

**PROPOSED ORDER OF THE DEPARTMENT OF
HEALTH AND FAMILY SERVICES REPEALING, RENUMBERING,
RENUMBERING AND AMENDING, AMENDING, REPEALING
AND RECREATING AND CREATING RULES**

To repeal HFS 46.03 (7), 46.05 (1) (c) 5. a. to i., 6. a. to f., (d) 3. a. to i., (4) (k) 2. (note) and 46.09 (3) (a) 5.; renumber HFS 46.05 (1) (j) 4., 46.07 (6) (f) 2. and 3., 46.09 (1) (a), 46.10 and 46.11; renumber and amend HFS 46.06 (11) (b) 2. b. to d. and 3. a. to d., 46.095 (1), (2) (title) and (intro), (c) and (3) (title) and (intro), (4) (title) and (a) 2. (note) and 46.10 (1) and (2) (d) as renumbered; amend HFS 46 (title), 46.01, 46.02 (1) (intro) and (d), 46.03 (1), (3), (6), (13), (17), (18), (19), and (34), 46.04 (2) (intro), (c), (f), (g), (i) 2. and 6., 8. (note), (m), (3) (a), (f) and (g), (6) (a) (intro), 6., (7) (intro), (8) (a), (b) (intro), 3. and (note), 46.05 (1) (b) 3. b., (c) 5. (intro), Table 46.05-A, 6. (intro), Table 46.05-B, (d) 3. (intro), Table 46.05-C, (2) (a) (intro), 3., 6. (note), 8. and 11., (4) (e) (intro) and 1., 46.06 (title), (1) (a), (2) (h) and (i), (3) (b) and (c), (6) (b) 2., (9) (b) 3. c., 4. b., (c) 1., (f) 5., (g) 1. c., (10) (a), Table 46.06 (title), (10) (b), (11) (b) 1. and 2. a., (c) 2. (intro) and e. (note), 46.07 (1) (a) (intro), (2) (b), (e) (intro), 1. and 3., (f) (note), (3) (d) (note), Table 46.07 (title), (5) (a) 4. (note), 9., (6) (d) 5. (intro), (e) 1., 2. and 3. (note), (f) 1., a. and (note) and c., (j) 9., (k) 3. (notes) and 5., 46.08 (4) (b), (5) (d), 46.09 (title) and (intro), (f), (2) (f) and (3) (a) 4.; repeal and recreate HFS 45 and Appendices, 46.04 (5) (a) 2. and 3., 46.05 (title) and (1) (a), (g) (note), (j) 3., (2) (c) 3. to 7., 46.06 (12), 46.07 (7), 46.08 (3), (7), 46.12, 46.13 and Appendices A to D; and create HFS 46.03 (3m), (4m), (8m), (10m), (11g), (11r), (14g), (14r), (18m), (22g), (22r), (26m), (29m) and (35), 46.04 (2) (h) to (L), (5) (a) 1. (note), 5. (note), (6) (a) 1. i. (note), 2. (note), 3. (note), 4. (note), 5. (note), 6m., 7. (note), (c) 2. (note), 46.05 (1) (e) 2. A. (note), (j) 1. b. (note), (2) (a) 12., (3) (g), (4) (f) (note), 46.06 (2) (k) and (L), (4) (j) (note), (6) (b) 3. and (note), (8) (g) (note), (9) (c) 3m. and (note), (11) (c) 1m., 46.07 (5) (a) 9m., (6) (f) 2., 46.08 (2) (b) 3. (note), (4) (d), 46.09 (1) (a) 6. (note), (j) to (L) and (2) (bm) and 46.095 (3) (dm), relating to family and group child care centers and affecting small businesses.

Statute interpreted

The rules interpret s. 48.67, Stats.

Statutory authority

The Department's authority to repeal, renumber, renumber and amend, amend, repeal and recreate and create these rules is found in s. 48.67, Stats.

Explanation of agency authority

Section 48.67, Stats., authorizes the Department to promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of day care centers. The rules are to be for the express purpose of protecting and promoting the health, safety, and welfare of the children in the care of all licensees. The statute also directs the Department, in establishing the minimum requirements for the issuance of licenses to day care centers that provide care and supervision for children under one year of age, to include a requirement that all licensees who are individuals and all employees and volunteers of a licensee who provide care and supervision for children receive, before the date on which the license is issued or the employment or volunteer work commences, whichever is applicable, training in the most current medically accepted methods of preventing sudden infant death syndrome.

