

# DELACARE

## Regulations for Residential Child Care Facilities and Day Treatment Programs



State of Delaware  
Department of Education  
Office of Child Care Licensing

## TABLE OF CONTENTS

### Introduction

1. Legal Basis .....	1
2. Purpose .....	1

### **Part I General Provisions** .....

3. Definitions of Terms .....	1
4. Definition of Regulated Services .....	7
5. Authority to Inspect .....	8
6. License Requirements .....	9

### **Part II Licensing Process and Procedures** .....

7. Procedures for Initial Licensure .....	9
8. License Renewal .....	11
9. Changes Affecting a License .....	12
10. Relocation of a Facility or Program .....	13
11. Regulation Variance .....	14
12. Complaints .....	14
13. Enforcement Actions .....	15

### **Part III Administration and Organization** .....

14. Notification .....	19
15. Insurance Coverage .....	20
16. Description of Services .....	21
17. Policies and Procedures .....	21

### **Part IV Staffing Requirements and Qualifications** .....

18. General Qualifications and Background Checks .....	24
19. Staff Qualifications .....	26
20. Administrative Oversight and Staffing .....	27
21. Personnel and Volunteer Files .....	28
22. Contracted Licensed Professionals Files .....	30
23. Training .....	30
24. Allegations of Abuse or Neglect against a Staff Member .....	31
25. Children's Admission .....	31

26. Service Plan .....	32
27. Children’s Health Appraisals .....	34
28. Education Requirements .....	34
29. On-Site School Requirements .....	35
30. Religion and Culture .....	35
<b>Part V Physical Environment and Safety .....</b>	<b>36</b>
31. General Safety.....	36
32. Heating and Cooling .....	37
33. Air Quality and Windows .....	38
34. Hazardous Materials.....	38
35. Smoking, Vaping, Illegal Drugs, and Alcohol.....	40
36. Outdoor Area .....	40
37. Kitchen and Food Preparation .....	41
38. Water, Food, and Nutrition .....	42
39. Administration of Medication.....	42
40. Hand Washing .....	44
41. Standard Precautions .....	44
42. Sanitation .....	44
43. Child Injury or Medical Event.....	45
44. Emergency Plan .....	45
45. First Aid Kits .....	46
46. Transportation .....	47
47. Swimming .....	48
48. Pets .....	49
<b>Part VI Residential Child Care Facilities.....</b>	<b>49</b>
49. Policies and Procedures for Residential Child Care Facilities .....	49
50. Staffing and Staff-to-Child Ratios for Residential Child Care Facilities .....	52
51. Children’s Rights for Residential Child Care Facilities.....	53
52. Children’s Health for Residential Child Care Facilities.....	53
53. Physical Environment for Residential Child Care Facilities .....	54
54. Discharge and Aftercare Plans for Residential Child Care Facilities .....	55

<b>Part VII Alternative to Detention Facilities .....</b>	<b>56</b>
55. Admission for Alternative to Detention Facilities .....	56
56. Staffing and Staff-to-Child Ratios for Alternative to Detention Facilities .....	56
57. Exemptions for Alternative to Detention Facilities.....	57
<b>Part VIII Drug and Alcohol Treatment Facilities.....</b>	<b>57</b>
58. Staff Qualifications for Drug and Alcohol Treatment Facilities.....	57
59. Activity Plan for Drug and Alcohol Treatment Facilities .....	57
<b>Part IX Independent Living Facilities.....</b>	<b>57</b>
60. Admission for Independent Living Facilities.....	57
61. Service Plan for Independent Living Facilities .....	58
62. Program for Independent Living Facilities .....	58
63. Activity Schedule for Independent Living Facilities .....	59
64. Staffing for Independent Living Facilities .....	59
65. Exemptions for Independent Living Facilities .....	59
<b>Part X Parenting Adolescent Facilities .....</b>	<b>59</b>
66. Staffing and Staff-to-Child Ratios for Parenting Adolescent Facilities .....	59
67. Service Plan for Parenting Adolescent Facilities .....	60
68. Adoption Counseling Services for Parenting Adolescent Facilities.....	60
69. Stimulation of Young Children for Parenting Adolescent Facilities .....	60
70. Children’s Health for Parenting Adolescent Facilities .....	62
71. Medical Care for Children of Parenting Adolescents .....	62
72. Diapering for Parenting Adolescent Facilities .....	63
73. Toys and Equipment for Parenting Adolescent Facilities.....	63
74. Physical Environment for Parenting Adolescent Facilities .....	64
75. Discharge and Aftercare Plans for Parenting Adolescent Facilities.....	65
76. Exemptions for Parenting Adolescent Facilities.....	65
<b>Part XI Shelter Care Facilities .....</b>	<b>65</b>
77. Children’s Health for Shelter Care Facilities .....	65
78. Duration of Placement for Shelter Care Facilities .....	65
79. Exemptions for Shelter Care Facilities.....	65
<b>Part XII Wilderness Adventure Facilities .....</b>	<b>65</b>

80. Policies and Procedures for Wilderness Adventure Facilities .....	65
81. Safety and Risk Management Committee for Wilderness Adventure Facilities ..	66
82. Staff Qualifications and Staff-to-Child Ratios for Wilderness Adventure Facilities .....	67
83. Away-From-Campus Adventure Activities for Wilderness Adventure Facilities ..	67
84. Equipment for Wilderness Adventure Facilities .....	67
85. Aquatic Procedures for Wilderness Adventure Facilities .....	68
86. Watercraft Activities for Wilderness Adventure Facilities .....	69
<b>Part XIII Day Treatment Programs .....</b>	<b>70</b>
87. Activities and Sleep Equipment for Day Treatment Programs .....	70
88. Indoor Space for Day Treatment Programs .....	70
89. Toilet Facilities for Day Treatment Programs .....	71
90. Staffing and Staff-to-Child Ratios for Day Treatment Programs .....	71
91. Day Treatment Agreement for Day Treatment Programs .....	71
92. Release of Children for Day Treatment Programs .....	72
<b>Part XIV Restrictive Procedures .....</b>	<b>72</b>
93. Restrictive Procedures .....	72
<b>APPENDICES</b>	
I. Initial Application	
II. Relocation Renewal Application	
III. Variance	

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 3001A-3005A (14 Del.C. §§3001A-3005A)

9 DE Admin. Code 105

## INTRODUCTION

### 1. Legal Basis

The legal basis for these licensing regulations is in 14 Del.C. §§3001A-3005A.

### 2. Purpose

The purpose of these regulations is to protect the health, safety, and well-being of children who are placed in residential child care facilities or who are enrolled in day treatment programs. These regulations establish minimum standards for these facilities and programs set forth by the Office of Child Care Licensing (known hereafter as OCCL).

## PART I GENERAL PROVISIONS

### 3. Definition of Terms

The following words and terms, when used in this regulation, have the following meaning:

**"Agreement of understanding"** means a contract between OCCL and the licensee by which the licensee agrees to specific terms to maintain licensure.

**"Applicant"** means the person or entity, such as a company, corporation, business, organization, or agency, that is applying for initial licensure or license renewal of a residential child care facility or day treatment program.

**"Behavior supports"** means the techniques used by a licensee or staff to help a child achieve positive behavior and to address and correct inappropriate behavior in a constructive and safe manner. The methods used must be in accordance with written policies and procedures governing program expectations, child and staff safety, and the child's service plan.

**"Business day"** means a weekday Monday through Friday, not including State of Delaware or DOE legal holidays that fall on a weekday.

**"Case manager"** means a person designated by a licensee who works directly with children, their families, and other relevant individuals and who is primarily

responsible for the development, implementation, and review of service plans for the child. This person also works to coordinate care and services to individuals and families.

**"Chemical restraint"** means the involuntary emergency administration of medication in immediate response to a dangerous behavior.

**"Chief administrator"** means the person designated by a licensee as having day-to-day responsibility for the overall administration and operation of a facility or program and for assuring the care, treatment, safety, and protection of children.

**"Child"** means a person who has not reached the age of 18 years or a person who becomes 18 while residing in the facility or participating in the program, who has not reached the age of 22. Child also includes a person enrolled in a State public school or receiving an approved extension to remain in care.

**"Child abuse"** means to cause or inflict sexual abuse on a child less than 18 years of age; or an act by a person that has care, custody, or control of a child that causes or inflicts physical injury through unjustified force, emotional abuse, torture, exploitation, maltreatment or mistreatment as defined in 10 Del.C. §901.

**"Child sexual abuse"** means an act against a child less than 18 years of age that is described as a sexual offense or child exploitation as defined in 11 Del.C. §8550(2).

**"CHU"** means the Criminal History Unit in the Department of Services for Children, Youth and Their Families.

**"Complaint investigation"** means the process followed by OCCL to investigate accusations that a licensee does not comply with these regulations or applicable laws.

**"Conference"** means a meeting between OCCL and a licensee, chief administrator, or designated representative to discuss serious non-compliance as defined in these regulations or to discuss the denial of a variance request.

**"Corrective action plan"** means a document listing non-compliance that a licensee must correct, how to correct it, and the date OCCL requires the corrections to be completed. This document serves as written notice of non-compliance with these regulations.

**"Denial"** means an enforcement action initiated by OCCL to refuse to grant a license after OCCL receives an application. This constitutes refusal of permission to operate.

**"Department"** means the Department of Education.

**"Designated representative"** means the person who has been assigned by the applicant or licensee to act on the applicant's or licensee's behalf and granted authority over program operations and to represent the applicant or licensee in dealings with OCCL. This person may sign the application with written authorization from the applicant or licensee.

**"Direct care supervisor"** means a person assigned responsibility by a licensee for the supervision of direct care workers. A case manager may also serve as a direct care supervisor.

**"Direct care worker"** means a person designated by a licensee to provide direct care and supervision of children as described in the facility or program's policies.

**"Director"** means the person responsible for the supervision and administration of OCCL.

**"DFS"** means the Division of Family Services within the Department of Services for Children, Youth and Their Families.

**"DPH"** means the Division of Public Health.

**"DSCYF"** means the Department of Services for Children, Youth and Their Families.

**"Enforcement action"** means an action taken by OCCL to promote compliance. Enforcement actions are warning of probation, probation, suspension, revocation, and denial.

**"Facility"** means a residential child care facility.

**"Hearing"** means the hearing provided to a licensee or applicant when requesting an appeal of OCCL's decision to place the facility on an enforcement action such as warning of probation, probation, suspension, revocation, or denial. A licensee or applicant may provide evidence to contest the action.

**"License"** means a document issued by OCCL allowing a person or entity to operate a residential facility or day treatment program after demonstrating compliance with these regulations and applicable State laws.

**"Licensee"** means the person or entity, such as a company, corporation, business, organization, or agency, which has the legal responsibility and authority to operate a residential child care facility or day treatment program.

**"Licensing specialist"** means an OCCL employee who is responsible for performing regulatory activities including monitoring child care facilities, investigating complaints, monitoring the need for enforcement actions, and making recommendations for licensure as set forth in Delaware Code and these regulations.

**"Licensing supervisor"** means an OCCL employee who is responsible for performing supervisory and regulatory activities including monitoring child care facilities, investigating complaints, monitoring the need for enforcement actions, and making recommendations for licensure as set forth in Delaware Code and these regulations.

**"Living unit"** means a designated area or space in which a group of children resides or receives care.

**"Neglect"** means the failure to provide, by those responsible for the care, custody, and control of a child less than 18 years of age, the proper or necessary education as required by law; nutrition; or medical, surgical or any other care necessary for the child's well-being as defined in 10 Del.C. §901.

**"Office of Child Care Licensing"** or "OCCL" means the agency within the Department authorized under 14 Del.C. §§3001A-3005A to promulgate and enforce regulations for child care, to license child care facilities, and to develop and implement policies and procedures.

**"Parent"** means a birth or adoptive parent, legal guardian, or other person having responsibility for, or legal custody, of a child. The term "parent" does not include the referring agency.

**"Physical escort"** means a temporary touching or holding, without the use of force, of the hand, wrist, arm, shoulder, or back for the purpose of encouraging a child who is agitated to walk to a safe location.

**"Physical restraint"** means the non-punitive, age-appropriate, time-limited, and reasonable use of physical holding that is required to restrict the movement of a child for the purpose of preventing harm to the child or to others when the child fails to respond to other techniques.

**"Plan review"** means the document submitted to OCCL by an applicant requesting approval to open a new facility or program or by a licensee for an expansion or renovation of a licensed facility's or program's indoor or outdoor space to ensure compliance with these regulations.

**"Positive reinforcement"** means an action that when systematically and regularly used following the desired behavior of a child, makes it more likely that the desired behavior will recur.

**"Probation"** means an enforcement action initiated by OCCL due to the residential child care facility's or day treatment program's serious non-compliance with these regulations. This action directs the licensee to correct non-compliance and maintain compliance or face revocation or denial.

**"Program"** means a day treatment program.

**"Provisional license"** means a license issued for a time-limited period under a corrective action plan when a licensee is temporarily unable to comply fully with these regulations. There can be no serious risk to the health, safety, and well-being of children. An extension to the provisional license requires the director's approval.

**"Psychotropic medication"** means a chemical substance that changes brain function and alters perception, mood, or consciousness.

**"Referring agency"** means an organization, either publicly or privately operated, that is legally authorized to place a child in a facility or to refer a child to a program.

**"Revocation"** means an enforcement action initiated by OCCL to rescind a license during the license's effective dates withdrawing permission to operate.

**"Seclusion"** means the involuntary confinement of a child, age 6 or older, alone in a room or area from which the child is physically prevented leaving due to the child's behavior. This is a time-limited restrictive procedure that typically involves a child being removed from the child's environment by using a physical restraint or physical escort, placing the child in a locked or unlocked room under constant monitoring, and preventing the child from getting out.

**"Serious non-compliance"** means an action or actions that violate these regulations and presents a significant risk to children. Serious non-compliance includes the following: child abuse or neglect, excessive non-compliance, failing to admit authorized people into the facility, failing to cooperate with an investigation, failing to report abuse or neglect, improper discipline, improper staff-to-child ratios, inappropriate adult behavior, lack of supervision, medication errors, being sanctioned by another agency, providing transportation in an unsafe manner, being under the influence of drugs or alcohol, leaving unqualified staff alone with children, failing to complete background checks as required, having an unsafe building or environment, refusing to sign an agreement of understanding, or failing to comply with a signed agreement of understanding.

**"Service letter"** means a letter required by the Delaware Department of Labor, 19 Del.C. §708, are used to determine whether a person seeking employment was counseled, warned, reprimanded, suspended, or discharged as a result of a

reasonably substantiated incident involving the person's violent behavior or threat of violence in the workplace, or for abuse, negligence, or neglect of patients, clients, residents, or children.

**"Service plan"** means a written, prescribed plan that specifies the basis for a child's admission to a facility or program, the techniques to be used to address a child's treatment needs, and goals for family reunification or permanency planning. This plan must identify the people responsible for developing and implementing the plan and the time frames for carrying out the plan while the child resides in the facility or participates in the program.

**"Staff member"** means any person who is employed by a licensee or any person under contract with a licensee excluding any vendors that do not provide direct care to children.

**"Supervision of children"** means staff members are physically present in the facility on the same floor level as children and monitoring the children's whereabouts to ensure timely attention to children's actions and needs.

**"Suspension order"** means a notice issued by OCCL directing a licensee to stop providing child care as of a specific date. While the license is suspended, a licensee may not provide child care.

**"Teacher"** means a person designated by a licensee to provide direct education services to children.

**"Time-out"** means the time-limited removal of a child from the child's immediate environment or the time-limited prohibition of a child to participate in an activity, as listed in Section 17.9.c.

**"Trauma-informed care"** means a facility or program's structure and treatment framework is grounded in an understanding of and responsiveness to the impact of trauma, that emphasizes physical, psychological, and emotional safety for the child, and that creates opportunities for the child to rebuild a sense of control and empowerment.

**"Treatment plan"** means a written plan of services included in the service plan to meet the specific treatment goals and needs of a child. The plan includes various services designed, developed, and implemented by a licensee to assist the needs of a child concerning education, health, medical, psychological, social, or other needs.

**"Variance"** means OCCL's approval for a licensee to meet the intent of a specific licensing regulation in a way that is different from the way the regulation specifies. OCCL will only give this approval when the change will not endanger the health, safety, or well-being of children in care.

**"Volunteer"** means a person who provides an unpaid service or support to a facility or program. The term "volunteer" shall include student interns.

**"Warning of probation"** means an enforcement action initiated by OCCL because the facility or program was cited for serious non-compliance. This action directs the licensee to correct non-compliance and maintain compliance or face probation or other enforcement action.

#### **4. Definition of Regulated Services**

- A. An individual, corporation, LLC, organization, entity, program, or agency may not operate a residential child care facility or day treatment program or provide child care services as defined in these regulations unless under state ownership and control or issued a license by OCCL. Anyone who operates a facility or program without a license violates 14 Del.C. §§3001A-3005A, The Delaware Child Care Act, and shall be fined not more than \$1000 or imprisoned not more than 6 months, or both.
- B. Licensed residential child care facilities shall meet the provisions of Sections 3 through 54, and, if applicable, the specific provisions for the service type a licensee wishes to operate. The facility and program requirements for licensees are:
  - 1. A licensee operating an alternative to detention facility shall also meet the provisions of Sections 55 through 56.
  - 2. A licensee operating a drug and alcohol treatment facility shall also meet the provisions of Sections 58 and 59.
  - 3. A licensee operating an independent living facility shall also meet the provisions of Sections 60 through 64.
  - 4. A licensee operating a parenting adolescent facility shall also meet the provisions of Sections 66 through 75.
  - 5. A licensee operating a shelter care facility shall also meet the provisions of Sections 77 and 78.
  - 6. A licensee operating a wilderness adventure facility shall also meet the provisions of Sections 80 and 86.
  - 7. A licensee operating a day treatment program shall meet the provisions of Sections 3 through Section 48 and Sections 87 through 92.
  - 8. A licensee using restrictive procedures shall meet the provisions of Section 93.
- C. "Residential child care facility" or "residential facility" means a facility that provides out-of-home, 24-hour care, protection, and supervision for children who have: behavioral dysfunctions; developmental, emotional, mental, or physical impairments; or chemical dependencies. Children may also reside in a residential facility when they are in the Department of Services for Children, Youth and Their Families' Division of Family Service's custody, pregnant or

have children, awaiting a court appearance, needing temporary living arrangements, or are preparing to live on their own. A psychiatric hospital or an approved foster home is not a residential facility.

