

FAMILY CHILD CARE HOMES – PART 1 – USER FRIENDLY- DECEMBER 2007

INTRODUCTION

LEGAL BASE

1. The legal base for these Licensing Rules is in the Delaware Code, Title 31, Welfare, In General, Chapter 3, Child Welfare, Subchapter # III, The Delaware Child Care Act, Subsections 341 –345 and Title 29, State Government, Part VIII, Departments of Government, Chapter 90, Department of Services For Children, Youth And Their Families, Subsection 9003 (7).

PURPOSE

2. The overall purpose of these Rules is the protection and promotion of the health, safety and well-being, and positive development of children who receive licensed child-care services in Family Child Care Homes.

GENERAL PROVISIONS

DEFINITION OF REGULATED SERVICE

3. Family Child Care is a licensed child care service offered by a person who provides care, education, protection, supervision or guidance in his or her private home on a regular basis for one (1) to (6) six children. This does not include a child care service provided exclusively to relatives. Service is provided for part of the twenty-four (24) hour day, unattended by parent or guardian, and for compensation.

DEFINITION OF TERMS

4. "Administrator" means the individual responsible for the supervision and administration of the Office of Child Care Licensing.
5. "Administrative Appeal Hearing" means the hearing provided to an Applicant or Licensee when the Applicant or Licensee has timely requested appeal of the Division's decision to deny an application or revoke a Family Child Care License.
6. "Adult" means a person who has reached his or her eighteenth (18th) birthday.
7. "Applicant" means an individual applying for a Family Child Care License that is obtained from the Office of Child Care Licensing."
8. "Background check" means a State (Delaware) and Federal (national) report of a person's entire criminal history, a search of the Department's child abuse and neglect records, and when applicable, a search of the Department of Health and Social Services' adult abuse registry.
9. "Business Day(s)" means any weekday Monday through Friday. It does not include any weekend day (Saturday and Sunday) or any State of Delaware legal holiday that falls on a weekday.
10. "Change of Shift" means the two (2) hour period of time overlapping between two (2) full (at least eight (8) hours per shift) shifts of child care and the specific conditions in which additional children are allowed beyond the licensed capacity for that particular time period.

11. "Child" means any person who has not reached the age of eighteen (18) years.
12. "Child Abuse means the abuse of a child as defined in Delaware Code, Title 16, Chapter 9.
13. "Child Care" means the providing of care, education, protection, supervision or guidance of children in a Family Child Care Home.
14. "Child Care Licensing Specialist" or "Child Care Licensing Supervisor" means the individual in employment of the Department of Services for Children, Youth and their Families, Division of Family Services, Office of Child Care Licensing and is responsible as per Delaware Code for performing regulatory activities including investigations, enforcement actions and decisions for licensure.
15. "Child Neglect" means the neglect of a child defined in Delaware Code, Title 16, Chapter 9.
16. "Child Sex Abuse" means any act against a child that is described as a sex offense as defined in Delaware Code, Title 11, Subsection 761 (d) or in subpart D. "sexual offenses" of subchapter I. of Chapter 5 of Title 11 of the Delaware Code.
17. "Child with Disabilities" means a child who has been diagnosed by a qualified professional as having a physical, intellectual, emotional, developmental or chronic medical condition(s) or impairment(s) which would require modification(s) in the regular program of activities for that child at the Family Child Care Home or as defined by applicable Federal and State Laws.
18. "Clock Hour(s) means the actual number of hours or time a participant spends attending the instructional portion of a training to develop or enhance early care and education and school-age care competencies.
19. "Complaint" means an accusation that a Licensee is not in compliance with these Rules or any applicable laws. Complaints may be written or oral and may be anonymous.
20. "Corrective Action Plan" means a plan provided to the Licensee by the Office of Child Care Licensing which specifies the how a Licensee corrects any non-compliance and the time frame in which the non-compliance shall be corrected.
21. "*Delaware First*" means the professional development system for early care and education and school-age care professionals in Delaware.
22. "Department" means the Department of Services for Children, Youth and Their Families.
23. "Denial" means the refusal to issue a Family Child Care License after the receipt of an original or renewal application. This constitutes refusal of official permission for the Applicant or Licensee to provide regulated service.
24. "Direct Voice Contact" means a Licensee speaking directly with a Child Care Licensing Specialist, Child Care Licensing Supervisor, or the Administrator from the Office of Child Care Licensing through a telephone call or face-to-face contact. A voice mail message is not acceptable.
25. "Division" means the Division of Family Service within the Department.
26. "Family Child Care Home" means a private home in which a person resides and provides a licensed child care service for one to six children at any one time but for no more than seventeen (17) consecutive hours in a twenty-four (24) period.