Related statutes or rules

Plain language analysis

The Department's administrative rules governing the licensing of day care centers are chapters HFS 45 and 46. Chapter HFS 45 applies to day care centers that care for between four and eight children under age seven. The Department currently refers to these centers as "family day care centers." Chapter HFS 46 applies to day care centers that care for nine or more children under age seven. The Department currently refers to these centers as "group day care centers."

With minor exceptions, the Department has not revised ch. HFS 45 since 1989. Since then, several events have suggested or required its modification.

1. In 1997, the Department created ch. HFS 46. Chapters HFS 45 and 46 address similar topics and should, but currently do not always, contain comparable requirements, including those related to definitions, licensing procedures and enforcement actions. Therefore, one purpose of this rulemaking order is to unify the treatment of a variety of subjects across the chapters.
2. Since 1989, a variety of child safety practices standards have changed and become generally accepted. For example, cardiopulmonary resuscitation training for childcare providers has become standardized. The Department's proposed rules for both chapters HFS 45 and 46 reflect these practices.
3. Pertinent statutory changes over the past five years relating to caregiver background checks under s. 48.685, Stats., and prohibitions on smoking under s. 101.123 (2) (bm), Stats., are reflected in the rules. In addition, 2001 Wisconsin Act 16 amended s. 48.67, Stats., to require that all child care centers licensed to care for children under age one must receive training in the most recent medically accepted practice to reduce the risk of Sudden Infant Death Syndrome. The proposed rules describe the needed training.
4. The proposed rules reflect changes in the ways the Department issues a license and create provisions that would allow the Department to bar consideration of an application if the applicant has had a previous license revoked or application denied for a substantive reason.
5. The Department proposes to change the term "day care center" to the more descriptive term "child care center."

Given the preceding events, the Department is proposing the following changes to ch. HFS 45, Family Child Care Centers:

1. Consolidating and expanding all definitions referred to throughout the chapter [HFS 45.03 (1) to (37).]
2. Adding a requirement for orientation of any employees, substitutes and emergency back-up providers [HFS 45.04 (2) (f).]
3. Expanding and consolidating the types of things that a licensee must report to the department [HFS 45.04 (3).]
4. Consolidating the requirements for staff records and add establishing requirements for maintaining records for employees and substitutes [HFS 45.05 (2).]
5. Increasing the specificity regarding the nature of the medical log book [HFS 45.04 (5) (c).]
6. Referencing centers licensed to care for children under age 2 to HFS 45.09 (1) (b) for training requirements and requiring CPR certification for all persons providing care to children [HFS 45.05 (1) (b).]
7. Requiring substitutes to meet training requirements [HFS 45.05 (1) (b) 2.]

8. Extending provider qualification requirements to volunteers [HFS 45.05 (1) (c).]
9. Adding requirements related to orientation [HFS 45.05 (2).]
10. Adding requirements for sight and sound supervision of children while eating and when children under age 5 are outside [HFS 45.05 (3) (i) and (j).]
11. Clarifying that child care centers that are not located in a one or two-family dwelling must conform with Commercial Building Codes [HFS 45.06 (1).]
12. Lowering the maximum inside temperature a center may have from 90 to 80 degrees before a fan or air conditioner is activated [HFS 45.06 (2) (c).]
13. Adding prohibitions on smoking and hot tub accessibility [HFS 45.06 (3) (h) to (i).]
14. Requiring that wooden structures that are constructed of CCA treated lumber be sealed every two years [HFS 45.06 (12) (b) 3.]
15. Adding restrictions to the accessibility of swimming pools located on site and establishing regulations that apply when children in care use swimming pools away from the center [HFS 45.06 (12).]
16. Requiring centers to make available weekly written menus for review by parents and department representatives [HFS 45.07 (5) (d).]
17. Adding provisions for the care of mildly ill children [HFS 45.07 (6) (d).]
18. Adding requirements related to pets [HFS 45.07 (7).]
19. Requiring that any person working in a center licensed to care for children under age two complete SIDS training before beginning to work. The training can either be the entry level training required under s. HFS 45.05 (1) (b) or the completion of at least 10 hours of training in infant and toddler care [HFS 45.09 (1) (b).]
20. Establishing requirements for safe sleep practices [HFS 45.09 (1) (c).]
21. Requiring a physician authorization to place an infant to sleep in a position other than the child's back [HFS 45.09 (2) (c).]
22. New requirements regarding night care of children [HFS 45.10.]
23. Revising the administration of family child care licensing to clarify procedures for obtaining and continuing a license [HFS 45.11.]
24. Establishing a new section on complaints, inspections and enforcement actions [HFS 45.12.]