- D. Residential child care facilities may also include specific service types, after the facility meets the additional provisions listed in these regulations. The specific service types are:
1. "Alternative to detention" means a facility for adolescents awaiting a court appearance;
  2. "Drug and alcohol treatment" means a facility that provides care and treatment for children addicted to drugs or alcohol that strives to end the addiction;
  3. "Independent living" means a facility that provides care for 12 or fewer adolescents to prepare them to live as self-sufficient adults;
  4. "Parenting adolescent" means a facility for pregnant adolescents or adolescents caring for their own child or children;
  5. "Shelter care" means a facility that provides temporary or emergency care for children for 45 days or less, unless meeting the extension requirements of Section 78; and
  6. "Wilderness adventure" means a facility whose primary purpose is to engage children in camping and a course of activities to help them learn and develop a sense of social responsibility, self-worth, and problem solving. Children camp for more than five days and may travel through one or more states. The activities may involve strenuous exercise or physical exertion, such as high rope challenge courses, wilderness trekking, rock climbing, and rappelling.
- E. "Day treatment program" means a program that provides highly structured, intensive, non-residential services for less than 24 hours each day to children who have: behavioral dysfunctions; developmental, emotional, mental, or physical impairments; or chemical dependencies.
- F. Licensed residential facilities operating an educational program for residents and day students shall be exempt from day treatment program requirements when more than 50% of the students are residents of the facility.

## **5. Authority to Inspect**

- A. Applicants, licensees, staff members, and volunteers if applicable shall allow access to the facility or program to officials from OCCL and other State and local agencies during the hours of operation to determine compliance with applicable codes, regulations, or laws. This includes access to information, files, documents, and video recordings needed to determine compliance.

- B. Applicants, licensees, staff members, and volunteers if applicable, shall allow and not hinder the interviewing of an applicant, licensee, staff member, volunteer, resident, child in care, or child's parent by officials from OCCL or other State and local agencies. Interviews will occur to determine compliance with these regulations and other applicable codes, regulations, or laws. A licensee shall cooperate and have staff members cooperate with investigations regarding allegations of child abuse or neglect conducted by DSCYF.

## **6. License Requirements**

- A. To operate a facility or program, OCCL must issue a license for the site address listed on the application. The license is valid at this address only. A new license is required before a facility or program may provide services at a new address. See Section 10 for relocations. A licensee may use one license for multiple buildings at the same site address or choose to have each building licensed individually.
- B. A license remains the property of OCCL and is not transferable or subject to sale.
- C. A licensee shall post the license where it is visible to the public.
- D. A license shall state the maximum number of children who may be served in the facility or program at one time.
- E. When a facility or program is sold, closes, or relocates, or when the license has been suspended, revoked, or expires, the license immediately becomes void.

## **PART II LICENSING PROCESS AND PROCEDURES**

### **7. Procedures for Initial Licensure**

- A. An applicant shall complete the following steps and submit the following information to OCCL when seeking a license:
  - 1. Attend OCCL's information session to learn the application process and regulations or send the designated representative.
  - 2. Submit a completed Initial License Application (see Appendix I), which includes:
    - a. Applicant's name, address, email, and phone numbers;
    - b. Applicant's references including: For corporations, contact information for board president; and for LLCs, contact information for managing member;
    - c. Previous licensure information, if applicable;
    - d. Program information (including ages of children to be served);

- e. Staffing information (including names of proposed staff); and
  - f. Certifications that include:
    - 1) Agreement to comply with federal and State laws and regulations;
    - 2) Statement that information supplied is true and correct; and
    - 3) Acknowledgment that OCCL is required to make a thorough investigation of the applicant.
3. Submit the following items to OCCL:
- a. Blueprints or diagrams of the facility or program;
  - b. Plan review including an emergency plan;
  - c. Sample two-week menu, if providing meals or snacks (if using a catering service copy of the caterer's food establishment permit);
  - d. Business plan;
  - e. Deed, lease, or documentation showing a lease or sale will be entered into at a date prior to licensure of the facility or program. An actual deed or lease is required before the pre-licensing visit is conducted;
  - f. Fire marshal plan review approval and inspection approval from the State fire marshal or designated fire marshal when located within the city limits of Wilmington, Newark, New Castle, or Dover;
  - g. Proof of compliance with zoning codes or certificate of occupancy or use, and, if applicable, other codes, regulations, guidelines, or laws, such as those regarding building construction, plumbing, Department of Natural Resources and Environmental Control for septic systems, and Office of Drinking Water for well water;
  - h. Lead-paint risk assessment and requirements of subsection 34.B, if the facility was built before 1978;
  - i. Release of employment form that allows OCCL to collect service letters as per 19 Del.C. §708. The form will list the applicant's current or most recent employer and all health care and child care facilities where the applicant worked within the past 5 years. If an applicant has no former employer, the applicant shall provide information for 2 more references;
  - j. Background checks, as described in subsection 18.C, for the applicant and designated representative;
  - k. If an applicant will be present at the facility or program, an applicant's health appraisal must contain a tuberculosis (TB) test or medical professional risk assessment that verifies the person does not pose a threat of transmitting TB to children or other staff, and was conducted within 1 year before the application date. This form must confirm the individual's health and document medical or physical conditions that may limit the person's ability to perform child care or have access to children or others and any reasonable accommodations that may be required;
  - l. Description of services as described in Section 16.;
  - m. Policies and procedures manual as described in Section 17;
  - n. Staff handbook;

- o. Evidence showing each room used for care is free of radon hazards using the Environmental Protection Agency's (EPA) guidelines:
    - 1) Testing may be performed by the property owner or an inspector certified by the American Association of Radon Scientists, the National Radon Safety Board, or any organization recognized by the EPA or State of Delaware Radon Program.
    - 2) If testing indicates a radon level over 4.0 pCi/L, radon mitigation according to industry standards must occur or a long-term radon test (90-120 days) must indicate a level less than 4.0 pCi/L.
  - p. Certification of indoor air quality or air quality testing, if applicable;
  - q. Documentation showing staff meet the qualifications for chief administrator and case manager due by pre-licensing visit;
  - r. Certificate of comprehensive liability insurance due by pre-licensing visit; and
  - s. State business license or documentation of tax-exempt status.
- B. Upon receipt of the completed application and required information, a licensing specialist will:
- 1. Review the application and information, and conduct a pre-licensing visit to inspect the premises to determine whether the applicant complies with these regulations;
  - 2. Make a recommendation for licensure. If a license is granted, it will be a 6-month initial provisional license; and
  - 3. Notify the applicant as stated in subsection 13.D.2, if an initial provisional license to operate is denied.
- C. A licensing specialist shall conduct a compliance review at the facility or program before the expiration of the initial provisional license. Once this review is completed, OCCL will issue a provisional or annual license depending upon whether full compliance is obtained. If full compliance is obtained, this annual license will be valid for 6 months.

## **8. License Renewal**

- A. A licensee shall submit a completed Renewal License Application (see Appendix II) to OCCL at least 60 days before the current license expires that includes the following:
- 1. A current certificate of comprehensive general liability insurance;
  - 2. A current certificate of motor vehicle insurance, if applicable; and
  - 3. A copy of the current State business license unless documentation showing tax-exempt status had been previously submitted.
- B. Applications received less than 60 days before the license expiration will be cited as late on the compliance review.

- C. When a licensee applies on time, the existing license will not expire until OCCL makes a decision on the renewal application.
- D. If a license expires before a licensee applies for renewal, the licensee must cease conducting child care. Failure to cease conducting child care may be penalized in accordance with 14 Del. C. § 3005A.
- E. When a licensee applies after the license expires, if approved, the new license will start the date OCCL received the application. A license will not be backdated.
- F. A licensing specialist or licensing supervisor shall verify during an announced annual compliance review that the licensee complies with these regulations.
  - 1. A licensee found to be non-compliant with the regulations will be cited and given a corrective action plan. If on an enforcement action at the time of license renewal, the licensee may face license denial if the licensee has been unable to achieve or maintain compliance with these regulations during the enforcement period.
  - 2. Within 5 business days of the citation, a licensee may dispute citations by contacting a licensing supervisor to request a conference or by discussing the citations over the phone.
    - a. A licensee may provide evidence that the facility was wrongly cited.
    - b. After the conference or phone conversation, the supervisor will then discuss the information with the licensing specialist and determine whether to remove the non-compliance from the corrective action plan.
    - c. The supervisor will inform the licensee of the decision in writing.
- G. OCCL will issue one of the following types of licenses:
  - 1. An annual license for 12 months when the licensee is in full compliance with the regulations;
  - 2. A provisional license when the licensee is unable to achieve full compliance before the current license expires and the licensee agrees to comply with the corrective action plan; or
  - 3. A license extension when compliance has not been determined through no fault of the licensee.

## **9. Changes Affecting a License**

- A. A licensee shall submit a new application and receive approval before changing the facility's or program's name. After receiving approval, the licensee shall submit a business license and proof of comprehensive general liability insurance with the new name before OCCL issues a new license.
- B. A licensee shall submit a new application to request a change in the type of authorized regulated service.

- C. A licensee shall submit a revised plan review and receive approval before changing the ages of children served to include infants and toddlers;
  - 1. Making additions or renovations to the indoor areas, outdoor areas, or classrooms of the facility or program; or
  - 2. Changing meal services provided.
- D. Before the new or renovated area is used or the new meal service begins, a licensing specialist will conduct an on-site visit to confirm the plan was followed.
- E. A licensee and prospective licensee shall follow the procedures in subsection 14.G.1 in preparation for the sale of the facility or program.

## **10. Relocation of a Facility or Program**

- A. A licensee planning to relocate shall notify OCCL at least 90 days before a planned relocation of a facility or program. A licensee shall complete a Relocation Application (see Appendix II) and submit the following information for the new location to OCCL before a licensing specialist conducts a compliance review:
  - 1. Blueprints or diagrams of the facility or program;
  - 2. Plan review including an emergency plan;
  - 3. Deed, lease, or documentation showing a lease will be entered into at a date prior to licensure for the facility or program or if located in a school, permission to use an area or classroom;
  - 4. Fire marshal plan review approval and inspection approval for the facility or program;
  - 5. Proof of compliance, if applicable, from the appropriate regulatory bodies governing zoning/certificate of occupancy or use, building construction, plumbing, Department of Natural Resources and Environmental Control for septic systems, and Office of Drinking Water for well water;
  - 6. Certification of indoor air quality or air quality testing, if applicable;
  - 7. Evidence showing each room used for care to be free of radon hazards and mitigation if necessary, as stated in subsection 34.C;
  - 8. State business license showing new site address;
  - 9. Certificate of current comprehensive general liability insurance; and
  - 10. Lead-paint risk assessment and requirements of subsection 34.B, if the building was built before 1978.
- B. A licensee may not provide services at the new location until OCCL issues a license for the new address.

## **11. Regulation Variance**

- A. An applicant or licensee shall comply with all regulations unless an applicant or licensee requests a variance from OCCL and receives written approval.
- B. To request a variance, the applicant or licensee shall complete a variance request form (see Appendix III) describing how the applicant or licensee will meet the intent of a specific regulation in a different way from the way the regulation states. The change may not endanger the health, safety, or well-being of children in care.
- C. OCCL's director or designee will approve or deny applicant or licensee's variance request in writing after receipt of the variance request.
- D. The licensee shall keep the variance approval and make it available upon request. A variance is valid only for this licensee. If the licensee fails to comply with the variance, OCCL will withdraw the variance approval and require the licensee to comply as the regulation states.
- E. A variance denial or withdrawal of approval may be appealed by requesting a conference with the Associate Secretary of Early Childhood Support within 5 business days of receiving the denial or withdrawal.
  - 1. The conference shall be scheduled within 10 business days.
  - 2. The decision of the Associate Secretary of Early Childhood Support is final.

## **12. Complaints**

- A. OCCL shall investigate when a complaint is received regarding a possible violation of these regulations.
- B. OCCL shall conduct an unannounced visit to investigate the complaint and notify the licensee or staff member that a complaint is being investigated at that unannounced visit.
- C. OCCL shall provide the licensee with a written complaint report containing the results of the investigation.
- D. If the complaint is substantiated or if other violations are found during the investigation, a licensee shall correct the violations and come into compliance with these regulations.
- E. Within 5 business days of receiving the complaint investigation report, a licensee may dispute citations or findings by contacting a licensing supervisor to request a conference or by discussing the citations over the phone.
  - 1. A licensee may provide evidence that the facility was wrongly cited.

2. After the conference or phone conversation, the supervisor will then discuss the information with the licensing specialist and determine whether to remove the non-compliance from the corrective action plan.
  3. The supervisor will inform the licensee of the decision in writing.
- F. Complaints relating specifically to laws, rules, or regulations of other governmental entities (including the Americans with Disabilities Act and Delaware Equal Accommodations Law) may be investigated by OCCL if the violation of those laws, rules, or regulations also constitutes a violation of DELACARE Regulations. OCCL may refer these complaints to the appropriate entity charged with enforcement authority for investigation. At the time of the referral, OCCL shall request a report of the findings. OCCL shall assist the complaining party with the referral process or make the referral itself, as appropriate. OCCL may coordinate investigation with those other entities. OCCL may adopt another enforcement entity's findings as the basis for an OCCL enforcement action.
- G. DSCYF's Institutional Abuse Unit or law enforcement may investigate if they receive a complaint regarding the abuse or neglect of a child while at the facility or program.

### **13. Enforcement Actions**

- A. A licensee shall follow these regulations and applicable federal, State, and local laws and regulations. Failure to do so will result in a corrective action plan or an enforcement action.
1. Enforcement actions are warning of probation, probation, suspension, revocation, and denial of a license application.
  2. OCCL may initiate an enforcement action when a licensee fails to comply with a corrective action plan, fails to sign an agreement of understanding, fails to comply with a signed agreement of understanding, or has been cited for serious non-compliance.
  3. A licensee may dispute an enforcement action by requesting a hearing within 10 business days of notification of OCCL's decision to impose the action.
    - a. This dispute request must be submitted in writing.
    - b. A licensee may provide evidence that the facility was wrongly cited.
- B. License Suspension
1. OCCL may immediately suspend a license if the health, safety, or well-being of children in care is in serious or imminent danger.
    - a. A suspension order requires the licensee to immediately stop providing child care. Absent extenuating circumstances, a suspension order shall be in writing.

- b. If a verbal suspension order is provided, it will be followed by a hand-delivered written suspension order by 11 AM the following business day.
    - c. A written suspension order must state the reason or reasons for the enforcement action.
  - 2. Within 10 business days of OCCL issuing the written suspension order, the licensee may choose to close permanently, remain suspended until the reason for the suspension has been corrected, or remain suspended and make a written request for a hearing. If a hearing is requested, the license will remain suspended until the Secretary of the Department of Education's decision becomes effective.
  - 3. A hearing must be scheduled within 10 business days of the licensee's written request for a hearing.
    - a. A hearing officer with no previous involvement in the matter must be assigned by the Associate Secretary of Early Childhood Support.
    - b. The hearing officer may allow delays in the hearing only for good cause.
    - c. Within 5 business days of the suspension hearing, the hearing officer shall issue recommendations to the Secretary of the Department of Education in accordance with 14 Del. C. § 3004A. The Secretary of the Department of Education shall accept, deny, or accept in part, and deny in part the recommendations of the hearing officer in the case and issue a final decision within 10 business days of the date of the recommendations.
    - d. The licensee will be notified in writing of the decision of the Secretary of the Department of Education. The decision will become final 10 business days after it is mailed or delivered to the licensee.
  - 4. A licensee dissatisfied with the Department's decision for suspension may file an appeal within 30 business days after the mailing or delivery of the decision notice.
    - a. An appeal may be filed in the Delaware Superior Court in the county where the facility or program is located, by filing the appeal in the Office of the Prothonotary for the Superior Court.
    - b. A licensee shall supply a copy of the appeal to the Department.
    - c. The licensee pays any costs for this appeal that Superior Court rules require to be paid by the filing party.
    - d. The final decision of the Secretary of the Department of Education will remain in place during the appeal process unless otherwise ordered by the court.
- C. Warning of Probation or Probation
  - 1. OCCL may place a facility or program on warning of probation or probation when serious non-compliance is cited.
    - a. OCCL shall notify the licensee in writing of the reasons it intends to place the facility or program on warning of probation or probation.

- b. This letter will describe how a licensee may appeal the decision by requesting a hearing to present information that the cited violations are not valid.
  - c. Warning of probation may initially last up to 6 months and may be extended. Probation may initially last up to 1 year and may be extended.
- 2. Within 10 business days of receiving the written notice, the licensee may submit a written request for a hearing. Failure to request a hearing means the licensee accepts the enforcement action.
- 3. A hearing must be held within 30 calendar days of the hearing request.
  - a. The Department will assign a hearing officer with no previous involvement in the matter.
  - b. A hearing officer may allow delays in the hearing only for good cause.
- 4. After a hearing officer makes a recommendation regarding warning of probation, OCCL's director or designee determines whether to adopt the recommendation and makes a final decision. After a hearing officer makes a recommendation regarding probation, the Associate Secretary of Early Childhood Support determines whether to adopt the recommendation and makes a final decision. OCCL shall notify the licensee in writing of the decision.
- 5. A licensing specialist shall conduct unannounced visits during the enforcement period to ensure compliance with these regulations is maintained.
  - a. The findings will be reported to the licensee in writing.
  - b. A licensee found to be non-compliant with the regulations will be cited and given a corrective action plan.
    - 1) Within 5 business days of the citation, a licensee may dispute citations by contacting a licensing supervisor to request a conference or by discussing the citations over the phone.
    - 2) A licensee may provide evidence that the facility was wrongly cited.
    - 3) After the conference or phone conversation, the supervisor will then discuss the information with the licensing specialist and determine whether to remove the non-compliance from the corrective action plan.
    - 4) The supervisor will inform the licensee of the decision in writing.
- 6. Failure to comply with licensing regulations while on warning of probation or probation may result in having the enforcement action extended or heightened.
- 7. A licensee may not increase the licensed capacity or receive a new license at an additional site while on an enforcement action or when issued a notice regarding OCCL's intent to place the facility or program on an enforcement action.