27. "Family Child Care License" means a written document issued by the Office of Child Care Licensing to an individual verifying that he/she has demonstrated compliance with the *Delacare: Rules for Family Child Care Homes* and the applicable codes, regulations, and laws.
28. "Health Care Provider" means a professionally licensed physician, advance practice nurse, (nurse practitioner), or physician assistant, such license being issued by an established licensing body.
29. "Household member(s)" means persons living together permanently or temporarily without regard to whether they are related to each other and without regard to the length of time or continuity of such residence, and it may include persons who previously lived in the household such as paramours of a member of the child's household.
30. "Infant" means any child who is under the age of twelve (12) months.
31. "Institutional Child Abuse or Neglect" means child abuse or neglect which has occurred to a child in the Department's custody and/or placed in a facility, center or home operated, contracted or licensed by the Department.
32. "Licensee" means the person who is issued the Family Child Care License, has legal responsibility for the Family Child Care Home, resides in the Family Child Care Home, provides child care, and meets the qualifications and requirements of Licensee as defined in these Rules.
33. "Licensure" means the issuing of a Family Child Care License when the Applicant has demonstrated compliance with *Delacare: Rules for Family Child Care Homes* and applicable codes, regulations, and laws.
34. "Meal" means breakfast, lunch, or dinner.
35. "Night Child Care" means child care provided in the evening and/or overnight between the hours of 8:00 P.M. and 6:00 A.M
36. "Office of Child Care Licensing" means the governmental organization within the Department authorized under Delaware Code, Title 31, Chapter 3, Subchapter III, to prescribe, by regulations or otherwise, any reasonable standards for the conduct of child care facilities, institutions, agencies, associations or organizations and may license such of these to conform to such standards.
37. "Parent(s)/guardian(s)" means a birth or adoptive parent, legal guardian or any other person having responsibility for, or legal custody of, a child.
38. "Preschool-Age Child" means a child who is between thirty-six (36) months and five (5) years of age who is not yet attending a public or private kindergarten program. If a child is older than five (5) years of age and is not yet attending a public or private kindergarten program that child shall be considered in the preschool-age group until attending kindergarten or first grade which ever comes first.
39. "Private Home" means a non-public residence such as a house, duplex, townhouse, apartment or mobile home where the Licensee resides and has control over the furnishings and use of space. An individual unit in public housing and university housing complexes may be considered a private home.

40. "Regularly or on a regular basis" means child care services which are available and provided at a Family Child Care Home on more than one (1) day in any one (1) week or for periods longer than three (3) weeks in any calendar year.
41. "Relative" means a person having any of the following relationships by blood, marriage, or adoption between the Licensee and the child in child care: parent, grandparent, great-grandparent, brother, sister, aunt, uncle, stepparent, stepbrother, and stepsister. A cousin, for the purpose of this definition, shall not be considered a relative.
42. "Revocation" means the process of rescinding a Family Child Care License during the effective dates of the Family Child Care License. If the process concludes with the decision of the Secretary of the Department to revoke the Family Child Care License, the Licensee shall cease operation of a Family Child Care Home within thirty (30) days of the decision.
43. "Rule(s)" means the Office of Child Care Licensing establishing a baseline or minimum standard required for a particular aspect of child care provided in a Family Child Care Home. A Licensee of a Family Child Care Home is encouraged to exceed the baseline or minimum standard required by these Rules.
44. "Secretary" means the Cabinet Secretary of the Department of Services for Children, Youth and Their Families
45. "School-age care" means child care for school-age children in any of the following circumstances: before and/or after school; during school holidays; and/or summer months.
46. "School-age Child" means any child age five (5) years or older who is attending kindergarten or higher grade. A child shall be considered school-age beginning the first day attending kindergarten or first grade which ever comes first.
47. "Snack" means supplemental food served between meals.
48. "Substitute" means an adult designated by the Licensee to provide child care in the Family Child Care Home when the Licensee is not present and meets the qualifications and requirements of Substitute as defined in these Rules.
49. "Supervision" means the Licensee or Substitute is physically present in the area or room where the children are being cared for and are providing watchful oversight and timely attention to the children's actions and needs.
50. "Suspension Hearing" means an informal hearing between the Division and the Licensee in order to determine whether the Family Child Care License remains suspended.
51. "Temporary Suspension Order" or "Suspension Order" means a notice issued by the Office of Child Care Licensing to the Licensee directing that Family Child Care services be discontinued on a date specified by the Office of Child Care Licensing. The Licensee shall not provide Family Child Care services during the term of a Temporary Suspension Order.
52. "Toddler" means a child between the age of twelve (12) months and under thirty-six (36) months.
53. "Training" means the successful participation in an organized professional development activity that is approved or accepted by the Office of Child Care Licensing the purpose of which is to develop or enhance early care and education or school-age care competencies of the Licensee and Substitute of the Family Child Care Home.

54. "Variance" means the nontransferable written authorization issued by the Division after the Licensee has demonstrated an alternative means by which to meet the intent of a specific Rule. A variance is a conditional approval to operate outside of these Rules is based on the need(s) or circumstance(s) of the Licensee and Family Child Care Home.

FAMILY CHILD CARE LICENSURE

55. An individual shall not operate or maintain a Family Child Care Home unless a Family Child Care License to do so is issued by the Office of Child Care Licensing.

AUTHORITY TO INSPECT

56. The Licensee, adult household member(s), and Substitute shall permit access to the Family Child Care Home, and respond to and cooperate with requests from authorized representatives of the Office of Child Care Licensing, and other State or local agencies and allow for the announced or unannounced inspection of any area or aspect of the operation of the Family Child Care Home which affects or potentially affects the children in child care including access to and request for information, files and records, for the purposes determining compliance and/or investigating complaints with applicable provisions of these Rules, and any other applicable codes, regulations, and laws.
57. The Licensee shall not impede and shall permit the interview of the him or herself, household members, Substitute, any child in child care, and the parent(s)/guardian(s) of a child in child care by authorized representatives of the Office of Child Care Licensing, and other State or local agencies for the purposes of determining compliance and/or investigating complaints with applicable provisions of these Rules, and any other applicable codes, regulations, and laws.

