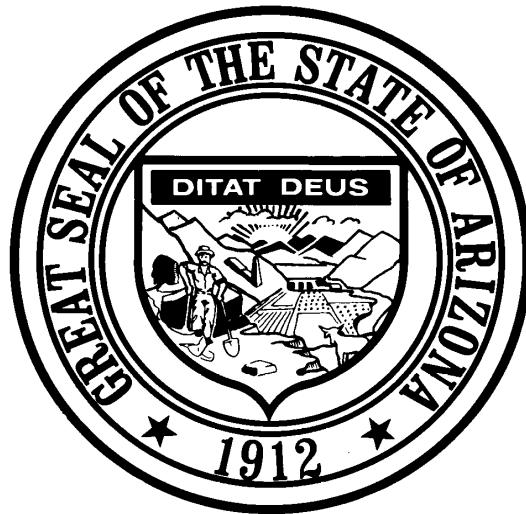


**Arizona Department of Health Services**  
**BUREAU OF CHILD CARE LICENSING**  
<http://www.azdhs.gov/licensing/childcare-facilities/index.php>

**ARIZONA ADMINISTRATIVE CODE  
AND ARIZONA REVISED STATUTES  
FOR CHILD CARE FACILITIES**



**MISSION STATEMENT**

“To monitor the health, safety and well being of children in child care centers and child care group homes throughout Arizona by regulating, establishing and enforcing appropriate rules, and by providing technical assistance and training to caregivers, and by providing consumer education.”

*Effective September 30, 2010*

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## ARTICLE 1. GENERAL

### **R9-5-101. Definitions**

In addition to the definitions in A.R.S. § 36-881, the following definitions apply in this Chapter unless otherwise specified:

1. “Abuse” has the same meaning as in A.R.S. § 8-201.
2. “Accident” means an unexpected occurrence that:
  - a. Causes injury to an enrolled child,
  - b. Requires attention from a staff member, and
  - c. May or may not be an emergency.
3. “Accommodation school” has the same meaning as in A.R.S. § 15-101.
4. “Accredited” means approved by the:
  - a. New England Association of Schools and Colleges,
  - b. Middle States Association of Colleges and Schools,
  - c. North Central Association of Colleges and Schools,
  - d. Northwest Commission on Colleges and Universities,
  - e. Southern Association of Colleges and Schools, or
  - f. Western Association of Schools and Colleges.
5. “Activity” means an action planned by a licensee and performed by an enrolled child while supervised by a staff member.
6. “Activity area” means a specific indoor or outdoor space or room of a licensed facility that is designated by a licensee for use by an enrolled child for an activity.
7. “Adaptive device” means equipment used to augment an individual’s use of the individual’s arms, legs, sight, hearing, or other physical part or function.
8. “Administrative completeness review time frame” has the same meaning as in A.R.S. § 41-1072.
9. “Adult” means an individual who is at least 18 years of age.
10. “Age-appropriate” means consistent with a child’s age and age-related stage of physical growth and mental development.
11. “Agency” means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
12. “Applicant” means a person or governmental agency requesting one of the following:
  - a. A license, or
  - b. Approval of a change affecting a license under R9-5-208.
13. “Application” means the documents that an applicant is required to submit to the Department for licensure or approval of a request for a change affecting a license.
14. “Assistant teacher-caregiver” means a staff member who aids a teacher-caregiver in planning, developing, or conducting child care activities.
15. “Association” means a group of individuals other than a corporation, limited liability company, partnership, joint venture, or public school who has established a governing board and bylaws to operate a facility.
16. “Beverage” means a liquid for drinking, including water.
17. “Business organization” has the same meaning as “entity” in A.R.S. § 10-140.
18. “Calendar week” means a seven-day period beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:59 p.m.
19. “C.C.P.” means Certified Childcare Professional, a credential awarded by the National Child Care Association.
20. “C.D.A.” means Child Development Associate, a credential awarded by the Council for Professional Recognition.

21. “Change in ownership” means a transfer of controlling legal or controlling equitable interest and authority in a facility resulting from a sale or merger of a facility.
22. “Charter school” has the same meaning as in A.R.S. § 15-101.
23. “Child care experience” means an individual’s documented work with children in:
  - a. A child care facility or a child care group home that was licensed, certified, or approved by a state in the United States or by one of the Uniformed Services of the United States;
  - b. A public school, a charter school, a private school, or an accommodation school;
  - c. A public or private educational institution authorized under the laws of another state where instruction was provided for any grade or combination of grades between pre-kindergarten and grade 12; or
  - d. One of the following professional fields:
    - i. Nursing,
    - ii. Social work,
    - iii. Psychology,
    - iv. Child development, or
    - v. A closely-related field.
24. “Child care services” means the range of activities and programs provided by a licensee to an enrolled child, including personal care, supervision, education, guidance, and transportation.
25. “Child Protective Services” means the Child Protective Services Program of the Arizona Department of Economic Security.
26. “Child with special needs” means:
  - a. A child with a health care provider’s diagnosis and record of a physical or mental condition that substantially limits the child in providing self-care or performing manual tasks or any other major life function such as walking, seeing, hearing, speaking, breathing, or learning;
  - b. A child with a “developmental disability” as defined in A.R.S. § 36-551; or
  - c. A “child with a disability” as defined in A.R.S. § 15-761.
27. “Clean” means to remove dirt or debris by methods such as washing with soap and water, vacuuming, wiping, dusting, or sweeping.
28. “Closely-related field” means any educational instruction or occupational experience pertaining to the growth, development, physical or mental care, or education of children.
29. “Communicable disease” has the same meaning as in A.A.C. R9-6-101.
30. “Compensation” means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit, that is received as payment.
31. “Corporal punishment” means any physical action used to discipline a child that inflicts pain to the body of the child, or that may result in physical injury to the child.
32. “CPR” means cardiopulmonary resuscitation.
33. “Credit hour” means an academic unit earned at an accredited college or university:
  - a. By attending a one-hour class session each calendar week during a semester or equivalent shorter course term, or
  - b. Completing practical work for a course as determined by the accredited college or university.
34. “Days” means calendar days, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
35. “Designated agent” means an individual who meets the requirements in A.R.S. § 36-889(D).

36. “Developmentally-appropriate” means consistent with a child’s physical, emotional, social, cultural, and cognitive development, based on the child’s age and family background and the child’s personality, learning style, and pattern and timing of growth.
37. “Discipline” means the on-going process of helping a child develop self-control and assume responsibility for the child’s own actions.
38. “Documentation” means information in written, photographic, electronic, or other permanent form.
39. “Electronic signature” has the same meaning as in A.R.S. § 41-132(E).
40. “Emergency” means a potentially life-threatening occurrence involving an enrolled child or staff member that requires an immediate response or medical treatment.
41. “Endanger” means to expose an individual to a situation where physical injury or mental injury to the individual may occur.
42. “Enrolled” means placed by a parent and accepted by a licensee for child care services.
43. “Evening and nighttime care” means child care services provided between the hours of 8:00 p.m. and 5:00 a.m.
44. “Facility” has the same meaning as “child care facility” in A.R.S. § 36-881.
45. “Facility director” means an individual who is designated by a licensee as the individual responsible for the daily onsite operation of a facility.
46. “Facility premises” means property that is:
  - a. Designated on an application for a license by the applicant, and
  - b. Licensed for child care services by the Department under A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter.
47. “Fall zone” means the surface under and around a piece of equipment onto which a child falling from or exiting from the equipment would be expected to land.
48. “Field trip” means an activity planned by a staff member for an enrolled child:
  - a. At a location or area that is not licensed for child care services by the Department, or
  - b. At a child care facility in which the child is not enrolled.
49. “Final construction drawings” means facility plans that include the architectural, structural, mechanical, electrical, fire protection, plumbing, and technical specifications of the physical plant and the facility premises and that have been approved by local government for the construction, alteration, or addition of a facility.
50. “Food” means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.
51. “Food preparation” means processing food for human consumption by cooking or assembling the food, but does not include distributing prepackaged food or whole fruits or vegetables.
52. “Full-day care” means child care services provided for six or more hours per day between the hours of 5:00 a.m. and 8:00 p.m.
53. “Governmental agency” has the same meaning as in A.R.S. § 44-7002.
54. “Guidance” means the ongoing direction, counseling, teaching, or modeling of generally accepted social behavior through which a child learns to develop and maintain the self-control, self-reliance, and self-esteem necessary to assume responsibilities, make daily living decisions, and live according to generally accepted social behavior.
55. “Hazard” means a source of endangerment.
56. “Health care provider” means a physician, physician assistant, or registered nurse practitioner.
57. “High school equivalency diploma” means:
  - a. A document issued by the Arizona Department of Education under A.R.S. § 15-702 to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B);

- b. A document issued by another state to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B); or
  - c. A document issued by another country to an individual who has completed that country's equivalent of a 12th grade education, as determined by the Department based upon information obtained from American or foreign consulates or embassies or other governmental agencies.
58. "Hours of operation" means the specific time during a day for which a licensee is licensed to provide child care services.
59. "Illness" means physical manifestation or signs of sickness, such as pain, vomiting, rash, fever, discharge, or diarrhea.
60. "Immediate" means without restriction, delay, or hesitation.
61. "Inaccessible" means:
- a. Out of an enrolled child's reach, or
  - b. Locked.
62. "Infant" means:
- a. A child 12 months of age or younger, or
  - b. A child 18 months of age or younger who is not yet walking.
63. "Infant care" means child care services provided to an infant.
64. "Infestation" means the presence of lice, pinworms, scabies, or other parasites.
65. "Inspection" means:
- a. Onsite examination of a facility by the Department to determine compliance with A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter;
  - b. Onsite review of facility documents, records, or reports by the Department; or
  - c. Onsite examination of a facility by a local governmental agency.
66. "Lesson plan" means a written description of the activities scheduled in each activity area for a day.
67. "License" means the written authorization issued by the Department to operate a facility in Arizona.
68. "Licensed applicator" has the same meaning as in A.R.S. § 32-2301.
69. "Licensed capacity" means the maximum number of enrolled children for whom a licensee is authorized by the Department to provide child care services in a facility or a part of a facility at any given time.
70. "Licensee" means a person or governmental agency to whom the Department has issued a license to operate a facility in Arizona.
71. "Local" means under the jurisdiction of a city or county in Arizona.
72. "Mat" means a foam pad that has a waterproof cover and is of sufficient size and thickness to accommodate the height, width, and weight of a reclining child's body.
73. "Material safety data sheet" means the information provided by a manufacturer describing chemical qualities, hazards, safety precautions, and emergency procedures to be followed in case of a spill, fire, or other emergency.
74. "Medication" means a substance prescribed by a physician, physician assistant, or registered nurse practitioner or available without a prescription for the treatment or prevention of illness or infestation.
75. "Menu" means:
- a. A written description of the food that a facility provides and serves as a meal or snack, or
  - b. The combination of food that a facility provides and serves as a meal or snack.
76. "Motor vehicle" has the same meaning as in A.R.S. § 28-101.
77. "N.A.C." means the National Administrator Credential, a credential issued by the National Child Care Association.
78. "Name" means, for an individual, the individual's first name and the individual's last name.
79. "Naptime" means any time during hours of operation, other than evening and nighttime hours, that is designated by a licensee for the rest or sleep of enrolled children.

80. “Neglect” has the same meaning as in A.R.S. § 8-201.
81. “One-year-old” means a child who is not an infant and at least 12 months of age but not yet two years of age.
82. “Outbreak” has the same meaning as in R9-6-101.
83. “Overall time-frame” has the same meaning as in A.R.S. § 41-1072.
84. “Parent” means:
- a. A natural or adoptive mother or father,
  - b. A legal guardian appointed by a court of competent jurisdiction, or
  - c. A “custodian” as defined in A.R.S. § 8-201.
85. “Part-day care” means child care services provided for fewer than six hours per day between the hours of 5:00 a.m. and 8:00 p.m.
86. “Perishable food” means food that becomes unfit for human consumption if not stored to prevent spoilage.
87. “Pesticide” has the same meaning as in A.R.S. § 32-2301.
88. “Pesticide label” means the written, printed, or graphic matter approved by the United States Environmental Protection Agency on, or attached to, a pesticide container.
89. “Physical injury” means temporary or permanent damage or impairment to a child’s body.
90. “Physical plant” means a building that houses a facility, or the licensed areas within a building that houses a facility, including the architectural, structural, mechanical, electrical, plumbing, and fire protection elements of the building.
91. “Physician” means an individual licensed as a doctor of:
- a. Allopathic medicine under A.R.S. Title 32, Chapter 13;
  - b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;
  - c. Osteopathic medicine under A.R.S. Title 32, Chapter 17;
  - d. Homeopathic medicine under A.R.S. Title 32, Chapter 29; or
  - e. Allopathic, naturopathic, osteopathic, or homeopathic medicine under the law of another state.
92. “Physician assistant” means:
- a. An individual who is licensed under A.R.S. Title 32, Chapter 25; or
  - b. An individual who is licensed as a physician assistant under the law of another state.
93. “Private pool” has the same meaning as “private residential swimming pool” in A.A.C. R18-5-201.
94. “Private school” has the same meaning as in A.R.S. § 15-101.
95. “Program” means a variety of activities organized and conducted by a staff member.
96. “Public pool” has the same meaning as “public swimming pool” in A.A.C. R18-5-201.
97. “Public school” has the same meaning as “school” in A.R.S. § 15-101.
98. “Registered nurse practitioner” means:
- a. An individual who is licensed and certified as a “registered nurse practitioner” under A.R.S. § 32-1601, or
  - b. An individual who is licensed or certified as a registered nurse practitioner under the law of another state.
99. “Regular basis” means at recurring, fixed, or uniform intervals.
100. “Responsible party” means an individual or a group of individuals who:
- a. Is assigned by a public school, charter school, or governmental agency; and
  - b. Has general oversight of the child care facility.
101. “Sanitize” means to use heat, chemical agents, or germicidal solutions to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.
102. “School-age child” means a child who:
- a. Meets one of the following:



- i. Is five years old on or before January 1 of the current school year, or
    - ii. Is five years old on or before January 1 of the most recent school year; and
  - b. Meets one of the following:
    - i. Attends kindergarten or a higher level program in a public, charter, accommodation, or private school during the current school year;
    - ii. Attended kindergarten or a higher level program in a public, charter, accommodation, or private school during the most recent school year;
    - iii. Is home-schooled at a kindergarten or higher level during the current school year; or
    - iv. Was home-schooled at a kindergarten or higher level during the most recent school year.
103. “School-age child care” means child care services provided to a school-age child.
104. “School campus” means the contiguous grounds of a public, charter, accommodation, or private school, including the buildings, structures, and outdoor areas available for use by children attending the school.
105. “School governing board” has the same meaning as “governing board” in A.R.S. § 15-101.
106. "Screen time" means the use of electronic media to watch television or to watch a video, a DVD, or a movie at the facility or at another location or the use of electronic media or a computer for game-playing, entertainment, communication, or educational purposes.
107. “Semi-public pool” has the same meaning as “semipublic swimming pool” in A.A.C. R18-5-201.
108. “Service classification” means one of the following:
- a. Full-day care;
  - b. Part-day care;
  - c. Evening and nighttime care;
  - d. Infant care;
  - e. One-year-old child care;
  - f. Two-year-old child care;
  - g. Three-year-old, four-year-old, and five-year-old child care;
  - h. School-age child care; or
  - i. Weekend care.
109. “Signatory” means an individual who is authorized by a school district governing board, school district superintendent, or governmental agency to sign a document on behalf of the school district governing board, school district superintendent, or governmental agency.
110. “Signed” means affixed with an individual’s signature or with a symbol representing an individual’s signature if the individual is unable to write the individual’s name.
111. “Sippy cup” means a lidded drinking container that is designed to be leak proof or leak-resistant and from which a child drinks through a spout or straw.
112. “Space utilization” means the designated use of an area within a facility for specific child care services or activities.
113. “Staff” or “staff member” means the same as “child care personnel” as defined in A.R.S. § 36-883.02.
114. “Student-aide” means an individual less than 16 years of age who is participating in an educational, curriculum-based course of study; vocational education; or occupational development program and who, without being compensated by a licensee, is present at a facility to receive instruction from and supervision by staff in the provision of child care services.
115. “Substantive review time-frame” has the same meaning as in A.R.S. § 41-1072.
116. “Supervision” means:
- a. For an enrolled child, knowledge of and accountability for the actions and whereabouts of the enrolled child, including the ability to see or hear the enrolled child at all times, to interact with the enrolled child, and to provide guidance to the enrolled child; or

- b. For an individual other than an enrolled child, knowledge of and accountability for the actions and whereabouts of the individual, including the ability to see and hear the individual when the individual is in the presence of an enrolled child and the ability to intervene in the individual's actions to prevent harm to enrolled children.
- 117. "Swimming pool" has the same meaning as in A.A.C. R18-5-201.
- 118. "Teacher-caregiver" means a staff member responsible for developing, planning, and conducting child care activities.
- 119. "Teacher-caregiver-aide" means a staff member who provides child care services under the supervision of a teacher-caregiver.
- 120. "Training" means child care-related conferences, seminars, lectures, workshops, classes, courses, or instruction.
- 121. "Volunteer" means a staff member who, without compensation, provides child care services that are the responsibility of a licensee.

**R9-5-102. Individuals to Act for Applicant or Licensee Regarding Document, Fingerprinting, and Department-Provided Training Requirements**

When an applicant or licensee is required by this Chapter to provide information on or sign documents, possess a fingerprint clearance card, or complete Department-provided training, the following shall satisfy the requirement on behalf of the applicant or licensee:

- 1. If the applicant or licensee is an individual, the individual;
- 2. If the applicant or licensee is a business organization, a designated agent who meets the requirements in A.R.S. § 36-889(D);
- 3. If the applicant or licensee is a public school, an individual designated in writing as signatory for the public school by the school district governing board or school district superintendent;
- 4. If the applicant or licensee is a charter school, the person approved to operate the charter school by the school district governing board, the Arizona State Board of Education, or the Arizona State Board for Charter Schools; and
- 5. If the applicant or licensee is a governmental agency, the individual in the senior leadership position with the agency or an individual designated in writing as signatory by that individual.

**ARTICLE 2. FACILITY LICENSURE**

**R9-5-201. Application for a License**

- A. An applicant for a license shall:
  - 1. Be at least 21 years of age;
  - 2. If an individual, be a U.S. citizen or legal resident alien and a resident of Arizona;
  - 3. If a corporation, association, or limited liability company, a domestic entity or a foreign entity qualified to do business in Arizona;
  - 4. If a partnership, have at least one partner who is a U.S. citizen or legal resident alien and a resident of Arizona;
  - 5. Submit to the Department an application packet containing:
    - a. An application on a form provided by the Department that contains:
      - i. The applicant's name;
      - ii. The applicant's date of birth;
      - iii. The facility's name, street address, city, state, zip code, mailing address, and telephone number;
      - iv. The requested service classifications;
      - v. Whether the applicant agrees to allow the Department to submit supplemental requests for information;

- vi. A statement that the applicant has read and will comply with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter;
- vii. A statement that the information provided in the application packet is accurate and complete; and
- viii. The applicant's signature and date the applicant signed the application;
- b. A copy of the applicant's:
  - i. U.S. passport,
  - ii. Birth certificate,
  - iii. Naturalization documents, or
  - iv. Documentation of legal resident alien status;
- c. A copy of the applicant's valid fingerprint clearance card issued according to A.R.S. Title 41, Chapter 12, Article 3.1;
- d. A copy of the form required in A.R.S. § 36-883.02(C);
- e. A certificate issued by the Department showing that the applicant has completed at least four hours of Department-provided training that included the Department's role in licensing and regulating child care facilities under A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter;
- f. Except as provided in subsection (A)(5)(i), a site plan of the facility drawn to scale showing:
  - i. The drawing scale;
  - ii. The boundary dimensions of the property upon which the facility's physical plant is located;
  - iii. If more than one building is used for the facility, the location and perimeter dimensions of each building;
  - iv. The location of each driveway on the property;
  - v. The location and boundary dimensions of each parking lot on the property;
  - vi. The location and perimeter dimensions of each outdoor activity area;
  - vii. The location, type, and height of each fence and gate; and
  - viii. If applicable, the location of any swimming pool on the property;
- g. Except as provided in subsection (A)(5)(i), a floor plan of each building to be used for child care services drawn to scale showing:
  - i. The drawing scale;
  - ii. The length and width dimensions for each indoor activity area;
  - iii. The requested licensed capacity and applicable service classification for each indoor activity area;
  - iv. The location of each diaper changing area;
  - v. The location of each hand washing, utility, and three-compartment sink; toilet; urinal; and drinking fountain; and
  - vi. The location and type of fire alarm system;
- h. Except as provided in subsection (A)(5)(i):
  - i. A copy of a certificate of occupancy issued for the facility by the local jurisdiction;
  - ii. Documentation from the local jurisdiction that the facility was approved for occupancy; or
  - iii. If the documents in subsections (A)(5)(h)(i) and (A)(5)(h)(ii) are not available, the seal of an architect registered as prescribed in A.R.S. § 32-121 on the site plan required in subsection (A)(5)(f) and the floor plan required in subsection (A)(5)(g) verifying compliance with local building and fire codes, local zoning requirements, and this Chapter;

- i. For an applicant providing child care services to three-year-old, four-year-old, five-year-old, or school-age children in a facility located in a public school, a set of final construction drawings or a school map showing:
  - i. The location of each school building;
  - ii. The location and dimensions of each outdoor activity area to be used by enrolled children;
  - iii. The length and width dimensions for each indoor activity area;
  - iv. The requested licensed capacity and applicable service classification for each indoor activity area; and
  - v. The location of each hand-washing sink, toilet, urinal, and drinking fountain to be used by enrolled children;
- j. If the facility is located within one-fourth of a mile of agricultural land:
  - i. The names and addresses of the owners or lessees of each parcel of agricultural land located within one-fourth mile of the facility, and
  - ii. A copy of an agreement complying with A.R.S. § 36-882 for each parcel of agricultural land;
- k. The applicable fee in R9-5-206;
- l. If the applicant is a business organization, a form provided by the Department that contains:
  - i. The name, street address, city, state, and zip code of the business organization;
  - ii. The type of business organization;
  - iii. The name, date of birth, title, street address, city, state, and zip code of each controlling person;
  - iv. A copy of the business organization's articles of incorporation, articles of organization, partnership documents, or joint venture documents, if applicable;
  - v. Documentation of good standing issued by the Arizona Corporation Commission and dated no earlier than three months before the date of the application; and
  - vi. A statement signed by the applicant stating:
    - (1) That each controlling person has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
    - (2) That each controlling person has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children;
- m. If the applicant is a public school, a form provided by the Department that contains:
  - i. The name of the school district;
  - ii. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;
  - iii. A statement signed by the applicant stating:
    - (1) That each individual in subsection (A)(5)(m)(ii) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
    - (2) That each individual in subsection (A)(5)(m)(ii) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and
  - iv. A letter from the school district governing board or school district superintendent designating a signatory, if applicable;

- n. If the applicant is a charter school, a form provided by the Department that contains:
  - i. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;
  - ii. A statement signed by the applicant stating:
    - (1) That each individual in subsection (A)(5)(n)(i) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
    - (2) That each individual in subsection (A)(5)(n)(i) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and
  - iii. A letter from the school district governing board in which the charter school is located, the Arizona State Board of Education, or the Arizona State Board for Charter Schools, approving the applicant to operate the charter school; and
- o. If the applicant is a governmental agency, a form provided by the Department that contains:
  - i. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;
  - ii. A statement signed by the applicant stating:
    - (1) That each individual in subsection (A)(5)(o)(i) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
    - (2) That each individual in subsection (A)(5)(o)(i) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and
  - iii. A letter from the individual in the senior leadership position with the agency designating a signatory.

