

Chapter HSS 45

FAMILY DAY CARE CENTERS FOR CHILDREN

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HSS. 45.01 Introduction. (1) 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 day care centers. The purpose of this chapter is to protect the health, safety and welfare of children being cared for in family day care centers.

(2) **TO WHOM RULES APPLY.** This chapter applies to all family day care centers, but does not include:

(a) Care and supervision of children in a program including religious education classes, which operates 4 or less 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; or

(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.

(3) **EXCEPTION.** The department may grant an exception to a requirement of this chapter when it is assured 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 rule.

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 Community Services. See Appendix A for addresses of the regional offices.

History: Cr. Register, August, 1989, No. 404, eff. 9-1-89.

HSS 45.02 Definitions. In this chapter:

(1) "Compensation" means salary, wages or other material consideration, such as gifts or compensatory labor, received for the care and supervision of children. "Compensation" does not include payments made by 2 or more parents who have entered into a cooperative arrangement for the exchange of child care and supervision when payments are for the actual cost of equipment, supplies or

facilities incidental to the operation of the cooperative arrangement.

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

(3) "Department" means the Wisconsin department of health and social services.

(4) "Family day care center" or "center" means a place where a person, other than a parent, relative or guardian, provides care and supervision for 4 to 8 children under 7 years of age for less than 24 hours a day and for compensation.

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

(6) "HealthCheck provider" means a provider of health assessment and evaluation services eligible to be certified under s. HSS 105.37 (1) (a).

(7) "Infant" means a child under one year of age.

(8) "In care" means enrolled in the center, with the center providing for the safety and the developmental needs of the child or children.

(9) "Licensee" means the individual or other legal entity which has legal and financial responsibility for the operation of a center and for meeting the requirements of this chapter. The licensee will ordinarily but not always be the provider.

(10) "Licensed physician" means a physician licensed under ch. 448, Stats.

(11) "Licensing representative" means a department employe responsible for licensing family day care centers.

(12) "Parent" means either "parent" as defined in s. 48.02 (13), Stats., or "guardian" as defined in s. 48.02 (8), Stats.

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

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

(15) "Regional administrator" means the head of one of the 6 regional offices of the department's division of community services.

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

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

(18) "Supervision" means guidance of the behavior and activities of children for their health, safety and well-being by a provider who is within sight or sound of the children.

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

(20) "Volunteer" means a person who agrees to give time, without compensation, to provide transportation to children attending a family day care center or to work with children in a family day care center.

History: Cr. Register, August, 1989, No. 404, eff. 9-1-89.

HSS 45.03 Operational requirements. (1) TERMS OF LICENSE. (a) The number of children in the care of a family day care center at any one time may not exceed the number for which the center is licensed under s. HSS 45.08 (1) (g) or (2).

(b) The age of children served by a center may not be younger or older than the age range specified in the license issued under s. HSS 45.08 (1) (g) or (2).

(c) The hours, days and months of a center's operation may not exceed those specified in the license issued under s. HSS 45.08 (1) (g) or (2).

(2) ADMINISTRATION. A licensee shall:

(a) Comply with all applicable statutes;

(b) Comply with all requirements in this chapter;

(c) Provide written information to parents on enrollment policies, including admission and termination policies and procedures; fees charged; absence policies; health care; nutrition; daily activities of the children; discipline; and religious instruction or practices, if any;

Note: Under the state public accommodation law, s. 942.04, 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.

(d) Provide written information to parents on the extent of insurance coverage on the premises, on the day care operation and on vehicles when transportation is provided;

(e) Display the day care license in a location where parents can see it during the hours of operation; and

(f) Maintain on file a completed staff record for each provider on forms provided by the department.

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

(a) Any accident resulting in the death or serious injury requiring professional medical treatment of a child while in the care of the center, within 48 hours after the occurrence; and

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

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(4) PARENTS. (a) The center shall permit parents to visit and observe at any time during the center's hours of operation.

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

Note: Copies of a summary of this chapter may be obtained from any regional office of the Department's Division of Community Services. See Appendix A.