APPLICATION PROCESS

58. The Applicant shall apply for a Family Child Care License on a form provided by the Office of Child Care Licensing. An application shall be required for initial licensure, and upon renewal when seeking to continue the operation of a Family Child Care Home.
59. The Applicant shall sign a statement which certifies:
- A. He/she has read and understands these Rules;
 - B. Intent to maintain full or substantial compliance with these Rules and any other applicable codes, regulations, and laws; and
 - C. Intent to provide child care for children throughout the majority of the licensure period(s).
60. The Applicant shall demonstrate to the satisfaction of the Office of Child Care Licensing that he/she and the Family Child Care Home is in full or substantial compliance with applicable provisions of these Rules, and any other applicable codes, regulations, and laws to qualify for a Family Child Care License.
61. The Applicant shall attend pre-licensing meeting(s) and/or training(s) and successfully complete the application process as described in Rules #59-70 within a time period as established by the Office of Child Care Licensing.
62. The Applicant shall submit a complete application including all required materials to the Office of Child Care Licensing and when applicable, any other agency as required by

their codes, regulations, or laws such as, but not limited to, the Division of Public Health, City or State Fire Marshal, Division of Revenue, Department of Natural Resources and Environmental Control, City or County Offices of Land Use or Zoning.

63. The Applicant shall submit documentation of current certification in cardiopulmonary resuscitation (CPR) and completion of a first aid course each applicable to the ages of the children in child care.
64. The Applicant shall provide three (3) written letters of reference from three (3) adults who are familiar with the Applicant but who are not related to the Applicant. These references shall verify that the Applicant is of good character and reputation, respects and understands children, and is sensitive to meeting their needs.
65. The Applicant shall sign a release of employment history form provided by the Office of Child Care Licensing that permits the Office of Child Care Licensing to obtain service letters as per Delaware Code, Title 19, Chapter 7, Section 708 from a current or most recent previous employer for him or herself, and any health care and/or child care facility for which the Applicant was employed within the past five (5) years of application for Licensure.
 - A. If a Licensee has no prior employment history, five (5) letters of reference as specified in Rule #64 shall be required to be provided.
66. The Applicant, all household member(s) eighteen (18) years of age or older, and Substitute shall be fingerprinted by the Delaware State Police.
 - A. The Office of Child Care Licensing, at its discretion when there is cause to believe the health, safety, or welfare of a child in child care may be at risk, may require a background check on a household member under eighteen (18) years of age.
67. The Applicant shall sign a release for the result of an adult abuse registry check through the Department of Health and Social Services.
68. The Applicant shall provide written evidence of health appraisals attesting to his/her health, and the health of any adult household members, and Substitute.
 - A. The written report from a health care provider shall have been completed within one (1) year prior to the date of initial licensure and include, at a minimum:
 - i. Health history;
 - ii. Physical exam;
 - iii. Vision and hearing screening;
 - iv. Freedom from communicable tuberculosis (Tb) verified within one (1) year prior to the date of initial licensure, with further testing every five (5) years;
 - v. A review of immunization status (such as measles, mumps, rubella, diphtheria, tetanus, and polio);
 - vi. A review of occupational health concerns;
 - vii. Assessment of need for vaccines against illnesses such as but not limited to, influenza, pneumococcus, and hepatitis B, and of risk from exposure to common childhood infections, such as parvovirus, CMV, and chicken pox; and
 - viii. Assessment of health related limitations or communicable diseases that may impair a person's ability to perform the child care or have direct access to children.

69. The Applicant shall provide health appraisals for children preschool-age or younger, including school-age children who are not attending a public or private school, living in the Family Child Care Home as specified in Rule #305.
70. The Applicant shall provide written proof of an electrical inspection of the Family Child Care Home conducted by an inspection agency that is approved by the State Fire Marshal.

ANNUAL FAMILY CHILD CARE LICENSE

71. The annual Family Child Care License shall be issued when the Office of Child Care Licensing determines that the Applicant who becomes the Licensee, and Family Child Care Home are in full or substantial compliance with applicable provisions of these Rules. This includes the determination of suitability of the Applicant and household members based on the results of their background checks for the issuance of the initial annual Family Child Care License.
72. The Licensee shall maintain full or substantial compliance with applicable provisions of these Rules and all other applicable local, State and Federal codes, regulations, and laws throughout the licensure period(s).
73. The annual Family Child Care License shall be issued only to the Licensee and for the address of the Family Child Care Home shown on the application. A Family Child Care License is not transferable, assignable or subject to sale.
74. The annual Family Child Care License shall be effective for one (1) year from the date of issuance, unless it is:
 - A. Modified to a provisional Family Child Care License;
 - B. Revoked;
 - C. Surrendered prior to the expiration date
 - D. Nullified; or
 - E. Suspended.
75. The Licensee shall post the Family Child Care License in a place conspicuous to the public.
76. The Licensee shall comply with any restrictions on the maximum number of children in child care which may be placed upon the Family Child Care Home by the Office of Child Care Licensing or other applicable agencies' codes, regulations and laws such as those related to fire safety and zoning.

PROVISIONAL FAMILY CHILD CARE LICENSE

77. A provisional Family Child Care License may be issued whenever a Licensee is temporarily unable to comply with all of these Rules and the Office of Child Care Licensing has determined that:
 - A. There is no serious risk to the health, safety and well-being of the children;
 - B. The Licensee has agreed to fulfill and operate under conditions as stated in a written corrective action plan as designated by the Office of Child Care Licensing; and
 - C. The Licensee demonstrates to the Office of Child Care Licensing of intent to comply.
78. A provisional Family Child Care License may be replaced with an annual Family Child Care License when the Licensee makes a written request to the Office of Child Care Licensing for the replacement of a provisional Family Child Care License with an annual Family Child

Care License after the corrective action plan is completed by the Licensee and approved by the Office of Child Care Licensing, and when the Office of Child Care Licensing determines that a Licensee:

- A. Has demonstrated the correction of all violations in advance of the expiration date of the provisional Family Child Care License in accordance with the agreed upon conditions as stated in the corrective action plan as designated by the Office of Child Care Licensing and;
 - B. Has come into and maintains full or substantial compliance with applicable provisions of these Rules.
79. A provisional Family Child Care License may be renewed when the Office of Child Care Licensing determines that a Licensee has demonstrated good faith efforts to achieve compliance but requires additional time to achieve full or substantial compliance with applicable provisions of these Rules.