**B.** The Department requires a separate license and a separate application for:

- 1. Each facility owned by the same person at a different location, and
- 2. Each facility owned by a different person at the same location.

**C.** The Department does not require a separate application and license for a structure that is:

- 1. Located so that the structure and the facility:
  - a. Share the same street address, or
  - b. Can be enclosed by a single unbroken boundary line that does not encompass property owned or leased by another;
- 2. Under the same ownership as the facility; and
- 3. Intended to be used as a part of the facility.

**R9-5-202. Time-frames**

- A.** The overall time-frame for each type of approval granted by the Department under this Article is listed in Table 2.1. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.
- B.** The administrative completeness review time-frame for each type of approval granted by the Department under this Article is listed in Table 2.1 and begins on the date that the Department receives an application packet.

1. An application packet for a license is not complete until the date, provided to the Department with the application packet or by written notice, that the child care facility is ready for an on-site licensing inspection.
  2. The Department shall send a notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
    - a. A notice of deficiencies shall list each deficiency and the items needed to complete the application packet.
    - b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice of deficiencies is issued until the date that the Department receives all of the missing items from the applicant.
    - c. If an applicant for a license or an approval of a change affecting a license fails to submit to the Department all of the items listed in the notice of deficiencies within 180 days after the date that the Department sent the notice of deficiencies, the Department shall consider the application or request for approval withdrawn.
  3. If the Department issues a license or other approval to the applicant during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.
- C.** The substantive review time-frame for each type of approval granted by the Department under this Article is listed in Table 2.1 and begins on the date of the notice of administrative completeness.
1. As part of the substantive review for a license application, the Department shall conduct an inspection that may require more than one visit to the facility.
  2. As part of the substantive review for a request for approval of a change affecting a license that requires a change in the use of physical space at the facility, the Department shall conduct an evaluation of the request to determine compliance with applicable rules and statutes that may include an on-site inspection.
  3. The Department shall send a license, a written notice of approval, or denial of a license or other request for approval to an applicant within the substantive review time-frame.
  4. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the Department and the applicant have agreed in writing to allow the Department to submit supplemental requests for information.
    - a. If the Department determines that an applicant or a facility is not in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter, the Department shall send a comprehensive written request for additional information that includes a written statement of deficiencies stating each statute and rule upon which noncompliance is based.
    - b. An applicant shall submit to the Department all of the information requested in the comprehensive written request for additional information and documentation of the corrections required in the statement of deficiencies, if applicable, within 120 days after the date of the comprehensive written request for additional information.
    - c. The substantive review time-frame and the overall time-frame are suspended from the date that the Department issues a comprehensive written request for additional information or a supplemental request for information until the date that the Department receives all of the information requested, including documentation of corrections required in a statement of deficiencies, if applicable.
    - d. If an applicant fails to submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including documentation of corrections required in a statement of deficiencies, if applicable, within the time prescribed in subsection (C)(4)(b), the Department shall deny the application.

5. The Department shall issue a license or other approval if the Department determines that the applicant and facility are in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter, and the applicant submits documentation of corrections that is acceptable to the Department for any deficiencies.
6. If the Department determines that a license or other approval is to be denied, the Department shall send to the applicant a written notice of denial complying with A.R.S. § 36-888 and stating the reasons for denial and all other information required by A.R.S. §§ 36-888 and 41-1076.

**TABLE 2.1 TIME-FRAMES (IN DAYS)**

<b>Type of Approval</b>	<b>Statutory Authority</b>	<b>Overall Time-Frame</b>	<b>Administrative Completeness Review Time-Frame</b>	<b>Substantive Review Time-Frame</b>
License under R9-5-201	A.R.S. § 36-882	120	30	90
Approval of Change Affecting License under R9-5-208	A.R.S. §§ 36-882 and 36-883	75	30	45

**R9-5-203. Fingerprinting Requirements and Central Registry Background Check Requirements**

- A.** A licensee shall ensure that a staff member completes, signs, dates, and submits to the licensee, before the staff member’s starting date of employment or volunteer service:
  1. The form required in A.R.S. § 36-883.02(C); and
  2. If required by A.R.S. § 8-804, the form in A.R.S. § 8-804(I).
- B.** Except as provided in A.R.S. § 41-1758.03, a licensee shall ensure that each staff member submits to the licensee a copy of:
  1. The staff member’s valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; or
  2. The fingerprint clearance card application that the staff member submitted to the Department of Public Safety under A.R.S. § 41-1758.02 within seven working days after the staff member’s starting date of employment or volunteer service.
- C.** A licensee shall ensure that each staff member submits to the licensee a copy of the staff member’s valid fingerprint clearance card each time the fingerprint clearance card is issued or renewed.
- D.** If a staff member possesses a fingerprint clearance card that was issued before the staff member became a staff member at the facility, a licensee shall:
  1. Contact the Department of Public Safety within seven working days after the individual becomes a staff member to determine whether the fingerprint clearance card is valid; and
  2. Document this determination, including the name of the staff member, the date of contact with the Department of Public Safety, and whether the fingerprint clearance card is valid.
- E.** If required by A.R.S. § 8-804, before an individual’s starting date of employment or volunteer service, a licensee shall comply with the submission requirements in A.R.S. § 8-804(C) for the individual.

- F.** A licensee shall not allow an individual to be a staff member if the individual:
1. Has been denied a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1 and has not received an interim approval under A.R.S. § 41-619.55;
  2. Receives an interim approval under A.R.S. § 41-619.55 but is subsequently denied a good cause exception under A.R.S. § 41-619.55 and a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1;
  3. Is a parent or guardian of a child adjudicated to be a dependent child as defined in A.R.S. § 8-201;
  4. Has been denied or had revoked a certificate to operate a child care group home or a license to operate a child care facility for care of children in this state or another state;
  5. Has been denied or had revoked a certification to work in a child care facility or a child care group home in this state or another state;
  6. If applicable, has stated on the form required in A.R.S. § 8-804(I) that the individual is currently under investigation for an allegation of abuse or neglect or has a substantiated allegation of abuse or neglect and has not subsequently received a central registry exception according to A.R.S. § 41-619.57; or
  7. If applicable, is disqualified from employment or volunteer service as a staff member according to A.R.S. § 8-804 and has not subsequently received a central registry exception according to A.R.S. § 41-619.57.

**R9-5-204. Child Care Service Classifications**

- A.** The Department licenses child care facilities using the following service classifications:
1. Full-day care;
  2. Part-day care;
  3. Evening and nighttime care;
  4. Infant care;
  5. One-year-old child care;
  6. Two-year-old child care;
  7. Three-year-old, four-year-old, and five-year-old child care;
  8. School-age child care; and
  9. Weekend care.
- B.** The Department shall designate on a facility's license each service classification that the facility is licensed to provide.
- C.** A licensee shall not provide child care services in a service classification for which the licensee is not licensed.

**R9-5-205. Submission of Licensure Fees**

A licensee shall submit to the Department, every three years and no more than 60 days before the anniversary date of the facility's license:

1. A form provided by the Department that contains:
  - a. The licensee's name;
  - b. The facility's name and license number; and
  - c. Whether the licensee intends to submit the applicable fee:
    - i. With the form, or
    - ii. According to the payment plan in subsection (2)(b); and
2. Either:
  - a. The applicable fee in R9-5-206, or



- b. One-half of the applicable fee in R9-5-206 with the form and the remainder of the applicable fee due no later than 120 days after the anniversary date of the facility's license.

**R9-5-206. Licensure Fees**

- A. Except as provided in subsection (B), the fees for an applicant submitting an application or a licensee submitting licensure fees are:
  - 1. For a child care facility with a licensed capacity of 5 to 10 children, \$1,000;
  - 2. For a child care facility with a licensed capacity of 11 to 59 children, \$4,000; and
  - 3. For a child care facility with a licensed capacity of 60 or more children, \$7,800.
- B. If an applicant or licensee participates in a Department-approved program, the Department may discount the fee in subsection (A), based on available funding.
- C. The fee for a licensee requesting an increase in a facility's licensed capacity is the difference between the applicable fee in this Section for the new licensed capacity and the applicable fee in this Section for the current licensed capacity, prorated from the date the licensee submitted the request for the increase for the number of months remaining before the facility's license anniversary date specified in subsection R9-5-205.

**R9-5-207. Invalid License**

If a licensee does not submit the licensure fee as required in R9-5-205(2), the facility license is no longer valid, and the facility is operating without a license.

**R9-5-208. Changes Affecting a License**

- A. At least 30 days before the date of a change in a facility's name, a licensee shall send the Department written notice of the name change and the Department shall issue an amended license that incorporates the name change but retains the anniversary date of the current license.
- B. At least 30 days before the date of an intended change in a facility's service classification, space utilization, or licensed capacity, a licensee shall submit a written request for approval of the intended change to the Department that includes:
  - 1. The licensee's name;
  - 2. The facility's name, street address, city, state, zip code, mailing address, and telephone number;
  - 3. The name, telephone number, and fax number of a point of contact for the request;
  - 4. The facility's license number;
  - 5. The type of change intended:
    - a. Service classification,
    - b. Space utilization, or
    - c. Licensed capacity;
  - 6. A narrative description of the intended change; and
  - 7. The following additional information, as applicable:
    - a. If the intended change affects individual rooms, the following information about each affected activity area, as applicable:
      - i. Identification of the activity area,
      - ii. Current and intended square footage,
      - iii. Current and intended operating hours,
      - iv. Current and intended service classification,
      - v. Current and intended licensed capacity, and
      - vi. Whether the activity area has or will have a diaper changing area;
    - b. If the intended change is to increase licensed capacity, the square footage of the outdoor activity area; and
    - c. If the intended change includes an alteration or addition to the physical plant of a licensed facility, the following, as applicable:

- i. If the facility is not located in a public school or if providing child care services to infants, one-year-old children, or two-year-old children in a facility located in a public school, the information required in R9-5-201(A)(5)(f) and (A)(5)(g) showing the intended change; or
  - ii. If the facility is located in a public school and provides child care only for three-year-old, four-year-old, or five-year-old, or school-age children, a set of final construction drawings or a school map, including the information required in R9-5-201(5)(i) showing the intended change.
- C.** If the intended change in subsection (B) includes an increase in the licensed capacity, a licensee shall submit the fee for an increase in licensed capacity in R9-5-206(C) with the written request for approval.
- D.** The Department shall review a request submitted under subsection (B) according to R9-5-202. If the intended change is in compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter and any applicable fee is submitted, the Department shall send the licensee written approval of the requested change or an amended license that incorporates the change but retains the anniversary date of the current license.
- E.** A licensee shall not implement any change described under subsection (B) until the Department issues an approval or amended license.
- F.** At least 30 days before the date of a change in ownership of a facility, a licensee shall send the Department written notice of the change. A new owner shall obtain a new license as prescribed in R9-5-201 before the new owner begins operating the facility.
- G.** A licensee changing a facility's location shall apply for a new license as prescribed in R9-5-201.
- H.** Within 30 days after a change in a controlling person, a licensee shall send the Department written notice of the change that includes:
  - 1. The name of the licensee;
  - 2. A description of the change made;
  - 3. The name, title, street address, city, state, and zip code of each controlling person;
  - 4. A statement that each controlling person has not been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state;
  - 5. A statement that each controlling person has not had a certificate to operate a child care group home or a license to operate a child care facility revoked in this state or another state for reasons that relate to endangerment of the health and safety of children;
  - 6. A statement that the information provided in the written notice is accurate and complete; and
  - 7. The signature of the licensee.
- I.** If the change in subsection (H) is a change in a controlling person who is a designated agent, a licensee shall include a copy of one of the following for the designated agent:
  - 1. A U.S. passport,
  - 2. A birth certificate,
  - 3. Naturalization documents, or
  - 4. Documentation of legal resident alien status.
- J.** Within 30 days after changing a responsible party, a licensee shall send the Department written notice of the change that includes:
  - 1. The name of the licensee;
  - 2. A description of the change made;
  - 3. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals; and
  - 4. A statement signed by the licensee stating:
    - a. That each individual in subsection (J)(3) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and

- b. That each individual in subsection (J)(3) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children.

**R9-5-209. Inspections; Investigations**

- A. A licensee shall allow the Department immediate access to all areas of the facility affecting the health, safety, or welfare of an enrolled child or to which an enrolled child has access during hours of operation.
- B. A licensee shall permit the Department to interview each staff member or enrolled child as part of an investigation.

**R9-5-210. Denial, Revocation, or Suspension of License**

- A. The Department may deny, revoke, or suspend a license to operate a facility if an applicant or licensee:
  - 1. Provides false or misleading information to the Department;
  - 2. Has been denied a certificate or license to operate a child care group home or child care facility in any state, unless the denial was based on the applicant's failure to complete the certification or licensing process according to a required time-frame;
  - 3. Has had a certificate or license to operate a child care group home or child care facility revoked or suspended in any state;
  - 4. Has been denied a fingerprint clearance card or has had a fingerprint clearance card revoked under A.R.S. Title 41, Chapter 12, Article 3.1;
  - 5. Fails to substantially comply with any provision in A.R.S. Title 36, Chapter 7.1, Article 1 or this Chapter; or
  - 6. Substantially complies with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter, but refuses to carry out a plan acceptable to the Department to eliminate any deficiencies.
- B. In determining whether to deny, suspend, or revoke a license, the Department shall consider the threat to the health and safety of children in a facility based on such factors as:
  - 1. Repeated violations of statutes or rules,
  - 2. A pattern of non-compliance,
  - 3. The type of violation,
  - 4. The severity of each violation, and
  - 5. The number of violations.

**ARTICLE 3. FACILITY ADMINISTRATION**

**R9-5-301. General Licensee Responsibilities**

- A. A licensee shall:
  - 1. Designate a facility director who acts on behalf of the licensee and is responsible for the daily on-site operation of a facility;
  - 2. Submit the name of the designated facility director in writing to the Department before a license is issued;
  - 3. Except as provided in subsection (A)(4), within 10 days before changing a facility director, submit written notice of the change including the new designated facility director's name and starting date;
  - 4. If the licensee is not aware of a change in the facility director 10 days before the effective date of the change, submit written notice of the change to the Department including the new designated facility director's name and starting date within 72 hours after becoming aware of the change.
- B. A licensee shall ensure that a facility director:
  - 1. Designates, in writing, an individual who meets the requirements of R9-5-401(2) to act on behalf of the facility director when the facility director is not present in the facility;

2. Supervises or assigns a teacher-caregiver to supervise each staff member who does not meet the qualifications of R9-5-401(3);
  3. Prepares a dated attendance record for each day and ensures that each staff member documents on the attendance record the time of each arrival and departure of the staff member; and
  4. Maintains on the facility premises, the dated attendance record required in subsection (B)(3) for 12 months after the date on the attendance record.
- C.** A licensee shall develop and implement written facility policies and procedures required for the daily on-site operation of the facility as prescribed in A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter.
- D.** A licensee shall ensure that the following individuals are allowed immediate access to facility premises during hours of operation:
1. A parent of an enrolled child or an individual designated in writing by the parent of an enrolled child; or
  2. A representative of:
    - a. The Department,
    - b. The local health department,
    - c. Child Protective Services, or
    - d. The local fire department or State Fire Marshal.
- E.** A licensee shall, with the exception of individuals listed in subsection (D)(2), ensure that a staff member supervises any individual that is not a staff member who is on facility premises where enrolled children are present.
- F.** A licensee shall ensure that a staff member submits, on or before the starting date of employment or volunteer services, one of the following as evidence of freedom from infectious active tuberculosis:
1. Documentation of a negative Mantoux skin test or other tuberculosis screening test recommended by the U.S. Centers for Disease Control and Prevention, administered within 12 months before the starting date of employment or volunteer service, that includes the date and the type of tuberculosis screening test; or
  2. If the staff member has had a positive Mantoux skin test or other tuberculosis screening test, a written statement that the staff member is free from infectious active tuberculosis that is signed and dated by a health care provider within six months before the starting date of employment or volunteer service.
- G.** A licensee shall ensure that a staff member who has current training in first aid and CPR, as required by R9-5-403(E), is present:
1. At all times during hours of operation on facility premises,
  2. On field trips, and
  3. While transporting enrolled children in a facility's motor vehicle or a vehicle designated by the licensee to transport enrolled children.
- H.** A licensee shall prohibit the use or possession of the following items when an enrolled child is on facility premises, during hours of operation, or in any motor vehicle used for transporting an enrolled child:
1. Any beverage containing alcohol;
  2. A controlled substance as listed in A.R.S. Title 36, Chapter 27, Article 2, except where used as a prescription medication in the manner prescribed;
  3. A dangerous drug as defined in A.R.S. § 13-3401, except where used as a prescription medication in the manner prescribed;
  4. A prescription medication as defined in A.R.S. § 32-1901, except where used in the manner prescribed; or
  5. A firearm as defined in A.R.S. § 13-105.
- I.** At least once a month, and at different times of the day, a licensee shall ensure that an unannounced fire and emergency evacuation drill is conducted and each staff member and enrolled child at the facility participates in the fire and emergency evacuation drill.

1. If child care services for a child with special needs are provided at a facility, the licensee shall provide for the enrolled child's participation in each fire and emergency evacuation drill according to the enrolled child's individualized plan as specified in R9-5-507(A)(1).
  2. A licensee shall document each fire and emergency evacuation drill and maintain the documentation on facility premises for 12 months after the date of the fire and emergency evacuation drill.
- J.** Every September, a licensee shall provide to parents of enrolled children information related to recommendations for influenza vaccinations for children.
- K.** A licensee shall not allow a staff member who lacks proof of immunity against a disease listed in R9-6-702(A) to be present in the facility between the start and end of an outbreak of the disease at the facility.
- L.** A licensee shall ensure that the Department is notified orally or in writing within 24 hours after an enrolled child's death at the child care facility during hours of operation.

**R9-5-302. Statement of Child Care Services**

- A.** A licensee shall prepare a written statement of child care services provided by the licensee that includes the following:
1. A description of the facility's child care services classifications in R9-5-204;
  2. Hours of operation;
  3. The facility's street address, city, state, zip code, mailing address, and telephone number;
  4. Child enrollment and disenrollment procedures;
  5. Charges, fees, and payment requirements for child care services;
  6. Child admission and release requirements;
  7. Age-appropriate discipline guidelines and methods;
  8. Transportation procedures;
  9. Field trip requirements and procedures;
  10. Responsibilities and participation of parents in facility activities;
  11. A general description of activities and programs;
  12. A description of the liability insurance required by R9-5-308 that is carried by the licensee and a statement that documentation of the liability insurance coverage is available for review on the facility premises;
  13. Medication administration procedures;
  14. Accident and emergency procedures;
  15. A notice stating inspection reports are available on-site;
  16. A provision stating that the facility is regulated by the Arizona Department of Health Services including the Department's local street address, city, state, zip code, and local telephone number;
  17. The procedures for notifying a parent at least 48 hours before a pesticide is applied on a facility's premises; and
  18. A statement that a parent has access to the areas on facility premises where the parent's enrolled child is receiving child care services.
- B.** A licensee shall provide a copy of the written statement of child care services:
1. To the Department:
    - a. Before the facility receives a license, and
    - b. Every 12 months after the date of the license as required by A.R.S. § 36-883.01; and
  2. To a parent when the parent requests a copy of the written statement of child care services.

**R9-5-303. Posting of Notices**

- A.** A licensee shall post in a place that can be conspicuously viewed by individuals entering or leaving the facility or activity area, the:
1. Facility's license;
  2. Name of the facility director;
  3. Name of the individual designated to act on behalf of the facility director when the facility director is not present in the facility, as prescribed by R9-5-301(B)(1);
  4. Schedule of child care services fees and policy for refunding fees as prescribed by A.R.S. § 36-882(O);
  5. Breakfast, lunch, dinner, and snack menus for each calendar week at the beginning of the calendar week;
  6. Notice of the presence of any communicable disease or infestation listed in 9 A.A.C. 6, Article 2, Table 2, from the date of discovery through the incubation period of the communicable disease or infestation;
  7. Notice of the Department's intent to deny, revoke, or suspend as prescribed by A.R.S. § 36-888 at the expiration of time in the notice for the licensee to respond;
  8. Notice of an intermediate sanction imposed as prescribed by A.R.S. § 36-891.01 within ten days after the licensee received notice of the intermediate sanction;
  9. Notice of a legal injunction imposed as prescribed by A.R.S. § 36-886.01 when the licensee receives the legal injunction; and
  10. Notice of the availability of facility inspection reports for public viewing at the facility premises.
- B.** A licensee shall ensure that the licensed capacity of each indoor activity area or room is posted in that activity area or room.
- C.** Except as prescribed in A.R.S. § 36-898(C), a licensee shall post a notification of pesticide application in each activity area and in each entrance of a facility, at least 48 hours before a pesticide is applied on the facility's premises, containing:
1. The date and time of the pesticide application, and
  2. A statement that written pesticide information is available from the licensee upon request.

**R9-5-304. Enrollment of Children**

- A.** A licensee shall require that a child be enrolled by the child's parent or an individual authorized in writing by the parent.
- B.** Except as required in A.R.S. § 36-3009, before an enrolled child receives child care services, a licensee shall require the enrolled child's parent to complete a Department-provided Emergency, Information, and Immunization Record card that is signed by the enrolled child's parent containing:
1. The child's name, home address, city, state, zip code, home telephone number, sex, and date of birth;
  2. The date of the child's enrollment;
  3. The name, home address, city, state, zip code, and contact telephone number of each parent of the child;
  4. The name and contact telephone number of at least two individuals authorized by the child's parent to collect the child from the facility in case of emergency, or if the child's parent cannot be contacted;
  5. The name and contact telephone number of the child's health care provider;
  6. The written authorization for emergency medical care of the enrolled child when the parent cannot be contacted at the time of the emergency;
  7. The name of the individual to be contacted in case of injury or sudden illness of the child;
  8. The written instructions of a child's parent or health care provider for nutritional and dietary needs of the child including, if applicable, the request in R9-5-509(C)(9); and
  9. A written record completed by the child's parent or health care provider noting the child's susceptibility to illness, physical conditions of which a staff member should be aware, and any individual requirements for health maintenance.

