13) Within 24 hours, notify all parents via posting of written notice at the program, email to parents, or private social media account whenever a communicable disease or condition is identified in the program;

(14) Whenever the program deviates from the planned menu as indicated on children's allergy care plans, as applicable; and

(15) In writing:

- a. When the program reduces staff during naptime in accordance with He-C 4002.26(v)(5) and (6); and
- b. At least 2 days prior to the use of any pesticides in accordance with He-C 4002.23(j).

(d) Child care staff shall provide a written report by the next business day to the parents of the child or children involved to fully inform them of the details of the incident described in (c)(1)-(7) above, including if known:

- (1) The name of 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 taken, or that will be taken by the program as a result of the incident.

(e) In addition to the circumstances for notifying emergency services as prescribed in first aid and CPR training, the licensee or permittee shall notify emergency services:

- (1) In the event of a missing child, call the police as soon as it is determined that the child is not on the premises;
- (2) Immediately whenever staff administer epinephrine (Epi-pen) to a child; and
- (3) Immediately when a child dies.

(f) When the unit determines that a child was the victim of abuse, neglect, corporal punishment, or other harsh treatment, a child was physically 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 notify the child's parents.

He-C 4002.16 Requirements for Written Policies and Procedures and Job Descriptions.

- (a) Licensees shall have and implement written policies regarding:
 - (1) A retention plan to prevent expulsion of children, which outlines how the program will address children's behaviors that pose a serious safety risk, which includes at a minimum:
 - a. Parent notification and ongoing communicating regarding their child's behavior;
 - b. The steps the program will take to assist the child in maintaining enrollment;
 - c. Parent notification when the child's enrollment cannot be maintained; and
 - d. The responsibilities of the program if the child's behavior results in a serious safety risk to the child or others within the program; and
 - (2) Children's access to and use of television, video, and electronic devices, which shall include at a minimum:
 - a. Age and developmentally appropriate materials;
 - b. Supervision by staff when in use and installation of any monitoring software; and
 - c. How the program will comply with parental restrictions regarding their child's use of electronic media.
- (b) The policy required in (a)(1) above shall only apply when addressing a child's behavior and not a parent's misconduct or the parent's failure to comply with other child care rules or laws.
- (c) Programs operating exclusively outdoors shall have written policies to include:
 - (1) The conditions when the program will not operate due to inclement weather, including excessive heat, extreme cold or when there is a severe weather alert;
 - (2) The expectation of parents to provide appropriate clothing according to the season and current weather conditions; and
 - (3) How child care staff will monitor children regarding their comfort including their warmth or signs of overheating and the action child care staff will take in response to children's comfort related to the weather conditions.
- (d) The program shall provide the written policies to parents at enrollment.
- (e) The licensee shall have a written job description for each direct child care staff position, including the scope of responsibility, required tasks, and the position to whom they report, with documentation of review on file in accordance in He-C 4002.09(a)(6).
- (f) Programs shall have an emergency operations plan (EOP) prior to issuance of a permit or renewal of a license.
- (g) All EOPs shall:
 - (1) Be modeled on the National Incident Management System (NIMS), which includes the Incident Command System (ICS), in coordination with local emergency response agencies in the community in which the program is located;
 - (2) Contain procedures for communication and reunification with families; and
 - (3) Include response actions, for natural, human-caused, or technological incidences including, but not limited to:

He-C 4002.16 Requirements for Written Policies and Procedures and Job Descriptions

- a. Evacuation, both within the building and off-site;
- b. Secure campus;
- c. Drop, cover, and hold;
- d. Lockdown;
- e. Reverse evacuation;
- f. Shelter-in-place; and
- g. Bomb threat or scan.

(h) All response actions in (g)(3) above shall include accommodations for infants and toddlers, children with chronic medical conditions, and children with disabilities or with access and functional needs.

(i) Programs that plan to resume operations after an emergency shall have a continuity of operations plan (COOP) to ensure that essential functions continue during, or resume rapidly after, a disruption of normal activities.

(j) All staff shall review the program's EOP within 30 days of their date of hire and sign and date an acknowledgement of their review, with the acknowledgement kept on file for review by department staff.

(k) Upon enrollment, programs shall provide families with information from the EOP that addresses communication and reunification procedures.

(l) In addition to the requirements for policies and procedures above, the licensee shall provide all child care staff with all policies and procedures upon hire, and ensure that they are familiar with them and comply with them, as applicable.

(m) Child care staff shall review and sign off on changes to policies and procedures required in rule within 30 days of the date of the changes, with documentation of the review kept on file for review by department staff.

He-C 4002.17 Emergency Preparedness and Practice Drills.

(a) Except for nature-based programs that operate solely outside, programs shall conduct fire drills in accordance with the following:

- (1) Programs that operate continuously throughout the year shall conduct at least one drill each month of operation;
- (2) Programs that operate only during the school year shall conduct a drill within 14 days of opening each year and monthly thereafter;
- (3) Programs that operate only during the summer months shall conduct one fire drill in each month of operation;
- (4) Child care personnel 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;
- (5) Child care staff 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;
- (6) All children and child care staff shall evacuate the building during each fire drill; and
- (7) Child care staff shall check daily attendance records to ensure that all children and staff are accounted for, after the building is evacuated.

(b) The only exception to (a)(5) 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.

(c) Programs shall complete a written record of fire drills, which shall be:

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

(d) The written record of fire drills required under (c) above shall include:

- (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 the drill.

(e) 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.

(f) In order to assure that staff and children are familiar with all of the EOP drills, programs shall:

- (1) Practice evacuation off-site and bomb threats once per year with all child care staff;
- (2) Practice at least 2 other components of their EOP with all child care staff and children each calendar year; and

(3) Review all EOP response actions with all staff at least 4 times each calendar year.

(g) Child care personnel shall record and maintain on file for review, a log of the practice drills and staff reviews required in (f) above, that include:

- (1) The date and time of the drill time,
- (2) The type of drill practiced or drill reviewed:
- (3) The method of review or practice, such as in-person, or review of on-line training;
- (4) The name of all staff that participated in the review or drill; and
- (5) The signature and date of the person conducting the review or drill.

He-C 4002.18 Interactions Between and Among Adults and Children.

(a) Child care staff shall nurture and encourage each child in care by providing each child with a variety of developmentally appropriate learning and social experiences and establishing and maintaining a learning environment that provides for the emotional well-being of each child.

(b) When a child is engaging in unacceptable behavior, child care staff shall:

- (1) Redirect a child's attention to a desirable activity by providing positive guidance, positively worded directions, and developmentally appropriate explanations for limits and rules;
- (2) Establish developmentally appropriate rules or limits for acceptable behavior, which are equitable, consistently applied, and developmentally appropriate;
- (3) Demonstrate desired behavior and problem-solving skills and then redirect children to acceptable behavior;
- (4) Arrange equipment, materials, activities, and schedules in a way that promotes desirable behavior; and
- (5) Implement safe, logical, and natural consequences related to the misbehavior and enforce those consequences as soon as possible after the misbehavior has occurred.

(c) Child care staff shall use separation, or time out only as a method to enable a child to regain control of his or herself, and not as a punitive disciplinary technique.

(d) When a child is separated from the group, he or she shall be able to see and hear the other children and be within hearing and vision of child care staff, except when child care staff remove a child from the classroom to a quieter area which is visible by other child care staff, to provide one-on-one attention.

(e) Child care staff and household members shall not:

- (1) Abuse or neglect children;
- (2) Use rough handling on children;
- (3) Use corporal punishment on children;
- (4) Require children to stand or sit facing walls or corners;
- (5) Shame, humiliate, threaten, or frighten children;
- (6) Confine infants or toddlers in high chairs or other seating devices or equipment, which restricts their movement, as a disciplinary technique;
- (7) Place or confine children in equipment that is not appropriate for their age, including but not limited to cribs, playpens, or highchairs;
- (8) Withhold food from children, forcibly feed children, or discipline children for not eating;
- (9) Discipline any child for toileting accidents, lapses in toileting habits, or prohibiting children from using the toilet as a form of discipline;
- (10) Use isolation as a form of discipline;
- (11) Require children to rest, sleep, or go to their mat, crib, or rest area as a means of discipline, or discipline children for not sleeping or resting during naptime;
- (12) Yell in anger or frustration at or with children; or

(13) Use profanity or obscene language with children or among themselves where children can hear them.

(f) The applicant, licensee, permittee, and all child care staff shall take prompt action to protect children from abuse, neglect, and corporal punishment, including but not limited to actions in (e) above.

(g) If a child's actions poses an imminent serious safety risk to the child or others that could result in serious bodily harm, child care staff may move the child to another area, holding the child as gently as possible and as briefly as necessary to protect the child and others.

(h) If a child has multiple incidents as described in (g) above, and does not respond to techniques described in (b) above, the center director, site coordinator, or family child care provider shall consult with parents to design an effective behavior management plan.

(i) Staff shall notify the center director, site director, site coordinator, or family child care provider on the same day when interactions with a child in accordance with (g) and (h) above occur.

(j) The center director, site director, site coordinator, or family child care provider shall notify parents on the same day of an occurrence reported to them in accordance with (i) above.

(k) All child care staff working with the child shall review and implement the behavior management plan in (h) above, and shall be trained on when and how to safely use any physical management techniques as specified, which shall be documented in the staff's file.

(l) The program shall ensure that parents have access to the program, the child care staff primarily involved with their children, and to their children, at any time children are in attendance and without prior notification. This requirement shall not prohibit the program from locking the doors for security purposes or checking parent's identification.

(m) The only exceptions to (l) above shall be if there is a court order or other legal documentation limiting parental access.

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

(o) Child care staff shall not:

(1) Be impaired while on the job by any substances including, but not limited to, legally prescribed medication, alcohol, or illegal substances; and

(2) Use alcohol or illegal substances while caring for children.

He-C 4002.19 Programming.

- (a) Whenever programs are preparing a planned transition of a child to a new classroom or group, program staff shall:
 - (1) Communicate with the child's parents by notifying them of the intent to transition their child;
 - (2) Collaborate and share information between each classroom or group; and
 - (3) Assist the child with the transition in a manner consistent with the child's ability to understand.
- (b) Programs shall have available for review by the department and parents a written schedule or plan which details the daily activities offered to children.
- (c) Program staff shall:
 - (1) On a daily basis provide children of all ages with 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) Regularly interact with children at their level, maintain eye contact, and, whenever appropriate, sit on the floor with them;
 - (4) Protect younger or less mobile children from accident or injury which could be caused by older or more physically active children; and
 - (5) Provide each child with developmentally appropriate opportunities and experiences that support cognitive, physical, social, and emotional development, creative expression, communication, and literacy.
- (d) Child care staff shall not allow children to provide care to other children, such as feeding infants, picking up infants or toddlers, changing diapers, assisting with toileting, or supervising children.
- (e) Programs shall provide opportunity for at least 60 minutes daily of gross motor activity for children age 18 months and older, except preschools operating 5 or fewer hours per day shall provide at least 20 minutes of gross motor activity daily.
- (f) In the absence of extreme weather conditions, child care staff may, and are encouraged to, bring children outside, taking into consideration the child's health and requests from a child's parent, provided the children shall be appropriately dressed and can move about safely in the outside play area, and staff shall monitor the children regularly for comfort in both hot and cold weather.
- (g) Child care staff shall not allow a child to go outside when the child has a health concern as documented on his or her allergy care plan or as documented by the child's health care practitioner limiting time outdoors.
- (h) Child care staff shall adhere to instructions from the child's parent related to protection from sun exposure, and apply sunscreen per manufacturer's instructions.
- (i) Other activity choices shall be available to children during use of television, video, or electronic devices.
- (j) All media shall be age and developmentally appropriate.
- (k) When in use, electronic devices shall be located in view of child care staff for monitoring purposes.

(l) Any internet accessible electronic device used by the children shall be equipped with monitoring or filtering software or controls that limit children's access to inappropriate web sites, e-mail, computer or mobile applications, or social media.

(m) Child care staff shall not allow a child to view television or videos, or use electronic devices when the child's parent has made such a request.

(n) Center-based programs shall not combine children younger than 24 months in a mixed age group which includes children older than 47 months, except:

(1) For time limited, specific activities, including but not limited to meals, snacks, nap or rest time, and special occasions such as birthday or holiday celebrations or visitor presentations;

(2) 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

(3) With a department approved plan for multi-age classrooms.

(o) Child care staff shall not leave infants or toddlers unattended in seating, carrying or other devices placed on countertops, tables, or other elevated surfaces.

(p) Child care staff shall:

(1) Not confine awake infants and toddlers in restrictive equipment such as infant seats, seated infant carriers, car seats, swings, high chairs, stationary activity centers, strollers, cribs, or playpens for more than 15 minutes in any 2-hour period;

(2) Allow infants and toddlers to remain in a high chair for more than 15 minutes when they are actively engaged in eating during snack or meals, in strollers for walks, or for non-ambulatory infants only, in cribs or playpens when outside; and

(3) Provide stimulating activities such as age-appropriate toys or books to infants or toddlers while they are in equipment specified in (1) above.