(5) 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 licensing representative on request. Each record shall include:

1. Enrollment information on a form prescribed by the department;

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;

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;

4. Documentation of each child's:

a. Health and immunization history; and

b. The most recent physical examination, except for a school-age child; and

5. Written permission from the parents under s. HSS 45.06 (6) (f) for medical attention to be sought for the child if the child is injured.

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

(c) The licensee shall maintain a medical log book with a stitched binding and shall record in it any injuries received by a child or medication dispensed to a child.

(6) 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 s. 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 ensure that every provider has received training in:

1. Child abuse and neglect laws;

2. Identification of children who have been abused or neglected; and

3. The process for reporting known or suspected cases of child abuse or neglect.

(7) CONFIDENTIALITY. The licensee is responsible for compliance by the center with s. 48.78, Stats., which requires that information about children in care be kept confidential.

History: Cr. Register, August, 1989, No. 404, eff. 9-1-89.

HSS 45.04 The day care provider. (1) QUALIFICATIONS. (a) Minimum age. The family day care provider shall be at least 18 years of age.

(b) *Training.* 1. The provider shall have satisfactorily completed 40 hours or 3 credits of early childhood training approved by the department within 6 months after initial licensure.

2. The provider shall receive and document having received 15 hours of continuing education each year in child growth and development, early childhood education, first aid, or cardiopulmonary resuscitation as approved by the department. This training may include attendance at training events, workshops, conferences, consultation with community resource people or observation of day care programs.

3. A provider licensed to care for infants and toddlers shall receive 10 hours of training in infant and toddler care as approved by the department within 6 months after accepting any infant or toddler for care. The training may be part of the required entry-level training under subd. 1. or shall be obtained through continuing education.

(c) *Statement concerning criminal convictions or charges.* The provider and any other adult living in the home or having regular contact with the children shall submit to the department a notarized statement concerning criminal convictions or pending charges on a form prescribed and provided by the department.

(2) **SUPERVISION.** (a) The 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.

(b) The 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 provider shall have an approved plan for ensuring supervision of the children in an emergency or during the provider's absence.

(h) The provider and any other adult working with children may not consume alcoholic beverages or any non-prescribed controlled substance specified in ch. 161, Stats., during the hours of the center's operation.

(3) **GROUP SIZE.** (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 the provider's own children; and

2. All children 7 years of age or older who are not the provider's own children.

(c) The maximum number of children that one provider may care for is specified in Table 45.04. 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.

TABLE 45.04
MAXIMUM NUMBER OF CHILDREN
IN FAMILY DAY 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 Per Provider
0	8	0	8
1	7	0	8
2	5	1	8
3	2	3	8
4	0	2	6

(4) **HEALTH.** (a) Except as provided under par. (b), the provider shall have a health examination within 12 months prior to or within 30 days after being licensed. The results of the examination shall be stated in a report on a form provided by the department. The report shall be dated and signed by a licensed physician, physician's assistant or HealthCheck provider. The report shall indicate that:

1. The person is free from illness detrimental to young children, including tuberculosis; and

2. The person is physically able to work with young children.

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

(c) The provider, a household member, volunteer, visitor or parent who has symptoms of illness or of a communicable disease that may be transmitted through normal contact, or whose behavior or mental or physical condition gives reasonable concern for the safety of the children, may not be in contact with the children in care.

History: Cr. Register, August, 1989, No. 404, eff. 9-1-89.

HSS 45.05 Home. (1) SPACE AND TEMPERATURE. (a) 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.

(b) The inside temperature of the center may not be less than 67° F.

(c) If the inside temperature exceeds 90° F., the provider 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 may not be accessible to children.

(c) Materials harmful to children, including power tools, flammable or combustible materials, insecticides, matches, drugs and other 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 home at all times in case of an emergency if a public or private rescue or emergency vehicle is not available 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 through the bars of an object with a diameter larger than 4 inches.

(3) FIRE SAFETY. (a) A smoke detector 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 test results.

(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 the provider shall know how to use it.

(c) Each center shall have a plan for taking appropriate action in the event of a fire or tornado and shall practice the plan with the children each month.

(d) Unvented gas, oil or kerosene space heaters are prohibited.

(e) A wood burning stove may be used only if it meets standards specified under s. ILHR 23.045.

(4) EXITING. (a) *General.* All exits shall be clear of obstructions.