- C. A licensee shall maintain a current Emergency, Information, and Immunization Record card for each enrolled child on facility premises in a place that provides a staff member ready access to the card in event of an emergency at, or evacuation of, the facility.
- D. When a child is disenrolled from a facility, the licensee shall:
  1. Enter the date of disenrollment on the child's Emergency, Information, and Immunization Record card; and
  2. Maintain the records in subsection (D)(1) for 12 months after the date of disenrollment on facility premises in a place separate from the current Emergency, Information, and Immunization Record cards. If a licensee is a school governing board, a charter school, or a person operating multiple child care facilities, the licensee may maintain disenrollment records in a single central administrative office located in the same city, town, or school attendance area as the facility.

**R9-5-305. Child Immunization Requirements**

- A. A licensee shall not permit an enrolled child to attend a facility until the facility receives:
  1. An immunization record for the enrolled child with the information required in 9 A.A.C. 6, Article 7, documenting that the enrolled child has received all current, age-appropriate immunizations required under 9 A.A.C. 6, Article 7:
    - a. Provided by a health care provider, or
    - b. Generated from the Arizona State Immunization Information System, which is the Department's child immunization reporting system established in A.R.S. § 36-135; or
  2. An exemption affidavit for the enrolled child provided by the enrolled child's parent that contains:
    - a. A statement, signed by the enrolled child's health care provider, that the immunizations required by 9 A.A.C. 6, Article 7 would endanger the enrolled child's health or medical condition; or
    - b. A statement, signed by the enrolled child's parent, that the enrolled child is being raised in a religion whose teachings are in opposition to immunization.
- B. A licensee shall attach an enrolled child's written immunization record or exemption affidavit, required in subsection (A), to the enrolled child's Emergency, Information, and Immunization Record card, required in R9-5-304(B).
- C. A licensee shall ensure that a staff member updates an enrolled child's written immunization record required in subsection (A)(1)(a) each time the enrolled child's parent provides the licensee with a written statement from the enrolled child's health care provider that the enrolled child has received an age-appropriate immunization required by 9 A.A.C. 6, Article 7.
- D. If an enrolled child's immunization record indicates that the enrolled child has not received an age-appropriate immunization required by 9 A.A.C. 6, Article 7, a licensee shall ensure that a staff member:
  1. Notifies the enrolled child's parent in writing that the enrolled child may attend the facility for not more than 15 days after the date of the notification unless the enrolled child's parent complies with the immunization requirements in 9 A.A.C. 6, Article 7, and
  2. Documents on the enrolled child's Emergency, Information, and Immunization Record card the date on which the enrolled child's parent is notified of an immunization required by the Department.
- E. A licensee shall not allow an enrolled child who lacks proof of immunity against a disease listed in A.A.C. R9-6-702(A) to attend the child care facility between the start and end of an outbreak of the disease at the facility.
- F. If a parent of an enrolled child, excluded from a child care facility because of the lack of documented immunity to a disease during an outbreak of the disease at the child care facility, submits any of the documents in A.A.C. R9-6-704 as proof of the enrolled child's immunity to the disease, a licensee shall allow the enrolled child to attend the child care facility during the outbreak of the disease.

**R9-5-306. Admission and Release of Children; Attendance Records**

- A.** A licensee shall maintain a dated attendance form containing an enrolled child's name with the time of each admission and release of the enrolled child.
1. Except as provided in subsection (A)(2), a licensee shall ensure that the attendance form is signed with at least a first initial of an individual's first name and the individual's last name by each enrolled child's parent or individual designated by the enrolled child's parent, each time the enrolled child is admitted or released.
  2. An electronic fingerprint verification or an electronic signature may be used in place of a signature of the enrolled child's parent or designated individual to admit or release the enrolled child.
  3. If an electronic signature is used to admit or release the enrolled child, the licensee shall adopt policies and procedures to ensure that the individual whose signature the electronic or digital method of identification represents is accountable for the use of the electronic or digital method;
  4. A licensee shall develop, document, and implement policies and procedures to ensure that the identity of an individual is known to the staff member or is verified with picture identification before releasing an enrolled child to the individual.
  5. A licensee shall not release the enrolled child to an individual other than the enrolled child's parent or other individual designated in writing by the enrolled child's parent except when the enrolled child's parent is unable to collect the enrolled child and authorizes the licensee by telephone to release the enrolled child to an individual not so designated.
    - a. The licensee shall verify the telephone authorization using a means of verification that has been agreed upon between the licensee and the enrolled child's parent at the time of enrollment.
    - b. The licensee shall document the means of verification in subsection (A)(5)(a) on the enrolled child's Emergency, Information, and Immunization Record card.
  6. A licensee shall not permit the self-admission or self-release of an enrolled child unless the enrolled child is of school age and the licensee has obtained and verified written permission from the enrolled child's parent.
  7. A licensee shall maintain the attendance form on facility premises for 12 months after the date of attendance.
- B.** A licensee shall:
1. Develop, document, and implement policies and procedures to ensure that a staff member maintains daily documentation of the presence of an enrolled child in an activity area that includes a method to account for any temporary absences of the enrolled child from the activity area, and
  2. Maintain the documentation of the presence of enrolled children in an activity area required in subsection (B)(1) on facility premises for 12 months after the date of the documentation.

**R9-5-307. Suspected or Alleged Child Abuse or Neglect**

A licensee shall ensure that the licensee or a staff member documents and reports all suspected or alleged cases of child abuse or neglect.

1. The licensee or staff member shall report the suspected or alleged child abuse or neglect to Child Protective Services or to a local law enforcement agency as prescribed in A.R.S. § 13-3620. The licensee or staff member shall also send documentation to Child Protective Services and any local law enforcement agency previously notified within three days of the initial report and maintain documentation of a child abuse or neglect report on facility premises for 12 months after the date of a report.
2. The licensee or staff member shall report the suspected or alleged child abuse by a staff member to the Department and to a local law enforcement agency as prescribed in A.R.S. § 13-3620. A licensee or staff member shall also send documentation to the Department and to any law enforcement agency previously



notified within three days of the initial report, and maintain documentation of a child abuse report on facility premises for 12 months after the date of a report.

**R9-5-308. Insurance Requirements**

- A. A licensee shall secure and maintain the following minimum insurance coverage:
  - 1. General facility liability insurance of at least \$300,000; and
  - 2. Motor vehicle insurance coverage, required by A.R.S. Title 28, Chapter 9, Article 4, for each motor vehicle provided by a licensee to transport enrolled children.
- B. A licensee shall maintain documentation of the insurance coverage required in subsection (A) on facility premises.
- C. A licensee shall provide a copy of documentation of insurance to the Department before issuance of a license and at any time that the licensee's insurance coverage expires, is canceled, or changes.

**R9-5-309. Gas and Fire Inspections**

- A. An applicant shall obtain the following inspections of a facility and make any repairs or corrections stated on an inspection report before a license is issued by the Department:
  - 1. If there are gas pipes that run from a gas meter to an appliance or location on the facility premises, a gas inspection by a licensed plumber or individual authorized by the local jurisdiction that verifies there are no gas leaks in the gas pipes that run from the gas meter to any appliance or location on facility premises; and
  - 2. A fire inspection by a local fire department.
- B. If there are gas pipes that run from a gas meter to an appliance or location on the facility premises, a licensee shall ensure that a licensed plumber or individual authorized by the local jurisdiction conducts a gas inspection that verifies there are no gas leaks in the gas pipes that run from the gas meter to any appliance or location on facility premises at least once every 12 months after the issue date of the license.
- C. A licensee shall maintain on facility premises:
  - 1. A current fire inspection report including documentation of any repairs or corrections required by the fire inspection report; and
  - 2. If there are gas pipes that run from a gas meter to an appliance or location on the facility premises, a current gas inspection report including documentation of any repairs or corrections required by the gas inspection report.

**R9-5-310. Pesticides**

- A. A licensee shall make written pesticide information available to a parent, upon a parent's request, at least 48 hours before a pesticide application occurs on facility premises, containing:
  - 1. The brand, concentration, rate of application, and any use restrictions required by the label of the herbicide or specific pesticide;
  - 2. The date and time of the pesticide application;
  - 3. The pesticide label and the material safety data sheet; and
  - 4. The name and telephone number of the pesticide business licensee and the name of the licensed applicator.
- B. A licensee is exempt from the provisions in subsection (A), as prescribed by A.R.S. § 36-898(C).

**ARTICLE 4. FACILITY STAFF**

**R9-5-401. Staff Qualifications**

A licensee shall ensure that staff members meet the following qualifications for employment or volunteer service at a facility:

1. A facility director is 21 years of age or older and provides the licensee with documentation of one of the following:
  - a. At least 24 months of child care experience, a high school or high school equivalency diploma, and:
    - i. Six credit hours or more in early childhood, child development, or a closely-related field from an accredited college or university; or
    - ii. At least 60 actual hours of instruction, provided in conferences, seminars, lectures, or workshops in early childhood, child development, or a closely-related field, and an additional 12 hours of instruction, provided in conferences, seminars, lectures, or workshops in the area of program administration, planning, development, or management;
  - b. At least 18 months of child care experience and:
    - i. An N.A.C., C.D.A., or C.C.P. credential; or
    - ii. At least 24 credit hours from an accredited college or university, including at least six credit hours in early childhood, child development, or a closely-related field;
  - c. At least six months of child care experience and an associate degree from an accredited college or university in early childhood, child development, or a closely-related field; or
  - d. At least three months of child care experience and a bachelor degree from an accredited college or university in early childhood, child development, or a closely-related field;
2. A facility director's designee is 21 years of age or older and provides the licensee with documentation of one of the following:
  - a. At least 12 months of child care experience, a high school or high school equivalency diploma, and:
    - i. Three credit hours or more in early childhood, child development, or a closely-related field from an accredited college or university, or
    - ii. At least 30 actual hours of instruction, provided in conferences, seminars, lectures, or workshops in early childhood, child development, or a closely-related field;
  - b. At least 12 months of child care experience and:
    - i. An N.A.C., C.D.A., or C.C.P. credential; or
    - ii. At least 24 credit hours from an accredited college or university, including at least six credit hours in early childhood, child development, or a closely-related field;
  - c. At least six months of child care experience and an associate degree from an accredited college or university in early childhood, child development, or a closely-related field; or
  - d. At least three months of child care experience and a bachelor degree from an accredited college or university in early childhood, child development, or a closely-related field;
3. A teacher-caregiver is 18 years of age or older and provides the licensee with documentation of one of the following:
  - a. Six months of child care experience and:
    - i. A high school diploma or high school equivalency diploma; or
    - ii. At least 12 credit hours from an accredited college or university, including at least six credit hours in early childhood, child development, or a closely-related field;
  - b. Associate or bachelor degree from an accredited college or university in early childhood, child development, or a closely-related field; or
  - c. N.A.C., C.D.A., or C.C.P. credential;
4. An assistant teacher-caregiver is 16 years of age or older and provides the licensee with documentation of one of the following:
  - a. Current and continuous enrollment in high school or a high school equivalency class;

- b. High school or high school equivalency diploma;
  - c. Enrollment in vocational rehabilitation, as defined in A.R.S. § 23-501;
  - d. Employment as a teacher-caregiver aide for 12 months; or
  - e. Service as a volunteer in a child care facility for 12 months;
5. A teacher-caregiver aide is 16 years of age or older;
  6. A student-aide provides the licensee with documentation of participation in:
    - a. An educational, curriculum-based course in child development, parenting, or guidance counseling; or
    - b. A vocational education or occupational development program; and
  7. A volunteer is 15 years of age or older.

**R9-5-402. Staff Records and Reports**

- A. A licensee shall maintain a file for each staff member containing:
  1. The staff member's name, date of birth, home address, and telephone number;
  2. The staff member's starting date of employment or volunteer service;
  3. The staff member's ending date of employment or volunteer service, if applicable;
  4. The name, telephone number, and mailing address of an individual to be notified in case of an emergency;
  5. The staff member's written statement attesting to current immunity against measles, rubella, diphtheria, mumps, and pertussis;
  6. The form required in A.R.S. § 36-883.02(C);
  7. Documents required by R9-5-203(A)(2) or R9-5-203(B);
  8. Documents required by R9-5-301;
  9. Documents required by R9-5-401, if applicable;
  10. If applicable:
    - a. The form required in A.R.S. § 8-804(I),
    - b. Documentation of the submission required in A.R.S. § 8-804 and the information received as a result of the submission, and
    - c. Documentation of training provided by a licensee as required by R9-5-403, if applicable;
  11. A copy of any current license or certification required by A.R.S. Title 36, Chapter 7.1, Article 1. or this Chapter; and
  12. Documentation of the requirements in A.R.S. § 36-883.02(D).
- B. A licensee shall ensure that, for a staff member who is currently working at the facility, the staff member's information required by:
  1. Subsections (A)(1) through (11) is maintained in a single location on facility premises, and
  2. Subsection (A)(12) is maintained and provided to the Department within two hours of the Department's request.
- C. A licensee shall ensure that, for an individual who is not currently working at the facility, the information required in subsections (A)(1) through (12) is:
  1. Maintained for 12 months after the date the individual last worked at the facility, and
  2. Provided to the Department within two hours of the Department's request.

**R9-5-403. Training Requirements**

- A. Within 10 days of the starting date of employment or volunteer service, a licensee shall provide, and each staff member who provides child care services shall complete, training for new staff members that includes all of the following:
  1. Facility philosophy and goals;

2. Names and ages of and developmental expectations for enrolled children for whom the staff member will provide child care services;
3. Health needs, nutritional requirements, any known allergies, and information about adaptive devices of enrolled children for whom the staff member will provide child care services;
4. Lesson plans;
5. Child guidance and methods of discipline;
6. Hand washing techniques;
7. Diapering techniques and toileting, if assigned to diaper changing duties;
8. Food preparation, service, sanitation, and storage, if assigned to food preparation;
9. If a staff member is assigned to feeding infants, the preparation, handling, and storage of infant formula and breast milk;
10. Recognition of signs of illness and infestation;
11. Child abuse or neglect detection, prevention, and reporting;
12. Accident and emergency procedures;
13. Staff responsibilities as required by A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter;
14. Sun safety policies and procedures;
15. Safety in outdoor activity areas;
16. Transportation procedures, if applicable; and
17. Field trip procedures, if applicable.

**B.** A licensee shall ensure that:

1. Each staff member who provides child care services completes 18 or more actual hours of training every 12 months after the effective date of this Chapter or the staff member's starting date of employment or volunteer service in at least two topics listed in this subsection:
  - a. Child growth and development, including:
    - i. Infant growth and development, which may include sudden infant death syndrome prevention;
    - ii. Developmental psychology;
    - iii. Language development;
    - iv. Observation and child assessment;
    - v. Developmentally-appropriate activities;
    - vi. Child guidance and methods of discipline which may include training on the appropriate techniques to prevent a child from harm or to prevent the child from harming others; and
    - vii. Developmentally-appropriate activity areas;
  - b. Health and safety issues, including:
    - i. Accident and emergency procedures, including CPR and first aid for infants and children;
    - ii. Recognition of signs of illness and infestation;
    - iii. Nutrition and developmentally-appropriate eating habits;
    - iv. Child abuse detection, reporting, and prevention;
    - v. Safety of indoor and outdoor activity areas; and
    - vi. Sun safety policies and procedures;
  - c. Program administration, planning, development, or management; and
  - d. Availability of community services and resources, including those available to children with special needs; and
2. As part of the required 18 hours of training in subsection (B)(1):
  - a. A staff member who has less than 12 months of child care experience before the staff member's starting date, completes at least 12 hours in one or more of the topics in subsection (B)(1)(a) in the staff member's first 12 months at the facility;

- b. A staff member who has 12 months or more of child care experience, completes at least 6 hours in one or more of the topics in subsection (B)(1)(a) every 12 months after the staff member's starting date;
  - c. A staff member who provides child care services to an infant completes at least 6 hours in subsection (B)(1)(a)(i) every 12 months after the staff member's starting date; and
  - d. A facility director completes at least 6 hours in subsection (B)(1)(c) every 12 months after the facility director's starting date.
- C.** A licensee shall ensure that documentation of a staff member's completion of training required by subsection (A) is signed by the facility director and dated.
- D.** A licensee shall ensure that a staff member submits to the licensee documentation of training received as required by subsection (B) to the licensee as the training is completed.
- E.** A licensee shall ensure that a staff member required by R9-5-301(G) meets all of the following:
- 1. The staff member obtains first aid training specific to infants and children,
  - 2. The staff member obtains CPR training specific to infants and children, which includes a demonstration of the staff member's ability to perform CPR,
  - 3. The staff member maintains current training in first aid and CPR, and
  - 4. The staff member provides the licensee with a copy of the front and back of the current card issued by the agency or instructor as proof of completion of the requirements of this subsection.

**R9-5-404. Staff-to-Children Ratios**

- A.** A licensee shall ensure that at least the following staff-to-children ratios are maintained at all times when providing child care services to enrolled children:

<i>Age Group</i>	<i>Staff: Children</i>
Infants	1:5 or 2:11
1-year-old children	1:6 or 2:13
2-year-old children	1:8
3-year-old children	1:13
4-year-old children	1:15
5-year-old children not school-age	1:20
School-age children	1:20

- B.** A licensee shall:
- 1. Determine and maintain the required staff-to-children ratio for each group of enrolled children based on the age of the youngest child in the group;
  - 2. Allow a volunteer qualified as a director, teacher-caregiver, or an assistant-teacher caregiver to be counted as staff in staff-to-children ratios; and
  - 3. Not allow a student-aide or an individual qualified as a teacher-caregiver-aide to be counted as staff in staff-to-children ratios.
- C.** A licensee shall ensure that:
- 1. When there are six or more enrolled children present in a facility, the following individuals are present in the facility:
    - a. A facility director or a director's designee who meets the requirements in R9-5-401 for a director's designee; and
    - b. One additional staff member;
  - 2. When five or fewer enrolled children are present in a facility, the facility director or director's designee who meets the requirements in R9-5-401 is present in the facility, and an additional staff member is

available by telephone or other equally expeditious means and able to reach the facility within 15 minutes after notification; and

3. When six or more enrolled children are present in a facility, an infant is not placed for supervision with a child who is not an infant.

**D.** A licensee shall ensure that a staff member assigned to provide child care services to enrolled children does not perform duties that may affect the staff member's ability to provide child care services to the enrolled children.

**E.** In addition to maintaining the required staff-to-children ratios, a licensee shall ensure that:

1. Staff members are present on facility premises to perform facility administration, food preparation, food service, and maintenance responsibilities; and
2. Facility maintenance does not depend on the work of enrolled children.

**F.** If a licensee conducts swimming activities at a swimming pool, the licensee shall ensure that there is a lifeguard on the premises who has current lifeguard certification that includes a demonstration of the lifeguard's ability to perform CPR. If the lifeguard is a staff member, the staff member cannot be counted in the staff-to-children ratios required by subsection (A).