D. Denial of a License Application or Revocation

1. OCCL may deny a license application or revoke a license for good cause, including the following:
  - a. Failure to comply with applicable provisions of federal, State, or local laws or of these regulations;
  - b. Violation of the terms or conditions of a license;
  - c. Fraud or misrepresentation in obtaining a license or in the subsequent operation of the facility or program;
  - d. Refusal to furnish OCCL with files, reports, or records as required by the law;
  - e. Refusal to permit an authorized representative of OCCL to gain admission to the facility or program during operating hours;
  - f. Engaging in any activity, policy, practice, or conduct by the licensee, or staff member that adversely affects or is deemed by OCCL to be detrimental to the education, health, safety, or well-being of children; or
  - g. Conduct that otherwise demonstrates unfitness by the licensee, or chief administrator to operate a facility.
2. OCCL shall notify the applicant or licensee in writing of the reasons it intends to deny a license application or revoke a license. This letter will describe how an applicant or licensee may appeal the decision by requesting a hearing to present information that the cited violations or reasons for the denial are not valid.
  - a. Within 10 business days of receiving the written notice, the applicant or licensee shall request a hearing in writing or accept the denial or revocation and close the program or facility within the time stated in the notice.
  - b. If an applicant or licensee does not make a timely request for a hearing within 10 business days of receiving the written notice, the denial or revocation will take effect 30 business days after receiving the written notice from OCCL.
3. A hearing will be held within 30 calendar days of the hearing request.
  - a. The Department will assign a hearing officer with no previous involvement in the matter.
  - b. A hearing officer may allow delays in the hearing only for good cause.
4. If an applicant or licensee requests a hearing in a timely manner, its existing license will be valid until the Department provides a written decision after the hearing. However, OCCL may suspend a license immediately whenever the health, safety, or well-being of children in care is in serious or imminent danger.
5. After a hearing officer makes a recommendation, the Secretary of the Department of Education determines whether to adopt the recommendation and issues a final decision. The applicant or licensee will be notified in writing of the decision. The decision will become final 10 business days after it is mailed or delivered to the applicant or licensee.

6. An applicant or licensee who is dissatisfied with the Department's decision regarding revocation or denial may file an appeal within 30 business days after the mailing or delivery of the decision notice.
  - a. The applicant or licensee appeals to the Delaware Superior Court in the county where the facility is located, by filing the appeal in the Office of the Prothonotary for the Superior Court.
  - b. The applicant or licensee shall supply a copy of the appeal to the Department.
  - c. The applicant or licensee pays any costs for this appeal that Superior Court rules require to be paid by the filing party.
  - d. The final decision of the Secretary of the Department of Education will remain in place during the appeal process unless otherwise ordered by the court pursuant to 29 Del.C. §10144.
7. When a license has been revoked or an application has been denied, the licensee may not apply for a license from OCCL for 3 years from the date that the revocation or denial was upheld.

### **PART III ADMINISTRATION AND ORGANIZATIONS**

#### **14. Notification**

- A. A licensee shall immediately call OCCL and speak to a licensing specialist Monday-Friday between 8:00 AM and 4:30 PM, if a child dies or attempts suicide at the facility or program. Leaving a message is not acceptable. If the death or suicide attempt occurs after business hours, a licensee shall immediately call the 24-Hour Child Abuse and Neglect Report Line, currently 1-800-292-9582.
- B. A licensee shall immediately notify the child's parent or the referring agency in the event of a child's death.
- C. A licensee shall notify the child's parent or the referring agency within 1 business day of any serious illness or injury that requires medical treatment or any severe psychiatric episode of a child requiring hospitalization.
- D. A licensee shall call OCCL and speak to a licensing specialist within 1 business day during business hours and send follow-up documentation to the assigned specialist within 3 days of the event in the event of any of the following:
  1. A fire, flood, or other disaster causes damage so the facility or program is unable to operate safely;
  2. A child client is injured and needs medical or dental treatment;
  3. Suspected abuse or neglect of a child while in care (after reporting the suspicion to the 24-Hour Child Abuse and Neglect Report Line);

4. Suspected child abuse or neglect involving a licensee or staff member being investigated by DSCYF or law enforcement;
  5. Known new charges, arrests, or convictions of a licensee or staff;
  6. A child had a reaction to medication requiring medical treatment or received medical treatment because of a medication error, such as giving the wrong medication, giving the wrong dose, failing to give the medication, giving medication to the wrong child, or giving the medication by the wrong route;
  7. An equipment breakdown that threatens the health and safety of children in care, including lack of working toilets, interruption of running water, loss of phone service or power, failure of any fire protection system, and heating or air-conditioning failure; or
  8. A child is abducted, absent without permission, or runs away.
- E. A licensee shall ensure staff members follow the Delaware DSCYF reportable events and notification procedures.
- F. A licensee shall call OCCL and speak to a licensing specialist within 2 business days and send follow-up documentation to the assigned specialist within 5 business days when the facility or program's phone number changes or when the chief administrator resigns, is dismissed, or is hired.
- G. A licensee shall notify OCCL in writing at least 90 days before the expected closing of a facility or program or a change of ownership, sponsorship, location, name, capacity, or type of regulated service being provided.
1. When a licensee plans to sell a currently licensed facility or program, the prospective licensee shall follow the procedures listed in Section 7, before the facility or program is sold so that a child care license can be issued to the new owner after meeting all licensing criteria and the sale is finalized. Lead-risk assessments are transferrable.
  2. Once the initial licensing procedures are completed by the prospective owner, a licensing specialist will conduct a pre-licensing visit to issue a new license that becomes effective the date the facility is sold. If non-compliance is cited, a corrective action plan will be created with a maximum of 30 days for completion assuming no major health or safety violations were cited.
  3. The prospective licensee shall provide a copy of the bill of sale to OCCL before OCCL will issue the license.

## **15. Insurance Coverage**

- A. A licensee shall have documentation of current comprehensive general liability insurance, motor vehicle insurance if transporting children in a vehicle that is owned or leased by the facility or program, and other insurance as required by State law.

## **16. Description of Services**

- A. A licensee shall have available via a website or printed materials the following information:
1. A written description of the facility's or program's mission;
  2. Description of the types of treatment services provided to children;
  3. Description of services provided to children and their families, including those provided directly by a licensee or arranged through another source;
  4. Age range of children served;
  5. Gender of children served;
  6. Rules of the facility or program;
  7. Policies governing visiting, telephone use, and other forms of communication with the child's family, friends, and others;
  8. Religious affiliation and practices observed by a licensee; if applicable;
  9. Activities provided;
  10. Description of a licensee's behavior support policies and procedures and restrictive procedures, if applicable;
  11. Resources on trauma exposure, its impact, and treatment;
  12. Grievance policies and procedures; and
  13. Information on how to obtain a copy of these regulations and on reporting any suspected violations of these regulations.

## **17. Policies and Procedures**

- A. A licensee shall have and follow written policies and procedures:
1. Governing a child's admission to a facility or program.
  2. Protecting a child's rights to privacy and dignity. A photo, video, or recording that reveals a child's identity shall not be used for research, fundraising, or public relations without the written consent of the child's parent or referring agency.
  3. Regarding a child's participation in research projects. The policy shall conform to the National Institute of Mental Health Standards on Protection of Human Subjects.
  4. Governing the recruitment, screening, hiring, supervision, training, evaluation, promotion, and disciplining of staff and volunteers.
  5. The qualifications shall be appropriate to the duties performed.
  6. Governing the assignment of a child to an educational program if a licensee chooses not to provide an educational program directly.
  7. For handling an incident of suspected child abuse or neglect that occurs while a child is a client of the facility or program that complies with applicable laws.
  8. Governing the discipline and behavior supports for children. These policies and procedures shall include the concepts and use of the least restrictive effective treatment and positive reinforcements and shall prohibit:

- a. Roughly handling a child or inflicting physical punishment on a child's body, including shaking, grabbing, striking, hair-pulling, biting, pinching, plucking, slapping, hitting, kicking, or spanking;
  - b. Humiliating, ridiculing, frightening, or degrading children;
  - c. Engaging in discriminatory treatment or harassment based on child's looks, race, national origin, religion, gender, gender expression, sexual orientation, disability, ethnicity, family, or other personal traits;
  - d. Encouraging or allowing children to hit, punish, or discipline each other;
  - e. Denying children food, water, toilet use, or bathing as a result of inappropriate behavior;
  - f. Using any form of forced physical exercise or activity or work assignment that produces pain or discomfort;
  - g. Punishing the group for misbehaviors of a child or a group of children unless the policies and procedures clearly list the specific circumstances and safeguards when this would be allowed;
  - h. Denying medical or dental care;
  - i. Denying visits or communications with family or others as listed in subsection 51.B;
  - j. Denying shelter, appropriate clothing, bedding, or any other essential personal items;
  - k. Denying sleep or rest;
  - l. Using mechanical restraints;
  - m. Attempting to change or discourage a child's sexual orientation, gender identity, or gender expression; or
  - n. Physically or sexually abusing a child.
9. Governing discipline and behavior supports include the model, program, or techniques used based on a child's needs, developmental level, and behavior and its use of each of the following:
- a. Use of a de-escalation system that is a holistic system for defusing escalating behavior and safely managing aggressive behavior;
  - b. Positive supports;
  - c. Use of "time-out," to restrict a child in care to a designated area for a period of time to give the child in care an opportunity to regain self-control,; if applicable;
  - d. Physical escort, if applicable;
  - e. Chemical restraint, if applicable;
  - f. Physical restraint, if applicable; and
  - g. Seclusion, if applicable.
10. Governing the use of appropriate "time-out" techniques. These policies and procedures shall require that appropriate "time-out" techniques may be used after first using other developmentally appropriate behavior supports and only:
- a. When a child's behavior is judged by the staff to be disruptive or prevents others from participating in an activity;

- b. When at least 1 staff member has been designated to be responsible for making visual contact with the child no less frequently than every 15 minutes;
  - c. When the room used for “time out” has adequate space, temperature, light, and ventilation, and is not capable of locking;
  - d. In an area that is not a closet, a bathroom, or an unfinished basement or attic;
  - e. For a duration of time that shall not exceed 1 minute per the age of the child for children under age 6 and no more than 30 minutes for children over age 6;
  - f. When the child is reintroduced to the group in a sensitive and non-punitive manner as soon as the child has regained control;
  - g. When “time-out” episodes are documented in the child’s record; and
  - h. If there are more than 15 “time-outs” for an individual child within a 24-hour period, a licensee shall ensure:
    - 1) The events and actions of the child leading up to each “time-out” are evaluated and staff responses to those events and actions are reviewed to ensure competency of staff to implement a “time-out” only when necessary;
    - 2) The chief administrator or designee conducts a review to determine the child’s suitability to remain in placement in the facility or program or whether changes to the child’s service plan are necessary; and
    - 3) The facility or program takes appropriate action in response to the findings of the review.
11. In cases of emergencies or life-threatening situations, including arrangements for emergency transport services for children. The procedures must include provisions for supervision when a staff is required to accompany a child to a hospital emergency room.
12. On a suicide prevention policy that includes the following:
- a. How the facility will respond in the event a child in care exhibits self-injurious, self-harm, or suicidal behavior;
  - b. Warning signs of suicide;
  - c. Emergency protocol and contacts;
  - d. Training requirements for staff members, including suicide prevention training and suicide risk assessment tool training;
  - e. Procedures for determining implementation of additional supervision precautions and for determining removal of additional supervision precautions;
  - f. Procedures to conduct a suicide risk assessment on the day of intake;
  - g. Documentation requirements for suicide ideation, self-harm, and special observation precautions to ensure immediate communication to all staff;
  - h. A process for tracking suicide behavioral patterns; and
  - i. A “post-intervention” plan with identified resources.

13. Governing the handling of grievances by children. These policies and procedures shall:
  - a. Be written in clear and simple language;
  - b. Be communicated to children in an age and developmentally appropriate manner;
  - c. Be posted in an area easily accessible to children and their parent or referring agency;
  - d. Ensure that any grievance shall be investigated by a staff who is not the subject of the grievance; and
  - e. Require continuous monitoring by a licensee of any grievance to ensure there is no punitive or retaliatory action taken or threatened against a child who reported a grievance.
14. Governing medical emergencies. These policies and procedures shall require that at least 1 staff member is on duty who is qualified to administer first aid and cardiopulmonary resuscitation (CPR) and 1 fully equipped first aid kit is placed in each building used by children and in any indoor recreation area.
15. For record security, maintenance, and disposal that addresses:
  - a. Assigning the responsibility of supervising record maintenance and custody to ensure records are uniform in organization, readily identifiable, current, and complete;
  - b. Securing a record against loss, damage, tampering, accessibility, and unauthorized use;
  - c. Determining to whom a record may be released;
  - d. Determining what type of record or portion of a record may be destroyed and what must be kept permanently;
  - e. Creating a storage system for permanent records that ensures information is protected and kept indefinitely; and
  - f. Transferring and keeping records in the event the facility or program closes.

#### **PART IV STAFFING REQUIREMENTS AND QUALIFICATIONS**

##### **18. General Qualifications and Background Checks**

- A. A licensee shall only employ staff members who understand and respect the needs of children and their families and their cultures. Staff shall be physically and emotionally capable of performing activities related to providing child care, which includes the ability to supervise children's activities; to support children's physical, intellectual, social and emotional growth; to deal with emergencies in a calm manner; and to carry out methods of behavior support, as stipulated in these regulations.
- B. A licensee shall ensure a staff member with a known contagious communicable disease does not provide personal care to or have direct contact with children unless the staff member's health care provider or the Division of Public Health (DPH) provides documentation stating the staff

- member may be present. If a staff has a reportable communicable disease, a licensee shall ensure the disease is reported to DPH. Information regarding the communicable diseases that require reporting may be located on DPH's website (currently listed as <https://dhss.delaware.gov/dph/dpc/rptdisease.html>).
- C. A licensee shall ensure a staff member schedules a fingerprinting appointment with Delaware State Police and is fingerprinted for a Delaware State Bureau of Identification and Federal Bureau of Investigation check before the start of employment.
    - 1. Staff members shall provide the fingerprint verification form to the licensee before working with children.
    - 2. Staff members working in programs receiving Title IV-E funds who currently reside out of state or those who have resided outside of Delaware in the last five years shall contact each state of residence, and request a name-based child abuse and neglect search.
    - 3. After the out-of-state searches are completed, the chief administrator shall submit the results immediately to the Criminal History Unit (CHU).
    - 4. While waiting for the results of the background check, a staff member may not be alone with children and must be supervised at all times by a person who has completed the background check process and been determined eligible.
    - 5. A licensee shall ensure results of all record checks are placed in the staff member's file.
  - D. A licensee may not own or be employed at a facility or program if the licensee is prohibited from working in child care in Delaware based on State law. Applicants and licensees who have a child or children currently or permanently removed from their custody because of abuse, neglect, or dependency are prohibited from providing child care.
  - E. A licensee shall comply with the DELACARE Regulations - Background Checks for Child-Serving Entities.
  - F. A licensee may not employ or retain a person who is prohibited from working in child care in Delaware based on State law. If a person is determined ineligible, the licensee, or DSCYF, in cases where the facility is under contract or directly operated by DSCYF, shall make the final determination on whether to hire or retain the person.
  - G. A licensee may not employ or retain in any capacity a person convicted of an offense defined as child sexual abuse in 11 Del.C. §8550; or who is on the Child Protection Registry at a Level III or Level IV.

- H. When known, the licensee may not employ or retain in any capacity a person whose child or children are currently removed from this person's custody because of abuse or neglect.
- I. After receiving an eligibility determination, a person who is determined ineligible or prohibited under the DELACARE Regulations - Background Checks for Child Serving Entities, is entitled to an administrative review for reconsideration.
  - 1. If the person requests an administrative review, the licensee and the person shall be bound by the final eligibility decision of the administrative review.
  - 2. If a person is determined ineligible, the licensee, or DSCYF in cases where the facility is under contract or directly operated by DSCYF shall make the final determination on whether to hire or retain the person.
  - 3. If a person is determined prohibited, the person may not work in child care.

## **19. Staff Qualifications**

- A. A licensee shall have a full-time chief administrator who meets the following qualifications: at least 21 years of age, a bachelor's degree from a regionally accredited college or university in business, public administration, social or behavioral science, social services, social work, or a human services field and have 2 years of successful related work experience in administration or supervision.
- B. A licensee shall have a case manager who meets the education and experience that are specifically related to the client population to be served. That education and experience shall consist of the following for the type of population served:
  - 1. A bachelor's degree in human services or behavioral science from a regionally accredited college or university in social work, sociology, psychology, speech communication or special education with certification for emotional disturbance or learning disabilities and 1 year of full-time work experience working with children.
  - 2. For work with children who are receiving services primarily for correctional aftercare or emotional disturbance, the case manager shall have one of the following qualifications:
    - a. A master's degree in human services or behavioral science from a regionally accredited college or university that includes field work experience or 1 year of full-time employment experience working with children or families.
    - b. A bachelor's degree in human services or behavioral science from a regionally accredited college or university and either 2 years of full-time employment experience in human services counseling involving

children and families or at least 500 hours of supervised family or child contact therapy hours.