(b) *Exiting from one-family and 2-family dwellings.* 1. Each floor occupied by children in a one-family or 2-family dwelling shall have at least 2 exits.

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

3. The second exit shall be one of the following:

a. A door or stairway providing 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 not more than 46 inches above the floor which is openable from the inside without the use of tools 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; or

d. In the case of a basement, an exit leading directly to ground level or to ground level via a stairway, or to an areaway or window well with an area of at least 6 square feet and no more than 46 inches below ground level.

(c) *Exiting from other than a one-family or 2-family dwelling.* The exiting for a family day care center located in other than a one-family or 2-family dwelling shall conform to department of industry, labor and human relations (DILHR) rules for the use of that building.

(d) *Exiting for infants and toddlers.* Children under 24 months of age may be cared for only in areas of the center where one of the 2 exits is not more than 6 feet up or down from the ground level, except that up to 2 children under 24 months of age may be located 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.

(5) DOORS AND WINDOWS. (a) The width of every required exit door shall be at least 2 feet 6 inches.

(b) Every closet door latch shall be openable by children from inside the closet.

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

(d) The area of the center used for child care activities and sleeping shall have openable windows with screens.

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

(7) WATER. 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. HSS 165 and shall be found bacteriologically safe. The laboratory report shall be available to the department upon request.

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

(b) The furnishings shall include:

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, two-inch thick mat or sleeping bag for each child one year of age or older who naps or sleeps; and

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

(9) KITCHEN. (a) *Equipment and utensils.* Equipment and utensils for preparing, serving and storing food shall be clean and equipped for the safe handling of food.

(b) *Dishwashing.* Multi-use eating and drinking utensils shall be thoroughly cleaned with detergent and hot water and rinsed after each child's use.

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

(d) *Food storage.* 1. Food shall be covered and stored at temperatures which protect against spoilage.

2. Leftovers shall be discarded after 36 hours unless frozen for later use.

(10) **WASHROOM 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) This subsection applies to any center where any child is receiving care for more than 3 hours a day.

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

(c) The outdoor space shall be well-drained and shall be free of hazards, including uncovered wells and cisterns and unused appliances.

(d) A permanent enclosure not less than 4 feet high shall be provided where there are hazards nearby, including traffic or bodies of water.

(e) Concrete and asphalt are prohibited under climbing equipment, swings, and slides.

(12) **SWIMMING PLACES.** (a) Above-ground rigid swimming pools may not be used by children in care.

(b) Wading pools may be used if the water is changed daily and the pool disinfected daily. In this paragraph, "wading pool" means a shallow pool, capable of being dumped to change water and used primarily for small children.

(c) In-ground pools may be used if:

1. The pool water is chlorinated, disinfected and treated as specified under s. HSS 172.04;

2. There is a supervising adult 18 years of age or older who has a current Red Cross advanced lifesaving certificate or lifeguard training certificate or a Young Men's Christian Association (YMCA) lifesaving or lifeguarding certificate; and

3. The department has approved a plan for supervision.

(d) Swimming pools shall be surrounded by a permanent enclosure as specified under sub. (11) (d).

(e) When swimming places which are not located on center premises are used by children, the swimming place shall meet the requirements of chs. ILHR 90 and HSS 172.

History: Cr. Register, August, 1989, No. 404, eff. 9-1-89; correction in (11) (e) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1995, No. 474.

HSS 45.06 Child. (1) PROGRAM. (a) The provider shall plan activities so that each child may:

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 which encourage creativity;
5. Learn new ideas and skills;
6. Participate in imaginative play; and
7. Be exposed to a variety of cultures.

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

1. Daily indoor activities, and outdoor activities when a child is in care for more than 3 hours;
2. Active and quiet play;
3. Protection from excess fatigue and overstimulation; and
4. Individual and group activities.

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

(2) **DISCIPLINE.** (a) Each family day care center shall provide positive guidance and redirection for the children and shall set clear-cut limits for the children. The provider shall help each child develop self-control, self-esteem and respect for the rights of others.

(b) If a provider uses time-out periods to deal with unacceptable behavior, time-out periods may not exceed 5 minutes and procedures must be included in center discipline policy.