## **ARTICLE 5. FACILITY PROGRAM AND EQUIPMENT**

### **R9-5-501. General Child Care Program, Equipment, and Health and Safety Standards**

**A.** A licensee shall ensure that:

1. In addition to complying with the requirements in this Chapter, the health, safety, or welfare of an enrolled child is not placed at risk of harm;
2. Except for an enrolled school-age child, drinking water is provided sufficient for the needs of and accessible to each enrolled child in both indoor and outdoor activity areas;
3. For an enrolled school-age child, if drinking water is not accessible in an indoor or outdoor activity area, drinking water sufficient to meet the individual needs of each enrolled school-aged child is available;
4. An enrolled child is placed in an age-appropriate or developmentally-appropriate group;
5. Indoor activity areas used by enrolled children are decorated with age-appropriate articles such as mirrors, bulletin boards, pictures, and posters;
6. Age-appropriate toys, materials, and equipment are provided to enable each enrolled child to participate in an activity;
7. Storage space is provided in the facility for indoor and outdoor toys, materials, and equipment in areas accessible to enrolled children;
8. Clean clothing is available to an enrolled child when the enrolled child needs a change of clothing;
9. If a staff member places an enrolled child in a feeding chair when feeding the enrolled child:
  - a. The feeding chair is constructed to prevent toppling;
  - b. The tray or feeding surface of the feeding chair is smooth and free of cracks; and
  - c. The staff member:
    - i. Cleans the feeding chair before and after each enrolled child's use;
    - ii. Sanitizes the tray or feeding surface before and after each enrolled child's use; and
    - iii. If the feeding chair was manufactured with a safety strap, fastens the feeding chair's safety strap while the enrolled child is in the feeding chair;
10. At least one indoor activity area in the facility is equipped with at least one cot or mat, a sheet, and a blanket, where an enrolled child can rest quietly away from other enrolled children;
11. Outdoor activities are scheduled to allow not less than 75 square feet for each enrolled child occupying the facility's outdoor activity area or indoor activity area substituted for outdoor activity area at any time;
12. The facility premises, including the buildings, are maintained free from hazards;
13. Toys and play equipment, required in this Article, are maintained:
  - a. Free from hazards, and

- b. In a condition that allows the toy or play equipment to be used for the original purpose of the toy or play equipment;
  - 14. Temperatures are maintained between 68° F and 82° F in each room used by enrolled children;
  - 15. Except when an enrolled child is napping or sleeping, each room used by an enrolled child is maintained at a minimum of 30 foot candles of illumination;
  - 16. When an enrolled child is napping or sleeping in a room, the room is maintained at a minimum of five foot candles of illumination;
  - 17. Each enrolled child's toothbrush, comb, washcloth, cloth towel, and clothing is maintained in a clean condition and stored in an identified space separate from those of other enrolled children;
  - 18. Each enrolled child's pacifier is labeled with an identifier that is specific to the enrolled child and maintained in a clean condition;
  - 19. Except as provided in subsection (A)(20), the following are stored separate from food storage areas and are inaccessible to an enrolled child:
    - a. All materials and chemicals labeled as a toxic or flammable substance;
    - b. All substances that have a child warning label and may be a hazard to a child; and
    - c. Lawn mowers, ladders, toilet brushes, plungers, and other facility equipment that may be a hazard to a child;
  - 20. Hand sanitizers:
    - a. When being stored, are stored separate from food storage areas and are inaccessible to enrolled children; and
    - b. When being provided for use, are accessible to enrolled children; and
  - 21. Except when used as part of an activity, the following are stored in an area inaccessible to an enrolled child:
    - a. Garden tools, such as a rake, trowel, and shovel; and
    - b. Cleaning equipment and supplies, such as a mop and mop bucket.
- B.** A toy or piece of play equipment, which is free from hazards and in a condition that does not allow the toy or play equipment to be used for the toy or play equipment's original purpose, may be in an activity area but is not counted as one of the toys or play equipment required in this Article.
- C.** A licensee shall ensure that a staff member:
- 1. Supervises each enrolled child at all times;
  - 2. Does not smoke or use tobacco:
    - a. On facility premises, except in designated areas separated from the children; or
    - b. On a field trip or when transporting an enrolled child;
  - 3. Except for an enrolled child who can change the enrolled child's own clothing, changes an enrolled child's clothing when wet or soiled;
  - 4. Except as provided in subsection (D), prepares and posts in each indoor activity area, a current schedule of children's age-appropriate activities, including the times the following are provided:
    - a. Meals and snacks;
    - b. Naps;
    - c. Indoor activities;
    - d. Outdoor or large muscle development activities;
    - e. Quiet and active activities;
    - f. Teacher-directed activities;
    - g. Self-directed activities;
    - h. Activities for individuals, groups of five or fewer children, and groups of six or more children; and
    - i. Activities that develop small muscles;

5. Except as provided in subsection (D), prepares and posts a dated lesson plan in each indoor activity area for each calendar week, which is maintained on facility premises for 12 months after the lesson plan date and provides opportunities for each child to:
    - a. Gain a positive self-concept;
    - b. Develop and practice social skills;
    - c. Think, reason, question, and experiment;
    - d. Acquire language skills;
    - e. Develop physical coordination skills;
    - f. Participate in structured large muscle physical activity;
    - g. Develop habits that meet health, safety, and nutritional needs;
    - h. Express creativity;
    - i. Learn to respect cultural diversity of children and staff;
    - j. Learn self-help skills; and
    - k. Develop a sense of responsibility and independence;
  6. If an activity in the lesson plan required in subsection (C)(5) includes screen time, include in the lesson plan the duration of the screen time in minutes;
  7. Except as provided in subsection (C)(8), implements the schedule in subsection (C)(4) and lesson plan in subsection (C)(5);
  8. If the schedule in subsection (C)(4) or lesson plan in subsection (C)(5) is not implemented, writes on the schedule or the lesson plan the activity that is implemented;
  9. Does the following when a parent permits or asks a staff member to apply personal products on an enrolled child, such as petroleum jelly, diaper rash ointments, sun screen or sun block preparations, toothpaste, and baby diapering preparations:
    - a. Obtains the enrolled child's personal products from the enrolled child's parent or, if the licensee provides the personal products for use by the enrolled child, obtains written approval for use of the products from the enrolled child's parent;
    - b. Labels the personal products with the enrolled child's name; and
    - c. Keeps the personal products inaccessible to enrolled children;
  10. In an indoor activity area that does not have a diaper changing area:
    - a. Stores an enrolled child's wet or soiled clothing in a sealed plastic bag labeled with the enrolled child's name; and
    - b. Sends an enrolled child's wet or soiled clothing home with the enrolled child when the facility releases the enrolled child to the enrolled child's parent; and
  11. Monitors an enrolled child for overheating or overexposure to the sun. If the enrolled child exhibits signs of overheating or overexposure to the sun, a staff member who has the first aid training required by R9-5-403(E) shall evaluate and treat the enrolled child.
- D.** A licensee is not required to have a schedule required in subsection (C)(4) or a lesson plan required in subsection (C)(5) for an indoor activity area that is approved and used:
1. By enrolled children only for:
    - a. Snacks or meals, or
    - b. A specific activity;
  2. To provide child care services to infants; or
  3. As a substitute for an outdoor activity area.

**R9-5-502. Supplemental Standards for Infants**

- A.** A licensee providing child care services for infants shall:
1. Provide a wall-enclosed room for infants that provides exits required by R9-5-601(1);



2. Provide age-appropriate active and quiet activities for each infant;
3. Provide age-appropriate indoor and outdoor activities for each infant;
4. Permit an infant to maintain the infant's pattern of sleeping and waking;
5. Develop, document, and implement policies and procedures that provide an opportunity for a non-crawling infant to spend time each day on the infant's stomach while the infant is awake;
6. Provide an outdoor activity area or an indoor activity area for large muscle development substituted for an outdoor activity area that is used by infants when enrolled children older than infants are not present;
7. Provide space, materials, and equipment in an infant room that includes the following:
  - a. An area with nonabrasive flooring for sitting, crawling, and playing;
  - b. Toys, materials, and equipment, that are too large for an infant to swallow and free from sharp edges and points, in a quantity sufficient to meet the needs of the infants in attendance that include:
    - i. Toys to enhance physical development such as toys for stacking, pulling, and grasping;
    - ii. Soft toys;
    - iii. Books;
    - iv. Toys to enhance visual development such as crib mobiles and activity mats with an object or objects suspended above the infant's head; and
    - v. Unbreakable mirrors; and
  - c. At least one adult-size chair for use by a:
    - i. Staff member when holding or feeding an infant; or
    - ii. Nursing mother when breastfeeding her infant;
8. Provide a crib for each infant that:
  - a. Has bars or openings spaced no more than 2-3/8 inches apart and a crib mattress measured to fit not more than 1/2 inch from the crib side;
  - b. Has a commercially waterproofed mattress; and
  - c. Is furnished with clean, sanitized, crib-size bedding, including a fitted sheet and top sheet or a blanket;
9. Prohibit the use of stacked cribs;
10. Ensure that an occupied crib with a crib side that does not have a non-porous barrier is placed at least two feet from another occupied crib side that does not have a non-porous barrier; and
11. Label each food container received from the parent with the infant's name.

**B.** A licensee providing child care services for infants shall not:

1. Allow an infant room to be used as a passageway to another area of the facility;
2. Permit an infant who is awake to remain for more than 30 consecutive minutes in a crib, swing, feeding chair, infant seat, or any equipment that confines movement;
3. Permit an infant to use a walker; or
4. Allow screen time in an infant room.

**C.** A licensee shall ensure that:

1. A staff member providing child care services in an infant room:
  - a. Plays and talks with each infant;
  - b. Holds and rocks each infant;
  - c. Responds immediately to each infant's distress signals;
  - d. Keeps dated, daily, documentation of each infant including:
    - i. A description of any activities the infant participated in,
    - ii. The infant's food consumption, and
    - iii. Diaper changes;

- e. Maintains the documentation in subsection (C)(1)(d) on facility premises for 12 months after the date on the documentation;
  - f. Provides a copy of the documentation in subsection (C)(1)(d) to the infant's parent upon request;
  - g. Does not allow bumper pads, pillows, comforters, sheepskins, stuffed toys, or other soft products in a crib when an infant is in the crib;
  - h. Cleans and sanitizes each crib and mattress used by an infant when soiled;
  - i. Changes each crib sheet and blanket before use by another enrolled child, when soiled, or at least once every 24 hours;
  - j. Cleans and sanitizes all sheets and blankets before use by another enrolled child;
  - k. Places an infant to sleep on the infant's back, unless the infant's parent submits written instructions from the infant's health care provider that states otherwise;
  - l. Obtains written, current, and dated dietary instructions from a parent or health care provider regarding the method of feeding and types of foods to be prepared or fed to an infant at the facility;
  - m. Posts the current written dietary instructions in the infant room and the kitchen and maintains the instructions on facility premises for 12 months after the date of the instructions; and
  - n. Follows the current written dietary instructions of a parent when feeding the infant;
2. A staff member providing child care services in an infant room does not:
- a. Place an infant directly on a waterproof mattress cover; or
  - b. Place an infant to sleep using a positioning device that restricts movement, unless the infant's health care provider has instructed otherwise in writing;
3. When preparing, using, or caring for an infant's feeding bottles, a staff member:
- a. Labels each bottle received from the parent with the infant's name;
  - b. Ensures that a bottle is not:
    - i. Heated in a microwave oven;
    - ii. Propped for an infant feeding; or
    - iii. Permitted in an infant's crib unless the written instructions required by subsection (C)(1)(l) state otherwise;
  - c. Empties and rinses bottles previously used by an infant; and
  - d. Cleans and sanitizes a bottle, bottle cover, and nipple before reuse; and
4. When feeding an infant, a staff member:
- a. Provides an infant with food for growth and development that includes:
    - i. Formula provided by the infant's parent or the licensee or breast milk provided by the infant's parent following written instructions required by subsection (C)(1)(l); and
    - ii. Cereal as requested by the infant's parent or health care provider;
  - b. If the staff member prepares an infant's formula, prepares the infant's formula in a sanitary manner;
  - c. Stores formula and breast milk in a sanitary manner at the facility;
  - d. Does not mix cereal with formula and feed it to an infant from a bottle or infant feeder unless the written instructions required by subsection (C)(1)(l) state otherwise;
  - e. Except for finger food, feeds solid food to an infant by spoon from an individual container;
  - f. Uses a separate container and spoon for each infant;
  - g. Holds and feeds an infant under 6 months of age and an infant older than 6 months of age who cannot hold a bottle for feeding; and
  - h. If an infant is no longer being held for feeding, seats the infant in a feeding chair or at a table with a chair that allows the infant to reach the food while sitting.

**R9-5-503. Standards for Diaper Changing**

- A.** A licensee shall ensure that each diaper changing area required in R9-5-601(4) contains:
1. A nonabsorbent, sanitizable diaper changing surface that is:
    - a. Seamless and smooth, and
    - b. Kept clear of items not required for diaper changing;
  2. A hand-washing sink next to the diaper changing surface for staff use when changing diapers and for washing an enrolled child during or after diapering that provides:
    - a. Running water between 86° F and 110° F,
    - b. Soap from a dispenser, and
    - c. Single-use paper hand towels from a dispenser;
  3. At least one waterproof, sanitizable container with a waterproof liner and a tight fitting lid for soiled diapers; and
  4. At least one waterproof, sanitizable container with a waterproof liner and a tight fitting lid for soiled clothing.
- B.** A licensee shall ensure that a staff member does not:
1. Permit a bottle, formula, food, eating utensil, or food preparation in a diaper changing area;
  2. Draw water for human consumption from a diaper changing area sink; or
  3. Except as provided in subsection (C), if responsible for food preparation, change diapers until food preparation duties have been completed for the day.
- C.** A staff member who provides child care services to an infant:
1. May throughout the time the staff member provides child care services to the infant:
    - a. Change the infant's diaper, and
    - b. Prepare the infant's formula or cereal; and
  2. Is prohibited from other food preparation after changing the infant's diaper.
- D.** A licensee shall ensure that a written diaper changing procedure is posted and implemented in each diaper changing area.
- E.** A licensee shall ensure that the written diaper changing procedure in subsection (D) states that an enrolled child's diaper is changed as soon as it is soiled, and that a staff member, when diapering:
1. Uses a separate wash cloth and towel only once for each enrolled child;
  2. Washes and dries the enrolled child using the enrolled child's individual personal products labeled with the enrolled child's name;
  3. Uses single-use non-porous gloves;
  4. Washes the staff member's own hands with soap and running water between 86° F and 110° F before and after each diaper change;
  5. Washes each enrolled child's hands with soap and running water between 86° F and 110° F after each diaper change;
  6. Cleans, sanitizes, and dries the diaper changing surface following each diaper change; and
  7. Uses single-use paper towels from a dispenser to dry the diaper changing surface or the hands of the enrolled child or staff member.
- F.** A licensee shall ensure that in an activity area with a diaper changing area:
1. The containers required in subsections (A)(3) and (A)(4) are inaccessible; and
  2. A staff member:
    - a. Documents each diaper change:
      - i. For an infant, in the infant's dated, daily, documentation required in R9-5-502(C)(1)(d); or
      - ii. For an enrolled child who is not an infant, in a dated diaper changing log;

- b. Maintains the diaper changing log on facility premises for 12 months after the date of the diaper changing log;
- c. Empties clothing soiled with feces into a flush toilet without rinsing;
- d. Places an enrolled child's clothing soiled by feces or urine in a plastic bag labeled with the enrolled child's name, stores the clothing in a container used for this purpose, and sends the clothing home with the enrolled child's parent; and
- e. Removes disposable diapers and disposable training pants from a diaper changing area as needed or at least twice every 24 hours to a waste receptacle outside the facility building.

**R9-5-504. Supplemental Standards for 1-year-old and 2-year-old Children**

A licensee providing child care services for 1-year-old and 2-year-old children shall:

- 1. Ensure that a staff member does not permit a 1-year-old or 2-year-old enrolled child who is awake to spend more than 30 minutes of consecutive time in a crib, feeding chair, or other place of confinement;
- 2. Consult with each enrolled child's parent to develop a plan for individual toilet training of the enrolled child and ensure that a staff member does not force toilet training on any enrolled child;
- 3. Ensure that each activity area has a supply of age-appropriate toys, materials, and equipment that are too large for a child to swallow and free from sharp edges and points, in a quantity sufficient to meet the needs of the enrolled children in attendance including:
  - a. Art supplies;
  - b. Books;
  - c. Rubber or soft plastic balls;
  - d. Puzzles and toys to enhance manipulative skills;
  - e. Blocks;
  - f. Washable soft toys and dolls;
  - g. Musical instruments; and
  - h. Indoor and outdoor equipment to enhance large muscle development;
- 4. Prohibit screen time in an activity area where child care services are provided to a one-year-old child; and
- 5. Ensure that:
  - a. If finger food is served, the food is of a size and texture that does not present a choking hazard;
  - b. A staff member serves food to an enrolled child in a feeding chair or at a table with a chair that allows the enrolled child to reach the food while sitting;
  - c. If a child is fed with a bottle, a staff member complies with the requirements in R9-5-502(C)(3); and
  - d. If a parent brings a sippy cup for the parent's enrolled child, the sippy cup is labeled with the enrolled child's name.

**R9-5-505. Supplemental Standards for 3-year-old, 4-year-old, and 5-year-old Children**

A licensee providing child care services for 3-year-old, 4-year-old, and 5-year-old children shall provide a supply of age-appropriate toys, materials, and equipment accessible to enrolled children in each activity area in a quantity sufficient to meet the needs of the enrolled children in attendance including:

- 1. Art supplies,
- 2. Blocks,
- 3. Books and posters,
- 4. Toys and dress-up clothes,
- 5. Indoor and outdoor equipment to enhance large muscle development,
- 6. Puzzles and toys to enhance manipulative and categorization skills,
- 7. Science materials, and

8. Musical instruments.

**R9-5-506. Supplemental Standards for School-age Children**

A licensee providing child care services for school-age children shall:

1. Ensure that a staff member supervises an enrolled school-age child to and from a bathroom and allows the enrolled child privacy while in the bathroom;
2. Ensure that if an enrolled child remains in the bathroom for more than three minutes, the supervising staff member checks on the enrolled child to ensure the child's safety;
3. Provide age-appropriate toys, materials, and equipment accessible to enrolled children in each activity area in a quantity sufficient to meet the needs of the enrolled children in attendance including:
  - a. Arts and crafts,
  - b. Games,
  - c. Puzzles and toys to enhance manipulative skills,
  - d. Books,
  - e. Science materials,
  - f. Sports equipment, and
  - g. Outdoor play equipment; and
4. Provide enrolled school-age children with a quiet study area.

**R9-5-507. Supplemental Standards for Children with Special Needs**

A. A licensee providing child care services for a child with special needs shall:

1. Except as provided in subsection (A)(2), before a child with special needs receives child care services, obtain from the enrolled child's parent a copy of an existing individualized plan for the enrolled child that can be reviewed, adopted, and implemented by the licensee when providing child care services to the enrolled child that includes the following as needed for the enrolled child:
  - a. Medication schedule;
  - b. Nutrition and feeding instructions;
  - c. Qualifications required of a staff member who feeds the enrolled child;
  - d. Medical equipment or adaptive devices;
  - e. Medical emergency instructions;
  - f. Toileting and personal hygiene instructions;
  - g. Specific child care services to be provided to the enrolled child at the facility;
  - h. Information from health care providers, including the frequency and length of any prescribed medical treatment or therapy;
  - i. Training required of a staff member to care for the enrolled child's special needs; and
  - j. Participation in fire and emergency evacuation drills;
2. If an enrolled child with special needs does not have an existing individualized plan, obtain from the enrolled child's parent written instructions for providing services to the enrolled child until a written individualized plan required in subsection (A)(1) is developed by a team consisting of staff members, the enrolled child's parent, and health care providers that is completed within 30 days after the enrolled child's initial date of receiving child care services;
3. Maintain an enrolled child's current individualized plan on facility premises and if the current individualized plan was developed according to subsection (A)(2), provide a copy to the enrolled child's parent; and
4. Ensure the individualized plan is updated at least every 12 months after the date of the initial plan or as changes occur.

- B.** If an enrolled child with special needs who is 18 months of age or older and does not walk is placed in an infant group, a licensee may move the enrolled child after the enrolled child's parent and licensee determine that the proposed move is developmentally-appropriate.
- C.** A licensee shall ensure that:
  - 1. When tube feeding an enrolled child, a staff member only uses:
    - a. Commercially prepackaged formula in a ready-to-use state,
    - b. Formula prepared by the enrolled child's parent and brought to the facility in an unbreakable container, or
    - c. Breast milk brought to the facility in an unbreakable container; and
  - 2. Only a staff member instructed by an enrolled child's parent or individual designated by the enrolled child's parent:
    - a. Feeds the enrolled child using the enrolled child's tube-feeding apparatus; and
    - b. Cleans the enrolled child's tube-feeding apparatus.
- D.** A licensee shall provide an enrolled child with special needs with:
  - 1. Developmentally-appropriate toys, materials, and equipment; and
  - 2. Assistance from staff members to enable the enrolled child to participate in the activities of the facility.
- E.** In addition to complying with the transportation requirements in R9-5-517, a licensee transporting an enrolled child with special needs in a wheelchair in a facility's motor vehicle shall ensure that:
  - 1. The enrolled child's wheelchair is manufactured to be secured in a motor vehicle;
  - 2. The enrolled child's wheelchair is secured in the motor vehicle using a minimum of four anchorages attached to the motor vehicle floor, and four securement devices, such as straps or webbing that have buckles and fasteners, that attach the wheelchair to the anchorages;
  - 3. The enrolled child is secured in the wheelchair by means of a wheelchair restraint that is a combination of pelvic and upper body belts intended to secure a passenger in a wheelchair; and
  - 4. The enrolled child's wheelchair is placed in a position in the motor vehicle that does not prevent access to the enrolled child in the wheelchair or passage to the front and rear in the motor vehicle.
- F.** A licensee providing child care services for an enrolled child who uses a wheelchair or is not able to walk shall locate the enrolled child on the ground floor of the facility.

**R9-5-508. General Nutrition Standards**

- A.** A licensee shall:
  - 1. Make breakfast available to an enrolled child who is present at a facility before 8:00 a.m.,
  - 2. Serve lunch to an enrolled child who is present at a facility between 11:00 a.m. through 1:00 p.m., and
  - 3. Serve dinner to an enrolled child who is present from 5:00 p.m. through 7:00 p.m. and who will remain at the facility after 7:00 p.m.
- B.** A licensee shall serve the following meals or snacks to an enrolled child present at a facility for the following periods of time:
  - 1. If an enrolled child is present two to four hours, one or more snacks;
  - 2. If an enrolled child is present during any of the meal times stated in subsection (A), a meal that meets the meal pattern requirements in subsection (C);
  - 3. If an enrolled child is present four to eight hours, one or more snacks and a meal;
  - 4. If an enrolled child is present nine or more hours, two snacks and one or more meals; and
  - 5. Before bedtime, one snack.
- C.** If a licensee provides food, a licensee shall prepare and serve food according to the meal pattern requirements found in Table 5.1, "Meal Pattern Requirements for Children."
- D.** If an enrolled child's parent provides food for the parent's enrolled child, the licensee shall provide milk or juice to the enrolled child if not provided by the parent.

- E.** If a licensee plans and serves meals, the licensee shall ensure that the meals:
1. Meet the age-appropriate nutritional requirements of an enrolled child; and
  2. For each calendar week, provide a variety of foods within each food group from the meal pattern requirements.
- F.** If a licensee provides food, the licensee shall maintain on the facility premises at least a one day supply of food needed to provide the meals and snacks required by subsections (B) and (C) to each enrolled child attending the facility.
- G.** In addition to the required daily servings of food stated in subsection (C), a licensee:
1. Shall make second servings of food available to each enrolled child at meals and at snack time,
  2. May substitute a food that is equivalent to a specific food component if second servings of the specific food component are not available, and
  3. Shall ensure that a food substitution in subsection (G)(2) is written on the posted weekly menu by the end of the meal or snack service.

**TABLE 5.1 MEAL PATTERN REQUIREMENTS FOR CHILDREN**

TABLE OF MEAL PATTERN REQUIREMENTS FOR CHILDREN			
Food Components	Ages 1 through 2 years	Ages 3 through 5 years	Ages 6 and Older
<b>Breakfast:</b> 1. Milk, fluid 2. Vegetable, fruit, or full-strength juice 3. Bread and bread alternates (whole grain or enriched): Bread or cornbread, rolls, muffins, or biscuits or cold dry cereal (volume or weight, whichever is less) or cooked cereal, pasta, noodle products, or cereal grains	1/2 cup 1/4 cup  1/2 slice 1/2 serving 1/4 cup 1/4 cup	3/4 cup 1/2 cup  1/2 slice 1/2 serving 1/3 cup 1/4 cup	1 cup 1/2 cup  1 slice 1 serving 3/4 cup 1/2 cup
<b>Lunch or Supper:</b> 1. Milk, fluid 2. Vegetable and/or fruit (2 or more kinds) 3. Bread and bread alternates (whole grain or enriched): Bread or cornbread, rolls, muffins, or biscuits or cold dry cereal (volume or weight, whichever is less) or cooked cereal, pasta, noodle products, or cereal grains 4. Meat or meat alternates: Lean meat, fish, or poultry (edible portion as served) or cheese or egg or cooked dry beans or peas* or peanut butter, soy nut butter, or other nut or seed butters or peanuts, soy nuts, tree nuts, or seeds or an equivalent quantity of any combination of the above meat/meat alternates or yogurt	1/2 cup 1/4 cup total  1/2 slice 1/2 serving 1/4 cup 1/4 cup  1 oz. 1 oz. 1/2 egg 1/4 cup 2 tbsp**  1/2 oz.**  4 oz.	3/4 cup 1/2 cup total  1/2 slice 1/2 serving 1/3 cup 1/4 cup  1 1/2 oz. 1 1/2 oz. 3/4 egg 3/8 cup 3 tbsp**  3/4 oz.**  6 oz.	1 cup 3/4 cup total  1 slice 1 serving 3/4 cup 1/2 cup  2 oz. 2 oz. 1 egg 1/2 cup 4 tbsp**  1 oz.**  8 oz.