FAMILY CHILD CARE LICENSE RENEWAL

80. The Licensee shall be required to renew a Family Child Care License annually.
- A. An annual Family Child Care License shall expire one (1) year from the date of issuance.
81. At least ninety (90) calendar days before the expiration of the current Family Child Care License, the Licensee shall make a request to the Office of Child Care Licensing by direct voice contact or in writing to obtain a Family Child Care License application form
82. The Licensee shall submit a fully completed Family Child Care License application form and all required materials to the Office of Child Care Licensing at least thirty (30) calendar days prior to the expiration of current Family Child Care License.
- A. When a Licensee makes timely and complete application for renewal of an annual Family Child Care License, the current Family Child Care License shall not expire until the Office of Child Care Licensing makes a decision on the Family Child Care License renewal application.

NOTIFICATION TO THE OFFICE OF CHILD CARE LICENSING

83. A Licensee shall immediately notify the Office of Child Care Licensing by direct voice contact during the Office of Child Care Licensing's business hours of the death of a child while in child care. If the death occurs after such business hours, the Licensee shall immediately call the 24-Hour Child Abuse/Neglect Hotline (currently listed as 1-800-292-9582).
84. A Licensee shall notify the Office of Child Care Licensing within one (1) business day by direct voice contact during the Office of Child Care Licensing's business hours if any of the following occur:
- A. Any fire; flood; or any other serious damage due to any natural or man-made disaster(s) that impact the ability to operate safely;
 - B. Injury of a child while in the child care at a Family Child Care Home requiring inpatient or outpatient treatment. The direct voice contact shall be followed by a written report on a form provided by the Office of Child Care Licensing;
 - C. Suspected abuse or neglect of a child enrolled at the Family Child Care Home after immediately calling the 24-hour Child Abuse/Neglect Hotline (currently listed as 1-800-292-9582) to report the abuse or neglect;

- D. Any subsequent charges, arrests, or convictions; or any involvement of the Licensee, Substitute and household members with the Department due to child abuse or neglect; or
 - E. Any breakdown of equipment that could pose a threat to the health and safety of children in child care. including but not limited to, lack of operating toilets, interruption of running water, loss of telephone service, failure of smoke/fire alarm system, and failure of cooling or heating systems so that temperatures cannot be maintained within limits of Rule #160.
85. The Licensee shall notify the Office of Child Care Licensing within five (5) business days by direct voice contact and follow-up in writing to his/her assigned Child Care Licensing Specialist when there is a change in the:
- A. Telephone number of the Family Child Care Home;
 - B. Shift(s) of child care provided;
 - C. Composition of household;
 - D. Physical space or rooms used at the Family Child Care Home for child care; or
 - E. Substitute; or
 - F. Intended use of a Substitute as specified in Rule #138.
86. The Licensee shall report to the Office of Child Care Licensing in writing or by direct voice contact at least thirty (30) days in advance of a change in address of the Family Child Care Home. A new Family Child Care License shall be required at the new address prior to providing Family Child Care services at the new address.

NULLIFICATION OF FAMILY CHILD CARE LICENSE

87. A Family Child Care License shall immediately become null and void when the following occurs:
- A. The Licensee no longer resides at the Family Child Care Home for which the Family Child Care License was issued;
 - B. The Licensee changes the location of the Family Child Care Home;
 - C. The Licensee surrenders the Family Child Care License to the Office of Child Care License;
 - D. The Family Child Care License has been denied;
 - E. The Family Child Care License has been revoked; or
 - E. The Family Child Care License has expired.

COMPLAINT PROCEDURE

88. An investigation by the Office of Child Care Licensing shall be made if a complaint is received regarding *Delaware: Rules for Family Child Care Homes*. The Office of Child Care Licensing shall notify the Licensee that a complaint is being investigated. The results of the Office of Child Care Licensing's investigation shall be reported in writing to the Licensee investigated. If the complaint is substantiated or if other violations are found as a result of the investigation, the Licensee shall be required to correct the violations and come into compliance with these Rules and any applicable Federal, State or local law or regulations.
- A. Complaints relating specifically to codes, regulations, or laws of other State and local agencies shall be referred to the appropriate agency for investigation. At the time of the referral, the Office of Child Care Licensing shall request a report from the other State and local agency on the investigation findings.
89. An investigation by the Department of Services for Children, Youth and their Families, Division of Family Services, Office of Children's Services, Institutional Abuse Investigation

Unit shall be made if a complaint is received regarding the abuse or neglect of a child at the Family Child Care Home. Law enforcement shall be notified and will conduct an investigation of any complaint that may constitute a crime.

- 90 An investigation of a reported unlicensed Family Child Care Home shall be made and require the individual(s) providing unlicensed Family Child Care to cease operation upon notice from the Office of Child Care Licensing.