(c) Actions which are humiliating or frightening to a child, including the following, are prohibited:

1. Spanking, hitting, pinching, shaking or inflicting any other form of corporal punishment on the child;
2. Verbal abuse, threats or derogatory remarks about the child or the child's family;
3. Binding or tying the child to restrict the child's movement or enclosing the child in a confined space such as a closet, locked room, box or similar cubicle;
4. Withholding or forcing meals, snacks or naps; and
5. Sexual abuse.

(d) A child may not be punished for lapses in toilet training.

(3) **EQUIPMENT.** (a) Safe indoor and outdoor play equipment shall be provided and shall be:

1. Scaled to the size and developmental level of the children;
2. Of sturdy construction with no sharp, rough, loose, or pointed edges, in good operating condition, and anchored when necessary; and

3. Placed so as to avoid danger of accident or collision and to permit freedom of action.

(b) Various types of play equipment shall be provided to allow for large and small muscle activity, dramatic play, creative expression and intellectual stimulation.

(c) Indoor play equipment shall be provided to allow each child a choice of at least 3 activities involving equipment when all children are involved in using equipment.

(d) Outdoor play equipment shall be provided to allow each child at least one activity when all children are using equipment at the same time.

Note: Lists suggesting kinds and numbers of equipment for centers are available from the Department's Division of Community Services regional office on request. See Appendix A.

(4) REST PERIODS. (a) Children under 5 years of age in care for more than 4 hours shall have a nap or rest period.

(b) The provider shall permit children who do not sleep and children who wake up early to get up and shall help them to have a quiet time through the use of equipment or activities which do not disturb other children.

(c) Each child who has a nap or rest period shall be provided with a bed, cot, mat, sleeping bag, crib or playpen which is placed at least 2 feet (63.8 cm) from the next sleeping child.

(d) Children spending the night shall sleep in beds, cots or cribs.

(e) Each child using a bed, cot or crib shall be provided with an individually identified sheet and blanket or sleeping bag which may be used only by that child until it is washed. Sleeping bags and bedding shall be stored in a sanitary manner and immediately cleaned if wet or soiled.

(f) Infants shall sleep alone in cribs or playpens. Two related children may share a double bed. No more than one child may occupy a single size bed, cot, mat or sleeping bag.

Note: See also s. HSS 45.05 (3) (b) 3 and 4 which require that a mat be at least 2 inches thick and that the cot, bed, mat, sleeping bag, crib or playpen be safe and washable.

(5) MEALS AND SNACKS. (a) Food shall be provided based on the amount of time children are present, as specified in Table 45.06.

TABLE 45.06

MEALS AND SNACKS TO BE SERVED TO CHILDREN IN FAMILY DAY CARE CENTERS

Time Present	Number of Meals and Snacks
At least 2½ but less than 4 hours	1 snack
At least 4 but less than 8 hours	1 snack and 1 meal
At least 8 but less than 10 hours	2 snacks and 1 meal
10 or more hours	2 meals and 2 or 3 snacks

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(b) Food shall be served at flexible intervals, but no child may go without nourishment for longer than 3 hours.

(c) Each meal shall provide ⅓ of the daily nutritional requirements of the child. Items to be included in meals and snacks as shown in pars. (d), (e) and (f), shall be used in meal planning.

Note: See Appendix B for United States Department of Agriculture standards for nutrition.

(d) Breakfast shall consist of the following:

1. Fruit or juice;
2. Cereal or whole grain or enriched bread product; and
3. Grade A vitamin D pasteurized milk.

(e) The noon or evening meal shall include the following:

1. A food furnishing protein, such as meat, poultry, fish, egg, cooked dried peas or beans, cheese or peanut butter;
2. Two foods from the fruit and vegetable group;
3. Cereal, or whole wheat or enriched bread products; and
4. Grade A vitamin D pasteurized milk.

(f) Snacks shall consist of at least 2 of the following: milk or a milk product, fruit, fruit juice, vegetable, peanut butter or other protein, whole grain or enriched bread or cereal. When only fruit juice is served, it shall be pure fruit juice.

(g) Enough food shall be prepared for each meal so that second portions of vegetables or fruit, bread and milk are available to children.

(h) When food is provided by the parent, the provider shall ensure that the meal provides ⅓ of the child's daily nutritional requirements and is in accordance with par. (d) or (e), as appropriate.