Snack: (select 2 of these 4 components)***			
1. Milk, fluid	1/2 cup	1/2 cup	1 cup
2. Vegetable, fruit, or full-strength juice	1/2 cup	1/2 cup	3/4 cup
3. Bread and bread alternates (whole grain or enriched):			
Bread	1/2 slice	1/2 slice	1 slice
or cornbread, rolls, muffins, or biscuits	1/2 serving	1/2 serving	1 serving
or cold dry cereal (volume or weight, whichever is less)	1/4 cup	1/3 cup	3/4 cup
or cooked cereal, pasta, noodle products, or cereal grains	1/4 cup	1/4 cup	1/2 cup
4. Meat or meat alternates:			
Lean meat, fish, or poultry (edible portion as served)	1/2 oz.	1/2 oz.	1 oz.
or cheese	1/2 oz.	1/2 oz.	1 oz.
or egg	1/2 egg	1/2 egg	1/2 egg
or cooked dry beans or peas*	1/8 cup	1/8 cup	1/4 cup
or peanut butter, soy nut butter, or other nut or seed butters	1 tbsp	1 tbsp	2 tbsp
or peanuts, soy nuts, tree nuts, or seeds	1/2 oz.	1/2 oz.	1 oz.
or an equivalent quantity of any combination of the above meat/meat alternates			
or yogurt	2 oz.	2 oz.	4 oz.
* In the same meal service, dried beans or dried peas may be used as a meat alternate or as a vegetable; however, such use does not satisfy the requirement for both components.			
** At lunch and supper, no more than 50% of the requirement shall be met with nuts, seeds, or nut butters. Nuts, seeds, or nut butters shall be combined with another meat or meat alternative to fulfill the requirement. Two tablespoons of nut butter or one ounce of nuts or seeds equals one ounce of meat.			
*** Juice may not be served when milk is served as the only other component.			

**R9-5-509. General Food Service and Food Handling Standards**

- A.** A licensee that prepares food for enrolled children on facility premises shall, if required by 9 A.A.C. 8, Article 1, and the local ordinances of the local health department where the facility is located, obtain a food establishment permit issued under 9 A.A.C. 8, Article 1, and:
1. Provide the Department with a copy of the facility’s food establishment permit before the Department issues a license to the facility,
  2. Maintain the facility’s current food establishment permit on the facility’s premises, and
  3. Provide a copy of the facility’s current food establishment permit to the Department upon request.
- B.** If a licensee contracts with a food establishment to prepare and deliver food to the facility, the licensee shall obtain and provide the Department with a copy of the food establishment’s permit, issued under 9 A.A.C. 8, Article 1, at the following times:
1. Before the Department issues a license to the facility,
  2. Upon contracting with the food establishment, and
  3. Every 12 months after the date the contract is entered into while the contract is in effect.
- C.** A licensee shall ensure that:
1. Enrolled children, except infants and children with special needs who cannot wash their own hands, wash their hands with soap and running water before and after handling or eating food;
  2. A staff member:
    - a. Washes the hands of an infant or a child with special needs who cannot wash the child’s own hands before and after the infant or child with special needs handles or eats food using:
      - i. A washcloth,
      - ii. A single-use paper towel, or
      - iii. Soap and running water; and



- b. If using a washcloth, uses each washcloth on only one child and only one time before it is laundered or discarded;
- 3. An enrolled child is not permitted to eat food directly off the floor, carpet, or ground or with utensils placed directly on the floor, carpet, or ground;
- 4. A staff member encourages, but never forces, enrolled children to eat food;
- 5. A staff member assists each enrolled child who needs assistance with eating;
- 6. A staff member teaches self-feeding skills and habits of good nutrition to each enrolled child as necessary;
- 7. Lunch and dinner are family-style meals as demonstrated by at least one of the following:
  - a. Food is served from a serving container on the table where enrolled children are seated;
  - b. Enrolled children serve themselves, independently or with the help of a staff member, from a serving container on the table where enrolled children are seated;
  - c. Enrolled children pass a serving container from individual to individual;
  - d. In a facility where lunch or dinner is provided by the facility, a staff member sits at the table and eats the lunch or dinner with enrolled children; or
  - e. In a facility where each enrolled child brings the enrolled child's own lunch or dinner, a staff member sits at the table with the enrolled children and eats the staff member's own lunch or dinner;
- 8. Fresh milk is served from the original, commercially filled container, to a container used for meal service or a cup, and unused portions are not returned to the original container;
- 9. Milk served to an enrolled child older than two years of age is fat-free or 1% lowfat milk unless the enrolled child's parent requests otherwise;
- 10. Reconstituted dry milk is not served to meet the fluid milk requirement;
- 11. Juice served to children for a meal or snack is full-strength 100% vegetable or 100% fruit juice from an original, commercially filled container or reconstituted from a concentrate according to manufacturer instructions;
- 12. Fruit juice served to an enrolled child is limited to the following amounts:
  - a. For an enrolled child younger than six years of age, four ounces per day; or
  - b. For an enrolled child six years of age or older, six ounces per day;
- 13. A beverage sweetened with any kind of sugar product is not provided by the facility;
- 14. Each staff member is informed of a modified diet prescribed for an enrolled child by the child's parent or health care provider, and the modified diet is posted in the kitchen and in the child's activity area;
- 15. The food served to an enrolled child is consistent with a modified diet prescribed for the child by the child's parent or health care provider;
- 16. An enrolled child is not permitted in the kitchen during food preparation or food service except as part of an activity;
- 17. An enrolled child does not use the kitchen or a food storage area as a passageway;
- 18. A staff member:
  - a. Prepares a weekly menu at least one week in advance,
  - b. Includes on the menu the specific foods to be served on each day,
  - c. Dates each menu,
  - d. Posts each menu at least one day before the first meal on the menu will be served, and
  - e. Writes food substitutions on a posted menu no later than the morning of the day of meal service;
- 19. Non-single-use utensils and equipment used in preparing, eating, or drinking food are:
  - a. After each use:
    - i. Washed in an automatic dishwasher and air dried or heat dried; or

- ii. Washed in hot soapy water, rinsed in clean water, sanitized, and air dried or heat dried; and
  - b. Stored in a clean area protected from contamination;
- 20. Single-use utensils and equipment are disposed of after being used;
- 21. Perishable foods are covered and stored in a refrigerator at a temperature of 41° F or below;
- 22. A refrigerator at the child care facility maintains a temperature of 41° F or below, as shown by a thermometer kept in the refrigerator at all times;
- 23. A freezer at the child care facility maintains a temperature of 0° F or below, as shown by a thermometer kept in the freezer at all times; and
- 24. Foods are prepared as close as possible to serving time and, if prepared in advance, are either:
  - a. Cold held at a temperature of 45° F or below or hot held at a temperature of 130° F or above until served; or
  - b. Cold held at a temperature of 45° F or below and then reheated to a temperature of at least 165° F before being served.

**R9-5-510. Discipline and Guidance**

- A. A licensee shall ensure that a staff member:
  - 1. Defines and maintains consistent and reasonable guidelines and limitations for an enrolled child's behavior;
  - 2. Teaches, models, and encourages orderly conduct, personal control, and age-appropriate behavior;
  - 3. Explains to an enrolled child why a particular behavior is not allowed, suggests an alternative, and assists the enrolled child to become engaged in an alternative activity; and
  - 4. After determining that an enrolled child's behavior may result in harm to self or others, holds the enrolled child until the enrolled child regains control or composure.
- B. A licensee shall ensure that a staff member does not use or permit:
  - 1. A method of discipline that could cause harm to the health, safety, or welfare of an enrolled child;
  - 2. Corporal punishment;
  - 3. Abusive language;
  - 4. Discipline associated with:
    - a. Eating, napping, sleeping, or toileting;
    - b. Medication; or
    - c. Mechanical restraint; or
  - 5. Discipline administered to any enrolled child by another enrolled child.
- C. A licensee may allow a staff member to separate an enrolled child from other enrolled children for unacceptable age-appropriate behavior.
  - 1. The separation period shall be for no longer than three minutes after the enrolled child has regained control or composure.
  - 2. A staff member shall not allow an enrolled child to be separated for longer than 10 minutes without the staff member interacting with the enrolled child.

**R9-5-511. Sleeping and Napping**

- A. A licensee shall provide each enrolled child who naps or sleeps at the facility with a separate cot or mat or a crib that meets the requirements of R9-5-502(A)(8) and ensure that:
  - 1. A cot, mat, or crib used by the enrolled child accommodates the enrolled child's height and weight;
  - 2. A staff member covers each cot, crib mattress, or mat with a clean sheet that is laundered when soiled, or at least once every seven days and before use by a different enrolled child;
  - 3. A clean blanket or sheet is available for each enrolled child;
  - 4. A rug, carpet, blanket, or towel is not used as a mat; and

5. Each cot, mat, or crib is maintained in a clean and repaired condition.
- B.** A licensee shall not use bunk beds or waterbed mattresses.
- C.** A licensee shall provide an unobstructed passageway at least 18 inches wide between each row of cots or mats to allow a staff member access to each enrolled child.
- D.** A licensee shall ensure that if an enrolled child is present at the facility during evening and nighttime hours, the licensee:
1. Permits the enrolled child to use a mat only when used on top of a cot;
  2. Before bathing the enrolled child at the facility, obtains written consent and bathing instructions from the enrolled child's parent and follows the instructions when bathing the enrolled child;
  3. Requires that a staff member cleans and sanitizes a bathtub or shower stall after bathing each enrolled child;
  4. Requires that a staff member remains awake while supervising the sleeping enrolled child; and
  5. Prohibits the operation of a television set in a room where the enrolled child is sleeping.
- E.** A licensee shall ensure that if an enrolled child is present at the facility during naptime, the licensee:
1. Does not permit the enrolled child to lie in direct contact with the floor while napping;
  2. Prohibits the operation of a television set in a room where the enrolled child is napping;
  3. Ensures naptime accommodations are available for the enrolled school-age child if requested by the enrolled child or the enrolled child's parent;
  4. Requires that a staff member remain awake while supervising the enrolled sleeping child; and
  5. Prohibits the enrolled child from napping in an attic or a loft during naptime.
- F.** A licensee shall ensure that storage space is provided in the facility for cots, mats, sheets, and blankets, that is:
1. Accessible to an area used for naptime or sleeping; and
  2. Separate from food service and preparation areas, toilet rooms, and laundry rooms.

**R9-5-512. Cleaning and Sanitation**

- A.** A licensee shall maintain facility premises free of insects and vermin.
- B.** A licensee shall maintain facility premises and furnishings:
1. In a clean condition, and
  2. Free from odor.
- C.** A licensee shall ensure that floor coverings are:
1. Clean; and
  2. Free from:
    - a. Dampness,
    - b. Odors, and
    - c. Hazards.
- D.** A licensee shall ensure that toilet bowls, lavatory fixtures, and floors in toilet rooms and kitchens are cleaned and sanitized as often as necessary to maintain them in a clean and sanitized condition or at least once every 24 hours.
- E.** If laundry belonging to a facility is done on facility premises, a licensee shall:
1. Not use a kitchen or food storage area for sorting, handling, washing, or drying laundry;
  2. Locate the laundry equipment in an area that is separate from licensed activity areas and inaccessible to enrolled children;
  3. Not permit an enrolled child to be in a laundry room or use a laundry area as a passageway for enrolled children; and
  4. Ensure that laundry soiled by vomitus, urine, feces, blood, or other body fluid is stored, cleaned, and sanitized separately from other laundry.
- F.** A licensee shall ensure that:
1. Each toilet room in a facility contains, within easy reach of enrolled children:

- a. Mounted toilet tissue; and
- b. Except as provided in subsection (G):
  - i. A sink with running water;
  - ii. Soap contained in a dispenser; and
  - iii. Disposable, single-use paper towels in a mounted dispenser, or a mechanical air hand dryer;
- 2. Staff members wash their hands with soap and running water after toileting;
- 3. An enrolled child's hands are washed with soap and running water after toileting;
- 4. Except for a cup or receptacle used only for water, food waste is stored in a covered container and the container is clean and lined with a plastic bag;
- 5. Food waste and other refuse is removed from the facility building at least once every 24 hours or more often as necessary to maintain a clean condition and avoid odors;
- 6. A staff member or an enrolled child does not draw water for human consumption from a toilet room hand-washing sink;
- 7. Toys, materials, and equipment are maintained in a clean condition;
- 8. Plumbing fixtures are maintained in a clean and working condition; and
- 9. Chipped or cracked sinks and toilets are replaced or repaired.
- G.** A licensee may have a sink with running water, soap contained in a dispenser, and single-use paper towels in a mounted dispenser or a mechanical air hand dryer located directly outside a toilet room if an enrolled child exiting the toilet room can access the sink, soap, and paper towels or air hand dryer without having to cross space that is used for any activity.

**R9-5-513. Pets and Animals**

- A.** A licensee shall maintain written documentation of current immunization against rabies for each ferret, dog, or cat owned by a licensee or staff member that is present on facility premises.
- B.** A licensee shall ensure that a staff member:
  - 1. Keeps all pet and animal habitats clean;
  - 2. Prohibits reptiles, such as turtles, iguanas, snakes, and lizards, in the facility;
  - 3. Prohibits birds in food preparation and eating areas;
  - 4. Keeps pets and animals clean;
  - 5. Prohibits pets and animals from endangering an enrolled child, staff member, or other individual on facility premises; and
  - 6. Keeps birds and animals such as horses, sheep, cattle, and poultry in an enclosure that is not accessible to an enrolled child except as part of an activity.

**R9-5-514. Accident and Emergency Procedures**

- A.** A licensee shall ensure that there is a first aid kit on facility premises that contains first aid supplies in a quantity sufficient to meet the needs of the enrolled children including the following:
  - 1. Sterile bandages including:
    - a. Adhesive bandages of assorted sizes,
    - b. Sterile gauze pads, and
    - c. Sterile gauze rolls;
  - 2. Antiseptic solution or sealed antiseptic wipes;
  - 3. A pair of scissors;
  - 4. Adhesive tape;
  - 5. Single-use, non-porous gloves; and
  - 6. Reclosable plastic bags of at least one-gallon size.

- B.** A licensee shall ensure that the first aid kit required in subsection (A) is accessible to staff members but inaccessible to enrolled children.
- C.** A licensee shall:
1. Prepare and date a written fire and emergency plan that contains:
    - a. The location of the first aid kit;
    - b. The names of staff members who have the first aid training required by R9-5-403(E);
    - c. The names of staff members who have the CPR training required by R9-5-403(E);
    - d. The directions for:
      - i. Initiating verbal notification of an enrolled child's parent by telephone or other equally expeditious means within 30 minutes of a fire or emergency; and
      - ii. Providing written notification to the enrolled child's parent within 24 hours; and
    - e. The facility's street address and the emergency telephone numbers for the local fire department, police department, ambulance service, and poison control center;
  2. Maintain the plan required in subsection (C)(1) in a location on facility premises that has an operable telephone service or two-way voice communication system that connects the facility with an individual who has direct access to an in-and-out operable telephone service;
  3. Post the plan required in subsection (C)(1) in any indoor activity area that does not have an operable telephone service or two-way voice communication system that connects the indoor activity area with an individual who has direct access to an in-and-out operable telephone services; and
  4. Update the plan in subsection (C)(1) every 12 months after the date of initial preparation of the plan or when any information changes.
- D.** A licensee shall post, near an activity area or a room's designated exit, a building evacuation plan that details the designated exits from the activity area or room and the facility.
- E.** A licensee shall maintain and use a communication system that contains:
1. A direct-access, in-and-out, operating telephone service at the facility; or
  2. A two-way voice communication system that connects the facility with an individual who has direct access to an in-and-out, operating telephone service.
- F.** If while attending a facility an enrolled child has an accident, injury, or emergency that, based on an evaluation by a staff member, requires medical treatment by a health care provider, a licensee shall ensure that a staff member:
1. Notifies the enrolled child's parent immediately after the accident, injury, or emergency;
  2. Documents:
    - a. A description of the accident, injury, or emergency, including the date, time, and location of the accident, injury, or emergency;
    - b. The method used to notify the enrolled child's parent; and
    - c. The time the enrolled child's parent was notified; and
  3. Maintains documentation required in subsection (F)(2) on facility premises for 12 months after the date of the child's disenrollment.
- G.** If an enrolled child's parent informs a staff member at the facility that the enrolled child's parent obtained medical treatment from a health care provider for an accident, injury, or emergency the enrolled child had while attending the facility, a licensee shall ensure that a staff member:
1. Documents any information about the enrolled child's accident, injury, or emergency received from the enrolled child's parent; and
  2. Maintains documentation required in subsection (G)(1) on facility premises for 12 months after the date of the child's disenrollment.

**R9-5-515. Illness and Infestation**

- A.** A licensee shall not permit an enrolled child to remain at the facility if a staff member determines that the enrolled child shows signs of illness or infestation.
- B.** If an enrolled child exhibits signs of illness or infestation at a facility, a licensee shall ensure that a staff member:
  - 1. Immediately separates the enrolled child from other enrolled children,
  - 2. Immediately notifies the enrolled child's parent by telephone or other expeditious means to arrange for the enrolled child's removal from the facility, and
  - 3. Maintains documentation of the notification on facility premises for 12 months after the date of the notification.
- C.** A licensee shall ensure that a staff member who has signs of illness or infestation is excluded from a facility.
- D.** A facility director shall not permit a staff member to return to a facility until free from signs of illness or infestation or until the staff member provides documentation by a health care provider that the individual may return to the facility.
- E.** If a staff member or enrolled child contracts a communicable disease or infestation listed in 9 A.A.C. 6, Article 2, Table 2, a licensee shall ensure that, within 24 hours of notice of the communicable disease or infestation, written notice is provided to each staff member, parent, and the local health department.
- F.** A licensee shall ensure that:
  - 1. A dated, written notice of the communicable disease or infestation is prepared and posted in the facility's entrance as required by R9-5-303;
  - 2. Documentation of the notification is maintained on facility premises for 12 months from the date of the notification; and
  - 3. Documentation of the absences of staff members and enrolled children due to a communicable disease or infestation listed in 9 A.A.C. 6, Article 2, Table 2, is prepared and maintained on facility premises for 12 months from the first date of absence.

**R9-5-516. Medications**

- A.** A licensee shall ensure that a written statement is prepared and maintained on facility premises that specifies:
  - 1. Whether prescription or nonprescription medications are administered to enrolled children; and
  - 2. If prescription or nonprescription medications are administered, the requirements in subsection (B) for administering the prescription or nonprescription medications.
- B.** If prescription or nonprescription medications are administered, a licensee shall ensure that:
  - 1. A facility director, or a staff member designated in writing by the facility director, is responsible for the administration of all medications in the facility, including storing, supervising an enrolled child's ingestion of a medication, and documenting all medications administered to an enrolled child;
  - 2. A facility director ensures that only one staff member in the facility at any given time is responsible for the administration of medications;
  - 3. A facility director, or a staff member designated in writing by the facility director, does not administer a medication to an enrolled child unless the facility receives written authorization signed by the enrolled child's parent or health care provider that includes the:
    - a. Name of the enrolled child;
    - b. Type of the medication;
    - c. Prescription number, if any;
    - d. Instructions for administration specifying the:
      - i. Dosage and route of administration;
      - ii. If indicated, starting and ending dates of the dosage period; and
      - iii. Times and frequency of administration;
    - e. Reason for the medication; and

- f. Date of authorization; and
- 4. A staff member :
  - a. Administers a prescription medication provided by a parent only from a container dispensed by a pharmacy;
  - b. Administers a nonprescription medication provided by a parent for an enrolled child only from a container prepackaged and labeled for use by the manufacturer and labeled with the enrolled child's name;
  - c. Does not administer any medication that has been transferred from one container to another; and
  - d. Does not administer a nonprescription medication to an enrolled child inconsistent with the instructions on the nonprescription medication's label, unless the facility receives written authorization from the enrolled child's health care provider.
- C.** A licensee shall allow an enrolled child to receive an injection only after obtaining a written authorization from a health care provider.
- D.** A licensee shall maintain the health care provider's written authorization required in subsection (C) on facility premises for 12 months after the date of the written authorization.
- E.** An individual authorized by state law to give injections may give an injection to an enrolled child. In an emergency, an individual may give an injection to an enrolled child according to A.R.S. §§ 32-1421(A)(1) and 32-1631(2).
- F.** A licensee shall maintain documentation of all medications administered to an enrolled child.
  - 1. Documentation shall contain:
    - a. The name of the enrolled child;
    - b. The name and amount of medication administered and the prescription number, if any;
    - c. The date and time the medication was administered; and
    - d. The signature of the staff member who administered the medication to the enrolled child; and
  - 2. A licensee shall maintain the documentation on facility premises for 12 months after the date the medication is administered.
- G.** A licensee shall return all unused prescription and nonprescription medications to a parent when the medication prescription date has expired or the medication is no longer being administered to the enrolled child or dispose of the medication if unable to locate the enrolled child's parent after the child's disenrollment.
- H.** Except as provided in subsection (J), a licensee shall ensure that prescription and nonprescription medications are stored as follows:
  - 1. An enrolled child's medication is kept in a locked, leak-proof storage cabinet or container that is used only for storing enrolled children's medications and is located out of reach of children;
  - 2. Medication for a staff member is kept in a locked, leak-proof storage cabinet or container that is separate from the storage container for enrolled children's medications and is located out of reach of children; and
  - 3. Medications requiring refrigeration are kept in a locked leak-proof container in a refrigerator.
- I.** A licensee shall ensure that a facility does not stock a supply of medications for administration to enrolled children, including:
  - 1. Any prescription medication; or
  - 2. A nonprescription medication such as aspirin, acetaminophen, ibuprofen, or cough syrup.
- J.** A staff member's or enrolled child's prescription medication necessary to treat life-threatening symptoms:
  - 1. May be kept in the activity area where the staff member or enrolled child is present; and
  - 2. Except when the prescription medication is administered to treat life-threatening symptoms, is inaccessible to an enrolled child.