3. For work with residents who are receiving services primarily for a developmental disability, the case manager shall have the following education and experience qualifications:
  - a. A bachelor's degree from a regionally accredited college or university in social work, sociology, psychology, speech communication, special education, physical therapy, or occupational therapy; and
  - b. Specialized training or one year of employment experience in treating or working with persons who are developmentally disabled.
- C. A licensee shall have direct care supervisors, unless assigning case managers to supervise direct care workers, who are at least 21 years old and meet one of the following requirements:
  1. A bachelor's degree in human services or behavioral science from a regionally accredited college or university and one year of full-time work experience working with children;
  2. An associate's degree in human services or behavioral science from a regionally accredited college or university or a minimum of 48 credit hours in human services or behavioral science from a regionally accredited college or university and 2 years of full-time work experience working with children; or
  3. A high school diploma from a regionally accredited high school or equivalent and 3 years of full-time work experience working with children.
- D. A licensee shall have direct care workers who are at least 21 years old and have a high school diploma from a regionally accredited high school or equivalent.

## **20. Administrative Oversight and Staffing**

- A. A licensee shall require the chief administrator to ensure there are sufficient administrative, supervisory, social service, educational, recreational, direct care, and support staff members or volunteers to perform the duties required by these regulations and to provide for the care, needs, medical consultation, and supervision of children.
- B. A licensee shall have an up-to-date organizational table showing the facility's or program's administrative and staffing structure with position titles and lines of authority.
- C. A licensee shall ensure a designated staff is in charge on the premises at all times when children are present.
- D. A licensee shall ensure a direct care supervisor or case manager supervises no more than 12 (full-time equivalent) direct care workers.

- E. If using volunteers, a licensee shall assign designated staff to supervise each volunteer.
- F. A licensee shall ensure written attendance records showing staff members' assignments with exact hours worked are maintained at each facility or program for at least 3 months.

## **21. Personnel and Volunteer Files**

- A. A licensee shall have a personnel file for each staff and volunteer who works with children at least 5 days or 40 hours a year. This file shall be available upon request. Except as noted, all file contents are required at the start of employment or volunteering and shall include the following:
  - 1. Completed application or résumé containing the person's name, date of birth, home address, and phone number;
  - 2. Work or volunteer start date, and end date, if applicable;
  - 3. Two references from adults not related to the person who can verify the person is of good character and respects and understands the needs of children and their families. These references can be letters or written notes gathered by calling the reference. Phone references require the reference's name, phone number, date called, information about the person's character and interactions with children and families, if known, and the name of person receiving the reference;
  - 4. Release of employment history form and received service letters, or documentation showing requests and follow-up for service letters have been made. If the person has not worked or if unable to get at least 1 completed service letter, 2 additional reference letters or phone references are required;
  - 5. Proof of qualifications, education, and applicable professional credential or certification;
  - 6. Health appraisal within the first month of employment conducted within one year before the start date. This appraisal shall confirm the individual's health and document medical or physical conditions that are job related that may limit the person's ability to perform child care or have direct access to children and any reasonable accommodations that may be required in accordance with the Americans with Disabilities Act;
  - 7. TB test or medical professional risk assessment within the first month of employment or volunteering conducted within 1 year before the start date, with further testing if a health care professional has concerns regarding the staff member's health;
  - 8. A statement signed by the person stating the person's status regarding all previous convictions; current indictment or involvement in criminal activity involving violence against a person; child abuse or neglect; possession, sale, or distribution of illegal drugs; sexual misconduct; gross irresponsibility or disregard for the safety of others; serious violations of

- accepted standards of honesty or ethical behavior; or a case of child abuse or neglect substantiated by DFS or the respective responsible entity in another state or country;
9. Documentation of a fingerprinted background check as described in subsection 18.C. A person shall have no unsupervised contact with a child until the facility or program receives an eligibility determination from CHU;
  10. Adult abuse registry check through the Division of Health and Social Services website, currently <https://dhss.delaware.gov/dhss/dltcrp/default.aspx>;
  11. Documentation acknowledging the person is aware that the use of alcohol or a drug that could negatively affect essential job functions; unlawful possession, manufacture, or distribution of alcohol or drugs; or possession of a controlled substance is prohibited while working;
  12. Documentation of the receipt of a facility's or program's policy manual, including verification of client confidentiality policies;
  13. If transporting children, a copy of the current driver's license and proof of vehicle insurance;
  14. Job description for the current position;
  15. If working with children, documentation of an orientation that is completed before working alone with children that includes the following topics and the opportunity to ask questions and receive clarification. The topics shall include:
    - a. The purpose, policies, and procedures, including those governing behavior supports including de-escalation skills training, crisis prevention and management skills, disciplinary techniques that are non-punitive in nature and are focused on helping children build positive personal relationships and self-control;
    - b. Trauma-informed treatment;
    - c. Suicide prevention;
    - d. The staff member's job duties;
    - e. Emergency procedures including the location of emergency exits, emergency equipment, and first aid kits; calling in an additional staff, securing the assistance of law enforcement or emergency personnel, and assigning roles in response to an emergency;
    - f. Current disaster plan, including where staff members and children would evacuate to if required to evacuate to a nearby area and one location out of the area; a list of items to take if evacuated including medication, medical equipment, and other necessities;
    - g. The role of staff and volunteers in client service delivery and the protection of children;
    - h. The Delaware child abuse and neglect law and reporting requirements;
    - i. Information on other federal or State laws or regulations applicable to children and families who are clients of the facility or program, including non-discrimination against a child based the child's race or color, sex, sexual orientation, age, national origin, disability, religion, or pregnancy;

- j. Applicable licensing regulations and the location of the regulations at the facility or program for review;
  - k. Cultural awareness, responsiveness, and sensitivity;
  - l. Sex trafficking signs, symptoms, prevention, and supports;
  - m. Reasonable and prudent parent standard training for designated staff members and age-appropriate and developmentally appropriate activities for a child in care; and
  - n. Procedures for complaint investigations.
- 16. Staff disciplinary actions, if applicable;
  - 17. Record of annual training hours, including certificates and transcripts, if applicable; and
  - 18. Annual performance evaluation signed and dated by the staff and supervisor.

## **22. Contracted Licensed Professionals Files**

- A. A licensee shall have a personnel file, available upon request, for each contracted licensed professional who works with children at least 5 days or 40 hours a year at the facility or program that includes the following:
  - 1. Documentation of a completed fingerprinted background check before the start of employment;
  - 2. Current professional credential or certification;
  - 3. Health appraisal within the first month of employment conducted within one year before the start date. This appraisal shall confirm the individual's health and document medical or physical conditions that are job related that may limit the person's ability to perform child care or have direct access to children and any reasonable accommodations that may be required in accordance with the Americans with Disabilities Act; and
  - 4. TB test or medical professional risk assessment within the first month of employment conducted within 1 year before the start date, with further testing if a health care professional has concerns regarding the staff member's health.

## **23. Training**

- A. Within 2 months of hire unless currently certified, a licensee shall ensure staff members working with children complete certifications in first aid and CPR that requires a "hands on" skills demonstration. The certifications shall be appropriate to the ages of the children served and be kept current.
- B. A licensee shall ensure each staff whose primary role requires interaction with children and who works 30 or more hours a week receives at least 18 hours of professional development training annually.

- C. A licensee shall ensure a staff whose primary role requires interaction with children and who works less than 30 hours a week receives at least 9 hours of professional development training annually.
- D. A licensee shall ensure professional development training is designed to maintain, improve, or enhance the staff member's knowledge or skills in carrying out job responsibilities, and it is in core areas such as behavior supports, crisis management, conflict resolution, cultural competence, mental or behavioral health, substance abuse, health and safety, trauma-informed care, child or adolescent development, professionalism, or communication.
- E. If the facility uses any of the restrictive procedures contained within Section 93, staff must be trained annually regarding the use of that restrictive procedure.

#### **24. Allegations of Abuse or Neglect against a Staff Member**

- A. A licensee shall ensure children are not abused or neglected.
- B. A licensee shall take corrective action to eliminate the factors or circumstances that may have caused or may have otherwise resulted in a continuing risk of abuse or neglect to children if the abuse or neglect occurred at the facility or program by a staff, volunteer, or licensed contracted professional.
- C. A staff member, volunteer, or licensed contracted professional alleged to have perpetrated an incident of child abuse or neglect shall not have direct contact with any child, but may, at the discretion of a licensee, be reassigned to other duties that do not involve contact with children until the investigation by the Institutional Abuse Unit or law enforcement has been completed.
- D. A licensee shall take appropriate disciplinary action against any staff, volunteer, or licensed contracted professional who committed an act of child abuse or neglect.

#### **25. Children's Admission**

- A. A licensee shall ensure the child, the child's parent or the referring agency, and any other appropriate party, are given a reasonable opportunity to participate in the facility's or program's admission process.
- B. When involvement of the child's parent in the admission process is not possible or desirable, a licensee shall record the reasons for the exclusion in the admission records.

- C. A licensee shall not admit a child into care until an admission evaluation has been completed.
- D. A licensee shall have and follow a written admission agreement with the parent or the referring agency. The admission agreement shall be signed by all parties and include:
  - 1. The basis for admission;
  - 2. The service or treatment goals;
  - 3. The specific services or treatment to be provided;
  - 4. The roles and responsibilities of a licensee and the people and agencies involved with the child and the child's family;
  - 5. Authorization to provide services to the child;
  - 6. Authorization to provide or obtain routine medical care for the child;
  - 7. If applicable, the child's religion and practices; and
  - 8. If applicable, authorization to allow the child to participate in recreational and out-of-state activities.
- E. Upon admission, a licensee shall provide to the child and the parent, if applicable, the following information:
  - 1. Rules of the facility or program;
  - 2. Policies governing visiting, telephone use, and other forms of communication with the child's family, friends, and other people;
  - 3. If applicable, religion and practices observed by a licensee;
  - 4. Description of services and activities provided;
  - 5. Description of a licensee's behavior support policies and procedures and if applicable, restrictive procedures;
  - 6. Resources on trauma exposure, its impact, and treatment;
  - 7. Grievance policies and procedures;
  - 8. Name of the child's service worker; and
  - 9. Information on how to obtain a copy of these regulations and on reporting any suspected violations of these regulations.
- F. When a licensee declines to admit a child, a licensee shall provide the child's parent or the referring agency with a written explanation of the reasons for refusal, if requested.

## **26. Service Plan**

- A. A licensee shall have and follow a written service plan for each child admitted into a facility or program.
- B. A licensee shall give the child and the child's parent or the referring agency an opportunity to be involved in the development of the service plan unless there is documentation justifying the reason for non-participation.
- C. A licensee shall ensure everyone who participated in the service plan's development signs the plan.

- D. A licensee shall begin to create the service plan within 7 days of a child's admission; complete the service plan within at least 30 days; and update the plan every 3 months thereafter during the child's placement at the facility or program. Facilities operating as shelter care shall initiate service planning within 24 hours of admission.
- E. A licensee shall ensure the service plan addresses the following:
1. Behavioral functioning;
  2. Psychological or emotional adjustment;
  3. Personal and social development;
  4. Familial relationships and family history including parent or caregiver trauma and its impact on the family system;
  5. Approved methods of behavior support;
  6. Brief history of traumatic events;
  7. Medical and health needs as indicated by a health screening;
  8. Type and frequency of direct supervision required that considers the child's age, maturity, behavior, and developmental level;
  9. Educational and vocational needs;
  10. Recreational interests and abilities;
  11. Identification of services or treatment and their arrangements on behalf of the child and the child's family;
  12. When applicable, a description of any specialized service or treatment by other appropriately qualified professionals;
  13. Conditions for discharge; and
  14. A projection in regard to the child's length of stay and an initial plan for discharge.
- F. A licensee shall ensure each child's service plan includes behavioral or functional objectives that specifies behaviors to be changed, eliminated, or modified, and includes projected achievement dates, with measurable indicators or criteria for monitoring progress and assessing achievement of the service plan's objectives.
- G. A licensee shall provide a copy of the plan to the child, parent, if applicable, and referring agency.
- H. A licensee shall ensure at the time of each three-month review, the service plan is updated to include the following:
1. Progress made toward achieving the goals established in the previous service or treatment plan;
  2. Any changes in the service or treatment plan; and
  3. A projected date for the child's discharge.

## **27. Children's Health Appraisals**

- A. A licensee shall ensure that within 1 month of admission, each child's file contains a health appraisal that includes an immunization record that adheres to 14 Del.C. §131 and 14 DE Admin. Code 804. A health care provider must have conducted this health appraisal within the last 12 months.
  - 1. If a licensee cannot obtain documentation of a health appraisal or immunizations for a child, such as specified in the McKinney-Vento Homeless Assistance Act, a licensee shall coordinate with the child's parent or referring agency to obtain the required health appraisal and immunizations and ensure the appraisal is conducted within 30 days of admission and the immunizations begin within 30 days of admission.
  - 2. A child will be exempt from immunization if:
    - a. The child's parent objects to immunizations on a religious basis and completes an affidavit of religious belief; or
    - b. The child's health care provider provides a notarized statement certifying that the immunization may be harmful to the child's health.
- B. A licensee shall have an on-site confidential file for each child within 1 month of enrollment that is retained for at least 3 months after discharge. This file shall contain information on:
  - 1. Available past medical history;
  - 2. Inventory and assessment of medications in use at the time of admission;
  - 3. Immunizations or exemptions as required by subsection 27.A.2.a or 27.A.2.b;
  - 4. Medications dispensed while at the facility or program;
  - 5. Medical consents and releases from the child's parent or referring agency;
  - 6. Medical, dental, psychological, or psychiatric examinations; and
  - 7. Medical treatment currently being provided.

## **28. Education Requirements**

- A. A licensee shall ensure each school-age child receives an appropriate education, in accordance with applicable federal and State laws and regulations. Education shall be provided by an off-site public or private school or an on-site school.
- B. A licensee shall ensure that adolescent children receive career preparation services, life skills training, and employment counseling unless such services, training, and counseling are being provided in their regular or special education school program. Such services, training, and counseling shall be appropriate to the age and capabilities of the child.
- C. For an adolescent who is not legally required to attend school, a licensee shall ensure the child is either employed or enrolled in a training program geared toward gaining suitable employment or necessary life skills appropriate to the child's age, capabilities, and service plan.

- D. A licensee shall provide appropriate space and supervision for quiet study after school hours.
- E. A licensee shall ensure each child has access to necessary educational references and other resource materials.

## **29. On-Site School Requirements**

- A. If a licensee chooses to provide an on-site school, a licensee shall ensure the school complies with the following:
  - 1. One teacher shall be responsible for educating no more than 20 children;
  - 2. Teachers shall be at least age 21 and possess a bachelor's degree from a regionally accredited college or university and be certified to teach in Delaware. Certification shall be appropriate to the age and educational needs of the children in the program or facility;
  - 3. Staff meeting the qualifications of direct care worker may assist in the on-site school as long as they work under the supervision of a teacher;
  - 4. The school operates for at least as many days and hours as required by State laws and regulations;
  - 5. A curriculum that is appropriate to the population to be served is followed;
  - 6. Special education and related services are provided or arranged by a licensee for each child whose special education needs have been identified and as appropriate in collaboration with the child's school district;
  - 7. Appropriate written records are maintained for each child that reflects the use of a uniform grading system; and
  - 8. Has a process for transfer and release of educational records to and from other schools or facilities.

## **30. Religion and Culture**

- A. A licensee shall respect the religious preference of the child and the child's parent, if applicable.
- B. A licensee shall ensure each child is provided opportunities to attend religious services or activities in the child's religious faith of choice. A licensee shall directly arrange for the transportation of a child to services or activities that are off-site or provide the technology for virtual attendance, unless this is not recommended in the service plan.
- C. A licensee shall not require or coerce children to participate in religious services or activities, shall not discipline, discriminate against, or deny privileges to any child who chooses not to participate, and shall not reward any child who chooses to participate.

## **PART V PHYSICAL ENVIRONMENT AND SAFETY**

### **31. General Safety**

- A. A licensee shall keep all areas, furnishings, and equipment of the facility or program in a clean, hazard-free, and safe condition. Floors, walls, counter surfaces, toilets, and surfaces or finishes must be cleanable and in good repair.
- B. A licensee shall take the following measures to prevent hazards to children in care:
  - 1. To prevent cuts, abrasions, and punctures, equipment, materials, and other objects on the premises that have sharp edges, protruding nails, bolts, or other dangers must be repaired, removed, or made inaccessible to children;
  - 2. To prevent burns, equipment, materials, or products that may be hot enough to injure a child must be made inaccessible to children;
  - 3. To prevent sheering, crushing, or pinching, broken or cracked equipment, materials, and objects must be repaired, removed, or made inaccessible to children;
  - 4. To prevent tripping, uneven indoor and outdoor walkways, damaged flooring or carpeting, or other tripping hazards must be removed or repaired; and
  - 5. To prevent injuries, equipment in poor condition (rusty parts, flaking paint, or other dangers) must be repaired, removed, or made inaccessible to children.
- C. A licensee shall have documentation that the buildings of the facility or program conform to all applicable State and local fire laws, regulations, and codes.
- D. A licensee shall ensure toilets, tubs, sinks, and showers are in working condition, do not leak, are in good repair, and are kept clean.
- E. A licensee shall ensure bathroom floors, showers, and bathtubs have slip-proof surfaces.
- F. A licensee shall ensure bathrooms are equipped with windows that open or a working mechanical ventilation system to the outside.

- G. A licensee shall keep the facility or program free from rodent and insect infestation. If pesticides are used, they shall be used according to the manufacturer's instructions.
- H. A licensee shall ensure the water temperature does not exceed 120° F from all water faucets and other water sources accessible to children in care. All sinks shall supply hot and cold water under pressure at all times and all plumbing shall comply with State and local plumbing codes. Water supply and the sewage disposal shall be approved by DPH and the Department of Natural Resources and Environmental Control, respectively.
- I. A licensee shall ensure that garbage and trash are stored in non-combustible, covered containers.
  - 1. Indoor containers shall be emptied at least daily to an outdoor receptacle and kept clean.
  - 2. Outdoor garbage containers shall be inaccessible to children, emptied at least weekly, and, with the exception of dumpsters, cleaned as needed.
- J. A licensee shall ensure that rooms used by children, including bedrooms, dining rooms, recreation rooms, and classrooms, are suitably lighted for safety and comfort. A licensee shall ensure corridors are illuminated during night-time hours.
- K. A licensee shall ensure stairways over four steps have handrails at a maximum height of 38 inches that are safe for children and adults.
- L. A licensee shall securely screen or equip fireplaces with protective guards while in use.
- M. A licensee shall prohibit the storage or use of any firearms or other weapons on the grounds of the facility or program or in any building used by children.
- N. A licensee shall ensure power-driven equipment shall be appropriately shielded and maintained in good repair. Children shall be permitted to use such equipment only when it is age-appropriate and only under the direct supervision of a staff.