(j) A child enrolled in school who is in attendance at the center when a meal or snack is served shall be offered the meal or snack.

(6) HEALTH. (a) *Observation.* 1. Each child upon arrival at the center shall be observed by the provider for symptoms of illness.

2. Any injury or evidence of unusual bruises, contusions, lacerations or burns received in or out of the center shall be noted in a medical log book.

(b) *Ill child.* A child who appears to be ill shall be moved to a separate room or area. The parent or emergency contact shall be notified and arrangements shall be made to remove the child from the center as soon as possible.

(c) *Communicable disease.* When it is determined that a child attending the center or a child of the provider has a reportable communicable disease under ch. HSS 145 transmitted through normal contact, such as chicken pox, German measles, infectious hepatitis, measles, mumps, scarlet fever or meningitis, the local public health officer and parents of all the enrolled children shall be notified.

Note: A chart with information about communicable disease is available from the licensing representative upon request.

(d) *Medications.* 1. The provider may give prescription or non-prescription medications to a child only under the following conditions:

a. A written authorization dated and signed by the parent is on file;

b. The prescription medication is in the original container and labeled with the child's name and with dosage and administration directions; and

c. The non-prescription medication is labeled with the child's name and the label includes the dosage and directions for administration.

2. Medications shall be stored so that they are not accessible to children.

3. Medications requiring refrigeration shall be kept in the refrigerator in a separate, covered container clearly labeled "medications."

(e) *Personal cleanliness.* 1. A child's hands shall be washed with soap and running water before meals or snacks and after toileting or diapering. A child's hands and face shall be washed after meals. Persons working with children shall wash their hands with soap and running water before handling food and after assisting with toileting.

2. Bodily secretions from a child shall be wiped with a disposable tissue. Whoever does the wiping shall wash his or her hands immediately.

3. Children may not share cups, eating utensils, toothbrushes or towels.

4. Wet or soiled clothing and diapers shall be changed promptly from an available supply of clean clothing.

5. Section HSS 45.07 (5) shall apply when a child 2 years of age or older needs attention for diapering or toileting.

(f) *Injuries.* 1. Written permission from the parents to call the family physician or refer the child for medical care in case of injury shall be on file at the center. The provider shall contact the parents as soon as possible after an emergency has occurred or, if the injury is minor, when they pick up the child.

2. Superficial wounds shall be cleaned with soap and water only and protected with a bandaid or bandage.

3. Suspected poisoning shall be treated only after consultation with a poison control center.

4. The provider shall designate a planned source of emergency medical care, such as a hospital emergency room, clinic or other constantly staffed facility and shall advise parents about that designation.

(g) *Health examination and history.* 1. Each child under 2 years of age, including each provider's child in care, shall have an initial health examination not more than 6 months prior to nor later than 3 months after being admitted to the center, and a follow-up health examination at least once every 6 months after admission.

2. Except for a child enrolled in school, each child 2 years of age or older, including the provider's children in care, shall have an initial health examination not more than one year prior to nor later than 3 months after being admitted to a center, and a follow-up health examination at least once every 2 years after admission.

3. The health examination report shall be on a form provided by the department and shall be signed and dated by a licensed physician, physician's assistant or a HealthCheck provider.

4. The health examination requirement under subd. 2 does not apply if the parents of a child request in writing that the department grant an exemption based upon the parents' adherence to religious belief in exclusive use of prayer or spiritual means for healing in accordance with the teachings of a bona fide religious sect or denomination.

5. All children, including school-age children, shall have a health history completed by the parent on file at the center.

(h) *Immunization.* The center shall maintain a record of immunizations for each child to document compliance with s. 140.05 (16), Stats., and ch. HSS 144.

(7) *PETS.* Dogs and cats that are kept on the premises of a center shall be vaccinated against rabies and shall be tolerant of children.

(8) *TRANSPORTATION.* (a) *Applicability.* This subsection applies to all transportation of children under provider supervision, including both regularly scheduled transportation to and from the center and field trip transportation.