(q) 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 their local fire officer and notification to the department.

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

He-C 4002.20 Prevention and Management of Injuries.

- (a) Child care staff shall supervise every child in care at all times.
- (b) In center-based programs, staff shall position themselves to:
 - (1) Be able to hear all children younger than school age at all times, continuously scan the entire environment to know where children are and what they are doing, and be able to physically respond immediately;
 - (2) Know the whereabouts and activities of all school age children in their care at all times when children are briefly out of sight, such as when transitioning from one area to another or using the bathroom, and shall be able to physically respond immediately;
 - (3) Allow for visual supervision of all children while children are eating, and shall be able to physically respond immediately to any child that may be choking; and
 - (4) Know the number of and identity of children in their care.
- (c) Video monitors shall not replace the supervision of children, except as provided for in He-C 4002.26(l) and (m).
- (d) The only exception to (b)(1) above shall be children 4 years and older may leave the classroom to use a bathroom located on the same level as the classroom, provided that child care staff are aware of each child leaving the classroom to use the bathroom and the level of the building that the bathroom is located on is used exclusively by the child care program.
- (e) In family child care homes, family child care providers shall supervise children in accordance with the following:
 - (1) The family child care provider or family child care worker may step away from the children to meet basic care needs throughout the day so long that:
 - a. It shall be time limited; and
 - b. The family child care provider or family child care worker shall be able to hear all children, preschool age and younger, at all times and be able to physically respond immediately, if necessary, with the exception of needing to step away to meet their own basic needs;
 - (2) The family child care provider or family child care worker shall know the whereabouts and activities of all school age children at all times and shall be able to physically respond immediately;
 - (3) The family child care provider or family child care worker may allow school-age children 6 years of age and older to play outside when the provider or worker are inside, with written parental permission; and
 - (4) When children are eating, the family child care provider or family child care worker shall be positioned to allow for visual supervision of all children and shall be able to physically respond immediately to any child that may be choking.
- (f) Child care staff shall not carry a child while stepping over a low wall, gate, or other similar barrier.
- (g) The program shall obtain the following documents from the parents of each child with a food allergy or other allergy, which results in a serious reaction:
 - (1) A written care plan that includes instructions regarding food(s) or other allergens to which the child is allergic and steps for child care staff to take to avoid the allergens; and

(2) A written treatment plan, detailing the treatment to be implemented in the event of an allergic reaction, which shall include:

a. The names, doses, and methods of prompt administration of any medications, where the medication needs to be stored in relation to the child, taking into consideration the storage requirements in He-C 4002.21(o)(2), and instructions on how to administer the prescribed medication; and

b. Specific symptoms that would indicate the need to administer one or more medications.

(h) At all times, at least one child care staff supervising a child with an allergy care plan shall have completed the training specified in He-C 4002.33(b)(5).

(i) The program shall post each allergy care plan in accordance with the posting requirements in He-C 4002.14.

(j) All child care staff responsible for food preparation and food service, and all child care staff responsible for supervising children with an allergy, including staff covering breaks, shall read and familiarize themselves with the care plans and treatment plans, to ensure that no child is accidentally exposed to an allergen.

(k) Programs shall be equipped with a telephone that is operable and accessible to all child care staff during all operating hours for incoming and outgoing calls. The phone may be a cellular phone or a landline.

(l) Child care staff shall report any occurrence of a missing child to emergency services, as soon as child care staff have determined that the child cannot be promptly located on the premises of the child care program.

(m) The center director, site director, family child care provider, and all staff used to meet staff to child ratios shall:

(1) Be certified in pediatric cardiopulmonary resuscitation (CPR) and first aid within 90 days of the first date of employment;

(2) Obtain certification in (m)(1) above by the American Red Cross, American Heart Association, Emergency Care and Safety Institute, National Safety Council, or other nationally recognized organization; and

(3) Maintain current certifications required in (m)(1) above.

(n) During all operating hours, on and off premises, there shall be at least one staff person who is trained and currently certified as specified in (m) above, with all children.

(o) CPR and first aid training as specified in (m) above may be received via correspondence or on-line, provided a skill test is required to be performed prior to becoming certified.

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

(q) 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.

(r) Programs shall store the first aid supplies required under (q) above in a portable container, in a location that is easily accessible by staff and out of the reach of children if the contents present a danger to children.

He-C 4002.21 Administration and Storage of Medication.

(a) Programs shall administer any medication, treatment, or other remedy to any child, as provided by the child's parents and in accordance with this section.

(b) For the purposes of this section, "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.

(c) Only authorized staff, a registered nurse (RN), licensed practical nurse (LPN), or licensed practitioner shall administer prescription and over-the-counter medications to children, in accordance with the child's medication order.

(d) Authorized staff shall administer only those medications for which there is a medication order provided by a licensed practitioner, and written permission from the parent.

(e) Programs shall not accept any prescription medications that do not include a prescription label or medication order from a licensed professional.

(f) Each medication order shall legibly display:

- (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 pro re nata (PRN); and
- (5) The dated signature of the licensed practitioner for orders other than the prescription label.

(g) Medication orders for PRN medication 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 over-the-counter medication; and
- (4) For other than the prescription label, the dated signature of the licensed health care practitioner for prescription medication.

(h) 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.

(i) 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.

(j) Prior to administering prescription and over-the-counter medication to any child, child care staff shall complete and document training on medication administration, as required by He-C 4002.33(b)(4), delivered by the department, a physician, RN, or LPN practicing under the direction of an APRN, RN, or physician, or online training approved by the department.

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

(l) 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.

(m) For each child receiving medication, child care staff shall maintain medication information on file and available for review by the department, including medication orders, parental authorization to administer medication, and information regarding a child's allergies, if applicable.

(n) Child care staff shall maintain a written record for each dose of medication administered to each child, which shall:

- (1) Be maintained on file in the program, available for review by the department;
- (2) Be completed by the authorized staff who administered the medication immediately after the medication is administered; and
- (3) For each administered medication, include at a minimum:
 - a. The name of the child;
 - b. The date and time the medication was taken;
 - c. A notation of any medication error or the reason why any medication was not taken as ordered or approved;
 - d. The dated signature of the authorized staff who administered the medication to the child; and
 - e. For administration of a PRN, documentation shall also include the reason for administration.

(o) All medication 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.

(p) Medications such as insulin, inhalers, and epi pens shall be readily accessible to child care staff caring for children requiring such medications, to assure timely administration when needed and in accordance with parental instructions in He-C 4002.20(g)(2)a.

(q) Medications described in (p) 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.

(r) The only exception to (q) 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 readily accessible to staff.

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

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

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

(v) Child care staff shall administer over-the-counter medications in accordance with the manufacturer's instructions or written instructions from the child's health care practitioner.

He-C 4002.22 Approval of Child Care Space and License Capacity: Indoors and Outdoors.

- (a) Prior to use 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); and
 - (3) Inspected by the department in accordance with RSA 170-E:8, III, and RSA 170-E:9, II; and these rules.
- (b) Prior to caring for children on any level of a building that does not exit to grade level, programs shall:
 - (1) Obtain written approval from the local fire authority, which specifically grants approval for children to be cared for on any level that does not exit to grade level, including any restrictions on the number of children; and
 - (2) Submit the approval in (1) above to the department.
- (c) Programs shall report any changes to indoor or outdoor child care space, or addition of new space, to the department:
 - (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; and
 - (3) When programs discontinue using space as specified in He-C 4002.02(q).
- (d) The licensee shall provide and maintain at least one toilet and one handwashing sink for every 20 children of their licensed capacity.
- (e) There shall be a minimum of 40 square feet of floor space per child, measured wall-to-wall, inside the rooms used by children.
- (f) The department shall determine the license capacity by adding the number of children each room can accommodate based on 40 square feet per child, exclusive of common space, and in accordance with local fire, health and zoning approvals.
- (g) The department shall not consider common space, hallways, lockers, bathrooms, cooking areas of the kitchen, closets, or offices as child care space when determining license capacity.
- (h) There shall be a minimum of 35 square feet of floor space per child for programs licensed before November 23, 2008.
- (i) Programs referenced in (h) above shall be required to comply with the requirements in (e) above when:
 - (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.
- (j) The program must have activity space of its own, apart from other groups that may be using the facility, during the time that it operates.
- (k) Programs which are located in the same building with other licensed entities or 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.

(l) Programs shall not overcrowd child care space with adult-sized furniture or other items for use only by adults or stored items.

(m) For programs licensed before November 23, 2008 whose capacities included the use of common space as described in rules previous to that date shall be allowed to have no more than up to 2 children over the classroom capacity, regularly assigned to each classroom, provided the common space was approved by and is on file with the department.

(n) For programs licensed before May 30, 1998 whose capacities included the use of common space as described in rules previous to that date shall be allowed to have no more than up to 4 children over the classroom capacity, regularly assigned to each classroom, provided the common space was approved by and is on file with the department.

(o) Programs shall be equipped with an outside play area, which directly adjoins the indoor space of the facility and 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 are as follows:

- (1) Programs 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) Programs may operate with 50 square feet of outdoor play area per child for $\frac{1}{3}$ 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) Programs that operate 5 or fewer hours per day provided the curriculum includes at least 20 minutes of gross motor activities.

(q) For programs operating exclusively outdoors, the department shall determine the license capacity based on the area of outdoor space and the proposed staffing patterns as specified in these rules.

He-C 4002.23 Health and Safety Requirements for Indoor Space.

- (a) Programs shall provide child care only in space approved by the department.
- (b) Child care staff shall ensure that the indoor space is:
 - (1) Safe, clean, free of clutter, and in good repair;
 - (2) Free from electrical hazards, such as overloaded outlets or extension cords, frayed, cracked or crimped cords, or unprotected outlets;
 - (3) Well-ventilated by means of unobstructed mechanical ventilation system or open, screened window;
 - (4) Well-lit to allow for the supervision of children and for child care staff and children to move about safely;
 - (5) Free of damp conditions which result in visible mold, mildew, or a musty odor;
 - (6) Free of heavy furnishings or items not secured to the wall or floor that could easily tip or are unstable;
 - (7) Free of fumes from toxic or harmful chemicals or materials;
 - (8) Free of tripping hazards; and
 - (9) Free of poisonous plants.
- (c) Child care staff shall ensure that potentially harmful items, including but not limited to matches, lighters, chemicals, materials labeled “harmful if swallowed,” flammable materials, sharp objects, and staffs’ personal belongings are locked or inaccessible to children.
- (d) All substances labeled “harmful if swallowed” or “flammable” and all containers storing cleaning materials shall be labeled as to the contents and stored separately from food and medications.
- (e) Non-toxic materials labeled “keep out of reach of children” shall only be used during a teacher-directed activity.
- (f) Cords or strings long enough to encircle a child’s neck, such as cords on window blinds, curtains or shades, shall be kept out of children’s reach.
- (g) Child care staff shall ensure that the presence of pets in the program does not present a hazard to the children, including but not limited to:
 - (1) Reptiles, amphibians and birds, including baby chicks and ducklings, shall not be permitted in rooms or outdoor spaces regularly occupied by children;
 - (2) When bringing animals into a child care, staff shall supervise children when the animals are available, designated areas shall be cleaned and sanitized after animal contact, and food or drink shall not be consumed in these areas;
 - (3) Cages or other habitats shall be cleaned of all fecal material and sanitized on an as needed basis but no less than once per week;
 - (4) Staff shall wear gloves while cleaning animal cages or habitats;
 - (5) All staff and children shall wash hands with soap and warm running water after contact with animals or their cages or habitats; and

(6) Dogs, cats, and ferrets shall be kept clean and free of parasites, fleas, ticks, mites, and lice, and vaccinated against rabies, with proof of current vaccination on site at the program and available for review by department staff.

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

- (1) Sinks, toilets, footstools, potty chairs, and adapters shall be cleaned and sanitized at least once a day and when visibly soiled;
- (2) 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;
- (3) Toilet paper, individual cloth or paper towels, and liquid soap from a dispenser shall be available and accessible to children and staff; and
- (4) Bathrooms shall have a functional means of outside ventilation.

(i) The program shall take prompt action to eliminate insects or rodents, and clean and sanitize all surfaces where there is visible evidence of their presence.

(j) 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.

(k) Pesticides shall not be used in areas used by children while children are present, and any treated indoor area shall be aired out per manufacturers' instructions prior to allowing children to return to that area.

(l) Programs shall maintain the child care space free from non-compliance of Saf-FMO 300 and Saf-C 6000 by not blocking exits, or evacuation routes, including doorways, hallways, and stairs that are a means of egress, and by maintaining smoke detectors in working order.

(m) The licensee shall prohibit smoking in the building anytime for center-based programs or during operating hours for family child care homes, with the following exceptions:

- (1) Child care staff who smoke during their breaks shall not smoke in view of children or while responsible for the care of children; and
- (2) Child care staff who smoke on their breaks shall wash their hands and change into fresh clothing, or remove smoke contaminated outerwear prior to returning to work to reduce exposure to second-hand smoke.