**R9-5-517. Transportation**

- A.** A licensee who transports an enrolled child in a motor vehicle that the licensee owns, or acquires for use by contract, shall:
1. Obtain dated, written permission from the enrolled child's parent before the licensee transports the enrolled child;
  2. Maintain written permission required in subsection (A)(1) on facility premises for 12 months after the date on the written permission;
  3. Ensure that the motor vehicle is registered by the Arizona Department of Transportation as required by A.R.S. Title 28, Chapter 7;
  4. Maintain documentation of current motor vehicle insurance coverage inside the motor vehicle;
  5. Contact the Department no later than 24 hours after a motor vehicle accident that occurs while transporting an enrolled child;
  6. Submit a written report to the Department within seven days after a motor vehicle accident that occurs while transporting an enrolled child;
  7. Not permit an enrolled child to be transported in a truck bed, camper, or trailer attached to a motor vehicle;
  8. Use a child passenger restraint system, as required by A.R.S. § 28-907, for each enrolled child who is younger than five years old;
  9. Except as provided in subsection (E), use an adjustable lap belt or an integrated lap and shoulder belt for each enrolled child who is five years old or older;
  10. Ensure that the motor vehicle has:
    - a. A working mechanical heating system capable of maintaining a temperature throughout the motor vehicle of at least 60° F when outside air temperatures are below 60° F;
    - b. Except as provided in subsection (E), a working air-conditioning system capable of maintaining a temperature throughout the motor vehicle at or below 86° F when outside air temperatures are above 86° F;
    - c. Except as provided in subsection (F), a first aid kit that meets the requirements of R9-5-514(A);
    - d. Two large, clean towels or blankets; and
    - e. Sufficient drinking water available to meet the needs of each enrolled child in the motor vehicle and sufficient cups or other drinking receptacles so that each enrolled child can drink from a different cup or receptacle;
  11. Ensure that the motor vehicle is:
    - a. Maintained in a clean condition,
    - b. In a mechanically safe condition, and
    - c. Free from hazards; and
  12. Maintain the service and repair records of the motor vehicle as follows:
    - a. A person operating a single child care facility shall maintain the service and repair records for at least 12 months after the date of an inspection or repair in a single location on facility premises;
    - b. A public or private school that uses a school bus, as defined in A.R.S. § 28-101, shall maintain the service and repair records for the school bus as provided in A.A.C. R17-9-108(F); and
    - c. A school governing board, charter school, or person operating multiple child care facilities shall maintain the service and repair records for any motor vehicle other than a school bus for at least 12 months after the date of an inspection or repair in a single administrative office located in the same city, town, or school attendance area as the facility.
- B.** A licensee shall ensure that an individual who drives a motor vehicle used to transport an enrolled child:
1. Is 18 years of age or older;



2. Holds a valid driver's license issued by the Arizona Department of Motor Vehicles as prescribed by A.R.S. Title 28, Chapter 8;
  3. Carries a list stating the name of each enrolled child being transported and a copy of each enrolled child's Emergency, Information, and Immunization Record card including the attached immunization record or exemption affidavit, in the motor vehicle;
  4. Requires that each door be locked before the motor vehicle is set in motion and keeps the doors locked while the motor vehicle is in motion;
  5. Does not permit an enrolled child to be seated in front of a motor vehicle's air bag;
  6. Requires that each enrolled child remain seated and entirely inside the motor vehicle while the motor vehicle is in motion;
  7. Except as provided in subsection (E), requires that each enrolled child be secured in a seat belt before the motor vehicle is set in motion and while the motor vehicle is in motion;
  8. Does not permit an enrolled child to open or close a door or window in the motor vehicle;
  9. Sets the emergency parking brake and removes the ignition keys from the motor vehicle before exiting the motor vehicle;
  10. Ensures that each enrolled child is loaded into or unloaded from the motor vehicle away from moving traffic at curbside or in a driveway, parking lot, or other location designated for this purpose; and
  11. Does not use audio headphones or a telephone while the motor vehicle is in motion.
- C.** When transporting an enrolled school-age child in a motor vehicle, a licensee shall ensure that the staff-to-children ratios required in R9-5-404(A) are met. A motor vehicle driver may be counted in the staff-to-children ratio, when transporting an enrolled school-age child in a motor vehicle, if the motor vehicle driver meets the qualifications of a teacher-caregiver.
- D.** When transporting an enrolled child who is not school-age in a motor vehicle, a licensee shall ensure that the staff-to-children ratios required in R9-5-404(A) are met. A motor vehicle driver may be counted in the staff-to-children ratio, when transporting an enrolled child who is not school-age in a motor vehicle, only if four or fewer enrolled children are being transported and the motor vehicle driver meets the qualifications of a teacher-caregiver.
- E.** A licensee who is transporting an enrolled child in a commercial vehicle, as defined in A.R.S. § 28-1301, is exempt from the provisions in subsections (A)(9), (A)(10)(b), and (B)(7).
- F.** A licensee who is transporting an enrolled child in a school bus, as defined in A.R.S. § 28-101, is exempt from the provision in subsection (A)(10)(c) and shall comply with A.A.C. R17-9-110.

**R9-5-518. Field Trips**

- A.** A licensee providing a field trip for an enrolled child shall:
1. Obtain written permission from a parent before the enrolled child participates in a field trip including:
    - a. The date and description of the field trip;
    - b. The times of departure from and return to the facility; and
    - c. The name, street address, and telephone number, if any, of the field trip destination;
  2. Prepare a written field trip plan including:
    - a. The name of each participating enrolled child, staff member, and other individuals on the field trip;
    - b. The times of departure from and return to the facility;
    - c. If applicable, license plate number of any motor vehicle used on the field trip; and
    - d. The name, street address, and telephone number, if any, of the field trip destination; and
  3. Maintain the written permission in subsection (A)(1) and written field trip plan in subsection (A)(2) on facility premises for 12 months after the date of the field trip.

- B.** A licensee shall ensure that a staff member taking enrolled children on a field trip carries the following on the field trip:
  - 1. A copy of the Emergency, Information, and Immunization Record card including the attached immunization record or exemption affidavit, of each enrolled child participating in the field trip;
  - 2. A copy of the written field trip plan required in subsection (A)(2);
  - 3. A list stating the name of each participating enrolled child; and
  - 4. Sufficient water to meet the needs of each enrolled child participating in the field trip.
- C.** A staff member shall verify the presence of each enrolled child and place a checkmark next to the enrolled child's name on the list required in subsection (B)(3) for each enrolled child who is present at the following times:
  - 1. At the beginning of the field trip or when boarding the motor vehicle,
  - 2. Upon arrival and each hour while at the field trip destination,
  - 3. When preparing to leave the field trip destination or when boarding the motor vehicle to return to the facility, and
  - 4. When reentering the facility at the conclusion of the field trip.
- D.** A licensee shall ensure that each enrolled child participating in a field trip is wearing in plain view a written identification stating the facility's name, address, and telephone number.
- E.** A licensee shall also ensure that each enrolled child is wearing out of view a written identification stating the enrolled child's name.
- F.** If a licensee uses a motor vehicle volunteered by a parent or other individual for a field trip, a licensee shall determine before the field trip begins that the motor vehicle is in compliance with R9-5-517(A)(3) and (4) and that the motor vehicle driver is in compliance with R9-5-517(B)(1) and (2).
- G.** When six or more enrolled children are participating in a field trip, a licensee shall ensure that a teacher-caregiver and at least one additional staff member are present on the field trip.

## **ARTICLE 6. PHYSICAL PLANT OF A FACILITY**

### **R9-5-601. General Physical Plant Standards**

A licensee shall comply with the following physical plant requirements:

- 1. When a facility is licensed to care for more than five infants in an infant room as described in R9-5-502(A)(1), each infant room has two or more designated exits from the room;
- 2. Not including infants and children who use diapers, toilets and hand-washing sinks are available to enrolled children in a facility as follows:
  - a. At least one flush toilet and one hand-washing sink for 10 or fewer children;
  - b. At least two flush toilets and two hand-washing sinks for 11 to 25 children; and
  - c. At least one flush toilet and one hand-washing sink for each additional 20 children;
- 3. A hand-washing sink required in R9-5-503(A)(2) or subsection (2) provides running water with a drain connected to a sanitary sewer as defined in A.R.S. § 45-101;
- 4. Except as provided in subsections (5) and (6), when providing child care services for infants or children who require diapering, a diaper changing area that meets the requirements in R9-5-503 is available in each infant room or indoor activity area used by an enrolled infant or child who wears diapers or disposable training pants;
- 5. If requesting a diaper changing area outside an infant room or indoor activity area to allow privacy for diapering an enrolled child with special needs, submit a written request for an approval, and:
  - a. For a license application, submit physical plant documents required by R9-5-201(A)(5)(g) that designate the location of the proposed diaper changing area;

- b. For a licensed facility, submit a drawing of the proposed diaper changing area to the Department before installing the diaper changing area. Within 30 days after the date of the receipt of the request, the Department shall send written notice to the licensee of approval or disapproval. If the proposed diaper changing area:
    - i. Complies with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter and provides privacy for the enrolled child with special needs, the Department shall approve the proposed diaper changing area; or
    - ii. Does not comply with A.R.S. Title 36, Chapter 7.1, Article 1 or this Chapter or provide privacy for the enrolled child with special needs, the Department shall provide the licensee with the requirements necessary for the Department to approve the requested change; and
  - c. Not use a diaper changing area located outside of an activity area until the Department approves the use of the diaper changing area;
6. A diaper changing area is not required in an activity area that is:
- a. Only used by enrolled children for snacks or meals,
  - b. Used for a specific activity by enrolled children who are two years of age or older; or
  - c. An indoor activity area that is being substituted for an outdoor activity area under R9-5-602(D); and
7. A glass mirror, window, or other glass surface that is located within 36 inches of the floor is made of safety glass that has been manufactured, fabricated, or treated to prevent the glass from shattering or flying when struck or broken, or is shielded by a barrier to prevent impact by or physical injury to an enrolled child.

**R9-5-602. Facility Square Footage Requirements**

- A.** A licensee shall ensure that the facility meets the following square footage requirements for indoor activity areas based on the child care services classifications:
- 1. At least 35 square feet of indoor activity space for each infant and 1-year-old child;
  - 2. At least 25 square feet of indoor activity space for each child who is not an infant or 1-year-old child; and
  - 3. When 1-year-old children are grouped together with children older than 1-year-old children in the same activity area, at least 35 square feet of indoor activity space for each child.
- B.** When computing indoor activity space for subsections (A)(1) through (A)(3) to determine licensed capacity, the floor space occupied by the following shall be excluded:
- 1. The interior walls;
  - 2. A kitchen, bathroom, closet, hallway, stair, entryway, office, a room designated for isolating an enrolled child from other children, storage rooms, and a room designated for the sole use of child care staff; and
  - 3. Room space occupied by teacher-caregiver desks, file cabinets, storage cabinets, and hand-washing sinks for staff use.
- C.** To provide activities that develop large muscles and an opportunity to participate in structured large muscle physical activities, a licensee shall:
- 1. Provide at least 75 square feet of outdoor activity area per child for at least 50% of the facility's licensed capacity; or
  - 2. Comply with one of the following:
    - a. If no enrolled child attends the facility for more than four hours per day, provide at least 50 square feet of indoor activity area for each child, based on the facility's licensed capacity;
    - b. If no enrolled child attends the facility for more than six hours per day, provide at least 75 square feet of indoor activity area per child for at least 50% of the facility's licensed capacity in addition to the indoor activity area required in subsection (A); or

- c. Provide at least 37.5 square feet of outdoor activity area and 37.5 square feet of indoor activity area per child for at least 50% of the facility's licensed capacity in addition to the indoor activity area required in subsection (A).
- D.** A licensee substituting indoor activity area for outdoor activity area shall:
  - 1. Designate, on the site plan and the floor plan submitted with the license application or request for approval of an intended change, the indoor activity area that is being substituted for an outdoor activity area; and
  - 2. In the indoor activity area substituted for outdoor activity area, install and maintain a mat or pad designed to provide impact protection in the fall zone of indoor swings and climbing equipment.
- E.** An indoor activity area that is substituted for an outdoor activity area is not assigned a licensed capacity.
- F.** The Department shall review and approve or deny the request for exemption or substitution.
  - 1. For a request that is part of a license application, the Department shall review the proposed exemption or substitution and provide written notice according to the procedures in R9-5-202.
  - 2. For a licensed facility, within 30 days after the date of the receipt of the request, the Department shall review the proposed exemption or substitution and provide written notice of the review to the licensee. If the proposed exemption or substitution:
    - a. Complies with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter, the Department shall approve the proposed exemption or substitution; or
    - b. Does not comply with A.R.S. Title 36, Chapter 7.1, Article 1 or this Chapter, the Department shall provide the licensee with the requirements necessary to approve the requested exemption or substitution.
  - 3. A licensee shall provide at least 75 square feet of outdoor activity area per child for 50% of the facility's licensed capacity, until the Department approves the exemption or substitution.

**R9-5-603. Outdoor Activity Areas**

- A.** Except as provided in subsection (B), a licensee shall not permit an enrolled child to cross a driveway or parking lot to access an outdoor activity area on the facility premises or a school campus unless the licensee obtains written approval from the Department.
- B.** If a licensee requests approval from the Department for enrolled children to cross a driveway or parking lot to access an outdoor activity area, the Department shall inspect the facility premises or school campus to determine whether the health, safety, or welfare of enrolled children would be endangered. The Department shall notify the licensee of approval or disapproval within 30 days of receipt of the request. If disapproved, the Department shall provide the licensee with the requirements necessary to approve the proposed crossing.
- C.** Except as provided in subsection (D), a licensee shall ensure that an outdoor activity area:
  - 1. Is enclosed by a fence:
    - a. A minimum of 4 feet high;
    - b. Secured to the ground; and
    - c. With either vertical or horizontal open spaces on the fence or gate that do not exceed 4.0 inches;
  - 2. Is maintained free from hazards, such as exposed concrete footings and broken toys; and
  - 3. Has gates that are kept closed while an enrolled child is in the outdoor activity area.
- D.** A licensee shall ensure that a playground used only for enrolled school age children at a facility operating at a public school meets the fencing requirements of the public school. If the Department determines by inspection that a facility fence at a public school does not ensure the health, safety, or welfare of enrolled children, the licensee shall meet the fencing requirements of subsection (C).
- E.** A licensee shall ensure that the following is provided and maintained within the fall zones of swings and climbing equipment in an outdoor activity area:
  - 1. A shock-absorbing unitary surfacing material manufactured for such use in outdoor activity areas; or

- 2. A minimum depth of 6 inches of a nonhazardous, resilient material such as fine loose sand or wood chips.
- F.** A licensee shall ensure that hard surfacing material such as asphalt or concrete is not installed or used under swings or climbing equipment unless used as a base for a rubber surfacing.
- G.** A licensee shall ensure that a swing or climbing equipment is not located in the fall zone of another swing or climbing equipment.
- H.** A licensee shall provide a shaded area for each enrolled child occupying an outdoor activity area at any time of day.

**R9-5-604. Swimming Pools**

- A.** If a licensee uses a public or semi-public swimming pool for an enrolled child, the swimming pool shall meet the requirements of the swimming pool ordinance enacted by local government. If no ordinance has been adopted, the swimming pool shall meet the requirements in A.A.C. R9-8-801 through R9-8-813.
- B.** A licensee that uses a private pool for an enrolled child shall ensure that the swimming pool and its equipment meet the following requirements:
  - 1. If a licensee uses a private pool that is a minimum of 2 feet in depth for enrolled children, the swimming pool shall meet the requirements of the swimming pool ordinance enacted by local government and, at a minimum, be equipped with the following:
    - a. A recirculation system consisting of piping, pumps, filters, and water conditioning and disinfecting equipment that conforms to the swimming pool manufacturer’s specifications for installation and operation, and is adequate to clarify and disinfect the pool water continuously;
    - b. Two swimming pool inlets located on opposite sides of the swimming pool to produce uniform circulation of water and maintain uniform chlorine residual throughout the entire swimming pool without the existence of dead spots;
    - c. A drain located at the swimming pool’s lowest point and covered by a grating that cannot be removed by bathers;
    - d. A swimming pool water vacuum system in operating condition;
    - e. A removable strainer to prevent hair, lint, or other objects from reaching the pump and filter;
    - f. An automatic mechanical water disinfectant system in use and in operating condition. The disinfecting agents shall maintain the swimming pool water as follows:
      - i. A free chlorine level between 1.0 and 3.0 parts per million as tested by the diethyl-p-phenylene diamine method or 0.4 to 1.0 parts per million when tested by the orthotolidine method;
      - ii. A pH level between 7.0 and 8.0 as tested by the diethyl-p-phenylene diamine method or the orthotolidine method; or
      - iii. A bromine level between 2.0 and 4.0 parts per million as tested by the diethyl-p-phenylene diamine method;
    - g. A shepherd’s crook; and
    - h. A ring buoy attached to a 1/2 inch diameter rope at least 25 feet in length;
  - 2. If a licensee uses a private pool that is less than 2 feet in depth for enrolled children, the swimming pool shall meet the requirements of subsection (B)(1) except that:
    - a. The swimming pool shall have a minimum of one swimming pool inlet;
    - b. The swimming pool is not required to have a bottom drain;
    - c. A pool water vacuum cleaning system is not required; and
    - d. A ring buoy with attached rope is not required;
  - 3. A portable pool that does not meet the requirements of subsection (B)(1) or (B)(2) is prohibited;
  - 4. On each day an enrolled child uses the swimming pool, a licensee shall test the water in the swimming pool at least once every day to verify that the swimming pool water meets the swimming pool water chemical ranges in subsection (B)(1)(f);

5. A licensee shall create a written swimming pool log and:
    - a. Document the results of tests required in subsection (B)(4) in the written swimming pool log;
    - b. Have the written swimming pool log at the swimming pool site while enrolled children are using the swimming pool; and
    - c. Maintain the written swimming pool log on facility premises for three months after the last date the swimming pool water was tested and documented; and
  6. If the swimming pool water does not meet the swimming pool water chemical ranges in subsection (B)(1)(f), the licensee shall:
    - a. Add liquid or dissolved dry chemicals to the swimming pool water,
    - b. Document any actions taken by the licensee to restore the swimming pool water chemical ranges in the written swimming pool log required in subsection (B)(5)(a), and
    - c. Not allow enrolled children to use the swimming pool until tests of the swimming pool water verify that the swimming pool water meets the swimming pool water chemical ranges in subsection (B)(1)(f).
- C.** A licensee shall ensure that a public, semi-public, or private pool used by an enrolled child is enclosed by a wall, fence, or barrier that complies with:
1. The requirements of a swimming pool barrier ordinance adopted by the local government where the swimming pool is located; or
  2. If the local government where the swimming pool is located has not adopted a swimming pool barrier ordinance, the requirements in A.R.S. § 36-1681.
- D.** A licensee that uses any semi-public or private swimming pool for enrolled children shall ensure that the swimming pool has been inspected by the Department or a city or county health department before it is used by enrolled children.
1. If a licensee operates or uses a swimming pool that is inspected by a city or county health department, the licensee shall provide the Department with a current written report of the swimming pool inspection.
  2. A licensee shall maintain the current swimming pool inspection reports of a swimming pool used by enrolled children on the facility premises.
- E.** A licensee shall ensure that written permission is:
1. Obtained from an enrolled child's parent before allowing the enrolled child to participate in a swimming activity, and
  2. Maintained on facility premises for 12 months after the date the enrolled child participated in the swimming activity.

**R9-5-605. Fire and Safety**

- A.** A licensee shall install and maintain a portable, pressurized fire extinguisher that meets, at a minimum, a 2A-10-BC rating of the Underwriters Laboratories in a facility's kitchen and any other location required by Standard 10-1 of the International Fire Code, incorporated by reference in A.A.C. R9-1-412.
- B.** A licensee shall ensure that:
1. All designated exits, corridors, and passageways that provide escape from the building are unobstructed and unlocked during hours of operation;
  2. Combustible material, such as paper, boxes, or rags, is not permitted to accumulate inside or outside the facility premises;
  3. An unvented or open-flame space heater or portable heater is not used on the facility premises;
  4. A gas valve on an unused gas outlet is removed and capped where it emerges from the wall or floor;
  5. Electrical extension cords are not used;
  6. Except for a room used only for an enrolled school-age child, each unused electrical outlet is covered with a safety plug cover or insert;

7. Slow cookers and hot plates are used only in a kitchen and are inaccessible to an enrolled child;
8. Heating and cooling equipment is inaccessible to an enrolled child;
9. Fans are mounted and inaccessible to an enrolled child;
10. Toilet rooms are ventilated to the outside of the building, either by a screened window open to the outside air or by an exhaust fan and duct system that is operated when the toilet room is in use;
11. A toilet room with a door that opens to the exterior of a building is equipped with a self-closing device that keeps the door closed except when an individual is entering or exiting;
12. A toilet room door does not open into a kitchen;
13. A smoke detector is installed in each indoor activity area and kitchen;
14. Each smoke detector required in subsection (B)(13) is:
  - a. Maintained in an operable condition;
  - b. Either battery operated or, if hard wired into the electrical system of the child care facility, has a back-up battery; and
  - c. Tested monthly;
15. If the local fire jurisdiction requires a sprinkler system, the sprinkler system is:
  - a. Installed,
  - b. Operable,
  - c. Tested quarterly, and
  - d. Serviced at least once every 12 months;
16. The fire extinguisher required in subsection (A):
  - a. Is serviced at least once every 12 months; and
  - b. Has a tag attached to the fire extinguisher that specifies the date of the last servicing and the identification of the person who serviced the fire extinguisher; and
17. The testing required in subsections (B)(14) and (B)(15) and servicing required in subsection (B)(16) is documented and the documentation is:
  - a. Maintained by the licensee, and
  - b. Available for at least 12 months after the date of the testing or servicing.