SUSPENSION, REVOCATION OR DENIAL OF A FAMILY CHILD CARE LICENSE

91. The Division may suspend, deny an application, or revoke a Family Child Care License for good cause, including but not limited to the following:
- A. Failure to comply with applicable provisions of the State Law(s) or these Rules;
 - B. Violation of the terms or conditions of the Family Child Care License or corrective action plan;
 - C. Use of fraud, or intentional or negligent misrepresentation in obtaining a Family Child Care License or in the subsequent operation of the Family Child Care Home;
 - D. Refusal to furnish information, files, and records to authorized representative(s) of the Office of Child Care Licensing, and other State or local agencies for the purposes determining compliance and/or investigating complaints with applicable provisions of these Rules, and any other applicable codes, regulations, and laws;
 - E. Refusal to respond to or cooperate with a request from an authorized representative of the Office of Child Care Licensing, and other State and local agencies and allow for the announced or unannounced inspection of any area or aspect of the operation of the Family Child Care Home which affects or potentially affects the children in child care for the purposes determining compliance and/or investigating complaints with applicable provisions of these Rules, and any other applicable codes, regulations, and laws;
 - F. Engaging in any activity, policy, practice or conduct that adversely affects or presents a serious or imminent danger, or risk thereof to the health, safety or well-being of children; or
 - G. Conduct that otherwise demonstrates unfitness by the Licensee to operate a Family Child Care home.
92. If the health, safety or well-being of children in child care is in serious or imminent danger, or risk thereof, the Office of Child Care Licensing may immediately suspend the Family Child Care License upon issuance of a temporary suspension order. The initial temporary suspension order may be verbal or written. Any verbal temporary suspension order shall be followed by a written temporary suspension order. Upon receipt, the Licensee shall cease operation of the Family Child Care Home. The temporary suspension order shall state the reason(s) for the temporary suspension. Upon request of the Licensee, the Division Director or designee shall schedule a suspension hearing, within ten (10) business days of the issuance of the temporary suspension order at which the Licensee or Licensee's representative may be present.

APPEAL

93. If the Division intends to deny an application, or revoke a Family Child Care License, the Division shall mail a notice of intent to deny or revoke the Family Child Care License to the Licensee. Such notice shall specify the Licensee's right to appeal the decision and to request an administrative appeal hearing. The Licensee shall request an administrative hearing within ten (10) business days of the date the notice was mailed as based on the postmark. The Division's notice shall state the Rules and briefly summarize the facts upon which the intent to deny or revoke is based.

94. If a written request or a verbal request made by direct voice contact for an administrative appeal hearing is received by the Division within the ten (10) business days of the date the notice of the intent to deny or revoke was mailed, the Division shall schedule an administrative appeal hearing within thirty (30) business days from the date the request for an administrative appeal hearing is received, unless for good cause, the Hearing Officer grants postponement or the parties agree to postponement.
95. The administrative appeal hearing shall be conducted by a Hearing Officer who has had no previous involvement in the matter prompting the administrative appeal hearing.
96. If a Licensee requests an administrative appeal hearing within ten (10) business days of the date the notice of intent to deny or revoke was mailed, the existing Family Child Care License shall remain in effect until an official written decision has been rendered subsequent to the administrative appeal hearing. The Office of Child Care Licensing shall have the authority to suspend the Family Child Care License immediately whenever the health, safety or well being of children in child care is in serious or imminent danger or risk thereof.
97. If a Licensee does not make a request within ten (10) business days of the date the notice of intent to deny or revoke was mailed for an administrative appeal hearing, the action in such notice seeking to deny or revoke a Family Child Care License shall become final and binding without any further right of review and take effect thirty (30) business days after the issuance of the notice. However, where stated in the Division's notice, if the health, safety or well-being of children in child care is in serious or imminent danger or risk thereof, denial or revocation shall be effective immediately upon the issuance of a written notice by the Division.

RULE VARIANCES

98. Upon the written request of an Applicant or Licensee, the Division may grant a variance from these Rules if the Applicant or Licensee has documented to the satisfaction of the Division that the intent of the specific Rule shall be satisfactorily achieved in a manner other than that prescribed by the Rule.
99. The Division shall render its decision on the request for variance in writing, including the conditions and Rule for which the variance is granted, and shall send a signed copy of the decision to the Applicant or Licensee. A copy of the decision shall be maintained on file by the Division and the Applicant or Licensee.
100. The variance may be, at the Office of Child Care Licensing's discretion, time-limited or indefinite but shall only remain in effect for as long as the Licensee continues to satisfactorily achieve the intent of the Rule and maintain the health, care, safety, protection, and supervision of children in child care.
101. The Division shall monitor the Licensee's compliance with the variance. If the Licensee fails to comply with the variance, the Division shall initiate necessary enforcement action and may revoke the variance.