(n) Child care staff shall:

- (1) Arrange space to provide clear pathways for movement from one area to another and to allow visual supervision by staff;
- (2) Arrange furnishings and fixtures safely, with sharp edges protected, and in such a way as to not present hazards to children; and
- (3) Store their personal belongings out of reach of children.

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

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

(q) All windows used for ventilation shall include screens in good repair, to prevent insects from entering the building. Windows and glass doors shall be constructed, adapted, or adjusted via the use of window guards or other means to prevent injury to children.

(r) Garbage shall be disposed of in a lined and covered container and staff shall empty trash containers daily or sooner if contents create an odor or a health risk.

(s) Stairways with more than 3 steps shall be equipped with handrails.

(t) In programs serving children younger than 3 years old, the licensee shall ensure that there are barriers placed at the top and bottom of stairwells opening into areas used by children younger than three years, unless prohibited by building or fire department regulations. Pressure gates at the top of stairs shall not be used.

(u) Open stairways used by children younger than school age shall have railings or banisters installed along the open or unprotected side(s).

(v) Programs shall:

(1) Have a safe, functioning heating system;

(2) Maintain a temperature of not less than 65 degrees Fahrenheit whenever children are present; and

(3) Protect children from contact with exposed heat sources, including steam and hot water pipes, and radiators, via the use of permanent screens, guards, insulation or another suitable device that prevents children from coming in contact with them.

(w) Prior to using portable space heaters or portable radiators in child care space, programs shall obtain written approval from the local fire inspector with documentation of the approval available for review by department staff during on-site visits.

(x) All portable space heaters or radiators shall:

(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.

(y) All fuel burning stoves, including but not limited to wood, coal, pellet, or gas, when used during child care, shall:

(1) Meet applicable local and state codes with documentation of such approval available for review by department staff during on-site visits; and

(2) Be maintained in a manner that ensures the safety of all children, by use of partitions, screens, guards, or other similar barricades, as approved by the local fire official;

(z) Child care staff shall be in the room with children whenever a fireplace is in use.

(aa) All working fireplaces in space used by children shall:

(1) Have a secure child proof barrier in place at all times; and

(2) Be equipped with padding or otherwise protected if the hearth presents a hazard to children.

(ab) Guns, weapons, or live or spent ammunition shall be kept in locked storage with the key stored separately and out of the reach of children.

(ac) Pursuant to 40 CFR 745, when interior surfaces of a building built prior to 1978 are in a deteriorating condition, including but not limited to flaking, chipping, and peeling paint, or are subject to renovations or construction, the licensee shall utilize a U.S. Environmental Protection Agency certified Renovation, Repair, and Painting (RRP) contractor, in accordance with 40 CFR 745.90(a) and (b) and He-P 1600.

(ad) In addition to (ac) above, until 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.

(ae) 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.

(af) 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.

(ag) 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.

(ah) Child care staff shall immediately clean spills of bodily fluids, including urine, feces, blood, saliva, and discharges from the nose, eyes, or an injury, using soap and water and then disinfectant. Surfaces requiring such action include tabletops, toys, floors, walls, toilets, potty chairs, and diaper changing surfaces.

(ai) Child care staff shall:

- (1) Wear non-porous gloves when cleaning bodily fluid spills specified above;
- (2) Place soiled clothing in a plastic bag, tied securely and return the items to the child's parent at pick up; and
- (3) Clean, rinse, disinfect, wring, and hang to dry mops used to clean bodily fluids.

(aj) 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.

He-C 4002.24 Health and Safety Requirements for Outdoor Space.

(a) The play area shall:

- (1) Be accessible to children with disabilities;
- (2) Be appropriate for each age group served, including use of toys and equipment that is age and developmentally appropriate to the needs of the children enrolled;
- (3) Provide for both direct sunlight and shade; and
- (4) Be free from hazards, including but not limited to:
 - a. Water hazards such as unprotected pools, wells, or bodies of water;
 - b. Animal feces;
 - c. Poisonous plants;
 - d. Broken toys, broken glass or other sharp items;
 - e. Chipping, peeling, or flaking paint;
 - f. Dangerous machinery or tools;
 - g. Small objects that could present a choking hazard to young children; and
 - h. Other dangerous items or substances.

(b) Fencing shall enclose all play areas if the department determines the play area is unsafe because it is located adjacent to:

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

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

- (1) Have no gaps greater than 4 inches and be designed to restrain preschool 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.

(d) The licensee shall protect outdoor play space located on a roof with a barrier at least 7 feet high, which children cannot climb.

(e) The licensee shall install suitable barriers, including but not limited to bulkhead doors, to prevent falls into outdoor stair or window wells.

(f) The department shall approve porches and decks before use as play areas.

(g) Porches and decks shall comply with the following:

- (1) If they are more than three feet from ground level, there shall be protective railings in accordance with applicable building codes;
- (2) Railings shall be sturdy and constructed in a way that will prevent a young child from going underneath, over, or through them;
- (3) There shall be a child safety gate or other barricade on stairs whenever the porch or deck is in use by children younger than three years old; and
- (4) The family child care provider, center director, or site director shall monitor the condition of porches and decks to ensure that there are no splinters, cracks, protruding nails or screws, and discontinue use of the area until repairs are complete.

(h) For outdoor play equipment that 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 if used by children younger than 3 years;
 - b. Is checked and ranked regularly to remove any foreign matter, correct compaction, and increase absorption; and
 - c. Is a unitary surface documented by the manufacturer as being in compliance with the standards of ASTM International's "ASTM F1292 Standard Specification for Impact Attenuation of Surfacing Materials Within the Use Zone of Playground Equipment" (2018 edition), available as noted in Appendix A, and installed per manufacturer's instructions or conforms with Table 4.2.1 below:

Table 4.2.1 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

(i) To prevent injury, programs shall not allow children to play on equipment or structures that require energy absorptive material pursuant to (h) above when the energy absorptive material is compacted and unable to be loosened, such as when frozen.

(j) All fencing, balusters, handrails, and guardrails, or slats on lofts, stairways, decks, porches, or balconies that are accessible to children shall be constructed and maintained to prevent entrapment hazards.

(k) All swimming pools on the premises of the child care program 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.

(l) All swimming pools on the premises of the child care program shall be inaccessible to children in accordance with the following:

- (1) In-ground pools shall be enclosed by a fence with a gate equipped with a child proof, self-latching device and a lock;
- (2) 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;
- (3) A pool that is directly accessible from inside the building shall have a secure, lockable barrier that meets the requirements in (1) and (2) above to make the pool inaccessible to children;
- (4) Pool gates, fences, or other barriers as required in (1), (2), and (3) above shall be locked during all operating hours, except when the children are involved in a supervised water activity in the pool; and
- (5) The keys, combinations, or other means to open the locks required in (1) through (4) above shall not be accessible to children.

(m) Each swimming pool shall be equipped 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.

(n) 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.

(o) Pursuant to 40 CFR 745 when exterior surfaces of a building built prior to 1978 are in a deteriorating condition, including but not limited to flaking, chipping, and peeling paint, or are subject to renovations or construction, a U.S. Environmental Protection Agency certified Renovation, Repair, and Painting (RRP) contractor shall be utilized, in accordance with 40 CFR 745.90(a) and (b) and He-P 1600.

(p) In addition to (o) 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.

He-C 4002.25 Learning Materials, Toys and Equipment.

- (a) Programs shall provide toys, equipment, furniture, 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; and
 - (4) Cleaned on a regular basis.
- (b) The program shall ensure that toys, equipment, furniture, and learning materials, are:
 - (1) Sturdy and safely constructed and installed;
 - (2) Easily cleaned; and
 - (3) Maintained in a safe, secure, and workable condition, free from lead paint, protruding nails, rust, and other hazards that may be dangerous to children.
- (c) Toys that children routinely mouth, 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.
- (d) Child care staff shall not use any equipment, materials, furnishings, toys, or games identified by the U.S. Consumer Product Safety Commission as being hazardous.
- (e) All play equipment, fences, and structures shall be free of entrapment hazards, including gaps that are between 3 ½ inches and 9 inches apart on balusters, handrails, guardrails, or slats on play structures, lofts, stairways, decks, porches, or balconies, that are accessible to children.
- (f) Child care staff shall not allow children younger than 3 years of age to have access to toys, toy parts, and other materials that pose a suffocation or choking risk or are small enough to be swallowed, including, but not limited to, coins, balloons, exposed foam padding, or empty plastic bags.
- (g) The only exception to (f) above for children age 30 months to 3 years shall be during teacher directed activities under direct supervision by child care staff, or when programs have the following documentation on file:
 - (1) Observations of the children by program staff indicating that children do not put toys or objects in their mouths during play;
 - (2) Parents statement that their child(ren) do not put toys or objects in their mouth(s) during play; and
 - (3) Signed parent acknowledgment that they understand small parts are a choking hazard, and that the program will have small materials accessible as part of the curriculum.
- (h) 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.
- (i) Baby walkers with wheels are prohibited in programs.
- (j) 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.
- (k) 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.

(l) Infants shall only have access to toys with strings or cords up to 6 inches in length.

(m) Toddlers shall only have access to toys with strings or cords up to 12 inches in length, or any length for an adult-directed activity.

(n) Except for therapeutic equipment or small trampolines intended for individual use with direct adult supervision, the use of trampolines by child care children, whether indoors or outdoors, is prohibited.

He-C 4002.26 Rest and Sleep.

- (a) Child care staff shall arrange cribs, cots, beds, mats, or playpens in a manner that ensures that:
 - (1) They do not block passageways and exit routes, 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.
- (b) Full day child care programs shall provide a sleeping bag, crib, cot, bed, or mat for each child requiring a rest.
- (c) Each child 12 months of age and younger shall be placed on their back to sleep in an individual crib or play pen.
- (d) Child care staff shall discontinue using cribs or play pens with infants who have demonstrated the ability to climb out of them.
- (e) No crib shall be used unless manufactured on or after June 28, 2011, or if manufactured prior to that date, has a Children's Product Certificate (CPC), or test report from a consumer product safety commission (CPSC) accepted third-party lab, provided by the manufacturer documenting the crib's compliance with 16 CFR 1219 as required by 16 CFR 1219 and 1220.
- (f) Cribs and play pens required under (c) above shall:
 - (1) Not be stacked;
 - (2) Be free of cracked or peeling paint, splinters, and rough edges;
 - (3) Have no more than 2³/₈ 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 that extend more than 1/16 of an inch above the end panels;
 - (6) 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;
 - (7) Have fitted sheets designed for the size mattress, including elastic corners so that there is no excess fabric with visible folds or bunching, and that do not compress the mattress;
 - (8) Not have bumper pads, blankets, flat sheets, pillows, quilts, comforters, sleep positioners, or any soft items or toys with infants up to 12 months of age; and
 - (9) Have mattresses which are in good repair, free of rips or tears, and fit the crib or playpen so that the space between the mattress and crib or playpen is not more than 2 adult fingers wide and does not create a suffocation hazard.
- (g) Pursuant to He-C 4002.33(b)(3), all child care staff in programs licensed for children 12 months and younger shall complete training on safe sleep practices prior to working with infants.
- (h) Infants up to 12 months shall not nap or sleep in a car safety seat, beanbag chair, bouncy seat, infant seat, swing, jumping chair, highchair, chair, futon, moses basket, or any other type of furniture or equipment that is not a play pen or crib that meets the requirements of (f) above.

(i) If an infant up to 12 months falls asleep outside of their crib or play pen, including entering the program asleep in a car safety seat, staff shall immediately move the infant and place him or her on their back in a crib or play pen.

(j) When child care staff place infants in their crib or play pen for sleep, they shall 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.

(k) Children older than 3 months 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.

(l) In family and family group child care homes, use of an electronic monitor shall only be used to monitor sleeping children on the same level in lieu of direct supervision, in accordance with the following:

(1) There is written authorization on file from the parents of the child, indicating that they are aware of and agree to the use of the monitor;

(2) The child care staff responsible for their supervision can easily hear sounds from the monitor and respond; and

(3) Every 15 minutes, the child care staff responsible for their supervision conduct in-person checks of infants and toddlers sleeping in a crib or playpen, to ensure that each child is safe and comfortable, including a check of their faces, viewing the color of their skin and to check on their breathing.

(m) In center-based programs, use of an electronic monitor, whether only audio or both audio and visual, shall be permissible in lieu of having staff in the same room with infants and toddlers sleeping in cribs or playpens, in accordance with the following:

(1) There is written authorization on file from the parents of the child, indicating that they are aware of and agree to the use of the monitor;

(2) The child care staff responsible for their supervision are located in an adjoining room where they can easily hear sounds from the monitor and respond; and

(3) Every 15 minutes, the child care staff responsible for their supervision conduct in-person checks of infants and toddlers sleeping in a crib or playpen, to ensure that each child is safe and comfortable, including a check of their faces, viewing the color of their skin and to check on their breathing.

(n) Blankets, sleeping bags, bedding, cots, and mats shall be stored in a manner that ensures that sleeping surfaces are not touching, or the items shall be washed and sanitized before re-use if stored in a way that sleeping surfaces are touching.