(b) *Emergency information.* The following emergency information shall be carried in the vehicle for each child transported:

1. An address and telephone number where a parent or other adult can be reached in an emergency;

2. The home, address and telephone number of the child's health care provider; and

3. Written consent from the child's parent for emergency medical treatment.

(c) *Driver.* The driver of the vehicle shall be at least 18 years of age and shall hold a valid Wisconsin operator's license for the type of vehicle driven.

(d) *Vehicle.* 1. All vehicles used to transport children shall be registered by the state of Wisconsin.

2. Center-owned vehicles shall be in safe operating condition. At 12-month intervals the licensee shall provide the department with evidence of a vehicle's safe operating condition on a form provided by the department.

Note: Form DCS-52, Safety-Inspection for Day Care Vehicles, may be obtained from any regional office of the Department's Division of Community Services. See Appendix A.

(e) *Seat belts.* Every child in care and accompanying adult being transported in a vehicle shall be seated and properly restrained in a seat belt or, for a child under 2 years of age, a child safety restraint system, in compliance with s. 347.48, Stats.

(f) *Vehicle capacity and supervision.* 1. Children may not be left unattended in a vehicle.

2. When children are transported in a vehicle there shall be at least one adult supervisor in addition to the driver whenever there are more than 3 children who are either under 2 years of age or who have a handicap which limits their ability to respond to an emergency.

(g) *Smoking.* Smoking shall be prohibited in the vehicle while children are being transported.

History: Cr. Register, August, 1989, No. 404, eff. 9-1-89.

HSS 45.07 Additional requirements for infant and toddler care. (1) **APPLICABILITY.** Family day care centers providing care and supervision to infants and toddlers shall comply with the additional requirements of this section.

(2) **GENERAL REQUIREMENTS.** (a) The provider shall use information obtained on a department-provided enrollment form for children under 2 years of age to individualize the program of care for each child. The provider and the child's parents shall periodically discuss the child's development and routines.

(b) Safety gates shall be provided at open stairways.

(3) **DAILY PROGRAM.** (a) Child care providers shall respond promptly to a crying child's needs.

(b) Each infant and toddler shall be allowed to form and follow his or her own patterns of sleeping and waking.

(c) Emphasis in activities shall be given to play as a learning and growth experience.

(d) Throughout the day, each infant and toddler shall receive physical contact and attention such as being held, rocked, talked to, sung to and taken on walks inside and outside the center.

(e) Routines related to activities such as taking a nap, eating, diapering and toileting shall be used as occasions for language development and other learning experiences.

(f) When a non-walking child is awake, the provider shall change the child's body position and location in the room periodically.

(g) The non-walking child who can creep or crawl shall be given opportunities during each day to move freely by creeping and crawling in a safe, clean, open, warm and uncluttered area.

(h) The provider shall encourage infants and toddlers to play with a wide variety of safe toys and objects.

(i) Infants and toddlers shall be taken outdoors for part of each day except during inclement weather or when this is not advisable for health reasons.

(4) **FEEDING.** The provider shall:

(a) Feed each infant and toddler on the child's own feeding schedule;

(b) Ensure that food and formula brought from home is labeled with the child's name and dated, and is refrigerated if required;

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(c) Ensure that formula provided by the center is of the commercial, iron-enriched type and mixed according to the manufacturer's directions;

(d) Except as provided in par. (f), provide formula or breast milk to all children under 6 months of age;

(e) Except as provided in par. (f), provide breast milk, formula, or Grade A pasteurized vitamin D whole milk to all children 6 months to 12 months of age;

(f) Provide another type of milk or milk substitute only on the written direction of the child's physician;

(g) Discard leftover milk or formula after each feeding, and rinse bottles after use;

(h) Offer drinking water to infants and toddlers several times daily;

(i) Hold a child unable to hold a bottle whenever a bottle is given. Bottles may not be propped;

(j) Hold or place a child too young to sit in a high chair or feeding table in an infant seat during feeding. Wide-based highchairs with safety straps or feeding tables with safety straps shall be provided for children who are not developmentally able to sit at tables and chairs; and

(k) Ensure that eating utensils and cups are scaled to the size and developmental level of the children.

(5) **DIAPERING AND TOILETING ACTIVITIES.** The provider shall:

(a) Change wet or soiled diapers and clothing promptly;

(b) Change the child on an easily cleanable surface which is cleaned with soap and water and a disinfectant solution after each use with a chlorine bleach solution of one quart water to one tablespoon bleach, made fresh daily.