## CHAPTER 2. DEPARTMENT OF HEALTH SERVICES, TOBACCO-RELATED PROGRAMS: ARTICLE 1. SMOKE-FREE ARIZONA

### R9-2-101. Definitions

In addition to the definitions in A.R.S. § 36-601.01(A), the following definitions apply in this Article unless otherwise specified:

1. "Adult day care" means "adult day health care facility" as defined in A.R.S. § 36-401.
2. "Ashtray" means any receptacle that is designed for disposing of the debris from smoking materials such as ash, cigarette butts or filters, or cigar stubs.
3. "Calendar quarter" means a period from:
  - a. January 1 through March 31,
  - b. April 1 through June 30,
  - c. July 1 through September 30, or
  - d. October 1 through December 31.
4. "Child care facility" has the meaning in A.R.S. § 36-881.
5. "Child care group home" has the meaning in A.R.S. § 36-897.
6. "Complaint" means a written or oral statement of a possible violation of A.R.S. § 36-601.01.
7. "Contiguous area" means a place that:
  - a. Is physically attached to a public place or non-vehicle place of employment; or
  - b. Is separated from the public place or non-vehicle place of employment only by other places controlled by the proprietor of the public place or non-vehicle place of employment.
8. "Controlled" means under the authority and responsibility of a proprietor.
9. "Department" means the Arizona Department of Health Services.
10. "Department's designee" means a state agency or political subdivision to which the Department delegates any functions, powers, or duties under A.R.S. § 36-601.01.
11. "Drift" means the physical movement of tobacco smoke, regardless of cause, into any area where smoking is prohibited by A.R.S. § 36-601.01.
12. "Emergency exit" means a doorway in a building or facility used for egress to the outdoors only when there is an immediate threat to the health or safety of an individual.
13. "Entering" means an individual going into or leaving a building or facility.
14. "Entrance" means a doorway in a building or facility that:
  - a. Is used by an individual for ingress from the outdoors or egress to the outdoors, and
  - b. Excludes:
    - i. An emergency exit, and
    - ii. A doorway for outdoor patio patrons.
15. "Health care institution" means a building or facility regulated under A.R.S. Title 36, Chapter 4.
16. "Health care professional" means one of the following individuals regulated under A.R.S. Title 32 or A.R.S. Title 36, Chapter 6, Article 7 or Chapter 17, including:
  - a. A podiatrist;
  - b. A doctor of chiropractic or chiropractic assistant;
  - c. A dentist, dental consultant, dental hygienist, or denturist;
  - d. A doctor of medicine;
  - e. A doctor of naturopathic medicine or naturopathic medical assistant;
  - f. A registered nurse practitioner, registered nurse, practical nurse, registered or practical nurse licensed by a state other than Arizona and practicing in Arizona according to the Nurse Licensure Compact, A.R.S. § 32-1668, or nursing assistant;
  - g. A dispensing optician;
  - h. An optometrist;
  - i. A doctor of osteopathic medicine;
  - j. A pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee;
  - k. A physical therapist or physical therapist assistant;
  - l. A psychologist;
  - m. A veterinarian or veterinary technician;
  - n. A physician assistant;
  - o. A radiologic technologist, including a practical radiologic technologist in podiatry, unlimited practical radiologic technologist, nuclear medicine technologist, or practical technologist in bone densitometry;
  - p. A homeopathic physician or a medical assistant employed by a homeopathic physician;
  - q. A behavioral health professional, including a baccalaureate social worker, master social worker, clinical social worker, professional counselor, associate counselor, marriage and family therapist, associate marriage and family therapist, associate substance abuse counselor, independent substance abuse counselor, or substance abuse technician;
  - r. An occupational therapist or occupational therapy assistant;
  - s. A respiratory therapist or respiratory therapy technician;
  - t. An acupuncturist;
  - u. An athletic trainer;
  - v. A massage therapist;
  - w. A midwife;
  - x. A hearing aid dispenser;
  - y. An audiologist; or
  - z. A speech-language pathologist or speech-language pathology assistant.
17. "Open to the general public" means when the proprietor of a veterans or fraternal club permits an individual who is not a member, an employee, or a bona fide guest as defined in A.R.S. § 4-101 to be present in the veterans or fraternal club.
18. "Outdoor patio" means an area designated by a proprietor according to R9-2-108(A).



19. "Outdoor patio patron" means an individual who is occupying an outdoor patio.
20. "Permeable" means permitting tobacco smoke to pass through.
21. "Private residence" means a structure, other than a health care institution, where an individual lives and sleeps.
22. "Proprietor" means an owner, operator, manager or other person in control of a public place or a place of employment.
23. "Reasonable distance" means the distance that meets the requirements in R9-2-102(A).
24. "Tobacco products and accessories" means:
  - a. Smoking materials such as cigars, cigarettes, or pipe tobacco; and
  - b. Smoking-related materials such as lighters, humidors, pipes, or cigarette cases.
25. "Vehicle" means motor vehicle as defined in A.R.S. § 28-101.
26. "Ventilation system" means the natural or mechanical means of supplying air to, or removing air from a space.

**R9-2-102. Reasonable Distance**

- A. Except as permitted in R9-2-108(D) or R9-2-108(E), a public place or non-vehicle place of employment shall have a distance where outside smoking is prohibited of at least 20 feet in all directions measured from each outer edge of an entrance, an open window, or a ventilation system.
- B. A proprietor of a public place or non-vehicle place of employment shall not permit tobacco smoke to drift into the area where smoking is prohibited as described in subsection (A).

**R9-2-103. Individual Responsibilities**

- A. An individual shall not smoke tobacco in an area of a public place or place of employment where smoking is prohibited by A.R.S. § 36-601.01 or R9-2-102(A).
- B. An individual in an area of a public place or place of employment where smoking is prohibited by A.R.S. § 36-601.01 or R9-2-102(A) shall stop smoking immediately when requested to stop smoking by the proprietor of the public place or a place of employment.

**R9-2-104. Proprietor Responsibilities**

- A. A proprietor shall:
  1. Not permit smoking in a public place, a place of employment, or within the distance required in R9-2-102(A) except according to this Article and the exceptions listed in A.R.S. § 36-601.01(B);
  2. Not permit tobacco smoke to drift into a building or facility through an entrance, a window, a ventilation system, or other means;
  3. Post signs according to A.R.S. § 36-601.01(E)(1) and R9-2-105;
  4. Remove all ashtrays from all areas where smoking is prohibited; and
  5. Communicate that smoking is prohibited in places of employment to:
    - a. All existing employees by the effective date of this Article, and
    - b. An applicant for employment at the time of the application for employment.
- B. If a building or facility that is controlled by a proprietor contains several places of employment or public places that are controlled by other proprietors:
  1. The proprietor of the entire building or facility shall comply with the requirements in subsection (A) for the area controlled by the proprietor of the entire building or facility, and
  2. The proprietor of each place of employment or public place shall comply with the requirements in subsection (A) for the area controlled by the proprietor of the place of employment or public place.
- C. If an individual in an area controlled by a proprietor is smoking in violation of A.R.S. § 36-601.01, the proprietor shall:
  1. Inform the individual that the individual is in violation of A.R.S. § 36-601.01, and
  2. Request that the individual stop smoking immediately.
- D. A proprietor of a veterans or fraternal club shall not permit smoking in an area of the veterans or fraternal club that is open to the general public.
- E. A proprietor of a retail tobacco store where smoking is permitted shall comply with R9-2-107.
- F. A proprietor of an outdoor patio where smoking is permitted shall comply with R9-2-108.
- G. A proprietor may declare that smoking is prohibited in an entire establishment, facility, or outdoor area.
- H. In a vehicle owned and operated by a proprietor during working hours, the proprietor shall:
  1. Not permit smoking in the vehicle when:
    - a. More than one individual occupies the vehicle, and
    - b. The vehicle is used for business purposes; and
  2. Post signs according to A.R.S. § 36-601.01(E)(1), A.R.S. § 36-601.01(E)(2), and R9-2-105(C).

**R9-2-105. Sign Requirements**

- A. To meet the requirements of A.R.S. §§ 36-601.01(E)(1) and 36-601.01(E)(2), a proprietor of a public place or non-vehicle place of employment shall post signs that:
  1. Are no smaller than four inches by six inches; and
  2. Contain:
    - a. The international no smoking symbol or the words "No Smoking";
    - b. The telephone number designated by the Department for making complaints;
    - c. The website address designated by the Department for making complaints; and
    - d. Letters, numbers, and symbols of sufficient size to be clearly legible to an individual of normal vision from a distance of five feet; and
  3. Include a citation to A.R.S. § 36-601.01.
- B. A proprietor of a public place or non-vehicle place of employment shall post a sign that meets the requirements in subsection (A):
  1. At every entrance,
  2. At a height and location easily seen by an individual entering the public place or non-vehicle place of employment, and
  3. So that the sign is not obscured in any way.
- C. A proprietor of a vehicle described in A.R.S. § 36-601.01(A)(7) shall:
  1. Post at least one sign that:
    - a. Is no smaller than two inches by three inches;
    - b. Meets the requirements in subsections (A)(2)(a) through (A)(2)(c); and

- c. Contains letters, numbers, and symbols of sufficient size to be clearly legible to an individual of normal vision from a distance of three feet;
- 2. Include a citation to A.R.S. § 36-601.01 on the sign; and
- 3. Firmly affix the sign to:
  - a. A vehicle door window,
  - b. The vehicle dashboard, or
  - c. Another area in the vehicle that is visible to each occupant in the vehicle.

**R9-2-106. Private Residence**

- A. Smoking is prohibited in a private residence licensed or certified by the Department or in areas of a private residence licensed or certified by the Department as:
  - 1. An adult day care,
  - 2. A child care facility,
  - 3. A child care group home, or
  - 4. A health care institution other than an adult day care.
- B. Smoking is prohibited in a health care professional's private residence:
  - 1. In an area where the health care professional provides services to an individual, and
  - 2. When the health care professional is providing services to an individual.
- C. A.R.S. § 36-601.01 does not apply to the private residence of an individual who is receiving services from a health care professional in the individual's private residence.

**R9-2-107. Retail Tobacco Store**

- A. A proprietor may permit smoking in a retail tobacco store only if the retail tobacco store meets the definition in A.R.S. § 36-601.01(A)(10) and the requirements in A.R.S. § 36-601.01(B)(3) and this Section.
- B. The proprietor of a retail tobacco store where smoking is permitted and that begins operating after January 1 of a calendar year shall complete, by the retail tobacco store's first day of operation, an affidavit that contains:
  - 1. The name of the proprietor of the retail tobacco store,
  - 2. The name and address of the retail tobacco store,
  - 3. A statement that the proprietor of the retail tobacco store has personal knowledge of the facts supporting the affidavit,
  - 4. A statement that the retail tobacco store expects to derive at least 51 percent of its gross income during each calendar year from the sale of tobacco products and accessories as required by A.R.S. § 36-601.01,
  - 5. A statement describing the documents that contain the facts supporting the statement in subsection (B)(4),
  - 6. The signature of the proprietor of the retail tobacco store,
  - 7. An Arizona notary's signature certifying that the proprietor swore to or affirmed the truthfulness of the statements in the affidavit, and
  - 8. The date of the Arizona notary's signature.
- C. The proprietor of a retail tobacco store where smoking is permitted and that has been in operation for at least an entire calendar year shall complete, by January 31 of each year, an affidavit that contains:
  - 1. The name of the proprietor of the retail tobacco store,
  - 2. The name and address of the retail tobacco store,
  - 3. A statement that the proprietor of the retail tobacco store has personal knowledge of the facts supporting the affidavit,
  - 4. A statement that the retail tobacco store derived at least 51 percent of its gross income during the previous calendar year from the sale of tobacco products and accessories,
  - 5. A statement describing the documents that contain the facts supporting the statement in subsection (C)(4),
  - 6. The signature of the proprietor of the retail tobacco store,
  - 7. An Arizona notary's signature certifying that the proprietor swore to or affirmed the truthfulness of the statements in the affidavit, and
  - 8. The date of the Arizona notary's signature.
- D. If the Department or the Department's designee receives a complaint under R9-2-109(A) about a retail tobacco store where smoking is permitted, the proprietor of the retail tobacco store shall provide to the Department or the Department's designee:
  - 1. The affidavit under subsection (B) or the most current affidavit under subsection (C), whichever is appropriate; and
  - 2. Documents that enable the Department or the Department's designee to determine the percent of gross income derived from the sale of tobacco products and accessories:
    - a. For the calendar quarter immediately preceding the date of the complaint; or
    - b. If the retail tobacco store was not in operation for the entire calendar quarter immediately preceding the date of the complaint, for the period beginning on the date the retail tobacco store opened and ending on the date of the complaint.
- E. The proprietor of a retail tobacco store where smoking is permitted shall retain on the premises of the retail tobacco store and make available to the Department or the Department's designee upon request:
  - 1. The affidavit under subsection (B) or the most current affidavit under subsection (C), whichever is appropriate; and
  - 2. The documents:
    - a. Identified under subsection (B)(5) or subsection (C)(5), whichever is appropriate; and
    - b. Required under subsection (D)(2).

**R9-2-108. Outdoor Patio**

- A. A proprietor may designate an area as an outdoor patio where smoking is permitted only if the area:
  - 1. Is a contiguous area of a place of employment or public place;
  - 2. Is controlled by the proprietor of the place of employment or public place; and
  - 3. Has:
    - a. At least one side that consists of:
      - i. Open space;
      - ii. Permeable material;
      - iii. A combination of open space and permeable material; or

- iv. A combination of open space, permeable material, and a non-permeable wall that is not higher than three and one-half feet or the minimum height required by an applicable local ordinance or building code, whichever is greater; or
  - b. No overhead covering or an overhead covering that consists of:
    - i. Permeable material, or
    - ii. A combination of open space and permeable material.
- B. If an outdoor patio where smoking is permitted has a doorway for outdoor patio patrons and does not have a wall that prevents individuals from entering the outdoor patio, the proprietor shall:
  - 1. Inform individuals that the doorway:
    - a. Is not an entrance, and
    - b. Is a doorway for outdoor patio patrons; and
  - 2. Direct individuals who are not outdoor patio patrons to an entrance.
- C. If a proprietor designates an area as an outdoor patio where smoking is permitted, the proprietor shall not permit tobacco smoke to drift into areas where smoking is prohibited through entrances, windows, ventilation systems, or other means.
- D. The reasonable distance required in R9-2-102(A) does not apply to a doorway for outdoor patio patrons, a window, or a ventilation system located in an area designated as an outdoor patio where smoking is permitted.
- E. If an outdoor patio is located less than 20 feet from any entrance of a public place or non-vehicle place of employment, a proprietor may permit smoking on the outdoor patio only if the proprietor uses a method that:
  - 1. Permits an individual to avoid breathing tobacco smoke when using the entrance at the public place or non-vehicle place of employment, and
  - 2. Does not permit tobacco smoke to drift into the public place or non-vehicle place of employment through entrances, open windows, ventilation systems, or other means.
- F. A proprietor may designate an outdoor patio as an area where smoking is prohibited.

**R9-2-109. Complaint; Observation; Notification; Inspection**

- A. When a person makes a complaint to the Department or the Department's designee under A.R.S. § 36-601.01, the complaint shall include:
  - 1. The name and address of the public place or place of employment that is the subject of the complaint;
  - 2. The date and approximate time of the occurrence that gave rise to the complaint;
  - 3. A description of the occurrence that gave rise to the complaint; and
  - 4. Any other information relevant to the occurrence that gave rise to the complaint.
- B. An individual shall make a complaint according to subsection (A) if the individual:
  - 1. Conducted an inspection pursuant to:
    - a. A.R.S. Title 36, Chapter 4 or Chapter 7.1; or
    - b. A.R.S. § 36-136(D) and 9 A.A.C. 8; and
  - 2. During the inspection, observed a possible violation of A.R.S. § 36-601.01.
- C. Within 15 days after receipt of a complaint made according to subsection (A), the Department or the Department's designee shall:
  - 1. Notify the proprietor at the public place or place of employment about the complaint; or
  - 2. Conduct an inspection, for compliance with A.R.S. § 36-601.01, of the public place or place of employment.
- D. If a complaint made according to subsection (A) is not resolved under subsection (C)(1), the Department or the Department's designee shall conduct an inspection, for compliance with A.R.S. § 36-601.01, of the public place or place of employment that is the subject of the complaint.

**R9-2-110. Determination of Violation**

- In determining whether a violation of A.R.S. § 36-601.01 has occurred, the Department or the Department's designee shall consider the following:
- 1. The presence of an ashtray in an area where smoking is prohibited;
  - 2. The lack of a sign that is required under A.R.S. § 36-601.01(E) or the presence of a sign that does not meet the requirements of R9-2-105;
  - 3. The presence of smoking;
  - 4. The presence of tobacco ashes, cigarette butts or filters, or cigar stubs in an area where smoking is prohibited;
  - 5. The presence of tobacco smoke that drifts into a place of employment or public place through entrances, windows, ventilation systems, or other means; and
  - 6. Except as provided in R9-2-108(D) and R9-2-108(E), the presence of tobacco smoke within a reasonable distance from entrances, open windows, or ventilation systems.

**R9-2-111. Notice of Violation; Notice of Assessment**

- A. After the Department or the Department's designee determines that a violation of A.R.S. § 36-601.01 has occurred, and based on the criteria in R9-2-112, the Department or the Department's designee may send to the proprietor at the place of employment or public place a written notice of violation that includes:
  - 1. The nature of the violation;
  - 2. The date and time that the violation occurred;
  - 3. The name, telephone number, and e-mail address of the Department contact person or the contact person of the Department's designee; and
  - 4. If a civil penalty is being assessed, a notice of assessment.
- B. If the Department or the Department's designee issues a notice of violation or a notice of assessment, a person to whom the notice is issued may appeal the determination that a violation has occurred or assessment of a civil penalty:
  - 1. According to A.R.S. Title 41, Chapter 6, Article 10, if the Department made the determination or assessment; or
  - 2. According to procedures of the Department's designee that are consistent with A.R.S. Title 41, Chapter 6, Article 10, if the Department's designee made the determination or assessment.

**R9-2-112. Criteria for Issuing a Notice of Violation or Notice of Assessment**

- In determining whether to issue a notice of violation under A.R.S. § 36-601.01(G)(5), whether to issue a notice of assessment under A.R.S. § 36-601.01(G)(6), or the amount of a civil penalty that is being assessed, the Department or the Department's designee shall consider:
- 1. The seriousness of the violation;
  - 2. Any economic benefit that results from the violation;

3. The duration of the violation;
4. The previous violations of A.R.S. § 36-601.01 at the place of employment or public place, including:
  - a. The type and severity of any previous violation,
  - b. The number of individuals affected by the previous violations,
  - c. The total number of previous violations, and
  - d. The length of time from the first violation to the current violation;
5. Any good faith efforts to comply with the requirements of A.R.S. § 36-601.01, including:
  - a. Reporting violations to the Department or the Department's designee; and
  - b. Meeting the requirements of A.R.S. § 36-601.01(I) by:
    - i. Informing an individual who is smoking that smoking is illegal, and
    - ii. Requesting that the individual immediately stop the illegal smoking; and
6. Other factors affecting the public health and safety the Department or the Department's designee deems relevant.

# ARIZONA DEPARTMENT OF HEALTH SERVICES

## BUREAU OF CHILD CARE LICENSING

### ARIZONA REVISED STATUTES

#### TITLE 36, CHAPTER 7.1, ARTICLES 1, 3, 5: CHILD CARE PROGRAMS

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## ARTICLE 1. DAY CARE CENTERS

### **§ 36-881. Definitions**

In this article, unless the context otherwise requires:

1. "Child" means any person through the age of fourteen years. Child also means a person who is under eighteen years of age if the child has a developmental disability as defined in section 36-551 or has at least one of the disabilities listed in section 15-761, paragraph 2 and requires special education as defined in section 15-761.

2. "Child care" means the care, supervision and guidance of a child or children, unaccompanied by a parent, guardian or custodian, on a regular basis, for periods of less than twenty-four hours per day, in a place other than the child's or the children's own home or homes.

3. "Child care facility" means any facility in which child care is regularly provided for compensation for five or more children not related to the proprietor.

4. "Controlling person" means a person who:

(a) Through ownership, has the power to vote at least ten per cent of the outstanding voting securities.

(b) If the applicant or licensee is a partnership, is the general partner or a limited partner who holds at least ten per cent of the voting rights of the partnership.

(c) If the applicant or licensee is a corporation, an association or a limited liability company, is the president, the chief executive officer, the incorporator, an agent or any person who owns or controls at least ten per cent of the voting securities.

(d) Holds a beneficial interest in ten per cent or more of the liabilities of the applicant or the licensee.

5. "Department" means the department of health services.

6. "Director" means the director of the department of health services.

7. "Person" means an individual, partnership, corporation, limited liability company, association, day nursery, nursery school, day camp, kindergarten, child care agency, school governing board, charter school or child care center that operates a child care facility.

8. "Substantial compliance" means that the nature or number of violations revealed by any type of inspection or investigation of an applicant for licensure or a licensed child care facility does not pose a direct risk to the life, health or safety of children.

### **§ 36-882. License; posting; transfer prohibited; fees; provisional license; renewal; exemption from rule making**

A. A child care facility shall not receive any child for care, supervision or training unless the facility is licensed by the department of health services.

B. An application for a license shall be made on a written or electronic form prescribed by the department and shall include:

1. Information required by the department for the proper administration of this chapter and rules adopted pursuant to this chapter.

2. The name and business or residential address of each controlling person.

3. An affirmation by the applicant that no controlling person has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state or has had a license to operate a child care facility or a certificate to operate a child care group home revoked for reasons that relate to the endangerment of the health and safety of children.

C. An application for an initial license shall include:

1. The form that is required pursuant to section 36-883.02, subsection C and that is completed by the applicant.

2. A copy of a valid fingerprint clearance card issued to the applicant pursuant to section 41-1758.07.

3. If the applicant's facility is located within one-fourth mile of any agricultural land, the names and addresses of the owners and lessees of the agricultural land and a copy of the agreement required pursuant to subsection D of this section.

D. The department shall deny any license that affects agricultural land regulated pursuant to section 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the department may license the child care facility to be located within the affected buffer zone. The agreement may include any stipulations regarding the child care facility, including conditions for future expansion of the facility and changes in the operational status of the facility that will result in a breach of the agreement. This subsection shall not apply to the issuance or renewal of a license for a child care facility located in the same location for which a child care facility license was previously issued.

E. On receipt of an application for an initial license, the department shall inspect the applicant's physical space, activities and standards of care. If the department determines that the applicant and the applicant's facility are in substantial compliance with this chapter and rules adopted pursuant to this chapter and the applicant agrees to carry out a plan acceptable to the department to eliminate any deficiencies, the department shall issue an initial license to the applicant.

F. Beginning January 1, 2010, subject to the availability of monies, the department may establish a discount program for licensing fees paid by child care facilities, including a public health discount.

G. The director, by rule, may establish and collect fees for child care facilities and a fee for late filing of applications. Beginning January 1, 2010 ninety per cent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten per cent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

H. Pursuant to the available funding, the department shall collect annual fees.

I. A license is valid from the date of issuance unless it is subsequently revoked or suspended or the licensee does not pay the licensure fee and shall specify the following:

1. The name of the applicant.
2. The exact address where the applicant will locate the facility.
3. The maximum number and age limitations of children that shall be cared for at any one time.
4. The classification of services that the facility is licensed to provide.

J. The department may issue a provisional license, not to exceed six months, to an applicant or a licensed child care facility if:

1. The facility changes director.
2. The department determines that an applicant for an initial license or a licensed child care facility is not in substantial compliance with this chapter and rules adopted pursuant to this chapter and the immediate interests of children, families and the general public are best served if the child care facility or the applicant is given an opportunity to correct deficiencies.

K. A provisional license shall state the reason for the provisional status.

L. On the expiration of a provisional license, the department shall issue a regular license if the department determines that the licensee and the child care facility are in substantial compliance with this chapter and rules adopted pursuant to this chapter and the applicant agrees to carry out a plan acceptable to the department to eliminate any deficiencies.