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

(p) Programs shall provide children who attend 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.

(q) 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.

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

(s) 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.

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

(u) Child care staff shall not:

(1) Require that children who are awake stay on mats, sleeping bags, cots, or beds for more than 60 minutes;
or

(2) Require children to sleep.

(v) 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 4002.36 through He-C 4002.38 provided that:

(1) The total number of child care staff 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 4002.36 through He-C 4002.38;

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

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

a. Evacuation;

b. Supervision;

c. Environment;

d. Schedule;

e. Naptime policy; and

f. Staff training and support;

(5) The program provides parents with written notice of the reduction of staff; and

(6) Documentation of the written notice in (5) above, in the form of a posted document, a policy statement that is signed by each parent, or other method of documentation is kept in the child's record for review by department staff during visits.

(w) During rest and sleep, programs shall always maintain ratios for children under 24 months, in accordance with He-C 4002.36 and 4002.37, except as specified in (x) below.

(x) 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 (w) above.

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

(z) No child shall wear a necklace during nap time or during sleep, unless the necklace is fused or has a fixed knot such that it cannot be removed.

He-C 4002.27 Water Testing and Sewage Disposal.

(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 60 degrees Fahrenheit shall be available at all sinks during operating hours;
- (2) 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;
- (3) In accordance with Env-Dw 501.04(c), a program that is considered to be a 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 department of environmental services;
- (4) Programs that have their own independent water supply and are not considered to be public water systems as defined in RSA 485:1-a, XV and confirmed by DES, shall test their water supply in accordance with the following:
 - a. Water testing shall be performed by a laboratory accredited under the environmental laboratory accreditation program 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, bacteria, nitrate, nitrite, lead, both stagnant and flushed, copper, both stagnant and flushed, and fluoride, and results provided to the department with the application; and
 - 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 3 months for bacteria;
 2. Annually for arsenic, nitrate, and nitrite; and
 3. At least once every 3 years for stagnant lead, stagnant copper, and fluoride;
- (5) The results of water tests required by (a)(4)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;
- (6) Any program whose water test result has exceeded maximum contaminant levels or action levels shall:
 - a. Immediately contact the department to report that finding, and provide the department with a plan for how it will ensure that children will not be at risk from exposure to the unsafe water; and
 - b. Within 30 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:
 1. The program demonstrates that it has made a good faith effort to develop and submit the corrective action plan within the 30 day period but has been unable to do so; and

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

(7) When a program fails to submit a written proposed corrective action plan within 30 days of receiving the unacceptable test result under (a)(6)b. above, the department shall initiate action to suspend the license or permit in accordance with He-C 4002.44(q) and (r), 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 staff 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) Privies are permissible in lieu of, or in addition to, (b)(2) above under the following conditions:

- (1) The licensee shall obtain approval by the town health officer for use of a privy;
- (2) The privy shall be constructed in accordance with Env-Wq 1022.01;
- (3) There shall be running water for handwashing available and accessible inside the privy area or immediately upon exiting the privy;
- (4) Privies shall be located:

- a. At least 100 feet from any place where food is prepared or served;
- b. At least 75 feet from any surface water; and
- c. At least 200 feet up-gradient of any well or spring;

(5) Privy contents shall be:

- a. Removed as often as necessary to prevent the pit from being filled to within one foot of the top of the pit; and
- b. Disposed of in accordance with Env-Wq 1600;

(6) The contents of the pit shall be covered daily with lime or other suitable agent to eliminate insects and odors;

(7) The materials for liming and disinfection shall be kept:

- a. In proximity to the privy where they are readily available for use; and
- b. Stored in a manner where children cannot access the contents;

(8) The privy and the pit shall be made fly-tight and provided with self-closing lids; and

(9) Child care staff shall maintain the privy in clean and sanitary conditions at all times.

(d) The licensee shall maintain chemical toilets in accordance with Env-Wq 1600, which shall be pumped by a septage hauler licensed by the department of environmental services.

He-C 4002.28 Bathroom Requirements.

- (a) Bathrooms shall have a means of outside ventilation.
- (b) Prior to use, the local health officer or designee and the department shall approve portable sinks intended for use to meet any of the requirements of He-C 4002.
- (c) Toilet facilities shall afford adequate privacy appropriate to the ages of children enrolled in the program while allowing for age appropriate supervision of each child.
- (d) Programs licensed to care for children younger than 3 years of age shall:
 - (1) Provide potty chairs or adult toilets with adapters at a ratio of one unit for every 10 children ages 18 months through 35 months, in addition to the requirements for toilets in He-C 4002.22(d);
 - (2) Place potty chairs within easy access to a toilet and sink to allow child care staff to proceed to the toilet to empty the potty chair and proceed to the hand washing sink 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 receptacle after each use.

He-C 4002.29 Diapering and Toilet Learning.

- (a) Programs serving diapered children and children who are not toilet trained shall have a designated diaper changing area, which shall:
- (1) Be located adjacent to or in close proximity to a designated hand washing sink to allow access for hand washing without having to open doors or gates or have physical contact with other children;
 - (2) Have a non-porous, washable surface, which shall be used exclusively for diaper changing and sanitized after each diaper change;
 - (3) 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; and
 - (4) Not be located in kitchens or in food preparation or food service areas, or on surfaces where food is prepared or served.
- (b) In addition to the requirements in (a) above, in center-based programs the diaper changing area shall be:
- (1) Located in the room where the children in diapers are cared for; and
 - (2) Equipped with a sink adjacent to or in close proximity to the diaper changing area designated exclusively for adult and child hand washing before or after diaper changing or toileting.
- (c) Programs shall not use a sink for hand washing after diapering or toileting if food preparation or washing dishes or eating utensils occurs in the sink.
- (d) At least every 2 hours, child care staff shall check children in diapers and change diapers and clothing if they are soiled or wet.
- (e) During each diaper change, soiled areas of children shall be washed with disposable, single use cleansing articles such as baby wipes or soft paper towels that have been moistened with water.
- (f) If an elevated diaper changing surface is used child care staff shall remain at the elevated diaper changing surface and keep one hand on the child at all times while a child is on it.
- (g) For each child there shall be a supply of clean diapers, clothing, and bedding for use as needed.
- (h) When non-disposable diapers are used:
- (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;
 - (2) The diaper shall contain a waterproof cover that is adherent to the cloth material; or
 - (3) The outer covering and inner lining shall be changed at the same time as a unit when a diaper with a separate lining is used.
- (i) Soiled disposable diapers and cleansing articles shall immediately be placed in a plastic bag lined, hands-free receptacle.
- (j) 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.
- (k) Covered hands-free receptacles used to dispose of diapers and cleansing articles shall be cleaned and sanitized at least once each day.

(l) Soiled non-disposable diapers shall:

- (1) Be immediately placed in an individual sealed plastic bag which shall be inaccessible to children and not in contact with other's belongings; and
- (2) Be returned to the parent at the end of each day.

(m) Programs using a commercial diaper service shall handle soiled diapers in accordance with written instructions from the service.

(n) A copy of the written instructions required in (m) above shall be available for review by the department upon request.

(o) Toilet learning shall be individualized, developmentally appropriate, conducted in accordance with a plan developed by each child's parents and child care staff, and never forced.

He-C 4002.30 Handwashing.

(a) Child care staff shall wash their hands with liquid soap and 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 eating;
- (6) Before and after administering medication; 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 staff shall:

- (1) Teach children the importance of hand washing with liquid soap and running water; and
- (2) Instruct, encourage, remind, or assist infants and children as needed throughout each day to wash their hands as necessary to comply with (a)(1) through (5) above.

(c) 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 4002.31 Nutrition, Food Service and Food Safety.

(a) Programs shall provide developmentally appropriate individual eating utensils, cups, and bottles, as applicable, for each meal and snack, which children shall not share.

(b) Eating and drinking utensils shall be free from defects, cracks, and chips.

(c) Child care staff shall clean all dishes and cooking utensils in a dishwasher or manually wash them in clean hot water and detergent, rinse them in hot water, and allow manually washed dishes to air dry.

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

(e) Child care staff shall sanitize all tables used for meals and snacks, both before and after serving meals or snacks.

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

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

(h) Child care programs that provide meals and snacks shall ensure they meet the daily meal patterns listed in the United States Department of Agriculture (USDA) “Child Meal Pattern” (11/26/2016) and USDA “Infant Meal Pattern” (11/29/2016) available as listed in Appendix B and copies of which are available in Appendix C.

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

(j) Except for the requirements in (k)(1) below, child care program personnel shall assure that no more than 3 hours elapse between meals and snacks offered to the children.

(k) Child care program personnel shall:

(1) 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; and

(2) Comply with dietary restrictions as requested in writing by the parents of each child, due to food allergies, religious, or philosophical beliefs.

(l) Notwithstanding (k) 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.

(m) Child care staff shall not serve foods that 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) Spoonsful 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; or
- (10) Other hard or cylinder shaped foods that may pose a choking hazard.

(n) Child care staff shall not serve low fat or non-fat milk, or other non-dairy milk products such as soymilk, oat milk, and almond milk, to children younger than 2 years of age unless authorized to do so in writing by the child's parent and the child's licensed health care practitioner.

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

(p) Programs that provide meals and snacks for children shall:

- (1) Ensure that snacks and meals are prepared and served in a safe and sanitary manner, including washing fruits and vegetables before serving them;
- (2) Not serve food to children beyond the recommended dates of use, or beyond 3 days of storage in the refrigerator for perishable leftover food;
- (3) Store all food in the original containers or in a clean, covered container labeled with the date open and expiration date;
- (4) Store all unopened food at least 6 inches above the floor, separate from non-food items;
- (5) Store food items separate from non-food items that could contaminate food or be mistaken for food;
- (6) In addition to (c) above, properly wash and sanitize all infant bottles between each use;
- (7) Prepare and make available to parents on request written menus, including snacks, for each week; and
- (8) Keep previous menus on file for one year.

(q) Child care program personnel shall store perishable food in accordance with the following:

- (1) Refrigeration and storage for food shall be at not less than 32°F, nor more than 40°F for all food requiring refrigeration;
- (2) There shall be a non-mercury, food service approved thermometers verifying temperatures maintained in all refrigerators; and
- (3) Refrigerators and freezers used to store foods intended for serving to children shall be maintained in clean condition.

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

(s) Programs shall have a method of providing nutritious meals and snacks to children whose parents fail to send meals or snacks from home.

(t) During meals and snacks, child care personnel shall:

- (1) Encourage children to serve themselves, when appropriate;
- (2) Help children with disabilities to participate in meal and snack times with their peers; and
- (3) Encourage children to eat a well-balanced diet.

- (u) 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.
- (v) In programs serving infants and toddlers, child care personnel shall:
 - (1) 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;
 - (2) Not introduce new or solid foods to any child without the consent of their parent(s), and as appropriate based upon their chewing and swallowing capability;
 - (3) Hold infants younger than 6 months of age or who are unable to sit in feeding chairs while being fed;
 - (4) Not hold more than one infant at a time to bottle-feed them;
 - (5) Not prop bottles; and
 - (6) Not feed infants or children while in a crib, or while on rest mats, beds, cots, or sleeping bags;
- (w) Child care personnel shall dispose of, or return to the parent, milk, formula, or food unfinished by a child, as directed by the parent.
- (x) Breast milk and prepared formula shall be stored in covered containers, labeled with the child's name and, dated.
- (y) Breast milk shall be:
 - (1) Used immediately or stored in the refrigerator no longer than 72 hours;
 - (2) Labeled as used and returned to the refrigerator after each feeding if there is any left-over in the bottle, if being returned to the parent; and
 - (3) Not fed to the child if left unrefrigerated for more than one hour.
- (z) 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 one hour; and
 - (3) Discarded after each feeding, if there is any leftover in the bottle.
- (aa) Frozen breast milk shall be labeled and dated and stored in a freezer at 0 degrees Fahrenheit for no longer than 6 months.
- (ab) Thawed breast milk shall be used within 24 hours.
- (ac) To thaw breast milk, child care program personnel shall:
 - (1) Place in refrigerator overnight; or
 - (2) Defrost in a container of running cool tap water.
- (ad) To warm formula or breast milk, child care program personnel shall:
 - (1) Hold under warm running water; or
 - (2) Place in a bowl of warm water, a slow-cooking device, or a bottle warmer; and
 - (3) Gently swirl bottle to recombine contents.

(ae) 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.

(af) 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.

He-C 4002.32 Field Trips, Water Activities, and Transportation.

(a) Programs that opt to allow child care staff 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) Child care staff who take the children off the premises for trips under (a) above shall call parents or post a notice at the program, informing parents of the destination and route of any unplanned trips, and the estimated time of return to the program.

(c) The center director, site director, or family child care provider shall obtain a signed and dated authorization form from each child's parents 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.

(d) The parental authorization form required in (c) above shall be retained by the program and available for review by the department for a minimum of 6 months after the date of the last water activity or field trip covered by the permission slip, and include:

- (1) For water activities, the date(s) and destination(s) 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; and
- (2) For all other field trips, the date(s), destination(s), and activities covered by the permission slip.