PROVISIONS FOR OPERATION OF A FAMILY CHILD CARE HOME

GENERAL QUALIFICATIONS AND REQUIREMENTS OF LICENSEE, HOUSEHOLD MEMBERS, AND SUBSTITUTE

102. The Licensee and Substitute shall be at least eighteen (18) years of age and able to carry out these Rules.
103. The Licensee and Substitute shall have an understanding of and respect for children and the child's family and culture and needs of children including, but not limited to, meeting children's physical needs such as feeding and diapering, supervising children's activities, supporting children's physical, intellectual, social and emotional growth, dealing with emergencies in a calm manner and carrying out methods of positive behavior management as stipulated in these Rules.
104. The Licensee, household members, and Substitute shall not have any conviction, current indictment, or substantial evidence of involvement in:
 - A. Any activity involving violence against a person;
 - B. Child abuse or neglect;
 - C. Possession, sale or distribution of illegal drugs;
 - D. Sexual misconduct;
 - E. Gross irresponsibility or disregard for the safety of others; or
 - F. Serious violations of accepted standards of honesty or ethical behavior.
 - i. The Department may, at its own discretion, make exceptions to the above Rule when it is documented that the health and safety of children would not be endangered except as prohibited by the Child Protection Registry Law as defined by Delaware Code, Title 16, Chapter 9, Subchapter II, Subsection 923.
105. The Licensee shall ensure that within five (5) business days of a current household member turning eighteen (18) years of age, an individual becoming a new household member, and new Substitute being designated, that such individual is fingerprinted by the Delaware State Police. The Licensee shall provide verification of such fingerprinting to the Office of Child Care Licensing within fourteen (14) business days.
 - A. The Office of Child Care Licensing, at its discretion when there is cause to believe the health, safety, or welfare of a child in child care may be at risk, may require a background check on a household member under eighteen (18) years of age.
106. The Licensee shall ensure that household members eighteen (18) years of age and older and Substitutes are not left alone with children in child care at the Family Child Care Home until the results of all background checks are completed, suitability is determined and household members and Substitute are approved by the Office of Child Care Licensing.
107. Any person whose children are removed from his/her custody because of abuse, neglect, or dependency shall not be issued a License.
 - A. A person who has relinquished or otherwise lost custody of his/her children shall present documentation to the Department regarding the circumstances of this relinquishment, for consideration in determining the suitability of licensure at the Family Child Care Home.
108. The Licensee, household members or Substitute shall not be convicted of any offense

defined as child sex abuse in Delaware Code, Title 11.

109. The Licensee shall ensure that copies of his or her health appraisal, the health appraisal of adult household members, and Substitute are kept on file in the Family Child Care Home and updated to be consistent with household composition and whenever a new Substitute is available as specified in Rule #133.
110. The Licensee, household members, and Substitute shall provide written authorization to permit the release of medical records to the Office of Child Care Licensing for the follow-up for known medical problems or as required by the Office of Child Care Licensing for the purposes of determining whether the medical problem might create a significant risk to children.
111. The Licensee, household members and Substitute shall not be diagnosed or under treatment for a serious mental illness which might create a significant risk of harm to children and provide written authorization to permit the release of medical records to the Office of Child Care Licensing for the purposed of determining whether a mental illness might create a significant risk to children.
112. The Licensee and Substitute shall not consume alcohol or use illegal drugs while providing child care at the Family Child Care Home.
113. The Licensee, household members, Substitute and any person present in the Family Child Care Home shall not be under the influence of alcohol, other drug(s) or substance(s) which adversely affects children in child care and the operation of the Family Child Care Home.
114. The Licensee shall have no other employment during the hours that children are in child care or participate in activities that distract from providing child care.
115. The Licensee shall not provide care for individuals requiring convalescent or nursing care at the Family Child Care Home during the hours children are in child care.
116. The Licensee shall not provide foster care at the Family Child Care Home for children or adults without the prior written approval of the Department.
 - A. The decision for dual service shall be made by the Administrator based upon the recommendation of the Child Care Licensing Specialist and Foster Home Coordinator of the placing agency. The recommendation shall consider the specific needs of potential child care children and foster care placements.
 - B. The written approval shall include the number and ages of children/adults to be cared for in each program in accordance with requirements.
 - C. The decision for dual service shall be reviewed periodically.
 - D. Foster children of preschool age and younger shall be counted in the capacity of the Family Child Care Home.

TRAINING EQUIVALENCY

117. When qualifying for a Family Child Care License, the Licensee may, when applicable, use college/university credits based on specific topic areas/titles, substitutions for college/university credits, or other training that is demonstrated to be equivalent to a particular qualification in these Rules all as approved or accepted by the Office of Child Care Licensing.
 - A. Other topic areas related to the needs of the school-age children served shall be considered when providing child care for that age group only.

QUALIFICATIONS - LEVEL I FAMILY CHILD CARE HOME

118. To qualify as a Level I Family Child Care Home, the Licensee shall have at least a high school diploma or its equivalent, and successfully completion of one of the following qualifications:
- A. *Delaware First's* "Introduction to Early Care and Education";
 - B. *Delaware First's* "Child Development";
 - C. *Delaware First's* "Introduction to Family Child Care"; or
 - D. Training that is demonstrated to be equivalent as approved or accepted by the Office of Child Care Licensing.
119. The Licensee who, before the effective date of these Rules, was licensed as Level I Family Child Care Home may continue to qualify based on *Delacare: Requirements for Family Child Care Homes (1994)* and provide child care as a Level I Family Child Care Home. The qualifications as stated in the Rules #118 shall be required in addition to any Level II Family Child Care Home qualifications when moving from Level I Family Child Care Home to Level II Family Child Care Home.