(c) Place soiled cloth diapers in a plastic bag labeled with the name of the child and send them home daily;

(d) Place soiled disposable diapers in a plastic-lined, covered container and dispose of them daily;

(e) Wash his or her hands with soap and running water before and after each diapering or assistance with toileting routines;

(f) Apply lotions, powders or salves to the child during diapering only at the specific direction of a parent or the child's physician; and

(g) Wash the child during diapering with a disposable towel used only once.

History: Cr. Register, August, 1989, No. 404, eff. 9-1-89.

HSS 45.08 Licensing administration. (1) **LICENSING PROCEDURES.** (a) A person making an inquiry to the department about obtaining a family day care license shall be:

1. Provided with a copy of this chapter;

2. Given other written materials or a list of publications about establishing a day care center;

3. Offered an opportunity to meet with a representative of the department to discuss the materials;

4. Supplied with the necessary application form if licensing is desired; and

5. Assisted through the licensing process by a representative of the department.

Note: The license application form for family day care centers may be obtained from any regional office of the department's division of community services. See Appendix A.

(b) An applicant for a license shall submit an application at least:

1. Sixty days before the date proposed for the center to begin operating;

2. Thirty days before the end of the current licensing period, in the case of a renewal;

3. Forty-five days before opening an additional center; and

4. Thirty days before changing the address of the center.

(c) An applicant for an initial license shall include the following materials with the application for the license:

1. A signed statement by the applicant accepting legal responsibility for complying with this chapter;

2. The articles of incorporation and by-laws if the center is organized as a corporation, association or cooperative;

3. A signed statement on a form provided by the department concerning any specified criminal conviction or pending charge;

4. A diagrammatic floor plan of the center showing room dimensions and room usage, and a diagram of the outdoor area which includes area dimensions, location and enclosures; and

5. The names, addresses and telephone numbers of 2 references other than relatives.

Note: An application for a license to operate a family day care center should be submitted to the appropriate regional office of the department's division of community services. See Appendix A.

(d) Within 20 working days after receiving an application for initial licensure, a licensing representative of the department shall contact the applicant in person or by phone and provide a checklist for the applicant to use in meeting requirements, including:

1. Necessary building inspections;

2. Required equipment, furnishings and supplies;

3. Requirements for staffing and staff qualifications;

4. Required safety and sanitation equipment and supplies; and

5. Required written policies and procedures.

(e) When the applicant for an initial license determines that all requirements on the checklist have been met, the applicant shall notify the department's licensing representative.

(f) Within 20 working days after the notification under par. (e) the department's licensing representative shall survey the center to determine if the applicant has complied with all of the requirements of this chapter. In deter-

mining compliance the department may require the applicant or provider to submit to a psychological examination.

(g) If the applicant is found to be in compliance with all applicable requirements of this chapter, the department shall issue a day care center license within 5 working days after the date on which the survey study under par. (f) was completed.

(h) If the applicant is found to be not in compliance with all applicable requirements of this chapter, the department shall specify in writing the areas of non-compliance and the applicant shall be given an opportunity to make the necessary changes and shall be re-surveyed within 20 working days after notifying the department's licensing representative that the center is ready to be surveyed again.

(2) AMENDMENT TO LICENSE. A written request for an amendment to the license shall be submitted to the department by the licensee before any change is made in the conditions of the current license such as a change in the maximum number of children, the age range of the children, the hours of the center's operation, the days of the week, the months of the year the center is in operation or the name of the center.

(3) ADDITIONAL LICENSE. A licensee seeking licensure for an additional center location shall demonstrate that the licensee has complied with this chapter in the operation of the existing center.

(4) LICENSE DENIAL OR REVOCATION. The department may refuse to grant a license or may revoke a license if the applicant, licensee, provider, a household member or a proposed or current employe or volunteer:

(a) Is the subject of a pending criminal charge for an action that substantially relates to the care of children or activities of the center;

(b) Has been convicted of a felony, misdemeanor or other offense which substantially relates to the care of children or activities of the center;

(c) Has been determined to have abused or neglected a child pursuant to s. 48.981, Stats.;

(d) Is the subject of a court finding that the person has abandoned his or her child, has inflicted sexual or physical abuse on a child or has neglected or refused, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter for his or her child or ward or a child in his or her care, so as to seriously endanger the physical health of the child;

(e) Has had a day care license revoked within the last 3 years; or

(f) Has violated any provision of this chapter or ch. 48, Stats., or fails to meet the minimum requirements of this chapter.