(e) Whenever the program provides transportation, it shall ensure that:

- (1) Any vehicle used for transportation of children is registered and inspected in accordance with the laws of the state of New Hampshire;
- (2) The vehicle is maintained in a safe operating condition, and is clean and free of obstructions on the floors and seats, and any sharp, heavy, or potentially dangerous objects are placed in the trunk or cargo area and securely restrained;
- (3) The operator of any vehicle transporting children is at least 18 years old and holds a valid driver's license;
- (4) The driver and any other attendants on the vehicle have received training in the safe transportation of children;
- (5) The driver of the vehicle is alert and not distracted by telephone, radio, or other communications; and
- (6) The driver of the vehicle takes attendance before and after each trip and conducts a complete vehicle inspection after every trip to ensure that no child is left alone in a vehicle at any time.

(f) Child care staff shall not permit any child to remain in any vehicle unattended by staff of the child care program.

(g) Any vehicle used to transport children, whether owned by the program, a child care staff member or by a parent who is transporting children other than his or her own, shall have proof of current liability insurance.

(h) Child care staff shall ensure:

- (1) The number of children riding in any vehicle does not exceed the number of persons the vehicle is designed to carry;
- (2) Individual, age appropriate child restraints or seat belts are provided for and used by each child in accordance with RSA 265:107-a, and the driver and any other adults shall use their seatbelts when transporting children; and

(3) All children remain seated when the vehicle is in operation.

(i) Child care staff shall carry on all field trips:

- (1) A copy of each child's registration and emergency information forms;
- (2) A first aid kit in the vehicle whenever children are present;
- (3) A copy of the parental permission slip for the field trip;
- (4) An attendance sheet documentation that staff accounted for each child every time they entered or exited the vehicle;
- (5) All emergency and currently prescribed child medications, as applicable; and
- (6) In each vehicle, a form that includes the program name, address, and phone number.

(j) There shall be a working cell phone or other mechanism for making emergency telephone calls available in each vehicle during transport.

(k) 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 staff shall supervise children at all times when they have access to wading pools that have water in them;
- (2) Child care staff shall not allow children inside the wading pool, 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 and who has completed a water safety training within the previous 3 years present with the children at all times during any water activity, and whenever children have access to swimming pools or other bodies of water.

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

(m) Child care staff 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.

(n) Lifeguards, 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.

(o) 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 staff shall comply with the staff to child ratios and minimum staffing requirements specified in:

- a. He-C 4002.37 for infant and toddler programs;
- b. He-C 4002.39 for school-age programs; and
- c. He-C 4002.36 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 (p) and (q) 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 4002.35 or be an assistant teacher or volunteer and at least 21 years of age;
- b. Notwithstanding a. above and with the exception of child care staff, other adults present to meet staff to child ratios shall be at least 18 years of age; and
- c. Center-based child care staff shall comply with the staff qualification requirements specified in He-C 4002.35.

(p) Center-based programs shall staff water activities in accordance with the following:

- (1) For children ages 24 to 35 months the maximum group size shall be 8 children, with a ratio of one staff to 2 children;
- (2) For children ages 36 to 47 months the maximum group size shall be 12 children, with a ratio of one staff to 4 children;
- (3) For children ages 48 to 59 months the maximum group size shall be 18 children, with a ratio of one staff to 6 children; and
- (4) For children ages 56 months and older, if licensed as a school age program, the maximum group size shall be 24 children, with a ratio of one staff to 8 children.

(q) Center-based programs shall staff field trips in accordance with the following:

- (1) For children 18 months and younger the maximum group size shall be 6 children, and the ratio shall be one staff to 3 children;
- (2) For children ages 19 to 35 months the maximum group size shall be 12 children, with a ratio of one staff to 4 children;
- (3) For children ages 36 to 47 months the maximum group size shall be 18 children, with a ratio of one staff to 6 children;
- (4) For children ages 48 to 59 months the maximum group size shall be 20 children, with a ratio of one staff to 8 children; and
- (5) For children ages 56 months and older, if licensed as a school age program, the maximum group size shall be 24 children, with a ratio of one staff to 10 children.

(r) 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.

(s) Programs may exceed the maximum group size specified in (p) above for water activities, and (q) 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.

(t) In a family or family group child care home, for all field trips and for water activities in swimming pools located on the licensed premises or off-site, such as the private residence of a friend or neighbor, child care staff shall comply with the staffing requirements specified in He-C 4002.34.

(u) 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 (t) above, child care staff shall comply with the staffing requirements specified in He-C 4002.34, 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.

(v) Programs shall comply with the following:

(1) Child care staff 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 He-C 4002.35, or family child care worker in family based programs as specified in He-C 4002.34 shall be designated as in charge and present during any water activity or field trip;

(2) All child care staff 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 staff 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.

(w) Except during swimming activities conducted by a qualified swim instructor, a person certified in water safety and rescue, or a lifeguard, child care in all programs shall prohibit each child who cannot swim from going into water that reaches higher than his or her navel.

He-C 4002.33 Professional Development.

(a) All center directors, agency administrators, site coordinators, or site directors, and all other child care staff who are responsible for the supervision of children, or who are necessary for the staff to child ratios, shall keep on file documentation of completion of a minimum of 6 hours of professional development, which shall be completed in accordance with the following:

- (1) Within 90 days of the first date of employment;
- (2) Within 2 weeks for programs operating 3 months of the year or less; or
- (3) By providing documentation of previous completion.

(b) The 6 hours of professional development required in (a) above shall include:

- (1) Child care licensing orientation;
- (2) Prevention and control of infectious diseases, including immunizations;
- (3) Prevention of SIDS and use of safe sleep practices;
- (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;
- (8) Emergency preparedness and response planning;
- (9) Handling and storage of hazardous materials and the appropriate disposal of bio-contaminants;
- (10) Appropriate precautions in transporting children for child care personnel who will provide transportation or accompany children during transportation;
- (11) First aid and CPR;
- (12) Prevention, recognition, and reporting of child abuse and neglect;
- (13) Child development, including cognitive, physical, social, and emotional development; and
- (14) Training on all required components in the emergency operations plan as specified in He-C 4002.16(g)(3)).

(c) Prior to working with infants 12 months and younger, child care staff shall take training on prevention of SIDS and use of safe sleep practices.

(d) Child care staff who have not completed the training in (1) through (4) below shall work under the direct supervision and observation of a staff member who has completed the following trainings:

- (1) Prevention and control of infectious diseases, including immunizations;
- (2) Prevention of shaken baby syndrome and abusive head trauma;
- (3) Handling and storage of hazardous materials and the appropriate disposal of bio-contaminants; and

(4) First aid and CPR.

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

(f) The center director, agency administrator, site coordinator, site director, and all child care staff shall complete 18 hours of professional development within their first 12 months of hire, and annually thereafter, in accordance with the following:

(1) A minimum of 3 hours shall be in health and safety topics listed in (b)(2)-(13) above; and

(2) The remaining 15 hours shall be in any other areas listed in (k) below.

(g) The only exceptions to (f) above shall be:

(1) Assistant teachers, associate teachers, group leaders, assistant group leaders, family child care workers, and family child care assistants who work fewer than 25 hours per week year round, or more than 25 hours per week during school vacations, or both, for the same licensee shall:

a. Obtain 12 hours of professional development within their first 12 months of hire, and annually thereafter; and

b. Of the 12 hours, a minimum of three hours shall be in any of the health and safety areas listed in (b)(2)-(13) above, and the remaining hours shall be in any areas in (j) below;

(2) Child care staff attending high school or college full time shall obtain 3 hours of professional development in health and safety areas listed in (b)(2)-(13) above annually;

(3) Full time college attendance in (2) above shall mean enrolled in a minimum of 12 credit hours per semester; and

(4) Substitutes, as defined in He-C 4002.01(bi).

(h) Professional development shall include trainings, workshops, technical assistance, self-study, or college courses.

(i) Self-study projects shall:

(1) Not exceed 6 of the required 18 hours of professional development; and

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

(j) Self-study projects referenced in (i) above shall:

(1) Be based on current research in child development or early childhood;

(2) Demonstrate developmentally appropriate practice;

(3) Support the knowledge and skills needed to care for young children; and

(4) Be documented and include an evaluation component.

(k) In addition to (b) above, professional development, as specified in (h) through (j) above, shall be in any of the following areas:

(1) Health and safety;

- (2) Caring for children with exceptionalities;
- (3) Nutrition;
- (4) Any child care related courses sponsored or funded by the department;
- (5) Indoor and outdoor learning environments;
- (6) Behavior guidance;
- (7) Leadership, child care administration, or mentoring;
- (8) Financial management;
- (9) Working with families; or
- (10) Legal issues in child care.

(l) The department shall accept the following toward meeting in-service professional development requirements:

- (1) Credit courses offered by a regionally accredited college or university with one credit equal to 12 hours;
- (2) Non-credit courses offered for continuing education units by a regionally accredited college or university;

(3) Conference sessions or workshops presented by an individual who meets one of the following criteria:

- a. Is credentialed by the department's child development bureau, NH early childhood professional development system in accordance with RSA 170-E:50;
- b. Has at least a bachelor's degree in the subject area which she or he is providing professional development;
- c. Meets the minimum qualifications for the position of center director;
- d. Holds a professional license or certification through a professional organization relevant to the subject area which he or she is providing professional development; or
- e. Is employed or was previously employed in a position such as a trainer, instructor, or consultant by an organization specializing in one of the areas referenced in (k) above in which she or he is providing professional development;

(4) Technical assistance provided by an individual who meets one of the criteria in (3) a. through e. above, provided they have at least 5 years experience as a center director if qualifying under c.

(5) Provision of training or technical assistance developed and presented by an employee of the program or an individual hired by the program shall be in accordance with the following:

- a. The training is conducted when the trainees are not responsible for children;
- b. With the exception of classroom observations, technical assistance is provided when the subject(s) of the technical assistance are not responsible for children; and
- c. Information regarding credentials of the individual, their methods, content and objective, dates and times of trainings or technical assistance, 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 individual meets the requirements specified in (3)a. through e. or (4) above; and

2. The training or technical assistance 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

(6) 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) Unless otherwise specified on the training certificate or course description for more or fewer hours, training hours for recertification in first aid shall count as 2 hours and training for recertification in CPR shall count as 3 hours towards annual professional development requirements.

He-C 4002.34 Family and Family Group Child Care Programs.

(a) Family and family group child care homes shall comply with He-C 4002.01 through He-C 4002.33 and this section.

(b) Family child care shall:

(1) Only be provided in a dwelling that provides complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation; and

(2) Be occupied for living purposes on a full time basis by the family child care provider; or

(3) Be located:

a. Physically on the same property as the family child care provider's permanent residence and such residence is a single family home;

b. In a duplex structure containing 2 independent side-by-side dwelling units and the family child care provider permanently resides in the other dwelling unit located in the duplex; or

c. In a structure with a maximum of 3 stories, with no more than one dwelling unit located on each floor level, and the family child care provider permanently resides in one of the other dwelling units located in the 3 story structure.

(c) A family child care provider may not hold more than one family child care license.

(d) 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 or her application documentation that he or she has a high school diploma or equivalent, including but not limited to General Equivalency Diploma (GED), a High School Equivalency Test (HiSet), or a Test Assessing Secondary Completion (TASC), and at least one of the following:

a. Successful completion of a 2 year child care curriculum approved by the 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.

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

(f) 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.

(g) 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 staff on an emergency or temporary basis for not more than 90 consecutive days and not more than a maximum of 120 days in a 12-month period.

(h) Family child care providers and family child care workers shall complete professional development requirements in accordance with He-C 4002.33.

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

(j) 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;
- (3) Not be calculated in staff to child ratios as specified in (o) through (q) below; and
- (4) Not be required to complete professional development hours as specified in He-C 4002.33.

(k) 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.

(l) The license capacity for 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.

(m) 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.

(n) 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.

(o) 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.

(p) 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 (o) above.

(q) 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.

(r) 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 their local fire officer and notification to the department; and
- (2) In doing so, they will not exceed the limits in (n), (o), and (q) above.

(s) The department shall not grant approval for (r) above if the program has not corrected citations identified on a statement of findings.

He-C 4002.35 Requirements for Child Care Staff 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 director shall be on the premises for at least 60% of each day's daytime operating hours; and
- (2) Programs operating as a night care program, the center director, qualified substitute director or lead teacher shall be on the premises for at least 60% of the program's evening and nighttime 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 director 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 director shall be on the premises for at least 60% of each day's daytime operating hours.

(c) Center directors, agency administrators, 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 daytime hours, for the remaining 40% of the daytime operating hours that the center director or site director is not required to be present under (a)(1) and (b)(2) above; and
 - c. In night care programs, for the remaining 40% of the night time hours that the center director is not required to be present under (a)(2) above; and
- (3) Make all child care staff 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.

(d) With the exception of programs operating only as a school age program, there shall be at least one lead teacher on the premises during all operating hours, and one out of every 6 child care staff 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.

(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 an associate teacher as described in (l) below is on the premises.