QUALIFICATIONS - LEVEL II FAMILY CHILD CARE QUALIFICATIONS

120. A Licensee shall request approval to become a Level II Family Child Care Home, by submitting written documentation to the Office of Child Care Licensing that shows how he/she is fully qualified. The documentation shall consist of copies of training certificates, transcript(s), or diploma(s). Written approval from the Office of Child Care Licensing shall be necessary to increase a Level and the number of children served.
121. The Licensee shall have the following experience to qualify as a Level II Family Child Care Home:
- A. Twenty-four (24) months of experience working with children in a group setting; or
 - B. Licensed as Level I Family Child Care Home and providing child care for a total of twenty-four (24) months with no substantiated complaints, or substantial noncompliance.
122. The Licensee shall have at least a high school diploma or its equivalent, and successful completion of one the following training to qualify as a Level II Family Child Care Home:
- A. Sixty (60) clock hours of training as divided into the following early care and education core topic areas: Child Development - fifteen (15) hours; Developmental Curriculum Planning – twelve (12) hours; Positive Behavior Management – twelve (12) hours; Health – three (3) hours; Safety – three (3) hours; Nutrition – three (3) hours; Families – six (6) hours; and Professionalism - six (6) hours;
 - B. *Training for Early Care and Education 1*;
 - C. A high school diploma from traditional high school's career pathway program in early childhood as recognized by the Office of Child Care Licensing;
 - D. Three (3) college/university credits in early childhood education or child development when caring for children preschool-age or younger, and/or elementary education or school-age care topics when caring for children kindergarten age and older; or
 - E. Training that is demonstrated to be equivalent as accepted or approved by the Office of Child Care Licensing.
123. The Licensee who, before the effective date of these Rules, was licensed as a Level II Family Child Care based on *Delacare: Requirements for Family Child Care Homes (1994)* shall have two (2) years from the effective date or no later than (date) to complete the

following training to continue to qualify and provide child care as a Level II Family Child Care Home:

- A. Sixty (60) clock hours of training as divided into the following early care and education core topic areas: Child Development - fifteen (15) hours; Developmental Curriculum Planning – twelve (12) hours; Positive Behavior Management – twelve (12) hours; Health – three (3) hours; Safety – three (3) hours; Nutrition – three (3) hours; Families – six (6) hours; and Professionalism - six (6) hours.

GENERAL FAMILY CHILD CARE LICENSEE TO CHILD RATIO

- 124. The number of children or total capacity of a Family Child Care Home shall not exceed four (4) to six (6) children preschool-age or younger depending on the designated Level.
- 125. The children, including foster care children, preschool-age or younger, living in the Family Child Care Home shall count toward the total capacity.
- 126. The school-age children, including foster care children of that age, living in the Family Child Care Home shall not count toward the total capacity if attending a public or private school outside of the Family Child Care Home.
- 127. The age distributions of children preschool-age or younger and the addition of other school-aged children that do not live in the Family Child Care Home, shall be determined by the extent of the Licensee's experience, specified conditions such as square footage, and training as stipulated in these Rules.
- 128. A Level I Family Child Care Home shall be licensed to provide child care for one of the following options:
 - A. Total of four (4) children preschool-age or younger, of whom no more than three (3) children are under the age of twenty-four (24) months and no more than two (2) children are under the age of twelve (12) months; and a total of two (2) additional school-age children;
 - B. Total of five (5) children preschool-age or younger, of whom no more than three (3) children are under the age of twenty-four (24) months and, no more than two (2) children are under the age of twelve (12) months; and no school-age children; or
 - C. Total of six (6) school-age children; and no children preschool-age or younger.
- 129. A Level II Family Child Care Home shall be licensed to provide child care for one of the following options:
 - A. Total of six (6) children preschool-age or younger, of whom no more than four (4) children are under the age of twenty-four (24) months and no more than two (2) children are under the age of twelve (12) months; and a total of two (2) additional school-age children;
 - B. Total of six (6) children preschool-age or younger, of whom no more than three (3) children are under the age of twenty-four (24) months and no more than two (2) children are under the age of twelve (12) months; and a total of three additional (3) school-age children;
 - C. Total of five (5) children preschool-age or younger, of whom no more than four (4) children are under the age of twenty-four (24) months and no more than three (3) children are under the age of twelve (12) months; and no school-age children;
 - D. Total of four (4) children under the age of twenty-four (24) months, of whom no more than three (3) children are under the age of twelve (12) months; and a total of two (2) additional school-age children; or
 - E. Total of nine (9) school-age children; and no children preschool-age or younger.

CHANGE OF SHIFT RATIO

130. The Licensee may provide child care for up to two (2) additional children, only during the two (2) hour period of time overlapping between two (2) full (at least eight (8) hours per shift) shifts. Before/after school child care shall not be provided when caring for additional children during a change of shift. At no time shall the number of children younger than twenty-four (24) months of age exceed the infant/toddler capacity as specified in Rules #128 and 129. The Licensee shall notify the Office of Child Care Licensing in writing of the specific children and times involved in the change of shift situation.

NIGHT CHILD CARE RATIO

131. The Licensee shall provide child care for no more than six (6) children of any age when providing night child care in the evening and/or overnight. This includes children, including foster care children, preschool-age or younger living in the Family Child Care Home who may sleep in his or her own bedroom.
- A. The Licensee or Substitute shall remain awake at all times children are in child care.

MAXIMUM CONSECUTIVE HOURS OF CHILD CARE

132. The Licensee shall provide no more than seventeen (17) hours of child care within a twenty-four (24) hour period with at least seven (7) consecutive hours of rest between periods of child care provided.
- A. A Family Child Care Home licensed before the effective date of these Rules that offered child care for more than seventeen (17) hours shall have one (1) year from the new effective date or until (date) to limit child care to no more than seventeen (17) hours within a twenty-four (24) hour period with at least seven (7) hour period of rest between periods of child care provided.