## **32. Heating and Cooling**

- A. A licensee shall keep temperatures in rooms used by the children at a minimum temperature of 68°F and a maximum of 82°F unless overridden by federal and State energy laws.
- B. A licensee shall ensure that each habitable room has a window, working heating, and cooling ventilation.

- C. Floor or window fans must be inaccessible to children and bear the safety certification mark of a recognized testing laboratory such as Underwriters Laboratories or Electro-Technical Laboratory.
- D. A licensee shall ensure heating, cooling, and plumbing equipment is properly installed, cleaned, and maintained to operate safely.
- E. A licensee shall ensure heating and cooling equipment prevents injury to children by having safety shielding.
  - 1. Fire code prohibits the use of heating equipment such as portable, open-flame, space heaters.
  - 2. Hot water pipes, steam radiators, and wood-burning stoves shall be out of children's reach to protect children against burns.
  - 3. Electric space heaters are prohibited.

### **33. Air Quality and Windows**

- A. A licensee shall ensure a facility or program located in a building that previously contained or currently contains a dry cleaner, nail salon, or any other use that may result in an unacceptable indoor air quality, will not be licensed or have a license renewed, unless the applicant or licensee obtains indoor air sampling as required per 7 DE Admin. Code 1375 that shows there is no impact to the facility or program.
- B. A licensee shall ensure a facility or program is ventilated to ensure that the air quality within the facility or program provides a healthy environment for children and adults. Insect screening shall be in good repair for all exterior doors and operable windows when the doors and windows are used for ventilation, provided that all requirements for fire safety have been met. This screening shall be easy to remove in an emergency.

### **34. Hazardous Materials**

- A. A licensee shall ensure the facility or program is free of unacceptable exposure to hazardous materials.
- B. An applicant and licensee shall ensure the facility or program is free of lead-based paint hazards. Buildings constructed in or after 1978 are exempt from lead-paint risk assessments and testing.
  - 1. If the buildings were constructed before 1978, an applicant or licensee shall provide to OCCL a lead-paint risk assessment performed by an environmental testing firm certified by DPH showing the facility or program to be free of lead-based paint hazards.
    - a. Before license renewal, unless previously submitted to OCCL, a licensee shall submit this risk assessment.
    - b. If lead paint is identified but intact (i.e. not chipping, flaking, or peeling), the licensee shall monitor the identified areas at least every 6 months

- and document that the lead-based paint is intact (in good repair and not deteriorated). Lead-based paint is not regarded as a hazard if it is intact, not present in an accessible surface, a friction surface, or an impact surface that could result in an adverse human health effect.
2. If lead-paint hazards are identified in the risk assessment that are not considered de minimis, the applicant or licensee shall remedy the hazards by hiring a lead-safe contractor (lead abatement or renovation firm) certified by DPH to make the repairs.
    - a. Once the repairs are made, a lead-dust clearance inspection must be performed by an environmental testing firm certified by DPH to confirm the facility or program is free of lead-based paint hazards.
    - b. The applicant or licensee shall provide the lead-dust clearance testing results to OCCL within 5 business days to confirm the facility or program is free of lead-based paint hazards.
    - c. Children may not be present during repairs and the facility or program must stay closed until the results of the lead dust clearance are at appropriate levels and the lead-safe contractor states it is safe for the facility or program to be open.
  3. If any lead-based paint identified in a risk assessment in a pre-1978 child-occupied facility becomes deteriorated or if lead-based paint is located in an area to be remodeled, a licensee shall retain a contractor certified by DPH to work using lead-safe work practices (lead abatement or lead renovator) to perform any renovation or repair.
    - a. Records of this renovation or repair work must be forwarded to OCCL within 5 business days of completion.
    - b. Children may not be present during repairs or renovation until a lead-dust clearance test is obtained and the lead-safe contractor states it is safe for the facility or program to be open.
- C. A licensee shall ensure radon testing is performed in each room used by children once every 5 years between the months of October and March and within 6 months after any remodeling, renovations, or construction.
1. This testing may be performed by the property owner or an inspector certified by the American Association of Radon Scientists, the National Radon Safety Board, or any organization recognized by the EPA or State of Delaware Radon Program.
  2. If testing indicates a radon level over the level acceptable to the EPA (currently 4.0 pCi/L), a licensee shall ensure acceptable radon mitigation occurs or a long-term radon test (90-120 days) indicates an acceptable level.
  3. A licensee shall ensure copies of radon testing results are sent to OCCL within 5 business days of receiving the results.
- D. A licensee shall ensure that containers of poisonous, toxic, or hazardous materials are prominently and distinctly marked or labeled for easy identification as to contents.

1. These materials shall be used only in the manner and under the conditions that will not contaminate food or constitute a hazard to the children in care or to staff.
2. These materials shall be stored in a locked storage space accessible only to authorized staff.
3. Materials required for routine cleaning and maintenance shall be stored and used in a safe manner.
4. The storage of flammable liquids and gases shall not be permitted in the facility or program except as allowed by the Office of the Fire Marshal.

**35. Smoking, Vaping, Illegal Drugs, and Alcohol**

- A. A licensee shall prohibit children from smoking, vaping, using illegal drugs, or drinking alcohol at the facility or program and during trips.
- B. A licensee shall prohibit staff, volunteers, and visitors from smoking, vaping, using illegal drugs, or drinking alcohol in the presence or in sight of children at the facility or program, when transporting children, or during trips.
- C. A licensee shall prohibit staff members, volunteers, and visitors from buying alcohol, tobacco, vaping products, and illegal drugs for children.

**36. Outdoor Area**

- A. A licensee shall ensure the following:
  1. Structures, fences, equipment, and the grounds are maintained in a clean, hazard-free, and safe condition;
  2. Hazards such as animal feces, toxic plants, broken seating or outdoor furniture, building supplies, power equipment, glass, sharp rocks, cigarette butts, beehives and wasp nests, and lawn mowers are not present when an area is used by children.
  3. Exterior lighting is provided for the buildings, parking areas, pedestrian walkways, or other premises used by children, staff, or volunteers while it is dark;
  4. Grounds drain naturally or through installed drainage systems so there is no standing water on the premises. Standing water after a storm must drain within 48 hours; and
  5. All areas determined to be unsafe including steep grades, cliffs, open pits, swimming pools, high voltage boosters, propane gas tanks, streets or roads, driveways, railroad tracks, or parking lots are fenced off or have natural barriers to protect children.
- B. A licensee shall ensure that raised areas on the premises, other than stairways over 2 feet, such as porches, elevated walkways, and elevated play areas, have walls or barriers to prevent falls over the open side. The walls or barriers must be at least 36 inches tall.

- C. A licensee shall maintain or have access to an outdoor recreation area with at least 75 square feet for each child for the maximum number of children who will use the outdoor area at one time. When a licensee is not able to comply with this requirement, a licensee shall provide a minimum of 700 square feet of open, accessible indoor space suitable for large muscle activity.
- D. A licensee shall ensure that its outdoor recreation program area has age-appropriate equipment for vigorous play, large muscle activity, physical exercise and group sports. Such equipment shall be kept in a clean, safe, and operable condition.

### **37. Kitchen and Food Preparation**

- A. A licensee shall ensure a kitchen or food preparation area is provided with the necessary operable equipment to prepare, store, serve, and clean-up all meals and snacks for children and staff. A facility or program that does not prepare food on-site is exempt from subsections 37.A through 37.K.
- B. The kitchen requirements for facilities or programs that prepare and serve meals and snacks are, but not limited to:
  - 1. One Refrigerator;
  - 2. Three-compartment sink; or
  - 3. Two-compartment sink and sanitizing basin; or
  - 4. Two-compartment sink and dishwasher; and
  - 5. Separate hand-washing sink within the food preparation area;
  - 6. Range or cooktop;
  - 7. Oven or microwave; and
  - 8. Food storage areas.
- C. A licensee shall ensure food service equipment and utensils are constructed of material that is non-toxic, easily cleanable, and kept in good repair.
- D. A licensee shall ensure food preparation areas are cleaned and sanitized after each use.
- E. A licensee shall ensure appliances, dishes, cups, pots, pans, and utensils in which food was prepared or served are cleaned and sanitized following each meal.
- F. A licensee shall ensure floors, walls, and counter surfaces that come into contact with food are made of easily cleanable non-porous materials.
- G. A licensee shall ensure the kitchen has a cook stove and oven with an appropriately vented hood that is kept in a safe and working condition.

- H. A licensee shall ensure the kitchen has sufficient lighting and all lights located over, by or within food preparation, serving, and storage areas have safety shields or light covers.
- I. A licensee shall ensure a facility or program has a refrigerator to keep perishable food, including lunches prepared at home, cold at 41°F or colder, and food stored in a freezer frozen at 0°F or colder.
  - 1. A working thermometer must be in refrigerators and freezers.
  - 2. Unused freezer compartments in mini-refrigerators do not need a thermometer.
- J. A licensee shall ensure the food served is nutritional, clean, wholesome, free from spoilage and contamination, and safe to eat. Prepared food items must be correctly labeled with the contents and date of preparation.
- K. Food storage areas and appliances must be cleanable and free of food particles, dust, and debris.
  - 1. All food items must be stored off the floor.
  - 2. Food must be stored separately from cleaning materials.
  - 3. Food must be stored in closed or sealed containers that are labeled with the contents and expiration date.

### **38. Water, Food, and Nutrition**

- A. A licensee shall ensure drinking water is always available to children.
- B. A licensee shall ensure that all children are provided nutritionally balanced meals and snacks, and portions suitable to the size and age of the child according to the Dietary Guidelines for Americans recommended by the United States Department of Agriculture.
- C. A licensee shall ensure that a current written menu is posted in a noticeable location on the premises. Menus listing foods served shall be kept for 30 days. Changes to the food served on a certain date shall be written on the menu on or before that date.
- D. A licensee shall ensure that alternate meals and snacks are provided for children on special diets when prescribed by a physician or required by religious beliefs or food preferences.

### **39. Administration of Medication**

- A. A licensee shall ensure that only staff trained in Limited Lay Administration of Medications (LLAM) or health care providers, nurses, or other qualified medical health personnel administer medication to children in a facility or program.

- B. A licensee shall follow the policies and procedures described in LLAM governing the use, storage, and administration or assistance with the self-administration of medications to children. These policies and procedures shall:
1. Identify those staff who may administer or assist with the self-administration of medications, in accordance with applicable State laws and regulations;
  2. Prohibit the administration of psychotropic medications unless a physician determines that such medication is clinically indicated;
  3. Prohibit the administration of medication for the convenience of a staff, or as a substitute for appropriate treatment services;
  4. Require that an informed, written consent of the child's parent or referring agency is received and maintained on file before the administration of any medication;
  5. Require the use of a Medication Administration Record (MAR) to document the administration of all medications and medication errors; and
  6. Ensure that any known prescribed medication taken by a child is not changed, altered, or failed to be dispensed without first consulting a physician.
- C. A licensee shall have, follow, and maintain a written schedule for each child receiving medications.
- D. A licensee shall ensure that medications are in the original container, properly labeled, and stored in a secure locked area, or as needed, in a locked refrigerated area. Keys to the secure area shall be kept in a location that is inaccessible to children.
- E. A licensee admitting children with prescribed psychotropic medication or with prescribed medication for chronic illness, such as diabetes or asthma, shall ensure that each of these children receive a monthly medical consult. This medical consult shall be conducted by a person licensed as a registered nurse or physician in Delaware and assigned responsibility for overseeing the assistance with medication. The medical consult shall be documented and include the following:
1. Review of the administration of the child's medication, including determining any problems in taking the medication and developing a plan to remedy those problems if needed;
  2. Assess and monitor the child with regard to the impact of the medication, including whether the medication is having its desired effects and whether the child is experiencing undesired side-effects;
  3. Provide a liaison between staff and the child's physician; and
  4. Provide staff with instruction in the expected outcomes from each child's medication regime and the possible side effects of that medication.

#### **40. Hand Washing**

- A. A licensee shall ensure that sinks used for hand washing have liquid soap and paper towels, a mechanical hand dryer, or individual clean cloth towels available for use. If cloth towels are used, a licensee shall ensure that they are washed or replaced daily.
- B. A licensee shall ensure staff members' and children's hands are washed with soap and running water, even if gloves were worn, and dried with a paper towel, mechanical hand dryer, or individual clean cloth towel, as follows:
  - 1. Before and after: eating or handling food; giving medications, and caring for a child who may be sick;
  - 2. After: toileting, touching blood, feces, urine, vomit, nasal or other bodily fluids; handling animals, their equipment, or coming into contact with an animal's body fluids; cleaning, and taking out the garbage.

#### **41. Standard Precautions**

- A. A licensee shall ensure standard precautions are used to protect against disease and infection. Spills of body fluids (i.e. urine, feces, blood, saliva, and discharges from the nose, eyes, an injury, or other tissue) shall be cleaned up immediately, as follows:
  - 1. For vomit, urine, and feces on surfaces including floors, walls, bathrooms, tabletops, toys, kitchen counters, the area shall be cleaned with soap and water, and then disinfected.
  - 2. For blood, blood-containing fluids, and tissue discharges, staff must wear non-porous gloves and not allow contact with any open skin sores or mucous membranes, and the area shall be cleaned with soap and water, and then disinfected.
  - 3. Bloody material shall be put in a plastic bag, tied securely, and thrown away.
  - 4. Mops shall be cleaned, rinsed, disinfected, wrung, and hung to dry.

#### **42. Sanitation**

- A. For sanitizing and disinfecting, a licensee shall ensure one of the following is used: an EPA-registered product, a commercially prepared product, or a bleach and water solution mixed to the proper concentration. A licensee shall follow the manufacturer's instructions for use. These products shall be labeled with the contents. Their instructions for use shall be available at all times.
- B. A licensee shall ensure cleaning equipment, including mops and buckets, are cleaned and stored in an area separate from the kitchen and food preparation, serving, and storage areas. Kitchen and bathroom sinks shall not be used for cleaning mops, emptying mop buckets, or for any other purpose not connected with food preparation or handwashing.

- C. A facility licensed to care for 13 or more children shall have a service sink to use for purposes not connected with food preparation or handwashing.
- D. A licensee shall ensure that beds, mattresses, and bedding are age-appropriate and assigned to one individual child for exclusive use. All bedding shall be cleaned weekly and when soiled or wet.
- E. A licensee shall ensure the following items or surfaces are cleaned with a soap and water solution and then disinfected, as follows:
  - 1. After each use: food preparation and eating surfaces, such as counters, tables;
  - 2. At least daily: toilets and toilet seats, sinks and faucets, drinking fountains, and smooth non-porous floors.
- F. A licensee shall ensure door knobs and high-touch surfaces in common areas are cleaned with a soap and water solution and sanitized at least daily.

#### **43. Child Injury or Medical Event**

- A. A licensee shall ensure when an injury occurs to a child while in care of the facility or program, a staff member takes emergency action to protect the child from further harm, calls emergency medical services if needed, and notifies the child's parent or referring agency.
  - 1. For a serious or potentially serious injury, the child's parent or referring agency shall be notified immediately after staff have taken appropriate emergency action to assist the child.
  - 2. A licensee shall maintain a written injury report in the child's file or a central log for each incident that includes the name of child, date of injury, description of injury, how it occurred, and first aid or medical care provided.
- B. In the event of a significant child medical event, such as a seizure, asthma attack, or severe allergic reaction, the child's parent or referring agency shall be notified immediately after staff have taken appropriate emergency action to assist the child, including contacting emergency medical services as needed.

#### **44. Emergency Plan**

- A. A licensee shall have and follow a written emergency plan describing procedures for natural and man-made disasters, communicable disease outbreak, and when a child is missing or runs away. The emergency plan shall include procedures for training staff for both natural and man-made disasters in at least the following areas:

1. Disaster preparedness, including notification to the fire department with responsibility for responding to a building that it contains a locked seclusion room, if applicable;
  2. Staff's specific responsibilities during a disaster;
  3. Accounting for children and staff;
  4. Relocation process;
  5. Medication access and administration;
  6. Accommodations of infants, toddlers, and children with disabilities or chronic medical conditions; if applicable;
  7. Continuation of services in the period following the emergency disaster;
  8. Contacting appropriate emergency response agencies and the parents or referring agencies; and
  9. Lock down procedures.
- B. A licensee shall ensure evacuation drills are practiced at least monthly at varied times of the day and night and during varied activities. Drills shall be practiced using different exits throughout the year. Evacuation routes shall be posted in the common areas on each floor level. Each drill shall be documented and include the date and time of the drill; number of children and staff who participated; exits used; and total amount of time necessary to evacuate.
- C. A licensee shall have and follow a written emergency plan describing procedures to shelter-in-place at the facility or program for up to 24 hours due to a natural or man-made disaster that includes a list of emergency supplies kept onsite including a sufficient quantity of non-perishable foods, bottled water, and equipment necessary to serve or prepare foods at the facility or program without the use of electricity.