(f) Center-based programs that wish to apply for or have a single license for multiple buildings, and which choose not to have a center director in each building shall designate a staff person who qualifies as a lead teacher to be in charge in each building who reports to the center director.

(g) School age programs that wish to apply for or have a single license for multiple buildings, and which choose not to have a site director in each building shall designate a staff person who qualifies as a group leader to be in charge in each building who reports to the site director.

(h) The center director, agency administrator, site coordinator, site director or his or her designee shall have available for review at the program for all child care staff, documentation to verify that the person qualifies for their position in accordance with this section.

(i) Center-based programs may employ substitute staff for not more than 90 consecutive days for the same position only if the individuals:

- (1) Meet the age requirements of the staff position for whom they are substituting; and
- (2) Have completed the criminal background check process as described in He-C 4002.41.

(j) A center director in a center-based program shall:

- (1) Be at least 21 years of age;
- (2) Have a high school diploma or equivalent, including but not limited to General Equivalency Diploma (GED), a High School Equivalency Test (HiSet), or a Test Assessing Secondary Completion (TASC);
- (3) Have 3 credits in management or supervision, awarded by an accredited college or university, a minimum of 2 years' experience in a supervisory or management position in lieu of the 3 credits in management and supervision, or a written plan for completion of 3 credits in management or supervision from an accredited college or university;
- (4) Have a minimum of 1500 hours experience working with children in a licensed child care program or public or private elementary school;
- (5) Have one of the following:
 - a. A minimum of an associate's degree awarded by an accredited college in related coursework;
 - 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 department of education;
 - d. Certification in a teacher preparation program accredited by the Montessori Accreditation Council for Teacher Education (MACTE) in infant and toddler, early childhood or elementary I, together with 60 credits, awarded by an accredited college or university; or
 - e. Documentation of 60 credits, of which at least 24 shall be in related coursework, 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; and

(6) Be on file with the department as a center director working in that position on or before November 6, 2017.

(k) A lead teacher in a center-based program shall have a high school diploma or equivalent, including but not limited to General Equivalency Diploma (GED), a High School Equivalency Test (HiSet), or a Test Assessing Secondary Completion (TASC), be at least 18 years old, and have one of the following:

- (1) A minimum of 18 credits in related coursework, including at least 3 credits in child or human growth and development, plus a minimum of 1000 hours experience working with children in a licensed child care program or public or private elementary school;
- (2) A minimum of 12 credits in related coursework, plus 3000 hours experience working with children in licensed child care program or public or private elementary school;
- (3) Documentation of a non-expired child development associates (CDA) in center-based programs awarded by the council for professional recognition;
- (4) A credential from a teacher preparation program accredited by MACTE;
- (5) Five years as a licensed family child care provider with no enforcement actions imposed by the department;
- (6) Successful completion of the New Hampshire Early Childhood Apprenticeship Program;
- (7) A minimum of 1000 hours of supervised child care experience in a licensed child care program, documentation of successful completion of a 2-year vocational course in career and technical education with an additional 9 credits in related coursework; or
- (8) 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 November 6, 2017.

(l) An associate teacher in a center-based program shall be at least 18 years old, have a high school diploma or equivalent, including but not limited to General Equivalency Diploma (GED), a High School Equivalency Test (HiSet), or a Test Assessing Secondary Completion (TASC), and have one of the following options:

- (1) Written documentation from or on file with the department that she or he was qualified and employed as an associate teacher on or before November 6, 2017;
- (2) A minimum of 9 credits in related coursework, including at least one 3 credit course in child or human growth and development;
- (3) Current certification as para II educator by the department of education; or
- (4) A minimum of 1000 hours of supervised child care experience in a licensed child care program, and knowledge of child growth and development obtained through one of the following:
 - a. Completion of a high school level 2-year career and technical education course in teacher education;
 - b. A 3 credit college course in child or human growth and development;
 - c. Thirty hours of training in child growth and development, granted by an accredited college or university, an authorized provider of the International Association for Continuing Education and Training or obtained through documented life experience, including experience with the same age children the associate teacher supervises, such as a family child care provider, service as a foster parent, work as a school teacher, work as a camp counselor and experience as a group leader for children in sports or other activities, such as scouts or little league, or closely related experience.

(m) 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.

(n) Notwithstanding (m)(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 3 months of experience at the program;
- (4) The employee has completed the required trainings pursuant to He-C 4002.33(a); and
- (5) The specific activities that the assistant teacher may be alone with children include:
 - a. Walking children:
 1. To or from a bathroom;
 2. To or from receiving first aid treatment;
 3. To or from a bus stop; and
 4. 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 5 minutes when other child care staff 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 4002.20.

(o) A junior helper in any center-based program, whether paid or volunteer, shall:

- (1) Be at least 14 years of age;
- (2) Work with children only under the direct supervision and observation of a staff person who meets at least the minimum qualification of an associate teacher;
- (3) Not be calculated in staff to child ratios as specified in He-C 4002.36, 4002.37, and 4002.39; and
- (4) Not be required to complete professional development hours as specified in He-C 4002.33.

(p) A site director in a school-age program shall be at least 20 years of age, have a high school diploma or equivalent, including but not limited to General Equivalency Diploma (GED), a High School Equivalency Test (HiSet), or a Test Assessing Secondary Completion (TASC), and have at least one of the following:

- (1) Written documentation from or on file with the department that she or he was qualified and employed as a site director in a school-age program on or before the effective date of these rules in 2022;
- (2) A minimum of an associate's degree in child development, education, recreation, or other field of study focused on children, awarded by an 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, from an accredited college plus 1000 hours of experience working with children;
- (5) Current certification as an educator by the department of education; or
- (6) Experience working with children totaling 2000 hours and:
 - a. Current certification as a para II educator by the department of education; or
 - b. Both of the following:
 - 1. Documentation of enrollment in a course for at least 3 credits in child development, education, recreation, or other field of study focused on children, through an accredited college or university and a written plan on file for completion of at least 3 additional credits as specified; and
 - 2. 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 b.1. shall be on file for review by the department.
- (q) A group leader in a school-age program shall be at least 17 years of age, and have 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, awarded by an accredited college or university;
 - (3) Documentation that she or he is a certified coach;
 - (4) Documentation of 5 years of parenting experience; or
 - (5) Documentation from or on file with the department that she or he was qualified and employed as a group leader in a school-age program on or before the adoption of these rules in 2022.
- (r) An assistant group leader in a school-age program, whether paid or volunteer, shall:
 - (1) Be at least 15 years of age; and
 - (2) Work with children only when under the direct supervision and observation of a site director or group leader as described in this section.
- (s) A project leader in a school-age program shall:
 - (1) Be at least 15 years of age;
 - (2) Be certified in CPR and first aid;
 - (3) Be recommended by an elementary school or established youth-related organization or agency; and
 - (4) Have a written plan for the project she or he is leading, including:
 - a. A description of the project;
 - b. The objective and expected outcomes of the project;
 - c. The location, time, and length of group meetings; and
 - d. The evaluation process of the project.

(t) Project leaders shall not be required to complete in-service professional development hours as specified in He-C 4002.33.

(u) Site directors in programs with a project leader shall:

- (1) Inform the project leader of program policies and child care licensing rules;
- (2) Require child care staff to observe or check on the project leader every 20 minutes;
- (3) Supervise, or require that the group leader supervise, the project leader; and
- (4) Have a consent form on file for review by the department that is signed by the parent of each child participating in an activity with a project leader.

(v) Project leaders shall not be calculated in staff to child ratios as specified in He-C 4002.39.

He-C 4002.36 Group Child Care Centers.

(a) Group child care centers shall comply with He-C 4002.01 through He-C 4002.33, He-C 4002.35, and this section, unless otherwise specified.

(b) 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 one 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 one 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 one 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.

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

(1) 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

(2) Comply with staff to child ratios and requirements specified in He-C 4002.37 when the average age of children is younger than 36 months.

He-C 4002.37 Infant and Toddler Program.

(a) Infant and toddler programs shall comply with He-C 4002.01 through He-C 4002.33, He-C 4002.35, and this section, unless otherwise specified.

(b) Programs shall staff infant and toddler programs in accordance with the following:

(1) 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;

(2) 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;

(3) 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.

(d) In addition to the staffing requirements under (b) and (c) above, programs licensed as infant and toddler programs shall 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.

(e) To ensure 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 staff 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.

He-C 4002.38 Preschool Program.

- (a) Preschool programs shall comply with He-C 4002.01 through He-C 4002.33, He-C 4002.35, and this section.
- (b) Preschool programs shall meet the staff to child ratio requirements specified in He-C 4002.36(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;
 - (2) Language development and emergent literacy;
 - (3) Cognitive development, including:
 - a. Early numeracy;
 - b. Science and social studies; and
 - c. Approaches to learning;
 - (4) Physical development and health; and
 - (5) Creative expression and aesthetic appreciation.

He-C 4002.39 School-Age Program.

- (a) School-age programs shall comply with He-C 4002.01 through He-C 4002.33, He-C 4002.35, and this section, unless otherwise specified.
- (b) All school age programs shall be exempt from He-C 4002.08(a) only regarding recording birth dates on attendance records.
- (c) School-age programs that operate in a building which currently house a public or private school shall:
 - (1) Identify and protect children from hazards such as vehicular traffic with direct supervision if the environment does not provide adequate protection; and
 - (2) Be exempt from modifying the environment to comply with He-C 4002.
- (d) Programs that serve only children attending part day public kindergarten or full-day public school shall be exempt from:
 - (1) He-C 4002.23(b)(2) regarding unprotected outlets only;
 - (2) He-C 4002.23(c) regarding access to sharp objects such as scissors for arts and crafts or knives for cooking and access to non-cleaning materials or chemicals not labeled as “harmful if swallowed” or “flammable”, except that hand sanitizer may be available for use by children under staff supervision; and
 - (3) He-C 4002.23(f) regarding long cords and strings.
- (e) In lieu of He-C 4002.26(p), 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.
- (f) The staff to child ratios for school-age programs shall be one 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.
- (g) In addition to the staffing requirements in (f) above, programs licensed as school-age programs shall have a second staff person in the building when 13 or more children are present.
- (h) School-age programs that 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 when 9 or more school age children are present.
- (i) When 8 or fewer school-age children are present, programs shall have the option to combine school-age children with children 4 years of age and older.
- (j) Programs shall have and maintain on file for review by parents and the department a written schedule of daily activities that ensures that the curriculum includes:
 - (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 4002.40 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 5:00 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 4002.33, He-C 4002.35, 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 that 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 4002.35.
- (d) Child care staff 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 staff 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 staff shall provide for privacy and separation by gender for bathing, toileting, and sleeping for all children.
- (g) Child care staff 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 staff 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.

He-C 4002.41 Background Checks and Determination of Eligibility.

(a) Prior to employment or residency, as applicable, and every 5 years thereafter, all child care staff, substitutes, other employees, and volunteers who may be alone with children or are included in staff to child ratios, and household members age 10 years or older, shall submit for a background record check using NH Connections.

(b) Each individual age 18 and older completing a background record check in accordance with (a) above, shall submit a non-refundable fee for the issuance of the employment eligibility card, in accordance with RSA 170-E: 7, IV-a. and IV-d.

(c) The following individuals shall not be required to obtain the employment eligibility card in (b) above:

- (1) Family child care providers, household members, applicants, substitutes, and volunteers;
- (2) Child care staff determined eligible to work prior to October 1, 2017, who remain employed by the same licensee or at the same location if the licensee has changed at the time of submission of their background record check in (a) above;
- (3) High school and college students; or
- (4) Other employees or individuals whose purpose is not related to the care or supervision of children in the program.

(d) The background record check shall be completed in accordance with RSA 170-E:7, unless exempted from this requirement as permitted under RSA 170-E:7, II-a.

(e) Pursuant to RSA 170-E:7, IV-b, individuals exempt in accordance with (d) above shall have on file at the program, a statement from the individual stating since the day the individual's background check was completed, that he or she:

- (1) Has not been convicted of any crimes; and
- (2) Has not had a finding by the department or any administrative agency in this or any other state for abuse, neglect, or exploitation.

(f) The unit shall make a determination regarding the individual's eligibility in accordance with RSA 170-E:7, III and IV and notify the program and individual within 45 days of submission of all required information as required in this section and RSA 170-E:7.

(g) Individuals required to complete background record checks as specified in (a) above shall not have access to children or be present in the program until the program receives notice of eligibility from the Unit.

(h) When the unit receives the results of the fingerprint-based criminal background check for an individual that does not include any disqualifying information as described in RSA 170-E:7, III and IV, it shall notify the program that the individual may be present in the program, provided the individual is never alone with children and always under the direct supervision and observation of a staff member whom the unit has been deemed eligible. This direct supervision and observation shall continue until the unit receives all results from the background check required in RSA 170-E:7 and notifies the program and individual as described in (f) above.

(i) 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 individual that includes:

- (1) The department's determination of ineligibility;
- (2) The basis for the determination; and

(3) The individual's right to challenge his or her criminal record pursuant to Saf-C 5703.12.