Note: Examples of actions the department will consider in making a determination under this paragraph that an act substantially relates to the care of children are: abuse and neglect of children; sexual assault; abuse of residents of facilities; crimes against life and bodily security; kidnapping; abduction; arson of buildings or property other than buildings; robbery; receiving property from children; crimes against sexual morality, such as enticing a minor for immoral purposes or exposing minors to harmful materials; and interfering with the custody of a child. The list is illustrative. Other types of offenses may be considered.

(5) **NOTICE TO DENY OR REVOKE A LICENSE.** If the department decides under sub. (4) to refuse to grant a license or to revoke a license, the department shall provide the applicant or licensee with a written notice of its decision. That notice shall be a 30-day notice in the case of a revocation, with the revocation to take effect 30 days after the date of the notice unless the decision is appealed under sub. (6). Upon receipt of that notice and during any revocation procedures which may result, the center may not accept for care any child not enrolled as of the date of receipt of the notice without the written approval of the department.

(6) **APPEAL OF DECISION TO DENY OR REVOKE A LICENSE.** Any person aggrieved by the department's decision to deny issuance or renewal of a license or to revoke a license may request a hearing on that decision under s. 227.42, Stats., within 10 days after the date of the notice under sub. (5).

Note: A request for a hearing should be submitted to the Department's Office of Administrative Hearings, P.O. Box 7875, Madison, Wisconsin 53707.

(7) **SUMMARY SUSPENSION OF A LICENSE.** (a) Under the authority of s. 227.51 (3), Stats., the department may summarily suspend a license and therefore close a family day care center when the department finds that there is imminent danger to the health, safety or welfare of the children in care. A finding of imminent danger may be based on but is not limited to the following:

1. Failure of the licensee to provide environmental protections for the children, such as heat, water, electricity or telephone service;

2. The licensee, provider, other person living in the home or other person in regular contact with the children in care has been convicted of or has a pending charge for a crime against life or bodily injury;

3. The licensee, provider, other person living in the home or other person in regular contact with the children in care has been convicted of a felony, misdemeanor or other offense or has a pending criminal charge which sub-

stantially relates to the care of children or activities of the center; or

4. The licensee, provider, other person living in the home or other person in regular contact with the children in care is the subject of a current investigation for alleged child abuse or neglect pursuant to s. 48.981, Stats., or has been determined to have abused or neglected a child.

Note: Examples of actions the department will consider in making a determination under this paragraph that an act substantially relates to the care of children are: abuse and neglect of children; sexual assault; abuse of residents of facilities; crimes against life and bodily security; kidnapping; abduction; arson of buildings or property other than buildings; robbery; receiving property from children; crimes against sexual morality, such as enticing a minor for immoral purposes or exposing minors to harmful materials; and interfering with the custody of a child. The list is illustrative. Other types of offenses may be considered.

(b) An order summarily suspending a license and therefore closing a family day care center may be a verbal order by a representative of the department. Within 72 hours after the order takes effect, the department shall either permit the reopening of the center or initiate proceedings to revoke the license. A preliminary hearing shall be conducted by the regional administrator or designee within 10 working days after the date of the initial order to close, on the issue of whether the license shall remain suspended during revocation proceedings.

History: Cr. Register, August, 1989, No. 404, eff. 9-1-89; emerg. am. (6), eff. 11-8-93; am. (6), Register, March, 1994, No. 459, eff. 4-1-94.

HSS 45.09 Complaints. Anyone having a complaint about a licensed or illegally operating family day care center may submit that complaint to the department by telephone, letter or personal interview. Every complaint shall be investigated by a licensing representative of the department. The department shall send a written report of the findings of the investigation to the complainant upon request.

Note: Complaints should be sent to the regional office of the Department's Division of Community Services. See Appendix A.

History: Cr. Register, August, 1989, No. 404, eff. 9-1-89.