The Department is also proposing the following changes to ch. HFS 46, Group Child Care Centers:

1. Modifying and consolidating all definition of terms referred to in the rule [HFS 46.03.]
2. Expanding the list of situations that must be reported to the department [HFS 46.04 (3).]
3. Eliminating duplicative information about entry level training requirements [HFS 46.05 (1).]
4. Expanding the required components of orientation to include contingency plans, the center procedure for sharing information about a child's special health care needs and the center's SIDS risk reduction procedures [HFS 46.05 (2) (a) 3., 11. and 12.]
5. Establishing requirements if a hot tub is located on the premises of a center [HFS 46.06 (2) (k) and (L).]
6. Adding restrictions about the use of swimming pools on the premises of a center [HFS 46.06 (12).]
7. Establishing requirements if pets are on the premises [HFS 46.07 (7).]
8. Revising the administration of group child care licensing to clarify procedures for obtaining and continuing a license [HFS 46.11.]

Summary of, and comparison with, existing or proposed federal regulation

The Department knows of no federal regulations that apply specifically to child care centers.

Comparison with rules in adjacent states

Minnesota – Licensing rules for Minnesota can be found in Minnesota: Chapter 9502 Licensing of day Care Facilities (4/1/95) and Chapter 9503 Child Care Centers (9/25/98). Family day care is defined in chapter 9502 as “day care for no more than ten children at one time of which no more than six are under school age. The licensed capacity must include all children of any caregiver when the children are present in the residence.”

A child care center is defined as a facility in which a child care program is operated when the facility is not excluded by Minnesota Statutes, section 245A.03, subdivision 2, and is not required to be licensed under parts 9502.0315 to 9502.0445 as a family or group family day care home. Generally these types of facilities care for 15 or more children.

Minnesota has an intermediate category of care called “Group Family Day Care” that is located in a provider’s residence and cares for no more than 14 children. Wisconsin does not have a similar category of care.

In Minnesota, Family Child Care is required to be in a provider’s residence and the rules are generally consistent with Wisconsin’s rules. Many of the licensing rules contained in this document have already been incorporated into Minnesota’s family day care center rules. The child care center rules in Minnesota are consistent with Wisconsin’s rules.

Iowa – Iowa’s licensing rules for child care home and centers can be found in chapter 110 for Child Development Homes (12/1/03) and chapter 109 for Child Care Centers (12/1/03). In Iowa, a Child Development Home is defined as “a person or program registered under this chapter that may provide child care to six or more children at any one time.” The care takes place in the residence of the provider. A Child Care Center is defined as a facility providing child day care for seven or more children, except when the facility is registered as a child development home. For the purposes of this chapter, the word “center” shall apply to a child care center or preschool, unless otherwise specified.

Child Development Homes can be in one of three categories (A, B, or C) depending on the number of children who are not enrolled in a school are present and the number of children under age 2. If a Child Development Home is a category C home, there may be up to 12 children in care with 2 child care providers present. In a Child Development Home, the provider self certifies that she or he meets the licensing requirements and a sampling of homes receives a monitoring visit during the licensing cycle. The licensing rules for Child Development Homes is generally less restrictive than for licensed family child care centers in Wisconsin.

When more than 6 children who are not enrolled in school receive care somewhere other than the providers home, the facility must meet the regulations for a child care center. Licensing rules for child care centers are generally less restrictive than for licensed group child care centers in Wisconsin, except in the area of staff to child ratio which is somewhat more restrictive.

Illinois – Illinois licensing rules for day care homes can be found in part 406 Licensing Standards for Day Care Homes (12/15/03). Licensing rules for day care centers can be found in part 407 Licensing Standards for Day Care Centers (2/15/04). Day care homes are defined as family homes that receive more than 3, but no more than a maximum of 12, children for less than 24 hours per day. The maximum of 12 children includes the family’s natural, foster, or adopted children and all other persons under the age of 12. The term does not include facilities that receive only children from a single household. A day care center is defined as any child care facility that regularly provides day care for less than 24 hours per day for more than 8 children in a family home or more than 3 children in a facility other than a family home, including senior citizen buildings. Illinois also has a category of care called group day care homes, which are defined as a

family home which receives more than 3 and up to 16 children for less than 24 hours per day. The number counted includes the family's natural, foster, or adopted children and all other persons under the age of 12. Wisconsin has no category of care that corresponds to group day care homes in Illinois.