(j) 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 department determined the individual to be ineligible to work in child care; and

(2) The program shall take immediate action to prohibit the individual from being on the premises of the child care program and from having access to the children enrolled in the program.

(k) The child care program shall inform the department in writing within 2 business days of receipt of the notice sent in (j) above of the specific action it has taken as required under (j)(2) above.

He-C 4002.42 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 non-compliance(s) occurred within 6 months of the date of the allegation(s);
- (2) The complaint includes 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 non-compliance of any of the provisions of RSA 170-E or He-C 4002; or
- (4) The complaint is from any source and alleges non-compliance 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) When the complaint is determined to be substantiated, a statement of findings shall be issued to the program listing the citations found resulting from the investigation and any other citations found.

(c) When the complaint is determined to be unfounded, the department shall send a notice to the program advising that the complaint was unfounded.

He-C 4002.43 Confidentiality.

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

(b) 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 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.

(c) 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.

(d) Applicants, licensees, permittees, and all child care staff 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 staff 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 staff 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.

(e) In addition to the confidentiality requirements in (d) above, child care staff 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 4002.44 Enforcement Action and Right to Appeal.

(a) The department shall consider the following enforcement actions in response to non-compliance with licensing rules and laws:

- (1) Assessment of administrative fines;
- (2) Placement of conditions on a permit or license;
- (3) Suspension of a permit or license;
- (4) Denial of an application for a new or renewed license; or
- (5) Revocation of a permit or license.

(b) 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 or any rule, and it determines that placement of those conditions shall:

- (1) Protect the health, safety, or well-being of children;
- (2) Assist the applicant, licensee, or permittee to achieve and maintain compliance with licensing rules or statute; or
- (3) Assist the applicant, licensee, or permittee to avoid suspension, revocation or denial of their license or permit.

(c) When the department intends to place conditions on a license or permit, it shall send to the applicant, licensee, or permittee a notice 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 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.

(d) The conditions placed in accordance with (b) 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) Shall include, but not be limited to:
 - 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 individual to obtain additional education other than that required for their position, or to complete additional in-service professional development activities, in excess of the annual requirement

as specified under He-C 4002.33 in order to prepare them to more effectively work with children 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 staff, 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 an increase in the license capacity, or any addition of new program types to an existing license or permit, until they achieve and maintain compliance with He-C 4002;

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

h. Requiring the licensee to replace the center director, site director, or site coordinator.

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

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

(2) The department's decision to place conditions on the license or permit is upheld after an administrative hearing.

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

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

(h) Upon receipt of notice of the department's intent to place conditions on a license, the applicant, licensee, or permittee receiving the notice shall immediately provide the department with evidence that the program notified all of the parents of enrolled children of the conditions imposed on the license by the department.

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

(1) Provide written notice to the licensee or permittee of the department's intention to rescind the conditions; and

(2) Issue a revised license or permit.

(j) The department shall revoke a permit or license or deny an application for a new license, license renewal, or license revision in accordance with RSA 170-E:12 if:

(1) The applicant, licensee, or permittee fails to provide or does not meet the requirements of He-C 4002.02;

(2) The applicant, licensee, or permittee refuses to submit or adhere to an agreement or corrective action plan which ensures that an individual determined ineligible for employment or as a household member 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) The 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 a:

- a. Finding of abuse, neglect, or exploitation of any person;
- b. Conviction of child endangerment, fraud, or a felony against a person in this or any other state by a court of law;
- c. Conviction of any crime as referenced in RSA 170-E:7, III or IV; or
- d. 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 thereof 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 thereof 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 citations 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 approved by the department in accordance with He-C 4002.06(f) through (i);

(10) The applicant, licensee, or permittee fails to pay a fine assessed by the department as specified in He-C 4002.45; 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 4002.44(b).

(k) If the department revokes a license or permit, or if a license or permit has expired due to the program's failure to submit a timely application for renewal in accordance with He-C 4002, the program shall discontinue operations immediately.

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

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

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

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

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

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

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

(1) The program does not have a history of repeat citations of licensing rules or statute and the action is based on non-compliance or a situation that 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 for one of the following and is under appeal:

- a. A criminal conviction; or
- b. A finding by the division for children, youth, and families, of child abuse, neglect, or endangerment.

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

(1) The non-compliance which resulted in the suspension is corrected; or

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

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

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

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

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

- (1) The health officer and fire inspector serving the town in which the program is located;
- (2) The organization or entity who provides resource and referral services, pursuant to RSA 171-E:5-a, 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.

(x) An applicant, licensee, center director, or site director shall be ineligible to reapply for a license, employment as a center director or site director, be a family child care provider, or hold any corporate office or controlling interest in any licensed program after revocation of a license or denial of an application.

(y) The period of ineligibility shall be 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.

(z) 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 (y) above, the agreement shall supersede the rule.

(aa) 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 (y) above only when it determines 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.

(ab) Notwithstanding (aa) 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 the non-compliance due to the applicant or licensee's refusal or inability to correct; 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.

(ac) Notwithstanding (aa) 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 (y) above, provided revocation or denial was the result of non-compliance with 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 and 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 non-compliance 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.

(ad) 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 4002.45 Administrative Fines.

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

- (1) The department shall send the notice of intent to assess a fine by certified mail or by hand delivery to any person, applicant, licensee, or permittee;
- (2) The written notice required under (1) above shall include:
 - a. The amount of the fine, the citation(s), and dates, if applicable, for which the fine is being assessed;
 - b. Information regarding the right to request an administrative hearing, including the name, address, and phone number of the hearings unit, and deadline by which to request a hearing;
 - 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 of 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)c. 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 department shall assess fines in accordance with the following:

- (1) For failure to comply with the provisions of a license or permit, in violation of He-C 4002.05(a)(1), the fine shall be \$200.00, plus \$100.00 per day for each day for which the department has evidence that the program continues to fail to comply with the provisions of a license or permit, in violation of He-C 4002.05(a), after receipt of written notice of non-compliance from the department;
- (2) For a repeat citation for failure to comply with the provisions of a license or permit, in violation of He-C 4002.05(a)(1), the fine shall be \$500.00, plus \$100.00 for each day for which the department has evidence that the program continues to fail to comply with the provisions of a license or permit, in violation of He-C 4002.05(a), after receipt of written notice of non-compliance from the department;
- (3) For operating a child care program without a license or permit, in violation of RSA 170-E:4, I, the fine shall be \$500.00, plus \$100.00 per day for each day for which the department has evidence that the program continues to operate, in violation of RSA 170-E:4, I;
- (4) For continuing to operate a child care program after voluntarily closing, or for continuing to operate under an expired license after failing to submit a timely renewal application, in violation of RSA 170-E:4, I, the fine shall be \$1,000.00, plus \$100.00 per day for each day for which the department has evidence that the program continues to operate, 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, I, the fine shall be \$2,000.00, plus \$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 requested reports or failing to make available any records required by the department for investigation, monitoring, or licensing purposes in violation of He-C 4002.05(k), (l), or (n)(4), the fine shall be \$500.00, per offense, plus \$100.00 per day, per offense, for each day for which the department does not receive the requested documents;

(7) For making false or misleading statements, either verbal or written, to the department, or for directing, requiring, or knowingly allowing any child care staff to make false or misleading statements to the department, or falsifying any documents, other written information, or reports issued by or required by the department, in violation of He-C 4002.05(m), the fine shall be \$1000.00 per offense;

(8) For failure by the applicant, licensee, or permittee, or by any child care staff at the direction of or on behalf of the applicant, licensee, 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 4002.05(n) the fine shall be \$1000.00;

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

(10) For failure to implement or maintain the corrective action set forth in any corrective action plan that has been approved or issued by the department, in violation of He-C 4002.06(m) , the fine shall be \$250.00 per citation;

(11) For failure to supervise each child in care, in violation of He-C 4002.20(a), the fine shall be \$750.00;

(12) For abusing or neglecting a child or children, 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 4002.18(e)(1) and (f), the fine shall be \$1000.00;

(13) For using corporal punishment, or failing to protect children from corporal punishment in the child care program by any child care staff, 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 4002.18(e)(3) and (f), the fine shall be \$1000.00;

(14) For using inappropriate discipline or rough handling children, or failing to protect children from inappropriate discipline or rough handling 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 4002.18(e)(2), the fine shall be \$500.00;

(15) For failure to comply with the qualifications for a center director or site director, in violation of He-C 4002.35(j) and (p) respectively, when the non-compliance is not corrected within 5 business days of written notice of non-compliance from the department, the fine shall be \$100.00, plus \$100.00 for each day that the non-compliance continues;

(16) For failure to complete the criminal background check process, in violation of RSA 170-E:7 and He-C 4002.41, the fine shall be \$500.00, plus \$100.00 per day when the non-compliance 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;

(17) For non-compliance of any statute or any rule which results in endangering one or more children, in violation of RSA 170-E:4, 2, the fine shall be \$1000.00 for each citation, plus \$200.00 per day for each day for which the department has evidence that the non-compliance continues after receipt of written notice of non-compliance from the department;

(18) For a repeat citation of any rule not specified in (b)(3) through (17) above, the fine shall be \$200.00;

(19) Except for (b)(5) above, when an inspection results in a determination that non-compliance of RSA 170-E or He-C 4002 is a repeat citation of any of the rules specified in (b)(3) through (19) above, the fine shall be twice the amount as the original fine assessed, not including any applicable daily rates;

(20) For the purposes of (b)(18) through (19) above, each incident of non-compliance shall constitute a separate citation subject to a separate fine; and

(21) For non-compliance of any statute, or rule which results in physical injury to one or more children, or places one or more children in jeopardy of physical harm, the department shall assess a fine of \$2,000.00 for each non-compliance, plus \$500.00 per day that the non-compliance exists.

Appendix A

RULES	STATUTE
He-C 4002.01	RSA 170-E:2
He-C 4002.02	RSA 170-E:6; RSA 170-E:8; RSA 170-E:9; RSA 170-E:11, I(1); RSA 541-A:30, I
He-C 4002.03	RSA 541-A:29
He-C 4002.04	RSA 170-E:11, I(m)
He-C 4002.05	RSA 170-E:7, I; RSA 170-E:6-b; RSA 170-E:11, I(a) & (b); and RSA 170-E:11, I(h)
He-C 4002.06	RSA 170-E:8, II; RSA 170-E:10; RSA 170-E:11, I(h)
He-C 4002.07	RSA 170-E: 10-a; RSA 170-E:11, IV; RSA 541-A:30-a
He-C 4002.08	RSA 170-E:11, I(d), (e)
He-C 4002.09	RSA 170-E:11, I(b)
He-C 4002.10	RSA 170-E:11, I(a), (d) & (g); 45 C.F.R. § 98.41(a)(1)(i)(C)
He-C 4002.11	RSA 170-E:11, I(a), (d) & (g); 45 C.F.R. §98.41(a)(1)(i)
He-C 4002.12	RSA 170-E:11, I(a), (d), (g), & (h); 45 CFR 98.[§98.16(aa)]
He-C 4002.13	RSA 170-E:11, I(e) & (f)
He-C 4002.14	RSA 170-E:11, I(a), (d), & (g); 45 C.F.R. § 98.41(a)(1)(iv) or (vii)
He-C 4002.15	RSA 170-E:11, I(a), (d), (g), (h), (i); 45 CFR 98.41(a)(1)(i)(C); CFR 98.[§98.16(aa)]
He-C 4002.16	RSA 170-E:11, I(a), (b), (c), (e), & (i); 45 CFR 18
He-C 4002.17	RSA 170-E:11, I(a), (d), (g), & (h); 45 CFR 98.[§98.16(aa)];
He-C 4002.18	RSA 170-E:11, I(a) - (e) & (i); 45 CFR 98
He-C 4002.19	RSA 170-E:11, I(a), (d), & (e)
He-C 4002.20	RSA 170-E:11, I(a), (d), (g), & (h) and 45 CFR 98.[§98.16(aa)]
He-C 4002.21	RSA 170-E:11, I(a), (d), (e) & (g)
He-C 4002.22	RSA 170-E:11, I(d)
He-C 4002.23	RSA 170-E:11, I(d) & (e); 40 CFR 745.90(a) and (b)(2011)
He-C 4002.24	RSA 170-E:11, (d) & (e)
He-C 4002.25	RSA 170-E:11, I(d) & (e); 16 C.F.R. § 1500
He-C 4002.26	RSA 170-E:11, I(c), (d), & (e); 45 C.F.R. § 98; 16 C.F.R. § 1219 and 1220
He-C 4002.27	RSA 170-E:11, I(d), (e), (h); RSA 170-E:6
He-C 4002.28	RSA 170-E:11, I(d), (e), (h); RSA 170-E:6
He-C 4002.29	RSA 170-E:6; RSA-170-E:11, I(d), & (e)
He-C 4002.30	RSA-170-E:11, I(d) & (e)
He-C 4002.31	RSA-170-E:11, I(d) & (e)
He-C 4002.32	RSA-170-E:11, I(a) - (e) and RSA 265:107-a
He-C 4002.33	RSA-170-E:11, I(b) & (e) and 45 C.F.R. §98.44
He-C 4002.34	RSA 170-E:11, I(b) & (e)
He-C 4002.35	RSA 170-E:11, I(b), (d) & (e)
He-C 4002.36	RSA 170-E:11, I(a) & (c)
He-C 4002.37	RSA 170-E:11, I(a), (c) & (e)
He-C 4002.38	RSA 170-E:11, I(a), (c) & (e)
He-C 4002.39	RSA 170-E:11, I(a), (c) & (e)
He-C 4002.40	RSA 170-E:11, I(a) & (c)
He-C 4002.41	RSA 170-E:7; RSA 170-E:11, I(h); 45 C.F.R. § §98.43
He-C 4002.42	RSA 170-E: 11, IV; RSA 170-E:17, II & III
He-C 4002.43	RSA 170-E:11, I(a) & (h); RSA 170-E:11, II & III
He-C 4002.44	RSA 170-E:11, I(a) & (h); RSA 170-E:11, IV & V; RSA 170-E:12; RSA 170-E:13
He-C 4002.45	RSA 170-E:11, II, VI & VII; RSA 170-E:21-a