#### **45. First Aid Kits**

- A. A licensee shall have at least one complete first aid kit in a location readily accessible to staff but not to children. A first aid kit shall be taken on field trips and program outings.
- B. A licensee shall ensure contents of the first aid kit located on-site includes the following:
1. Disposable non-porous gloves;
  2. Scissors;
  3. Tweezers;
  4. A non-glass thermometer to measure a child's temperature;
  5. Bandage tape;
  6. Sterile gauze pads;
  7. Flexible rolled gauze;
  8. Triangular bandage or sling;
  9. Safety pins;

10. Eye patch or dressing;
  11. Pen/pencil and note pad;
  12. Instant cold pack;
  13. Current American Academy of Pediatrics or AAP standard first aid chart or equivalent first aid guide;
  14. Small plastic, metal, or wooden finger splints;
  15. Non-medicated adhesive strip bandages; and
  16. Plastic bags for cloths, gauze, and other materials used in handling blood.
- C. In addition to the items listed in subsection 45.B, a first aid kit used on field trips or program outings shall include the following items:
1. Bottled water;
  2. Liquid soap;
  3. Emergency medications needed; and
  4. List of emergency phone numbers and the Poison Control Center phone number.

#### **46. Transportation**

- A. Excluding the use of school buses, a licensee shall ensure only vehicles with a rated capacity as defined by the manufacturer of 10 passengers plus the driver or less may be used to transport children.
- B. A licensee shall ensure when transporting children that the driver, when employed by the facility or program, and vehicle, when owned or leased by the facility or program, comply with all applicable federal and State laws.
1. The driver shall be at least 21 years old.
  2. The driver shall have a valid driver's license and vehicle insurance that authorizes the driver to operate the vehicle being driven.
  3. The driver shall have a background check confirming eligibility to be alone with children during transport.
  4. The driver may not transport more children and adults than the vehicle's capacity.
- C. A licensee shall ensure that companies contracted by the facility to provide transportation services to children follow applicable State and federal laws.
- D. A licensee shall ensure each child is secured in an individual safety restraint system appropriate to the age, weight, and height of the child at all times while the vehicle, other than a school bus, is in motion.
1. Safety restraints must be federally approved and labeled according to the applicable Federal Motor Vehicle Safety Standard.
  2. Child safety restraints must be installed and used as determined by the manufacturer and vehicle's instruction manual.
  3. Safety restraints must be kept in a safe working condition and free of recall.

- E. A licensee shall ensure vehicles used to transport children have and use the following:
  - 1. A working heater capable of keeping an interior temperature of at least 50°F;
  - 2. Air-conditioning to reduce the interior temperature when it exceeds 82°F (school buses are exempt);
  - 3. A working phone;
  - 4. A traveling first aid kit including children's emergency contact information; and
  - 5. A dry chemical fire extinguisher approved by Underwriters Laboratory.
- F. A licensee shall ensure children are loaded and unloaded at the vehicle's curbside or in a protected parking area or driveway.
- G. A licensee shall ensure all doors are locked when the vehicle is moving.
- H. A licensee shall have written parent permission or the referring agency's permission for transportation provided by the facility or program.
- I. A licensee shall ensure children are never alone in the vehicle and that the vehicle is visually checked at the final location so that no child is left behind.
- J. A licensee may not transport children in the open back of a truck.
- K. A licensee that chooses to transport non-ambulatory children with disabilities shall ensure the following additional equipment is provided for all vehicles except automobiles used for transporting children:
  - 1. A ramp device to permit entry and exit of a child;
  - 2. A fastening system for wheelchairs that secures the chair to the vehicle floor; and
  - 3. Adequate aisle space that does not impede access to the exit door.

#### **47. Swimming**

- A. A licensee shall ensure all children are under direct supervision while wading or swimming.
- B. A licensee shall ensure permanent or built-in swimming pools, filtered wading pools, and hot tubs are inaccessible to children when not in use by using a physical barrier with a locking mechanism.
- C. The water in swimming pools used by children shall be treated, cleaned, and maintained according to DPH regulations.
- D. The pool and equipment shall be kept in a safe manner and be hazard-free.

- E. A licensee shall ensure an individual currently certified as a Red Cross Lifeguard or a nationally recognized equivalent is on duty and supervising swimming activities.

#### **48. Pets**

- A. A licensee shall ensure pets kept by the facility or program are cared for in a safe and sanitary way.
- B. A licensee shall keep proof of vaccinations required by State law (currently this is rabies vaccinations for dogs and cats).
- C. Poisonous or aggressive animals; animals known to be carriers of illnesses, such as ferrets, turtles, iguanas, lizards or other reptiles; birds of the parrot family; or animals sick with a disease that can be spread to humans may not be kept at the facility.
- D. A licensee shall keep containers used for collecting or containing animal feces or urine out of rooms used by children.
- E. A licensee shall inform parents or referring agency of animals or pets kept by the facility or program.

### **PART VI RESIDENTIAL CHILD CARE FACILITIES**

#### **49. Policies and Procedures for Residential Child Care Facilities**

- A. A licensee shall have and follow written policies and procedures governing visits as applicable between children and their parent, relatives, and friends, both at the facility, at the children's own homes, and at other suitable locations. These policies and procedures shall address the days and hours of visits, frequency of visits permitted, any exceptions governing whom the child may visit, and whom to contact to arrange for special accommodations in the event of hardship or emergencies and shall be consistent with applicable State laws, regulations, or court orders.
  - 1. A facility shall explain the policies to the child and child's parent or referring agency.
  - 2. A facility shall provide accommodations within the buildings to allow visits with children to be conducted in reasonable privacy, except where the service plan indicates that visits are to be directly supervised, or when the facility has reason to believe that a particular visitor would not be in the best interest of the child.
  - 3. A facility shall not deny or restrict children's visits in the facility with their parent, relatives, or friends based upon a child's behavior, unless the child's behavior is unsafe or denial of visits based on behavior is specified in the child's service plan.

- B. A licensee shall include in the visitation policies and procedures provisions for verifying the identity of any visitor not known to the facility and determining the location of overnight visits and the adult responsible for the child's care during the visit before releasing the child.
- C. A licensee shall have and follow written policies and procedures governing visiting or touring the facility by volunteers, advisory committees or councils, public officials, the media, and the public who are not related to children in care. These policies and procedures shall address:
  - 1. The process required to get written approval before visiting or touring the facility;
  - 2. The purpose and extent of such visits or tours;
  - 3. The days, hours, frequency, and length of visits or tours;
  - 4. The circumstances and conditions when people may visit or tour, including a requirement that visits or tours are supervised by staff;
  - 5. Precautions to protect the privacy, health, safety, and well-being of children in care; and
  - 6. Conditions to ensure that visits or tours do not:
    - a.. Cause a major or serious disruption of services or treatment to children;
    - b. Interfere with the implementation of the child's service plan;
    - c. Intimidate or embarrass children or staff; or
    - d. Seriously interfere with or disrupt program operations.
- D. A licensee shall have and follow written policies and procedures governing the handling and management of children's money. These policies and procedures shall include provisions on:
  - 1. The conditions under which a child may have money;
  - 2. The management of individual monetary accounts when the facility or program stores the money for the child to access, ensuring that there is an accurate record of each child's money including any additions to or deductions from the original amount;
  - 3. Prohibiting a facility from requiring a child to pay for the cost of a child's own care and treatment, except for the reasonable reimbursement of costs required to pay for purposeful damage to the facility or to another person's property by a child; and
  - 4. Allowing or assisting with opportunities for a child to earn an allowance or to earn money by working.
- E. A licensee shall have and follow written policies and procedures ensuring children are offered developmentally appropriate leisure, recreational, and physical activities, including extracurricular, enrichment, cultural, and social activities, if permissible with a child's service plan. These policies and procedures shall contain provisions requiring:

1. Each child has ongoing opportunities to participate in at least one age-appropriate and developmentally appropriate activity;
  2. Children not be threatened, coerced, or intimidated to participate or engage in any recreation, physical exercise, or leisure time activity, but may be required to attend while not participating in the activity;
  3. Staff provide adequate and appropriate supervision of children engaging in recreation, physical exercise, or leisure time activities and offer instruction, guidance, and support to assist a child in learning to do so in a safe manner;
  4. A list of the types of activities to be offered to children both on and off the premises, if permissible with a child's service plan;
  5. A balanced mixture of planned recreation, physical exercise, and leisure time activities, so that children have a reasonable choice of alternatives in which to participate;
  6. Opportunities for both individual and group activities;
  7. Children shall not engage or participate in high-risk activities unless:
    - a. A licensee complies with applicable provisions governing such activities, as specified in Sections 80 - 86; or
    - b. A licensee uses an existing high adventure activity provider that is certified or approved by an appropriate accrediting agency that assumes responsibility for safety precautions and risk reductions.
  8. Children are prohibited from participating in bungee jumping, hang gliding, parachute jumping, parasailing, and riding in airborne gliders.
  9. Children only use bathing, biking, boating, camping, canoeing, hiking, kayaking, sailing, swimming, water skiing, white water rafting or other sporting or recreation areas or facilities that comply with applicable provisions of federal, State, and local laws, regulations, and codes.
  10. The reasonable and prudent parent standard is applied when determining whether to allow a child in care to participate in extracurricular, enrichment, cultural, and social activities;
  11. At least one staff member is available either on-site or via telephone and authorized to apply the reasonable and prudent parent standard to decisions involving participation in age-appropriate or developmentally appropriate activities. When applying the reasonable and prudent parent standard, the designated staff must consider:
    - a. The age, maturity, and developmental level of a child in care;
    - b. nature and inherent risks of harm; and
    - c. The best interest of the child.
  12. A written schedule of monthly planned recreation, physical exercise, and leisure time activities be posted in a noticeable location on the premises, and be maintained on file for at least 90 days.
- F. A licensee shall have and follow written policies and procedures governing the time to be set aside for uninterrupted daily sleep for each child. These policies and procedures shall ensure each child is given the opportunity for at

least 8 hours of uninterrupted rest on a daily basis, unless the service plan or health needs of the child indicate otherwise.

- G. A licensee shall have and follow written policies and procedures that ensure the following:
  - 1. Children receive guidance and instruction in personal care and hygiene appropriate to their age, gender, race, and culture;
  - 2. Children follow personal care and good hygiene practices; and
  - 3. All necessary hygiene supplies, towels, washcloths, and toiletries are provided to children in harmony with their age, gender, race, and culture.
- H. A licensee shall have and follow written policies and procedures governing preventative, routine, and emergency dental and medical care, including provisions for effective coordination of such dental and medical care with those responsible for the child's aftercare. These policies and procedures shall include:
  - 1. Periodic appraisal of the general health of each child;
  - 2. Initial and continuing health screening procedures;
  - 3. Emergency procedures; and
  - 4. Maintenance of health records.

#### **50. Staffing and Staff-to-Child Ratios for Residential Child Care Facilities**

- A. A licensee shall ensure no child is present in the facility without being supervised by a staff member.
- B. A licensee shall ensure when children are present and awake at a facility, there is a minimum staff-to-child ratio of 1 direct care worker for up to 6 children on each floor where children are present.
- C. A licensee shall ensure when children are taken to an off-site location a staff-to-child ratio of 1 direct care worker for up to 4 children is maintained at all times.
- D. When children are sleeping, a licensee shall ensure there is a minimum staff-to-child ratio of 1 direct care worker for up to 8 children on each floor where children are present.
- E. Staff members shall be awake and available to assist children with their needs. An additional staff shall be on call and able to reach the facility, when called, within 30 minutes.
- F. A licensee shall ensure a staff member visually observes each child no less than twice per hour when the child is awake and on-site and no less than once per hour while the child is sleeping, unless otherwise stated in the service plan. A licensee shall ensure hourly sleep checks are documented

and maintained on electronic or paper file for at least 3 months after the child is discharged.

- G. A licensee shall ensure when group activities occur, a staff is in a position to observe interactions among children in the group and to redirect unwanted or disruptive behaviors.

## **51. Children's Rights for Residential Child Care Facilities**

- A. A licensee shall allow a child's parent, if applicable, attorney, clergy, and authorized representative of the referring agency to be permitted to communicate privately with a child. This communication may take place on the phone, via computer, by mail or email, or in-person.
  - 1. A licensee shall ensure each building used by children has at least one working telephone that is available for children to use.
  - 2. A licensee shall ensure a licensee's telephone number is clearly posted and available to children, their parent, and the general public.
- B. A licensee shall not deny or restrict a child's right to send and receive mail without censorship and without limiting the amount of mail a child sends or receives, except when:
  - 1. The facility has reason to believe that a child's mail may contain unauthorized, injurious, or illegal materials; or
  - 2. A court order restricts this right.
- C. A licensee shall ensure each child has reasonable access to writing materials and postage.
- D. A licensee shall ensure each child has adequate, clean, and seasonally appropriate clothing.
- E. A licensee shall permit a child to bring clothing and other personal belongings to the facility, unless prohibited by the facility's written policies and procedures.
- F. A licensee shall permit children to take their clothing and other personal belongings at the time of discharge.

## **52. Children's Health for Residential Child Care Facilities**

- A. A licensee shall ensure that children receive timely, competent care when they are ill and continue to receive necessary follow-up care.
- B. If a licensee cannot document that each child has received a complete physical examination within 12 months before admission to the facility, the facility shall arrange for the child to have a new physical examination, to be completed within 30 days of admission.

- C. Upon admission, a licensee shall ensure a child is asked if the child has any physical illnesses or injuries. If a child shows symptoms of illness or injury, the facility shall arrange for an immediate examination of the child by a licensed physician or by a licensed nurse practitioner.
- D. A licensee shall ensure a child receives a health appraisal annually.
- E. A licensee shall ensure a child receives necessary medical care throughout the year.
- F. A licensee shall ensure every child over age 3 receives a dental examination annually.
- G. A licensee shall ensure a child receives necessary non-cosmetic dental care throughout the year.
- H. A licensee shall make provisions with the referring agency for a child to receive any needed eyeglasses, hearing aids, prosthetic devices, or other corrective devices, as deemed medically necessary by a licensed physician.

**53. Physical Environment for Residential Child Care Facilities**

- A. A licensee shall ensure the living units have designated space for daily living activities, including dining, recreation, indoor activities, and areas where children may visit with their parent, relatives, and friends.
- B. A licensee shall make adequate provisions for storing a child's clothing and other personal belongings while the child is enrolled, so that clothing used by a child does not come into contact with clothing used by another child.
- C. A licensee shall ensure a dining area is provided which is kept in a clean manner, well-lighted, and ventilated. A licensee shall ensure that dining room tables and chairs or benches are sturdy and appropriate for the sizes and ages of the children in care.
- D. A licensee shall ensure there are toilet and bathing accommodations that meet the following specifications:
  - 1. For every 8 residents, there shall be at least one toilet, sink, and bathtub or shower;
  - 2. These toileting and bathing facilities shall not be located more than one floor from any bedroom;
  - 3. Bathrooms shall have at least one mirror fastened to the wall at an age-appropriate height; and
  - 4. Toilet paper, liquid soap, and paper towels, mechanical hand dryer, or cloth towels for individual use shall be provided in each bathroom.

- E. A licensee shall ensure children's bedrooms include:
  - 1. At least 50 square feet per child, excluding closet space;
  - 2. Sufficient space for beds to be at least 3 feet apart at the head, foot, and sides;
  - 3. No more than 4 children for sleeping per room;
  - 4. A door that may be closed;
  - 5. A direct source of natural light;
  - 6. A window shade or curtain to ensure privacy; and
  - 7. Lights with safety covers or shields.
- F. A licensee shall provide each child with the following items:
  - 1. A bed;
  - 2. A non-porous mattress;
  - 3. Clean bed linens at least every seven days, or more often if needed;
  - 4. A pillow; and
  - 5. Bedding appropriate for the season.
- G. A licensee shall use cots or portable beds in an emergency only and for no longer than a period of 72 hours.
- H. A licensee shall ensure there are no more than 2 tiers when bunk beds are used. In addition, the facility shall ensure the distance between the top bunk mattress and ceiling is large enough to enable the child to sit upright in bed without the child's head touching the ceiling.
- I. A licensee shall provide a dresser, storage bin, or other furniture in the bedroom for the storage of clothing and other personal belongings for each child.
- J. A licensee shall not permit a child to share the same bed with any other child.
- K. A licensee shall ensure children of the same sex may share a bedroom.
- L. A licensee shall ensure children in care age 18 years and older must be housed in separate bedrooms from children in care under 18 years of age, unless, a parent and child share a bedroom, when one or both is a child in care.

**54. Discharge and Aftercare Plans for Residential Child Care Facilities**

- A. A licensee shall have and follow written policies and procedures governing discharge and aftercare planning. These policies and procedures shall include:
  - 1. The roles and responsibilities of the child's parent, the referring agency, and the facility;

2. The handling of an emergency discharge of a child that ensures the immediate notification of the child's parent or the referring agency;
  3. The involvement of the child in developing the planned discharge and aftercare plan, as applicable, consistent with the child's ability to understand the plan and process; and
  4. The contents of the discharge report, which shall include:
    - a. The date and reason for discharge;
    - b. The name, address, telephone number of the person or agency to whom the child was discharged;
    - c. A summary of the services provided to the child while in care;
    - d. Service plan goals that have been achieved;
    - e. Service needs that remain to be addressed; and
    - f. Recommendations for continuing or additional services and identification of service providers.
- B. A licensee shall ensure the discharge report is completed within 30 days of the child's discharge.

## **PART VII ALTERNATIVE TO DETENTION FACILITIES**

### **55. Admission for Alternative to Detention Facilities**

A licensee shall only admit a child who has been committed to the facility by a hearing officer from the Justice of the Peace Court or Family Court as a bail condition and is awaiting resolution of criminal charges.

### **56. Staffing and Staff-to-Child Ratios for Alternative to Detention Facilities**

- A. A licensee shall ensure when 2 or more children are present at a facility, there is a minimum of 2 direct care workers present and a minimum staff-to-child ratio of 1 direct care worker for up to 5 children at all times.
- B. When children are sleeping, a licensee shall ensure staff members are awake and available to assist children with their needs. An additional staff shall be on call and able to reach the facility, when called, within 30 minutes.
- C. A facility shall assign direct care workers to monitor no more than one living unit at the same time.
- D. A licensee shall ensure a staff member visually observes each child no less than 3 times hourly when the child is awake and no less than twice an hour while the child is sleeping. Documentation of these observations shall be maintained for 3 months after the child is discharged.

- E. A licensee shall ensure when group activities occur, a staff is in a position to observe interactions among children in the group and to redirect unwanted or disruptive behaviors.