Wisconsin's rules for family child care centers are generally consistent with the rules for day care homes. In fact, many of the family child care rules included in this proposed draft have already been incorporated into Illinois licensing rules. The group child care center rules in Wisconsin are generally consistent with the day care center rules in Illinois.

Michigan – Michigan defines a family day care home as a private home in which at least one, but fewer than 7, minor children are received for care and supervision for periods of less than 24 hours a day, unattended by a parent or legal guardian. A group day care home is defined as a private home in which more than 6, but not more than 12, minor children are given care and supervision for periods of less than 24 hours a day unattended by a parent or legal guardian. A day care center, in Michigan, means a facility, other than a private residence, receiving one or more preschool or school-age children for care for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child. The definitions for day care facilities are found in Child Care Organizations Act 116 of 1973. Licensing rules for family and group day care homes are found in Michigan Rules for Family and Group Day Care Homes (4-20-99) and the center rules are found in Child Day Care Licensing – Child Care Centers (7/30/03).

Michigan's rules for licensing family day care homes and day care centers are generally less restrictive than Wisconsin's licensing rules in most areas.

Summary of factual data and analytical methodologies

Pursuant to s. 48.67, Stats., in developing these rules, the Department consulted the Department of Workforce Development's Child Care Section, the agency responsible for developing ch. DWD 55, rules for certified child care homes, the Department of Commerce's Division of Safety and Buildings, the Department of Public Instruction's Community Nutrition Programs Section, the agency responsible for the administration of the USDA Child and Adult Care Food Program in Wisconsin, and the Department's Division of Public Health on regulations related to food preparation and service, communicable disease and immunizations, and health practices. The Department also consulted the American Academy of Pediatrics and the American Public Health Association's Caring for Our Children: National Health and Safety Performance Standards for Children in Out-of-Home Care, second edition, in the development of these rules.

Analysis and supporting documents used to determine effect on small business

The revision of HFS 45 will affect family child care centers licensed to care for up to 8 children. The revisions to HFS 46 will affect group child care centers licensed to care for 9 or more children. As of June 2003, there were 3,111 licensed family child care centers and 2,399 licensed group child care centers. Most of these entities are "small businesses" as the term is defined under s. 227.114 (1) (a), Stats. All programs affected by the proposed changes to the administrative code will receive a mailing from the Department indicating the dates, times and locations of scheduled public hearings as well as instructions on how to obtain a copy of the proposed revisions and the procedure to make oral or written comments regarding the revisions.

The proposed revisions to the rules expand the list of items that must be reported to the Department within a specified time frame. The reports required in the rule revision are a means by which the Department obtains information about situations occurring at a child care center or that

affect children enrolled at a center which have the potential to affect the health, safety or welfare of the children enrolled in the program. These new reporting requirements are being proposed for the purpose of protecting the children in care. Therefore, the Department has not proposed specific exemptions from these reporting requirements.

The Department is also proposing rule revisions that will bring HFS 45 into alignment with HFS 46 and will reflect current best practices in early childhood education and care. The Department has included provisions in the rule revisions that allow individual programs to request an exception to any given rule provided a alternative plan for protecting the health, safety and welfare of children in care is also included with the request. These exception requests are evaluated and approved on an individual basis.

Anticipated costs incurred by private sector

The Department anticipates that there will be some minor costs incurred by child care centers when these rules are implemented. For example, all persons working with children will be required to have a current certificate of completion for Infant/Child Cardiopulmonary Resuscitation (CPR). Costs are anticipated to range from \$10 to \$30 per person each time the training is needed. Certificates are valid for periods from one to five years depending on the agency providing the training. The Department did not specify a specific agency that must provide the training to allow centers to choose the type of training program desired. Under the proposed revisions, family child care licensees who allow cats and dogs to have unrestrained access to the children in care would be required to provide specific liability insurance pertaining to pets. In other words, the liability insurance certificate from the insurance agent will need to specify that the center is covered for cats or dogs. Those family child care licensees who do not allow pets to have unrestrained access to the children would not be required to have this coverage. The Department is not able to determine how many centers may be affected by this regulation but estimates the cost of such liability insurance could range from \$50 to \$250 per year depending on the type of insurance coverage obtained and the limits of the policy. Group child care licensees are already required to have liability insurance and additional costs for coverage of unrestrained pets should be negligible. The Department does not anticipate any other costs to licensees under these proposed revisions.