Appendix B: Incorporation by Reference Information

Rule	Title	Publisher; How to Obtain; and Cost
He-C 4002.24(h)(2)c.	ASTM International's, "ASTM F1292 Standard Specification for Impact Attenuation of Surfacing Materials Within the Use Zone of Playground Equipment" (2018 Edition)	<p>Publisher: ASTM International</p> <p>Cost: \$60.00</p> <p>The incorporated document is available at: https://www.document-center.com/standards/show/ASTM-F1292</p>
He-C 4002.31(h)	United States Department of Agriculture's, "Infant Meal Pattern" (11/29/2016)	<p>Publisher: United States Department of Agriculture</p> <p>Cost: Free of Charge</p> <p>The incorporated document is available as attached in Appendix C or at: https://www.fns.usda.gov/sites/default/files/cacfp/CACFP_infantmealpattern.pdf</p>
He-C 4002.31(h)	United States Department of Agriculture's, "Child Meal Pattern" (11/29/2016)	<p>Publisher: United States Department of Agriculture</p> <p>Cost: Free of Charge</p> <p>The incorporated document is available as attached in Appendix C or at: https://www.fns.usda.gov/sites/default/files/cacfp/CACFP_childmealpattern.pdf</p>

Appendix C: USDA Meal Patterns

Infant Meal Pattern



United States Department of Agriculture

Infant Meal Pattern

Breakfast	
Birth through 5 months	6 through 11 months
4-6 fluid ounces breastmilk ¹ or formula ²	6-8 fluid ounces breastmilk ¹ or formula ² ; and 0-4 tablespoons infant cereal ^{2,3} meat, fish, poultry, whole egg, cooked dry beans, or cooked dry peas; or 0-2 ounces of cheese; or 0-4 ounces (volume) of cottage cheese; or 0-4 ounces or ½ cup of yogurt ⁴ ; or a combination of the above ⁵ ; and 0-2 tablespoons vegetable or fruit or a combination of both ^{5,6}

¹ Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.

² Infant formula and dry infant cereal must be iron-fortified.

³ Beginning October 1, 2019, ounce equivalents are used to determine the quantity of creditable grains.

⁴ Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

⁵ A serving of this component is required when the infant is developmentally ready to accept it.

⁶ Fruit and vegetable juices must not be served.

11/29/2016

Infant Meal Pattern

Lunch and Supper	
Birth through 5 months	6 through 11 months
4-6 fluid ounces breastmilk ¹ or formula ²	6-8 fluid ounces breastmilk ¹ or formula ² ; and 0-4 tablespoons infant cereal ^{2,3} meat, fish, poultry, whole egg, cooked dry beans, or cooked dry peas; or 0-2 ounces of cheese; or 0-4 ounces (volume) of cottage cheese; or 0-4 ounces or ½cup of yogurt ⁴ ; or a combination of the above ⁵ ; and 0-2 tablespoons vegetable or fruit or a combination of both ^{5,6}

¹ Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.

² Infant formula and dry infant cereal must be iron-fortified.

³ Beginning October 1, 2019, ounce equivalents are used to determine the quantity of creditable grains.

⁴ Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

⁵ A serving of this component is required when the infant is developmentally ready to accept it.

⁶ Fruit and vegetable juices must not be served.

11/29/2016

Infant Meal Pattern

Snack	
Birth through 5 months	6 through 11 months
4-6 fluid ounces breastmilk ¹ or formula ²	2-4 fluid ounces breastmilk ¹ or formula ² ; and 0-½ slice bread ^{3,4} ; or 0-2 crackers ^{3,4} ; or 0-4 tablespoons infant cereal ^{2,3,4} or ready-to-eat breakfast cereal ^{3,4,5,6} ; and 0-2 tablespoons vegetable or fruit, or a combination of both ^{6,7}

¹ Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.

² Infant formula and dry infant cereal must be iron-fortified.

³ Beginning October 1, 2019, ounce equivalents are used to determine the quantity of creditable grains.

⁴ A serving of grains must be whole grain-rich, enriched meal, or enriched flour.

⁵ Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

⁶ A serving of this component is required when the infant is developmentally ready to accept it.

⁷ Fruit and vegetable juices must not be served.

11/29/2016

Child Meal Pattern



United States Department of Agriculture

CHILD MEAL PATTERN

Breakfast (Select all three components for a reimbursable meal)				
Food Components and Food Items¹	Ages 1-2	Ages 3-5	Ages 6-12	Ages 13-18² (at-risk afterschool programs and emergency shelters)
Fluid Milk³	4 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces
Vegetables, fruits, or portions of both⁴	¼ cup	½ cup	½ cup	½ cup
Grains (oz eq)^{5,6,7}				
Whole grain-rich or enriched bread	½ slice	½ slice	1 slice	1 slice
Whole grain-rich or enriched bread product, such as biscuit, roll or muffin	½ serving	½ serving	1 serving	1 serving
Whole grain-rich, enriched or fortified cooked breakfast cereal ⁸ , cereal grain, and/or pasta	¼ cup	¼ cup	½ cup	½ cup
Whole grain-rich, enriched or fortified ready-to-eat breakfast cereal (dry, cold) ^{8,9}				
Flakes or rounds	½ cup	½ cup	1 cup	1 cup
Puffed cereal	¾ cup	¾ cup	1 ¼ cup	1 ¼ cup
Granola	½ cup	½ cup	¾ cup	¾ cup

¹ Must serve all three components for a reimbursable meal. Offer versus serve is an option for at-risk afterschool participants.

² Larger portion sizes than specified may need to be served to children 13 through 18 years old to meet their nutritional needs.

³ Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old. Must be unflavored low-fat (1 percent), unflavored fat-free (skim), or flavored fat-free (skim) milk for children six years old and older.

⁴ Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

⁵ At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards meeting the grains requirement.

⁶ Meat and meat alternates may be used to meet the entire grains requirement a maximum of three times a week. One ounce of meat and meat alternates is equal to one ounce equivalent of grains.

⁷ Beginning October 1, 2019, ounce equivalents are used to determine the quantity of creditable grains.

⁸ Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

⁹ Beginning October 1, 2019, the minimum serving size specified in this section for ready-to-eat breakfast cereals must be served. Until October 1, 2019, the minimum serving size for any type of ready-to-eat breakfast cereals is ¼ cup for children ages 1-2; 1/3 cup for children ages 3-5; and ¾ cup for children ages 6-12.

CHILD MEAL PATTERN

Lunch and Supper (Select all five components for a reimbursable meal)				
Food Components and Food Items¹	Ages 1-2	Ages 3-5	Ages 6-12	Ages 13-18² (at-risk afterschool programs and emergency shelters)
Fluid Milk³	4 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces
Meat/meat alternates				
Lean meat, poultry, or fish	1 ounce	1 ½ ounce	2 ounces	2 ounces
Tofu, soy product, or alternate protein products ⁴	1 ounce	1 ½ ounce	2 ounces	2 ounces
Cheese	1 ounce	1 ½ ounce	2 ounces	2 ounces
Large egg	½	¾	1	1
Cooked dry beans or peas	¼ cup	¾ cup	½ cup	½ cup
Peanut butter or soy nut butter or other nut or seed butters	2 tbsp	3 tbsp	4 tbsp	4 tbsp
Yogurt, plain or flavored unsweetened or sweetened ⁵	4 ounces or ½ cup	6 ounces or ¾ cup	8 ounces or 1 cup	8 ounces or 1 cup
The following may be used to meet no more than 50% of the requirement: Peanuts, soy nuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternates (1 ounces of nuts/seeds = 1 ounce of cooked lean meat, poultry, or fish)	½ ounce = 50%	¾ ounce = 50%	1 ounce = 50%	1 ounce = 50%
Vegetables⁶	⅛ cup	¼ cup	½ cup	½ cup
Fruits^{6,7}	⅛ cup	¼ cup	½ cup	½ cup
Grains (oz eq)^{8,9}				
Whole grain-rich or enriched bread	½ slice	½ slice	1 slice	1 slice
Whole grain-rich or enriched bread product, such as biscuit, roll or muffin	½ serving	½ serving	1 serving	1 serving
Whole grain-rich, enriched or fortified cooked breakfast cereal ¹⁰ , cereal grain, and/or pasta	¼ cup	¼ cup	½ cup	½ cup

¹ Must serve all five components for a reimbursable meal. Offer versus serve is an option for at-risk afterschool participants.

² Larger portion sizes than specified may need to be served to children 13 through 18 years old to meet their nutritional needs.

³ Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old. Must be unflavored low-fat (1 percent), unflavored fat-free (skim), or flavored fat-free (skim) milk for children six years old and older.

⁴ Alternate protein products must meet the requirements in Appendix A to Part 226.

⁵ Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

⁶ Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

⁷ A vegetable may be used to meet the entire fruit requirement. When two vegetables are served at lunch or supper, two different kinds of vegetables must be served.

⁸ At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards the grains requirement.

⁹ Beginning October 1, 2019, ounce equivalents are used to determine the quantity of the creditable grain.

¹⁰ Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

CHILD MEAL PATTERN

Snack				
(Select two of the five components for a reimbursable snack)				
Food Components and Food Items ¹	Ages 1-2	Ages 3-5	Ages 6-12	Ages 13-18 ² (at-risk afterschool programs and emergency shelters)
Fluid Milk ³	4 fluid ounces	4 fluid ounces	8 fluid ounces	8 fluid ounces
Meat/meat alternates				
Lean meat, poultry, or fish	½ ounce	½ ounce	1 ounce	1 ounce
Tofu, soy product, or alternate protein products ⁴	½ ounce	½ ounce	1 ounce	1 ounce
Cheese	½ ounce	½ ounce	1 ounce	1 ounce
Large egg	½	½	½	½
Cooked dry beans or peas	⅛ cup	⅛ cup	¼ cup	¼ cup
Peanut butter or soy nut butter or other nut or seed butters	1 tbsp	1 tbsp	2 tbsp	2 tbsp
Yogurt, plain or flavored unsweetened or sweetened ⁵	2 ounces or ¼ cup	2 ounces or ¼ cup	4 ounces or ½ cup	4 ounces or ½ cup
Peanuts, soy nuts, tree nuts, or seeds	½ ounce	½ ounce	1 ounce	1 ounce
Vegetables ⁶	½ cup	½ cup	¾ cup	¾ cup
Fruits ⁶	½ cup	½ cup	¾ cup	¾ cup
Grains (oz eq) ^{7,8}				
Whole grain-rich or enriched bread	½ slice	½ slice	1 slice	1 slice
Whole grain-rich or enriched bread product, such as biscuit, roll or muffin	½ serving	½ serving	1 serving	1 serving
Whole grain-rich, enriched or fortified cooked breakfast cereal ⁹ , cereal grain, and/or pasta	¼ cup	¼ cup	½ cup	½ cup
Whole grain-rich, enriched or fortified ready-to-eat breakfast cereal (dry, cold) ^{9,10}				
Flakes or rounds	½ cup	½ cup	1 cup	1 cup
Puffed cereal	¾ cup	¾ cup	1 ¼ cup	1 ¼ cup
Granola	⅛ cup	⅛ cup	¼ cup	¼ cup

¹ Select two of the five components for a reimbursable snack. Only one of the two components may be a beverage.

² Larger portion sizes than specified may need to be served to children 13 through 18 years old to meet their nutritional needs.

³ Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old. Must be unflavored low-fat (1 percent), unflavored fat-free (skim), or flavored fat-free (skim) milk for children six years old and older.

⁴ Alternate protein products must meet the requirements in Appendix A to Part 226.

⁵ Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

⁶ Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

⁷ At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards meeting the grains requirement.

⁸ Beginning October 1, 2019, ounce equivalents are used to determine the quantity of creditable grains.

⁹ Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

¹⁰ Beginning October 1, 2019, the minimum serving sizes specified in this section for ready-to-eat breakfast cereals must be served. Until October 1, 2019, the minimum serving size for any type of ready-to-eat breakfast cereals is ¼ cup for children ages 1-2; 1/3 cup for children ages 3-5; and ¾ cup for children ages 6-12.

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