M. The licensee shall notify the department in writing within ten days of any change in the child care facility's director.

N. The license is not transferable from person to person and is valid only for the quarters occupied at the time of issuance.

O. The license shall be conspicuously posted in the child care facility.

P. The licensee shall conspicuously post a schedule of fees charged for services and the established policy for a refund of fees for services not rendered.

Q. The licensee shall keep current department inspection reports at the child care facility and shall make them available to parents on request. The licensee shall conspicuously post a notice that identifies the locations where these inspection reports are available for review.

R. The department of health services shall notify the department of public safety if the department of health services receives credible evidence that a licensee who possesses a valid fingerprint clearance card either;

1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B.
2. Falsified information on any form required by section 36-883.02.

S. Licensees may pay licensure fees by installment payments based on procedures established by the department.

T. The department shall review its actual costs to administer this article at least once every two years. If the department determines that its administrative costs are lower than the fees it has collected pursuant to this section, it shall adjust fees.

U. If the department lowers fees, the department may refund or credit fees to licensees

V. Fee reductions are exempt from the rule making requirement of title 41, chapter 6.

### **§ 36-883. Standards of care; rules; classifications**

A. The director of the department of health services shall prescribe reasonable rules regarding the health, safety and well-being of the children to be cared for in a child care facility. These rules shall include standards for the following:

1. Adequate physical facilities for the care of children such as building construction, fire protection, sanitation, sleeping facilities, isolation facilities, toilet facilities, heating, ventilation, indoor and outdoor activity areas and, if provided by the facility, transportation safely to and from the premises.
2. Adequate staffing per number and age groups of children by persons qualified by education or experience to meet their respective responsibilities in the care of children.
3. Activities, toys and equipment to enhance the development of each child.
4. Nutritious and well-balanced food.
5. Encouragement of parental participation.
6. Exclusion of any person from the facility whose presence may be detrimental to the welfare of children.

B. The department shall adopt rules pursuant to title 41, chapter 6 and section 36-115.

C. Any rule that relates to educational activities, physical examination, medical treatment or immunization shall include appropriate exemptions for children whose parents object on the ground that it conflicts with the tenets and practices of a recognized church or religious denomination of which the parent or child is an adherent or member.

D. The department of health services shall conduct a comprehensive review of its rules at least once every two years. Before conducting this review, the department shall consult with agencies and organizations that are knowledgeable about the provision of child care facilities to children including:

1. The department of economic security.

2. The department of education.
3. The state fire marshal.
4. The league of Arizona cities and towns.
5. Citizen groups.

E. The department shall designate appropriate classifications and establish corresponding standards pertaining to the type of care offered. These classifications shall include:

1. Facilities offering infant care.
2. Facilities offering specific educational programs.
3. Facilities offering evening and nighttime care.

F. Rules for the operation of child care facilities shall be stated in a way that clearly states the purpose of each rule.

**§ 36-883.01. Statement of services**

Each child care facility shall annually furnish to the department, and make available to parents on request, an explicit and up-to-date written statement of the services it offers.

**§ 36-883.02. Child care personnel; fingerprints; exemptions; definition**

A. Except as provided in subsection B of this section, child care personnel, including volunteers, shall submit the form prescribed in subsection C of this section to the employer and shall have valid fingerprint clearance cards issued pursuant to section 41-1758.07 or shall apply for a fingerprint clearance card within seven working days of employment or beginning volunteer work.

B. Exempt from the fingerprinting requirements of subsection A of this section are parents, including foster parents and guardians, who are not employees of the child care facility and who participate in activities with their children under the supervision of and in the presence of child care personnel.

C. Applicants, licensees and child care personnel shall attest on forms that are provided by the department that:

1. They are not awaiting trial on or have never been convicted of or admitted in open court or pursuant to a plea agreement committing any of the offenses listed in section 41-1758.07, subsection B in this state or similar offenses in another state or jurisdiction.
2. They are not parents or guardians of a child adjudicated to be a dependent child as defined in section 8-201.
3. They have not been denied or had revoked a certificate to operate a child care group home or a license to operate a child care facility in this or any other state or that they have not been denied or had revoked a certification to work in a child care facility or child care group home.

D. Employers of child care personnel shall make documented, good faith efforts to contact previous employers of child care personnel to obtain information or recommendations that may be relevant to an individual's fitness for employment in a child care facility.

E. The forms required by subsection C of this section are confidential.

F. A child care facility shall not allow a person to be employed or volunteer in the facility in any capacity if the person has been denied a fingerprint clearance card pursuant to section 41-1758.07 or has not received an interim approval from the board of fingerprinting pursuant to section 41-619.55, subsection I.

G. The employer shall notify the department of public safety if the employer receives credible evidence that any child care personnel either:

1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B.
2. Falsified information on the form required by subsection C of this section.

H. For the purposes of this section, "child care personnel" means any employee or volunteer working at a child care facility.

**§ 36-883.03. Employer-subsidized child care; immunity from liability**

A. An employer that subsidizes child care on a nondiscriminatory basis to its employees through a child care facility licensed pursuant to this article or through a person or facility exempt from licensure pursuant to this article but screened pursuant to section 41-1964 or 46-321 is not liable for damages as a result of an act or omission by the child care facility, person or exempt facility unless the employer is guilty of gross negligence in recommending the child care facility, person or facility or unless the employer is acting as the owner or has an ownership interest in or is an operator of the child care facility or exempt facility.

B. For purposes of this section, an employer is deemed to be subsidizing an employee's child care costs if the employer pays, either directly or indirectly, at least twenty-five per cent of the cost of the child care service rendered to the employee by the child care facility, person or exempt facility described in subsection A of this section.

**§ 36-883.04. Standards of care; rules; enforcement**

The director shall prescribe reasonable rules and standards regarding the health, safety and well-being of children cared for in any public school child care program. These rules shall be comparable to the rules and standards prescribed pursuant to section 36-883. The director shall also prescribe rules regarding the enforcement of the standards of care including penalties for noncompliance with these standards. These enforcement and penalty provisions shall be comparable to those existing for private child care facilities.



**§ 36-883.05. Child care facilities; infants; floor bedding; requirements; emergency evacuation; notice; definitions**

- A. A child care facility that provides child care services utilizing the practice of a documented educational philosophy including least restrictive environment for infants and meets the requirements of this section may use floor bedding in the facility instead of cribs.
- B. Floor bedding pursuant to subsection a of this section must meet all of the following requirements:
  - 1. Be a mat that meets the following dimensions:
    - a. Is not less than two inches and not more than three inches thick.
    - b. Is not less than three feet and not more than four feet long.
    - c. Is not less than two feet and not more than three feet wide.
  - 2. Not be elevated or raised in any way.
  - 3. Be covered with a waterproof and washable mattress pad, a washable zip cover and an individually assigned sheet.
  - 4. Be assigned to an individual infant and not shared with another infant.
  - 5. Be turned over at least once a week.
  - 6. Be placed at least eighteen inches apart, eighteen inches from any wall and two feet from any other object.
  - 7. Be placed on a floor that is vacuumed and sanitized every day and, if the floor is carpeted, is shampooed at least twice a month.
- C. The ratio of staff members to resting infants in the resting area must be at least one staff member to every four infants. A staff member in the resting area must be supervised for the first ninety days of employment to ensure the staff member's proper use of the floor bedding pursuant to this section. Any staff member in the resting area shall have current certification in cardiopulmonary resuscitation and first aid.
- D. If an emergency requiring evacuation occurs, the infant nursery staff shall place the infants in an evacuation crib and move the infants in the crib to a designated evacuation assembly area. Evacuation cribs must be stored not more than ten feet from the exterior exit. If stored on the outside of the building, an evacuation crib must be protected from weather. On arrival at the designated evacuation assembly area, all infants must be physically accounted for against the sign-in log and the results reported to the director of the child care facility immediately. The infant nursery supervisor is responsible for bringing all attendance sheets, child rosters and information sheets to the evacuation assembly area. The child care facility staff shall take appropriate supplies during the evacuation to protect the children, if possible, during inclement weather.
- E. A facility shall provide the department written notice thirty days before implementing the use of floor bedding pursuant to this section.
- F. If a licensed facility does not comply with the requirements of this section, the department may require the installation of cribs.
- G. A child care facility that provides services utilizing the practice of a documented educational philosophy including least restrictive environment may incorporate the minimum school facility adequacy guidelines pursuant to section 15-2011 when selecting a facility if the guidelines do not conflict with facility requirements established by the Arizona Department of Health Services.
- H. For the purposes of this section:
  - 1. "Infant" means either:
    - a. A child twelve months or younger.
    - b. A child eighteen months or younger if not walking.
  - 2. "Resting area" means a space within the classroom separate from the activity area that contains only the floor bedding, infants and staff members.

**§ 36-884. Exemptions**

This article does not apply to the care given to children by or in:

- 1. The homes of parents or blood relatives.
- 2. A religious institution conducting a nursery in conjunction with its religious services or conducting parent-supervised occasional drop-in care.
- 3. A unit of the public school system, including specialized professional services provided by school districts for the sole purpose of meeting mandated requirements to address the physical and mental impairments prescribed in section 15-771. If a public school provides child care other than during the school's regular hours or for children who are not regularly enrolled in kindergarten programs or grades one through twelve, that portion of the school that provides child care is subject to standards of care prescribed pursuant to section 36-883.04.
- 4. A regularly organized private school engaged in an educational program which may be attended in substitution for public school pursuant to section 15-802. If the school provides child care beyond regular public school hours or for children who are not

regularly enrolled in kindergarten programs or grades one through twelve, that portion of the school providing such care shall be considered a child care facility and is subject to the provisions of this article.

5. Any facility that provides training only in specific subjects, including dancing, drama, music, self-defense or religion and tutoring provided by public schools solely to improve school performance.

6. Any facility that provides only recreational or instructional activities to school age children who may enter into and depart from the facility at their own volition. The facility may require the children to document their entrance into and departure from the facility and this documentation does not affect the exemption under this paragraph. The facility shall post a notice stating it is not a licensed child care facility under section 36-882.

7. Any of the Arizona state schools for the deaf and the blind.

8. A facility that provides only educational instruction for children who are at least three and not older than six years of age if all the following are true:

(a) The facility instructs only in the core subjects of math, reading and science.

(b) The facility does not accept state-subsidized tuition for the children.

(c) A child is present at the facility for not more than two and one-quarter hours a day and not more than three days a week.

(d) The instruction is not provided in place of care ordinarily provided by a parent or guardian.

(e) The facility posts a notice that the facility is not licensed under this article.

(f) The facility requires fingerprint cards of all personnel pursuant to section 36-883.02.

9. A facility that operates a day camp that provides recreational programs to children if all of the following are true:

(a) The day camp is accredited by a nationally recognized accrediting organization for day camps as approved by the department.

(b) The day camp operates for less than twenty-four hours a day and less than ten weeks each calendar year.

(c) The day camp posts a notice at the facility and on its website that it is not licensed under the laws of this state as a child care facility.

(d) The day camp provides programs only to children who are at least five years of age.

(e) The day camp requires fingerprint cards of all personnel pursuant to section 36-883.02.

#### **§ 36-885. Inspection of child care facilities**

A. The department or designated local health departments or its agents may at any time visit during hours of operation and inspect a child care facility to determine if it complies with this article and rules adopted under this article.

B. The department shall visit each child care facility as often as necessary to assure continued compliance with this article and department rules. The department shall make at least one unannounced visit annually.

#### **§ 36-886. Operation without a license; classification.**

A. If it appears that any person is maintaining or operating a child care facility without a license, the department shall notify the facility's operator either by mail, by certified mail with return receipt requested or by delivery in person. The person affected by the notice shall, within ten days from its receipt, cease and desist operation or show proof of having a valid license. The person may, within ten days, request in writing a hearing before the director.

B. On application of the department, a magistrate shall issue a warrant to the department authorizing inspection of a child care facility if there is probable cause to believe that a person is operating the facility without a license.

C. If a person does not comply with this section the department shall notify the county attorney of the county in which the child care facility is being operated of the violation and request that criminal prosecution be commenced against the violator. The department may request the attorney general to apply for injunctive relief.

D. Any person who continues to maintain or operate a child care facility without a license ten days after receipt of notice from the department is guilty of a class 1 misdemeanor.

#### **§ 36-886.01. Injunctions.**

If the department believes that a child care facility is operating under conditions that present possibilities of serious harm to children, the department shall notify the county attorney or the attorney general who shall immediately seek a restraining order and injunction against the facility.

#### **§ 36-887. Procedure for inspection of records.**

A. Records maintained by the department for child care facilities are available to the public for review and copying.

B. Personally identifiable information that relates to a child, parent or guardian is confidential. The department shall disclose this information only as follows:

1. Pursuant to a court order.

2. Pursuant to a written consent signed by the parent or guardian.

3. To a law enforcement officer who requires it for official purposes.

4. To an official of a governmental agency who requires it for official purposes.

C. The department shall enter into the child care facility's case file, contiguous to the form containing the reported violation, those documents that verify correction of reported violations.

**§ 36-888. Denial, revocation or suspension of license**

A. The department may deny, suspend or revoke a license for a violation of this article or department rules. At least thirty days before the department denies, revokes or suspends a license it shall mail the applicant or licensee a notice of that person's right to a hearing. The department shall issue this notice by registered mail with return receipt requested. The notice shall state the hearing date and the facts constituting the reasons for the department's action and shall cite the specific statute or rule that the person is not conforming to.

B. If the person does not respond to the written notice the department, at the expiration of the time fixed in the notice, shall take the action prescribed in the notice. If the person, within the period fixed in the notice, conforms the application or the operation of the child care facility to the applicable statute or rule, the department may grant the license or withdraw the notice of suspension or revocation.

**§ 36-889. Licensees; applicants; residency; controlling persons; requirements**

A. Each licensee, other than a corporation, a limited liability company, an association or a partnership, shall be a citizen of the United States who is a resident of this state, or a legal resident alien who is a resident of this state. A corporation, association or limited liability company shall be a domestic entity or a foreign entity that is qualified to do business in this state. A partnership shall have at least one partner who is a citizen of the United States and who is a resident of this state, or who is a legal resident alien and who is a resident of this state.

B. The department shall not issue or renew a license unless a list of each of the applicant's or licensee's controlling persons is on file with the department and no controlling person has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or other state or has had a license to operate a child care facility or a certificate to operate a child care group home revoked for reasons that relate to the endangerment of the health and safety of children.

C. The applicant or licensee shall notify the department within thirty days after the election of any new officer or director or of any change in the controlling persons and shall provide the department the name and business or residential address of each controlling person and an affirmation by the applicant that no controlling person has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state or has had a license to operate a child care facility or a certificate to operate a child care group home revoked for reasons that relate to the endangerment of the health and safety of children.

D. Each applicant or licensee shall designate an agent who is authorized to receive communications from the department, including legal service of process, and to file and sign documents for the applicant or licensee. The designated agent shall be all of the following:

1. A controlling person.
2. A citizen of the United States or a legal resident alien.
3. A resident of this state.

**§ 36-890. Decisions**

All decisions rendered by the director, pursuant to the applicable law and regulations, shall be in writing and filed of record in the office of the department. Notice of such decisions shall be given to the affected person or licensee. If no appeal is taken by any such person or licensee within the time provided by law, the decision of the director shall be final and conclusive.

**§ 36-891. Civil penalty; inspection of centers; training program**

A. The director may impose a civil penalty on a person who violates this article or rules adopted pursuant to this article in an amount of not more than one hundred dollars for each violation. Each day that a violation occurs constitutes a separate violation. The director may issue a notice that includes the proposed amount of the civil penalty assessment. If a person requests a hearing to appeal an assessment, the director shall not take further action to enforce and collect the assessment until the hearing process is complete. The director shall impose a civil penalty only for those days on which the violation has been documented by the department.

B. In determining the civil penalty pursuant to subsection A, the department shall consider the following:

1. Repeated violations of statutes or rules.
2. Patterns of noncompliance.
3. Types of violations.
4. Severity of violations.
5. Potential for and occurrences of actual harm.
6. Threats to health and safety.
7. Number of children affected by the violations.
8. Number of violations.
9. Size of the facility.
10. Length of time during which violations have been occurring.

C. If a civil penalty imposed pursuant to subsection A is not paid, the attorney general or a county attorney shall file an action to collect the civil penalty in a justice court or the superior court in the county in which the violation occurred.

D. Unless a license is revoked or suspended, the director shall place the license of a child care facility subject to a civil penalty pursuant to subsection A on provisional license status for a period of time not to exceed six months in addition to other penalties imposed pursuant to this article.

E. Civil penalties collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

F. The department shall develop an instrument that documents compliance and noncompliance of child care facilities according to the criteria prescribed in its rules governing child care facility licensure. Blank copies of the instrument, which shall be in standardized form, shall be made available to the public.

G. The director shall establish a child care facility training program to provide training for child care facilities and users of child care services, technical assistance materials for child care facilities and information to enhance consumer awareness.

**§ 36-891.01. Intermediate sanctions; notification of compliance; hearing**

A. If the director has reasonable cause to believe that a licensee is violating this article or rules adopted pursuant to this article and that the health or safety of the children is endangered, the director may impose, on written notice to the licensee, one or more of the following intermediate sanctions until the licensee is in substantial compliance with this article:

1. Immediate restrictions on new admissions to the child care facility.
2. Termination of specific services that the facility may offer.
3. Reduction of the facility's capacity.

B. A child care facility sanctioned pursuant to this section shall notify the department in writing when it is in substantial compliance. On receipt of notification the department shall conduct an inspection. If the department determines that the facility is in substantial compliance the director shall immediately rescind the sanctions. If the department determines that the facility is not in substantial compliance the sanctions remain in effect. The facility may then notify the department of substantial compliance not sooner than fourteen days after the date of that inspection. If the department determines on the return inspection that the facility is still not in substantial compliance the sanctions remain in effect. Thereafter, a facility may notify the department of substantial compliance not sooner than thirty days after the date of the last inspection. A facility shall make all notifications of substantial compliance by certified mail. The department shall conduct all inspections required pursuant to this subsection within fourteen days after receipt of notification of substantial compliance. If the department does not conduct an inspection within this time period, the sanctions have no further effect.

C. A person who has been ordered by the director to restrict admission, reduce capacity or terminate specific services may request a hearing to review the director's action. The person shall make this request in writing within ten days after the person receives notice of the director's action. The office of administrative hearings shall conduct an administrative hearing within seven business days after the notice of appeal has been filed with the office of administrative hearings.

D. A hearing conducted pursuant to this section shall comply with the requirements of title 41, chapter 6, article 10.

**§ 36-892. Violation; classification**

Any person violating the provisions of the applicable law, or regulations, is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this article.

**§ 36-893. Legal action or sale; effect on licensure**

A. The department shall not act on an application for licensure of a currently licensed child care facility while any enforcement or court action related to child care facility licensure is pending against that facility's current licensee.

B. The director may continue to pursue any court, administrative or enforcement action against the licensee even though the facility is in the process of being sold or transferred to a new owner.

C. The department shall not approve a change in facility ownership unless it determines that there has been a transfer of all legal and equitable interests, control and authority in the facility so that persons other than the transferring licensee, that licensee's agent or other parties exercising authority or supervision over the facility's daily operations or staff are responsible for and have control over the facility.

**§ 36-894. Medical marijuana; child care facilities; prohibition**

A. A person, including a cardholder as defined in section 36-2801, may not lawfully possess or use marijuana in any child care facility in this state.

**ARTICLE 3. PLACEMENT OF CHILDREN BY DEPARTMENT OF ECONOMIC SECURITY**

**§ 36-895. Licensing and monitoring of child care facilities; financial agreements**

A. The department of health services shall license child care facilities and monitor their operation to ensure that the level of care being provided is adequate. The department of economic security shall not duplicate the monitoring functions of the department of health services and shall accept the decisions of the department of health services concerning compliance with licensing standards.

B. The department of economic security may prepare and enter into financial agreements with child care providers as defined in section 46-801.

## ARTICLE 5. NOTIFICATION OF PESTICIDE APPLICATION

### **§ 36-898. Licensees; pesticide application; notice; definitions**

A. The director, in consultation with licensees, personnel of licensees, parents, guardians, administrators, members of the public, a qualifying party and at least one health professional, shall develop and adopt a policy to provide parents, guardians, children and personnel with at least forty-eight hours' notice before pesticides are applied on licensee property.

B. The policy shall include at least the following:

1. Procedures for providing the notification including:

- (a) Procedures for written notification to parents, guardians or an individual authorized by a parent or guardian during a regular child care session.
- (b) Procedures for requiring the licensee to post signs to identify pesticide application areas.

2. Procedures for requiring any contracted pest control applicator to provide detailed and sufficient information to licensees for the purpose of completing the posting materials.

C. The policy shall include exemptions for the following pesticide applications:

1. Nonresidual pesticide applications performed or contracted by public health agencies for adult vector control.
2. Emergency pesticide applications of a pesticide that has a toxicity category of III or IV pursuant to 40 Code of Federal Regulations section 156.62 to control harmful pests that pose an immediate threat to the public health.
3. Disinfectants or swimming pool chemicals.
4. Block, gel or paste-type bait that is a toxicity category III or IV formulation of insecticide pursuant to 40 Code of Federal Regulations section 156.62 and that is either of the following:
  - (a) Secured in an enclosed, tamper-resistant bait station and placed in an area that is inaccessible to children.
  - (b) Applied to a crack or crevice inaccessible to children.
5. Block-type bait that is a toxicity level III or IV formulation of rodenticide pursuant to 40 Code of Federal Regulations section 156.62 and that is secured in an enclosed, tamper-resistant bait station placed in an area inaccessible to children.
6. Personal repellants.
7. Any pesticide exempt from regulation by the United States environmental protection agency pursuant to the federal insecticide, fungicide and rodenticide act (7 United States Code section 136w).

D. Each licensee shall maintain written records of pesticide application notifications for a period of at least three years after the application. The licensee may delegate to the pest control applicator the duty to fill out and post notices required by department policy. A licensee is not required to maintain records of pesticides that are exempt pursuant to subsection C of this section.

E. For the purposes of this section:

1. "Child care" has the same meaning prescribed in section 36-881.
2. "Department" means the department of health services.
3. "Licensee" means a person who is regulated pursuant to this chapter.
4. "Pesticides" includes pesticides regulated under the federal insecticide, fungicide and rodenticide act (P.L. 100-532; 102 Stat. 2654; 7 United States Code section 136) except for nonrestricted use disinfectants, sanitizers or deodorizers regulated by the federal insecticide, fungicide and rodenticide act.
5. "Qualifying party" has the same meaning prescribed in section 32-2301.