Effect on small business

These proposed rule changes will have an effect on small business insofar as most of the entities subject to chs. HFS 45 and 46 are small businesses. However, the Department has determined that exempting groups of entities from compliance with HFS 45 or 46 would compromise the health and safety of the children in the care of those entities and would be contrary to the goal expressed in s. 48.67, Stats., that the Department's rules protect and promote the health, safety and welfare of the children in the care of all licensees.

Agency contact person

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Place where comments are to be submitted and deadline for submission

The comment period for these rules is over. Hearings were held on these proposed rules in 2003.

Rule text

SECTION 1. Chapter HFS 45 and Appendices are repealed and recreated to read:

Chapter HFS 45

Family Child Care Centers

HFS 45.01	Authority and purpose.
HFS 45.02	Applicability.
HFS 45.03	Definitions.
HFS 45.04	Operational requirements.
HFS 45.05	Staffing.
HFS 45.06	Physical plant and equipment.
HFS 45.07	Program.
HFS 45.08	Transportation.
HFS 45.09	Additional requirements for infant and toddler care.
HFS 45.10	Additional requirements for night care.
HFS 45.11	Licensing administration.
HFS 45.12	Complaints, inspections and enforcement actions.

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

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

(a) Care and supervision of children in a program that operates no more than 4 hours a week.

(b) Group lessons to develop a talent or skill, such as dance or music, social group meetings and activities and group athletic activities.

(c) Care and supervision while the parents are on the premises and are engaged in shopping, recreation or other non-work activities.

(d) Seasonal programs of 10 days or less duration in any 3-month period, including day camps, vacation bible school and holiday child care programs.

(e) Care and supervision in emergency situations.

(f) Care and supervision while the parent is employed on the premises if the parent's child receives care and supervision for no more than 3 hours a day.

(g) Care and supervision provided at the site to the child of a recipient of temporary assistance to needy families, or Wisconsin works, who is involved in orientation, enrollment or initial assessment prior to the development of an employability plan or the child care is provided where parents are provided training or counseling.

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

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

HFS 45.03 Definitions. In this chapter:

(1) "Care" means providing for the safety and the developmental needs of a child in a family child care center.

(2) "Caregiver background check" means the retrieval of information about an individual's past criminal conduct pursuant to s. 48.685, Stats., and ch. HFS 12 that may bear on the suitability of that individual to assume a child caregiving role or have regular contact with children at the center.

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

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

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

(6) "Emergency" means any of the following situations: fire; tornado; flood; loss of building service including, no heat, water, electricity, or telephone; extreme outdoor heat or cold; threats to the building or its occupants; lost or missing children; or a medical or family situation requiring immediate attention.

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

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

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

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

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

- (a) Abuse of alcohol or drugs.
 - (b) A history of a civil or criminal conviction or administrative rule violation that substantially relates to caring for children, as described in ch. HFS 12.
 - (c) Exercise of unsound judgment.
- (12) "Foster care" means care and maintenance provided to a child in a foster home pursuant to a court order or voluntary placement agreement.
- (13) "Foster home" means any facility that is operated by a person required to be licensed under s. 48.62 (1) (a), Stats., and that provides care and maintenance for no more than 4 foster children, or, if necessary to keep siblings together, for no more than 6 foster children.
- (14) "HealthCheck provider" means a provider of health assessment and evaluation services eligible to be certified under s. HFS 105.37 (1) (a).
- (15) "Inclement weather" means stormy or severe weather such as any of the following:
- (a) Heavy rain.
 - (b) Temperatures above 90° F.
 - (c) Wind chills of 0° F. or below for children age 2 and above.
 - (d) Wind chills of 20° F. for children under age 2.
- (16) "Infant" means a child under one year of age.
- (17) "In care" means enrolled in the center, with the center providing supervision, either on or off the premises, for the safety and the developmental needs of the child or children.
- (18) "Licensee" means the individual, corporation, partnership or non-incorporated association or cooperative that has legal and financial responsibility for the operation of a center and for meeting the requirements of this chapter.
- (19) "Licensing representative" means a department employee responsible for licensing family child care centers.
- (20) "Mildly ill" means a child who has a common, temporary illness that is non-progressive in nature and is not listed on the communicable disease chart in appendix A of ch. HFS 145.
- (21) "Night care" means any care that is offered by a licensed family child care center between 9:00 PM and 5:00 AM.
- (22) "Parent" means either "parent" as defined in s. 48.02 (13), Stats., or "guardian" as defined in s. 48.02 (8), Stats.
- (23) "Physical restraint" means the use of physical force to restrict the free movement of all or a portion of a child's body.
- (24) "Physician" has the meaning given in s. 448.01 (5), Stats.