#### **57. Exemptions for Alternative to Detention Facilities**

- A. An alternative to detention facility is exempt from the following regulations:
  - 1. Section 50 regarding supervision and staff-to-child ratios; and
  - 2. Subsection 30.B regarding participation in off-site religious services.

### **PART VIII DRUG AND ALCOHOL TREATMENT FACILITIES**

#### **58. Staff Qualifications for Drug and Alcohol Treatment Facilities**

- A. A licensee shall ensure the case manager who works with children who are receiving services primarily for alcohol or drug problems, meets one of the following qualifications:
  - 1. A bachelor's degree from a regionally accredited college or university in a social or behavioral science field and certification as an alcohol and drug counselor or meeting the qualifications of a registered alcohol and drug counselor.
  - 2. An advanced professional degree in a social or behavioral science field from a regionally accredited college or university with at least 6 credits in courses offering content in alcohol and drug abuse treatment and counseling practicum or field experience.
  - 3. A bachelor's degree from a regionally accredited college or university in a social or behavioral science field and 6 credits in courses offering content in alcohol and drug abuse treatment and counseling practicum or field experience.
  - 4. A bachelor's degree from a regionally accredited college or university in a social or behavioral science field and 2 years of experience working with children in alcohol and drug abuse counseling.

#### **59. Activity Plan for Drug and Alcohol Treatment Facilities**

A licensee shall ensure a drug and alcohol treatment facility provides a highly structured daily activity schedule to encourage group participation and evidenced-based approaches to aid in recovery.

### **PART IX INDEPENDENT LIVING FACILITIES**

#### **60. Admission for Independent Living Facilities**

- A. A licensee shall ensure an independent living facility admits children who:
  - 1. Have reached the age of 16 or older;

2. Have demonstrated a level of maturity that will enable them to be involved in some community activities, including education or employment; and
  3. Require minimum guidance or supervision.
- B. A licensee shall ensure an independent living facility accepts a child into care only after an admission evaluation indicates that preparation for self-sufficiency or independent living is the primary goal for the child.
- C. At the time of admission, an independent living facility shall enter into a written agreement with each child. The agreement shall include:
1. The roles and responsibilities of the facility, the child, and other involved parties;
  2. A description of the policies governing conduct and consequences of inappropriate behavior of the child while in care;
  3. A statement of any financial arrangements related to placement, in accordance with subsection 49.D.3; and
  4. The approval signatures of the child and the facility's representative.

#### **61. Service Plan for Independent Living Facilities**

- A. In addition to the requirements of Section 26, a licensee shall ensure the service plan includes:
1. The type and frequency of supervision needed;
  2. The respective roles and responsibilities of the facility, the child, and other involved parties;
  3. The time-frames and methods to be used gradually to reduce dependency while appropriately increasing personal responsibility;
  4. Identity of all people responsible for the implementation of the plan;
  5. The life skills the youth will need to acquire before discharge;
  6. The criteria for achieving a successful discharge; and
  7. The preliminary plan for discharge and aftercare, in accordance with Section 54.

#### **62. Program for Independent Living Facilities**

- A. A licensee shall ensure an independent living facility offers a structured program to teach life skills on the following topics:
1. Money management and consumer awareness;
  2. Personal hygiene;
  3. Social skills;
  4. Health;
  5. Housekeeping;
  6. Transportation;
  7. Education planning/career planning;
  8. Job-seeking skills;
  9. Job maintenance skills;

10. Emergency and safety skills;
11. Knowledge of community resources;
12. Leisure activities; and
13. Housing.

**63. Activity Schedule for Independent Living Facilities**

- A. A licensee shall ensure staff assist each child to develop and follow a written activity schedule that includes:
  1. Life skills training and practice appropriate to achieving independent living;
  2. Age and ability appropriate household chores to be completed by children in care;
  3. Employment, job skills training, or educational activities; and
  4. Contact with staff members, volunteers, or community groups.

**64. Staffing for Independent Living Facilities**

- A. A licensee shall have and follow written policies and procedures governing the type and frequency of staff supervision provided for each child. These policies and procedures shall:
  1. Contain criteria for determining the type and frequency of staff supervision. The criteria shall be based on an assessment of each child's maturity, suitability, and readiness for responsibly and safely handling various degrees of responsibility and independence; and
  2. Describe the way a child can communicate with a facility for information, assistance, or to express a concern.

**65. Exemptions for Independent Living Facilities**

- A. An independent living facility shall be exempt from the following:
  1. Subsections 36.C and 36.D regarding the outdoor recreation area; and
  2. Subsections 50.B-50.F regarding supervision and staff-to-child ratios.

**PART X PARENTING ADOLESCENT FACILITIES**

**66. Staffing and Staff-to-Child Ratios for Parenting Adolescent Facility**

- A. A licensee shall ensure a facility has a minimum staff-to-child ratio of 1 direct care worker for every 6 adolescents and their children.
- B. A licensee shall ensure no more than 12 adolescents and their children reside in the facility.
- C. A licensee may permit an adolescent to care for the child of another adolescent when the following conditions are met:

1. The adolescent cares for no more than one other child in addition to the adolescent's own; and
2. The adolescents discuss the expectations of the caregiver, including how long care is to be provided, the child's nutritional and toileting needs, and whether the child's parent will pay for the care or baby-sit in the future.

**67. Service Plan for Parenting Adolescent Facilities**

- A. A licensee shall ensure the service plan includes the following:
  1. An assessment of the child's health, nutritional, medical, and developmental needs;
  2. An assessment of the interest of the child's non-resident parent, and the role that the non-resident parent is to have with the child and with the child's resident parent;
  3. An assessment of the interests of the grandparents and the role that they are to have with the child and with the child's resident parent; and
  4. Self-sufficiency goals for the resident parent, including child care and level of understanding of the child's developmental needs, food preparation skills, budgeting and money management, and job readiness.

**68. Adoption Counseling Services for Parenting Adolescent Facilities**

- A. A licensee shall ensure the facility provides adoption counseling if the adolescent expresses an interest in surrendering a child for adoption. The counseling shall include:
  1. An explanation of adoption;
  2. The types of adoptions available;
  3. The processes involved in surrendering a child for adoption; and
  4. A list of agencies licensed to provide these services.

**69. Stimulation of Young Children for Parenting Adolescent Facilities**

- A. A licensee shall ensure infants are held, spoken to, and placed in a position to observe activities when they are awake during the day.
- B. A licensee shall ensure infants are held for feedings until they can hold their own bottles.
- C. A licensee shall ensure infants have access to age-appropriate toys and are provided opportunities for visual and sound stimulation.
- D. A licensee shall ensure when a resident parent is in school or is working, the infant is appropriately cared for in a licensed child care center, a licensed family child care home, or in the facility.

- E. A licensee shall ensure children under 18 months of age are engaged in at least 4 of the following activities with their resident parent for at least 45 minutes each day:
1. Sensory activities, such as the use of mobiles, teething toys, busy boxes, baby mirrors, rattles, melody chimes, squeeze toys, or other comparable toys or equipment;
  2. Language activities, such as the use of picture books, toy telephones, audio equipment with age-appropriate music or sounds, hand puppets, stuffed animals, soft washable dolls, photographs, or other comparable items;
  3. Manipulative activities, such as the use of squeeze toys, grip toys, sorting and stacking toys, 3-piece or 4-piece inlay type puzzles, puzzle blocks, simple threading toys, mobile pull toys, balls, or other comparable age-appropriate play equipment;
  4. Building activities, such as the use of building blocks, toy cars, figures of animals and people, nesting toys, and other comparable toys or equipment;
  5. Large muscle activities, such as the use of low climbers, slides, riding or rocking toys, foam or plastic balls, gym mats, play tunnels, or other comparable play equipment; and
  6. Music activities, such as the use of rhythm instruments, record player and records, toys equipped with musical tones, musical mobiles, busy boxes, drums, xylophones, piano, or other comparable equipment or toys.
- F. A licensee shall ensure children 18 months of age or older are engaged in at least 4 of the following activities with their resident parent for at least 1 hour each day:
1. Language activities, such as being read to from a book, playing with flannel boards and telling a story or having the child tell the story, pictures, identification or classification, puppets, audio-visual equipment, or other comparable equipment or toys;
  2. Science and math related activities, such as planting or gardening, playing with sand or the use of a sand table, fish or small animal care, and other comparable activities;
  3. Manipulative activities, such as the use of puzzles, pegs and a pegboard, lacing boards, table-top building toys, dominoes, and other age-appropriate comparable toys and equipment;
  4. Building activities, such as the use of unit blocks, transportation toys, farm animals, play people, age-appropriate, child size work bench, or other household equipment;
  5. Art activities, such as the use of crayons, tempera paint, large brushes and newsprint, finger paint, construction paper, paste or glue, blunt scissors, collage materials, non-toxic felt-tip markers, clay or playdough, or other comparable play equipment or toys; and
  6. Music activities, such as the use of rhythm sticks, drums, cymbals, bells, tape recorder, piano, or other comparable equipment.

## **70. Children's Health for Parenting Adolescent Facilities**

- A. A licensee shall ensure pregnant adolescents receive:
  - 1. Comprehensive prenatal care, including:
    - a. Monthly visits to an obstetrician or certified nurse mid-wife during the first 28 weeks of gestation;
    - b. Biweekly visits to an obstetrician or certified nurse mid-wife from the 29th to the 36th week of gestation;
    - c. Weekly visits to an obstetrician or certified nurse mid-wife from the 36th week of gestation until delivery; and
    - d. Participation in a childbirth class provided by a registered nurse or childbirth educator.
  - 2. Arrangements for the delivery of the child are made by the end of the second trimester, or within 15 days upon admission to the facility in situations where the adolescent is already pregnant beyond the second trimester; and
  - 3. A dental examination within 3 months of admission and that necessary non-cosmetic dental care is provided.
- B. A licensee shall ensure a system is established to provide background medical information on the pregnant adolescent to the hospital identified for delivery or at the birthing center identified for delivery.
- C. A licensee shall ensure delivery arrangements are clearly recorded in the adolescent's medical record and staff have access to this information in an emergency.

## **71. Medical Care for Children of Parenting Adolescents**

- A. A licensee shall ensure adolescents only use prescription medication that is authorized by a licensed physician or a licensed nurse practitioner and non-prescription medication is used according to the manufacturer's instructions.
- B. A licensee shall ensure adolescents only use prescription medication that is authorized by a licensed physician or a licensed nurse practitioner and non-prescription medication according to the manufacturer's instructions for their children.
- C. A licensee shall ensure adolescents follow the advice of a licensed physician regarding the health care of the adolescent's child.
- D. A licensee shall ensure an adolescent has:
  - 1. A physical examination for the adolescent's child conducted by a health care provider at the age of 1 month, and again by no later than the age of 2 1/2 half months;

2. The child properly immunized as required by DPH; and
3. Between 3 1/2 and 4 months of age, a physical examination and periodically thereafter as recommended by the infant's attending physician or medical clinic.

## **72. Diapering for Parenting Adolescent Facilities**

- A. A licensee shall ensure a facility has a diaper-changing area with a clean, washable, and non-absorbent surface that shall not be located in the kitchen area. There shall be a separate hand-washing sink with running warm water within 5 feet of the changing area. The diaper-changing area shall be cleaned with soap and water and then disinfected after each use.
- B. A licensee shall ensure that used disposable diapers are placed in a foot-activated container that is used exclusively for diapers, lined with a leak-proof or impervious liner, within arm's reach of the changing area, inaccessible to children, and sanitized daily. Diapers shall be removed from the facility daily or more frequently if needed to prevent accumulation of odors, and placed in a closed container that is outside the building and used for trash collection.
- C. A licensee shall ensure people who change diapers wash their hands and the child's hands afterward.

## **73. Toys and Equipment for Parenting Adolescent Facilities**

- A. A licensee shall ensure all toys and equipment to be used by children are sturdy, of safe construction, non-toxic, and free of hazards. A facility shall use a choker tube to ensure that all parts of all toys used by children under 3 years of age are large enough so that they cannot be swallowed by the child.
- B. A licensee shall ensure rest or sleep equipment meets the safety standards required by the Consumer Product Safety Commission and kept in a safe condition.
- C. Mattresses and sleep equipment must be non-absorbent and cleanable.
  1. Cots, mats, and crib mattresses must be cleaned with soap and water and then disinfected weekly and when soiled or wet.
  2. Mats must be stored so there is no contact with the sleep surface of another mat or cleaned and disinfected after each use.
  3. Sleep equipment and bedding must be cleaned and disinfected before being assigned to another child.
- D. Children over age 1 must be provided with top and bottom covers.
  1. Sheets and blankets or other bedding must be cleaned at least weekly and when soiled or wet.

2. Bedding must be stored so there is no contact with another child's bedding.
- E. A licensee shall ensure safe sleep practices for infants are used including the following:
1. Cribs must not be stacked while in use.
  2. Cribs must not have gaps larger than 2 3/8 inches between the slats.
  3. Infants must sleep only in cribs, pack-and-plays, and playpens. The use of soft surfaces, such as soft mattresses, pillows, sofas, and waterbeds are prohibited as infant sleep surfaces.
  4. Infants who fall asleep in car seats, swings, seats, or other equipment are immediately moved to cribs, pack-and-plays, or playpens.
  5. Cribs, pack-and-plays, and playpens must have top rails at least 20 inches above the mattresses. The mattress must be set at its lowest position.
  6. Latches on cribs, pack-and-plays, or playpens must be safe, secured, and hazard-free.
  7. Crib mattresses must be firm and tight fitting to the frame and covered with a tight-fitting bottom sheet only.
  8. Pillows, bibs, blankets, bumper pads, cloth diapers other than those worn by an infant, comforters, top sheets, quilts, sheepskin, stuffed toys, sleep positioning devices unless exempted by subsections 73.E.10.a - 73.E.10.b, stuffed toys, and other items are prohibited in a crib, pack-and-play, and playpen. Infants may use pacifiers in a crib.
  9. Toys or objects attached to cribs, pack-and-plays, or playpens are prohibited.
  10. Infants must be placed on their backs when laid down to sleep as recommended by the American Academy of Pediatrics.
    - a. OCCL allows an exception if the infant's health care provider documents that a physical or medical condition requires a different sleeping position or use of a sleep-positioning device.
    - b. The health care provider must document the new sleep position or the device and how to use it.

#### **74. Physical Environment for Parenting Adolescent Facilities**

- A. A licensee shall ensure the facility provides:
1. A separate bedroom with at least 100 square feet for the adolescent and the adolescent's child, and an additional 50 square feet for each additional child.
  2. Sufficient space to accommodate tables, high chairs, chairs for adolescents and their children, and on duty staff to eat meals together; and
  3. Sufficient locked or secure storage space that can accommodate the personal belongings of the adolescent and the adolescent's children which is reasonably accessible to the adolescent.

- B. A licensee shall ensure safety gates approved by the American Society for Testing and Materials are used in stairway areas where infants and toddlers are in care.
  - 1. Gates must have latching devices that adults, but not children, can open easily.
  - 2. Pressure or accordion gates may not be used in any area of the facility.

**75. Discharge and Aftercare Plans for Parenting Adolescent Facilities**

A facility shall include in the discharge and aftercare plan specific information regarding the status of the adolescent's child and health care, immunization, and medical needs that the child may require; and an assessment of the adolescent's ability to parent the child and to follow-up appropriately on the child's aftercare plan.

**76. Exemptions for Parenting Adolescent Facilities**

A parenting adolescent facility shall be exempt from subsections 50.B-50.F regarding supervision and staff-to-child ratios.

**PART XI SHELTER CARE FACILITIES**

**77. Children's Health for Shelter Care Facilities**

A shelter care facility shall either obtain documentation that a child has received a physical examination within the last 12 months or arrange for a physical examination within 7 days of admission.

**78. Duration of Placement for Shelter Care Facilities**

A facility shall provide care to children for no more than 45 days, unless there is documentation in the child's service plan that clearly justifies a longer placement.

**79. Exemptions for Shelter Care Facilities**

A shelter care facility shall be exempt from subsection 27.A.1 regarding beginning to obtain necessary immunizations within 30 days of admission.

**PART XII WILDERNESS ADVENTURE FACILITIES**

**80. Policies and Procedures for Wilderness Adventure Facilities**

- A. A licensee shall have and follow written policies and procedures that contain:
  - 1. A comprehensive description of the various types of adventure activities in which a licensee plans to involve children, including the specific camping

- or activity destinations for each day; routes to be followed whether by highway, trail, or waterway; and the modes of transportation to be used;
2. Safety rules that are to be used by staff members, volunteers, and children when engaged in camping and for each type of adventure activity in which the program offers;
  3. Recognized standards for staff and volunteers to be qualified as responsible for leading, instructing, and supervising children engaged in any of the adventure activities;
  4. Descriptions of appropriate safety equipment and clothing, such as safety glasses or goggles, helmets, gloves, special shoes, and outdoor clothing that are required to be used for adventure activities;
  5. Procedures to be used to ensure that the environment is protected and any waste materials or trash are appropriately disposed of;
  6. Instructions for posting itineraries, preparing for emergency medical services, and notifying, at agreed upon times, a licensee's main office when the adventure activity takes place in a location or locations that are remote from the main premises of a licensee;
  7. Guidelines to ensure adventure activities include opportunities for problem-solving, developing a positive self-image, developing an appreciation for the natural environment, and conservation;
  8. Guidelines to ensure adventure activities are followed by opportunities for reflection and life application;
  9. Guidelines to ensure participation is conducted within the boundaries of the child's capabilities, dignity, and respect for self-determination;
  10. Procedures to ensure necessary potable water, nutritious food, appropriate clothing, shelter, rest, and other essentials are available and planned for;
  11. Procedures for obtaining signed consent forms from a child's parent or referring agency; and
  12. Procedures that ensure the reporting to DFS of any fatalities or any accidents resulting in the hospitalization of a child.