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

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

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

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

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

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

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

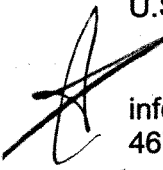
(32) "Substitute" means a provider who replaces another provider on a pre-arranged basis.

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

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

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

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

 **Note:** Universal precautions are sometimes referred to as "~~standard precautions~~". For information on the OSHA requirements related to universal/standard precautions, call 1-800-356-4674. *wrong phone # Angela - only info*

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

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

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

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

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

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

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

(b) Comply with all requirements in this chapter.

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

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

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

Compliance Review
~~(e) Develop, submit to the department for approval, implement and provide to the parents written policies and procedures related to all of the following:~~

1. Enrollment and discharge of enrolled children.

2. Fee payment and refunds.

3. Child and provider absences.

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

5. Nutrition.

6. Daily activities of the children.

7. Child guidance.

8. Transportation of children.

9. Religious instruction or practices, if any.

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

Note: Under the state public accommodation law, s. 106.04, Stats., federal law and regulations related to use of federal funding, and some local anti-discrimination ordinances,

denying admission on the basis of race, handicap, religion or certain other characteristics may be illegal.

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

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

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

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

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

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

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

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

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

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

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

(c) Any construction or remodeling that affects the premises of a center prior to the beginning of the construction or remodeling. If the construction or remodeling has the potential to affect the locations on the premises where children are served or a condition of the license, the construction or remodeling shall receive written approval by the department before the construction or remodeling begins.

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

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

correction by the date the department specifies and be approved by the department licensing representative.

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

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

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

(g) Any incident involving law enforcement that occurs on the premises or involves a person on the premises within 24 hours after the incident.

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

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

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

~~(j) A change of any program service, such as changes in transportation or food services, at the center and seasonal closings, at least 5 calendar days prior to the change. Changes in program services shall be approved by the department.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Self
reported*
1. That the person is free from illness detrimental to children, including tuberculosis.
 2. That the person is physically able to work with young children.

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

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

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

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

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

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

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

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

Note: The Department's form CFS-0062, Child Care Enrollment and Health History, includes a blanket authorization to take children on field trips. The Department's form CFS-0058 or CFS-0058A, Day Care Field Trip or Other Activity Notification, or another type of notification such as a note to a parent may be used to provide specific information about a field trip. Information on how to obtain the Department's forms is in Appendix E.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Agencies authorized under s. 48.78, Stats.

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

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

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

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

1. Child abuse and neglect laws.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Location of children's emergency contact information.

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

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

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

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

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

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

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

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

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

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

2. Arrival and departure information for each child in care including the names of people authorized to pick up the child.

3. Location of children's files.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TABLE 45.05
Maximum Number of Children
in Family Child Care per Provider

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(b) An operable fire extinguisher with a minimum rating of 2A-10BC shall be provided for the kitchen and cooking area and inspected annually, and a provider shall know how to use it.~~

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

~~just like
Dan's
and exit
23.045.~~
(d) A woodburning stove may be used only if it meets standards specified under s. COMM 23.045.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) *Doors and windows.* 1. Every closet door latch shall be capable of being opened by children from inside the closet.

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

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

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

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

1. Table space and seating for each child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

report to the department's licensing representative any significant change in any circumstance described in the plan.

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

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

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

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

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

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

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

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

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

2. Certified lifesaving personnel are on duty.

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

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

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

c. For children 4 and 5 years of age: 1:6.

d. For children 6 years of age and older: 1:8.

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

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

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

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

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

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

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

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

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

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