**81. Safety and Risk Management Committee for Wilderness Adventure Facilities**

A licensee shall establish a Safety and Risk Management Committee consisting of representatives of management, staff, and individuals with experience and expertise in adventure activities. This committee shall review a licensee's policies and procedures governing adventure activities and monitor risk management and safety practices used in the various adventure activities, and advise a licensee's chief administrator of any revisions, omissions, or additions that are necessary and appropriate. The committee shall review any accident that may occur and the circumstances surrounding the accident and send written findings and recommendations to a licensee's chief administrator and to OCCL.

**82. Staff Qualifications and Staff-to-Child Ratios for Wilderness Adventure Facilities**

- A. A licensee shall ensure staff and volunteers who have responsibility for a particular adventure activity are qualified and experienced in the specific adventure activity. If certification is required, these staff or volunteers shall have current certification.
- B. An aquatic supervisor shall be an adult who has satisfactorily completed the training and certification for a water safety instructor that are equivalent to those adopted by the American Red Cross for water safety.
- C. A licensee shall ensure the ratio of staff and volunteers to children conforms with standards for the specified adventure activity that have been recognized by a national accrediting or other recognized organization.
- D. A licensee shall ensure an aquatic supervisor or water safety instructor is on duty at each aquatic activity. The aquatic supervisor shall be responsible for the enforcement of a licensee's safety policies and procedures governing aquatic activities, including swimming, boating, canoeing, kayaking, water skiing, and white-water rafting.

**83. Away-From-Campus Adventure Activities for Wilderness Adventure Facilities**

- A. A licensee shall keep a list of all children, staff members, and volunteers who participate in an adventure activity that occurs away from the premises of a licensee at a licensee's administrative office.
- B. A licensee shall ensure a fully stocked first aid kit that is adventure activity-appropriate and readily available accompanies the group on an adventure activity.
- C. A licensee shall have and follow an itinerary and pre-established check-in times for groups that will travel out-of-state for more than 48 hours.
- D. A licensee shall provide the child's parent or referring agency with a copy of the itinerary.

**84. Equipment for Wilderness Adventure Facilities**

- A. A licensee shall ensure appropriate equipment and gear is used for each specified adventure activity. This equipment and gear shall be certified if required, in good repair, in working condition, and age- and body-size appropriate.

- B. A licensee shall ensure ropes and gear used for rope rock climbing, rappelling, high and low ropes courses, or other adventure activities in which ropes are used are approved by the Union of International Alpine Association or "UIAA" or an equivalent certifying organization. Staff members responsible for supervising the activity shall inspect the ropes before engaging children in the activity.
- C. A licensee shall ensure participants are appropriately equipped, clothed, and wearing safety gear, such as a helmet, goggles, safety belt, life jacket or a flotation device, that is appropriate to the adventure activity in which a child is engaged.
- D. A licensee shall provide and place lifesaving equipment at each permanent swimming area so it is immediately available in case of an emergency. The following equipment shall be available:
  - 1. A whistle or other loud signal device for each staff on duty;
  - 2. An assist pole or other appropriate reaching device;
  - 3. A ring buoy or other appropriate throwing assist device that has a rope attached to it which is of sufficient length for the area;
  - 4. A backboard that has appropriate rigid cervical collars and a minimum of 6 straps;
  - 5. A first aid kit; and
  - 6. A rescue tube.
- E. A licensee shall ensure lifesaving equipment is provided for other aquatic activities and is placed so that it is immediately available in case of an emergency. At a minimum, the equipment shall include the following:
  - 1. A whistle or other loud signal device;
  - 2. A throwing assist device; and
  - 3. A first aid kit.

## **85. Aquatic Procedures for Wilderness Adventure Facilities**

- A. A licensee shall ensure before engaging in an aquatic activity, each child shall be classified by the aquatic supervisor according to swimming ability in 1 of 2 classifications: swimmer and non-swimmer.
- B. A licensee shall not permit a child to participate in an aquatic activity that requires higher skills than the child's swimming classification, except during formal instruction.
- C. A licensee shall establish and enforce a method, such as the buddy system, for supervising children who are involved in an aquatic activity. The system used shall include procedures for check-in, check-out, and the periodic accounting for each child's whereabouts by a staff. A licensee shall ensure a staff accounts for each of the swimmers at least once every 10 minutes.

- D. A licensee shall have and follow a written aquatic emergency plan for each activity. The plan shall include:
  - 1. Rescue procedures and frequency of drills;
  - 2. Child accountability;
  - 3. Prompt evacuation; and
  - 4. Notification of outside emergency services.
- E. A licensee shall ensure swimming at sites other than a waterfront or pool that is on the premises of a licensee is supervised by an aquatic supervisor who is assisted by 1 aquatic observer for every 10 children in the water.
- F. A licensee shall ensure the buddy system is used and that buddy checks are conducted every 5 minutes whenever swimming is permitted at non-permanent sites.
- G. A licensee shall not permit swimming during periods of darkness unless the swimming pool has underwater and deck lighting that provides unrestricted vision.
- H. A licensee shall ensure diving occurs only in designated areas.
- I. For a facility or program that uses a natural diving or swimming area, such as a lake, river, bay, or ocean, a licensee shall ensure the following:
  - 1. Hazards are assessed and eliminated or clearly marked before a child swims, dives, or bathes at a natural diving or swimming area;
  - 2. Swimmers are not subjected to a dangerous condition such as a strong current, a sharp drop-off, a quicksand bottom, or rough surf;
  - 3. Water is free from known dangerous aquatic life;
  - 4. The bottom is free from known hazardous debris, sharp stones, and sharp shells;
  - 5. Swimming, diving, and boating areas are clearly marked or roped off; and
  - 6. Diving and swimming programs are conducted at separate times or in separate areas from boating programs.

## **86. Watercraft Activities for Wilderness Adventure Facilities**

- A. A licensee offering boating or other watercraft activities shall meet the following requirements:
  - 1. A licensee shall ensure that each person wears a Personal Flotation Device approved by the U.S. Coast Guard for that particular activity while on the water.
  - 2. A licensee shall ensure campers have at least an American Red Cross Advanced Beginner Swimming Certificate, American Red Cross Survival Swimming Certificate, or its equivalent before being allowed to participate in boating activities.

3. A licensee shall ensure that each watercraft is in good repair before use.
4. A licensee shall ensure a watercraft towing a water skier, tuber, or towable has an adult observer on board in addition to the driver.
  - a. Ropes used to tow must be at least 100 feet in length.
  - b. A licensee shall ensure the operator keeps a safe distance from docks, other boats, bulkheads, and shorelines when towing someone behind a boat.
5. A licensee shall ensure an individual using a watercraft has been trained in boarding, debarking, and safety procedures for the craft.
6. A licensee shall ensure a watercraft docking area is not adjacent to a swimming area, and that a swimming area is not used for the launching or dropping off water-skiers.
7. A licensee shall follow the watercraft's rated capacity.

### **PART XIII DAY TREATMENT PROGRAMS**

#### **87. Activities and Sleep Equipment for Day Treatment Programs**

- A. The program shall ensure all children are provided activities and physical exercise or routines that are developmentally and age-appropriate.
- B. The program shall provide opportunities for rest after the noon meal to children under age 6. The rest area shall be lighted to allow staff to view the children.
- C. The program shall ensure each child under age 6 who is present during scheduled rest time has age-appropriate and clean rest equipment and bedding. The bedding shall include a top and bottom cover and washed weekly and when wet and or soiled.

#### **88. Indoor Space for Day Treatment Programs**

- A. A program shall have at least 35 square feet of usable indoor space per child. OCCL will not count toilet rooms, kitchen areas, eating areas, seclusion rooms, offices, storage spaces, hallways, closets, and gymnasiums in the square footage.
- B. A program shall have a separate area where children who are showing symptoms of illness that require isolation from the group may be cared for until released to their parent. The area shall not be located in the kitchen or toilet areas.

## **89. Toilet Facilities for Day Treatment Programs**

A. A licensee shall ensure a program has enclosed toilet rooms inside the building on each floor where education or recreation occurs. Each toilet room shall have at least 1 sink with warm running water and 1 operable window or ventilation fan. All door locks, if present, must be designed to permit staff to open the locked door readily.

B. A licensee shall ensure a program has the following toilet-to-child ratios:

Ages of Children	Ratio of Number of Toilets to Number of Children <sup>1, 2</sup>
Under age 5	1:10
Over age 5	1:25
1 Urinals may be counted as half of a toilet, if placed at an accessible height to the population served, as long as the population served includes a significant number of males, and that a minimum of 2 flush toilets are available and accessible to both males and females.	
2 Staff shall be counted in the over age 5 ratio when determining the number of toilets if the program does not provide separate toilet facilities for staff.	

## **90. Staffing and Staff-to-Child Ratios for Day Treatment Programs**

A. A licensee shall ensure direct supervision of children is provided at all times through the assignment of qualified staff physically present and working with children to maintain the following minimum staff-to-child ratio for each age group:

Age of Child	Minimum Direct Care Worker to Child Ratio
0-5	1:4
6-12	1:6
13+	1:10

## **91. Day Treatment Agreement for Day Treatment Programs**

A. A licensee shall ensure a program has and follows a written day treatment agreement. The agreement shall be completed before the child's admission and be signed by a licensee or the licensee's designee, the child, if

appropriate, the child's parent, and the referring agency. The agreement shall include the following information:

1. A description of the expectations, roles, and responsibilities of the program, child, family, and other involved parties;
2. Description of the hours of operation, arrangements for service of meals, equipment to be provided by the family, transportation arrangements, and visitation policies;
3. Description of the behavior management policy, the release policy, and the procedures for handling child and parent complaints; and
4. Description of grounds for enrollment termination.

## **92. Release of Children for Day Treatment Programs**

- A. A program shall have and follow written policies and procedures governing the release of children. A program shall provide a copy of the policies and procedures to all parents, staff, volunteers, and children that include the following requirements:
  1. To ensure children are released to authorized people, agencies, or public or private school bus services;
  2. For the emergency release of children, when a parent calls the program requesting emergency release of the child, the program shall verify the identity of the parent before releasing the child;
  3. Procedures to follow for requiring photo identification for individuals unknown to the program who are identified as authorized releases, except for bus drivers contracted by the child's school;
  4. Procedures to follow when a person not authorized to receive a child, or when a person who appears to be intoxicated or otherwise incapable of bringing the child home safely, requests release of a child; and
  5. Handling situations in which a non-custodial parent attempts to claim the child without custodial parent or guardian permission.

## **PART XIV RESTRICTIVE PROCEDURES**

### **93. Restrictive Procedures**

- A. A licensee shall receive written permission from OCCL before a facility or program uses the restrictive procedures of chemical restraint, physical restraint, or seclusion.
- B. A licensee shall have and follow written policies and procedures governing the appropriate use of chemical restraint, physical restraint, or seclusion, as applicable. These policies and procedures shall:
  1. Prohibit the use any restrictive procedure on a child below age 6.
  2. Require restrictive procedures to only be permitted under the following conditions:
    - a. A trauma-informed treatment model is used;
    - b. The child is a danger to self or others;

- c. child's behavior is seriously disruptive;
  - d. Other ways to manage the child's dangerous behavior have failed; and
  - e. Staff members administering a restrictive procedure were trained to administer that procedure.
3. Identify the types of behavior or conditions for which each type of restrictive procedure, as applicable, would be permitted;
  4. Require that each type of restrictive procedure, as applicable, may only be used when less restrictive interventions would not effectively reduce the risk;
  5. Require documentation that a licensee's use of each type of restrictive procedure, as applicable, is in accordance with established, accepted clinical practice and is age-appropriate;
  6. Require these procedures be used only as additional techniques to accompany positive reinforcement techniques;
  7. Require that a technique be used only when its use outweighs the risk of potential harm associated with its use;
  8. Prohibit, at a minimum, any of the following aversive punishment procedures:
    - a. The use of noxious substances;
    - b. The use of instruments causing temporary incapacitation;
    - c. Any restraints on a child who is pregnant;
    - d. Any restraint that may constrict a child's breathing;
    - e. Placing pressure on a child's neck or throat;
    - f. Placing pressure on a child's mouth, except for the purpose of extracting a body part from a bite or possible choking item;
    - g. Using a restrictive procedure when the primary purpose is to inflict pain; or
    - h. Using restraint equipment and physical restraint techniques for punishment, discipline, or retaliation.
  9. Require a restrictive procedure to be administered only by staff who have been specifically trained in its use and authorized to apply such strategies. Staff members are prohibited from intentionally:
    - a. Pulling a child's hair;
    - b. Pinching a child's skin;
    - c. Twisting a child's arm or leg in a way that would cause pain or injury to the child;
    - d. Kneeling or sitting on any part of a child;
    - e. Placing a choke hold on a child;
    - f. Bending back a child's finger;
    - g. Shoving or pushing a child into the wall, floor, or other stationary object;
    - h. Placing of hands, feet, elbows, knees or any object on a child's neck, throat, genitals or other intimate parts;
    - i. Causing pressure to be placed or creating a risk of causing pressure to be placed, on a child's stomach, chest, joints, throat or back by a knee, foot or elbow; or

- j. Allowing another child or children to assist in a physical restraint.
- 10. Describe the position and qualifications of the staff who have direct responsibility for applying and for supervising the application of each type of restrictive procedure, as applicable;
- 11. Restrict the use of each type of restrictive procedure, as applicable, to designated and authorized staff who have been given prior training in how to administer and supervise the application of such procedure including the following:
  - a. Documentation requirements;
  - b. Thresholds for using restrictive procedures;
  - c. The physiological and psychological impact of restrictive procedures;
  - d. How to monitor and respond to the resident's physical signs of distress;
  - e. Symptoms and interventions for positional asphyxia, as applicable;
  - f. Time limits for the use of physical restraint and seclusion;
  - g. Emergency release of a child from a locked seclusion room within two minutes of the onset of a fire or similar emergency, if applicable; and
  - h. Procedures for obtaining approval for the use of a restrictive procedure.
- 12. Require the current service plan for that child permits the use of each type of restrictive procedure, as applicable, considering whether the restrictive procedure is proportionate to the severity of the child's behavior; the child's chronological and developmental age, size, and gender, physical condition, disability, medical condition, psychiatric condition, and personal injury, including any history of trauma, and used in a manner consistent with the child's treatment plan;
- 13. Require a legal, informed, written consent from the child's parent or referring agency is received before using each type of restrictive procedure, as applicable;
- 14. Require chemical restraints to be administered by a registered nurse either orally or via intramuscular injection, if applicable;
- 15. Prohibit the removal or limitation of the use of a mobility aid or other assistive device in a restraint unless there is a risk of imminent serious bodily injury and less restrictive interventions would not effectively reduce the risk.
- 16. Indicate time limitations and other restrictions on the use of each type of restrictive procedure, as applicable and require physical restraint and seclusion to end when the threat of harm ends;
- 17. Require a physical restraint to be applied for the minimum time necessary to accomplish the purpose. It shall not exceed 10 minutes without documentation on attempts made to release the child from the hold if more than 10 minutes is required. A licensee shall ensure a child is released from a physical restraint as soon as the child gains control, or before 10 minutes have elapsed, whichever occurs first;
- 18. Require the chief administrator or chief administrator's designee provides weekly administrative oversight of each use of each type of restrictive

- procedure, as applicable, to ensure that these procedures are humanely and appropriately applied; and
19. Require documentation for each use of each type of restrictive procedure, as applicable. This documentation shall contain the following information:
    - a. The name of the child;
    - b. The names of the staff who administered the procedure;
    - c. Behavior supports used to deter the behavior before the use of a restrictive procedure;
    - d. The names of witnesses;
    - e. The date, time, and duration of the procedure;
    - f. The place;
    - g. The circumstances surrounding the use of the procedure;
    - h. A description of the child's behavior; and
    - i. A health observation to state whether any injuries occurred.
  20. Require written specific authorization from a licensed physician when a child has a known physical condition that would contraindicate its use;
  21. Require the chief administrator, designee, or the direct care supervisor to be immediately notified when a child has been restrained for more than 10 minutes or when within a 24-hour period a child has been in seclusion more than 3 times or a total of 2 hours.
  22. Require the chief administrator or the designee to conduct a review to determine the child's suitability to remain in placement in the facility or program or whether changes to the child's service plan are necessary and to take appropriate action in response to the review for the following situations:
    - a. Whenever a physical restraint has been used for more than 10 minutes;
    - b. If there are more than 3 seclusions for an individual child or 2 hours of seclusion within a 24-hour period; or
    - c. If a chemical restraint is administered.
  23. Require the reviews for physical restraints and seclusions to be forwarded to DSCYF by following the DSCYF Reportable Events and Notification Procedures.
- C. A licensee shall ensure when using the restrictive procedure of seclusion:
1. Children are placed in seclusion for no more than 45 consecutive minutes;
  2. At least one staff member is responsible for providing continuous monitoring and observation of the child and is available to unlock the room, if locked, within 2 minutes of the onset of a fire or similar emergency;
  3. The child is not secluded in a closet, bathroom, or unfinished basement or attic;
  4. Rooms used for seclusion have tamper-proof fixtures and adequate space, temperature, light, and ventilation;
  5. The room or area used has equipment and furnishings that do not present a physical hazard or suicide risk and objects that may be used by a child

- for self-injury are removed from the child before the child is placed in seclusion;
6. The room or area used has at least 75 square feet and a ceiling height of at least 8 feet;
  7. A staff member returns the child to the group in a sensitive and non-punitive manner as soon as the child has regained control;
  8. The child has access to toilet facilities, as needed; and
  9. The child receives the same number and frequency of meals and snacks provided to other children in the facility or program.

## **APPENDICES**

### **Appendix I**

#### **Initial Application**

<http://regulations.delaware.gov/register/february2024/final/Appendix I 105 RCC-DTP Initial Application for FO.pdf>

### **Appendix II**

#### **Relocation Renewal Application**

<http://regulations.delaware.gov/register/february2024/final/Appendix II 105 RCC-DTP Relocation or Renewal Application for FO.pdf>

### **Appendix III**

#### **Variance**

<http://regulations.delaware.gov/register/february2024/final/Appendix III 105 RCC-DTP Variance Request for FO.pdf>

27 DE Reg. 599 (02/01/24) (Final)