USE OF A SUBSTITUTE

133. The Licensee shall have an arrangement with a Substitute who is available to assist in emergency and limited non-emergency situations.
134. The Licensee shall ensure that the name, address and telephone number of the Substitute shall be provided to the Office of Child Care Licensing and shall be posted with other emergency numbers in the Family Child Care Home.
135. The Licensee shall document on the form provided by the Office of Child Care Licensing that the Substitute is oriented to these Rules and the policies and procedures of the Family Child Care Home and has had the opportunity to ask questions and receive clarification before providing child care.
136. The Licensee shall provide and review written information on safe sleeping practice, risk reduction of Sudden Infant Death Syndrome (SIDS), and child abuse and neglect reporting with the Substitute before he/she provides child care.
137. The Licensee shall ensure the use of a Substitute providing child care in the Family Child Care Home in the absence of the Licensee is permitted for the following situations and do not require the prior notification to and approval of the Office of Child Care Licensing:
- A. Emergencies;

- B. Medical appointments;
 - C. School appointments; or
 - D. Time off for up to one (1) full week.
138. The Licensee shall ensure the use of a Substitute in the Family Child Care Home and is permitted for the following circumstances and requires prior notification (see Rule #85) to and approval from the Office of Child Care Licensing:
- A. Training/classes held for three (3) or more sessions, student teaching, internship or practicum all related to early care and education and/or school-age care or related field;
 - B. Time off for more than one (1) full week with child care provided in the Family Child Care Home in the absence of the Licensee; or
 - C. Medical or maternity leave for more than one (1) full week with child care provided in the Family Child Care Home and the Licensee remaining in attendance at the Family Child Care Home.
139. The Licensee shall inform the parent(s)/guardian(s) in advance whenever a Substitute will be caring for their children unless in an emergency situation that does not allow time for notification. This notification shall include the identity of the Substitute.
140. The Licensee or Substitute shall be responsible for the supervision of children in child care at all times.

ANNUAL TRAINING

141. The Licensee shall successfully complete at least twelve (12) clock hours of annual training accepted or approved by the Office of Child Care Licensing.
- A. Annual training shall be within at least three (3) different core areas associated with improving quality in early care and education and school-age care in the Family Child Care setting as specified under subsection "C" (below) of this Rule.
 - B. Annual training may be within one (1) to two (2) core areas if the Licensee is applying credits earned for successfully completing either a college/university course or clock hours from a training that is at least five (5) or more clock hours in length.
 - C. Topics shall include the following core areas: Child Development; Developmental Curriculum Activities or Planning; Caring for Special Needs Children, Positive Behavior Management; Health & Safety; Nutrition; Family/Community; Professionalism; and Business Practices/Administration.
142. The Licensee shall complete annual training during the time period beginning at the start date and ending at the expiration date of the Family Child Care License. Training in First Aid and CPR shall not count toward a Licensee's annual training requirement.

FIRST AID AND CPR TRAINING

143. The Licensee and Substitute used for non-emergency situations as stated in Rule #138 shall have:
- A. Proof of current First Aid training or First Aid training taken every three (3) years if there is no expiration date;
 - B. Remain currently certified in cardiopulmonary resuscitation (CPR) throughout the licensure; and
 - C. The First Aid training and CPR certification shall be applicable to any of the ages of the children enrolled in the Family Child Care Home at any given time.

LICENSEE RESPONSIBILITIES

ENROLLMENT

144. The Licensee shall provide any parent/guardian who is inquiring about or planning to enroll a child in the Family Child Care Home with information detailing his or her right to inspect the active record, complaint files, procedures for making complaints, and knowledge finding the Rules concerning a Family Child Care Home as described in *The Parents Right to Know Act* and included in the "Licensing Information for Parents" as furnished by the Office of Child Care Licensing. The Licensee shall have written verification that each parent/guardian has received this information by keeping the signed document in the child's file.
- A. A copy of the signed document shall be given to the parent(s)/guardian(s).
 - B. In the event that the parent(s)/guardian(s) do not enroll the child, the signed document shall be kept on file as proof of providing the information.

PARENT(S)/GUARDIAN(S) COMMUNICATION

145. The Licensee shall have an organized system of respectful communication with parent(s)/guardian(s) that incorporates the use of a written policy regarding parent(s)/guardian(s) communication including strategies to encourage parent(s)/guardian(s) involvement in the Family Child Care Home as follows:
- A. Assurances that parent(s)/guardian(s)' visits and monitoring of the Family Child Care Home are welcomed;
 - B. Assurances of nondiscrimination and respect for each child's family and culture;
 - C. Consultation with parent(s)/guardian(s) about child care practices specific to their children's culture and community, and provide as much consistency as possible in their child care practices especially concerning infants and toddlers.
 - D. Assurances that parent(s)/guardian(s) are of primary importance in children's development;
 - E. A procedure for learning about parent(s)/guardian(s) preferences and goals and any concerns or special circumstances that may influence the child's development and learning;
 - F. A typical daily schedule of program and activities at the Family Child Care Home;
 - G. A procedure for keeping a daily record of each infant's feeding, sleeping, and other routine activities and share these with the infant's parent(s)/guardian(s) at the end of each day; and
 - H. A written explanation of policies on positive behavior management, food service, safety and sanitation, release of children, routine and emergency health care, health exclusions, outbreak of communicable disease, reporting of accidents or critical incidents, mandatory reporting of child abuse and neglect, and when applicable, administration of medication and transporting children.
146. The Licensee shall ensure that parent(s)/guardian(s) have free access to areas of the Family Child Care Home used for child care while their children are in child care.

CHILD FILE

147. The Licensee shall maintain an individual file for each child enrolled. The information in the file shall be obtained upon enrollment and updated at least annually or upon known changes to the information. The file shall contain the following information:
- A. The child's full name, address, telephone number, and birth date;

- B. Home and work addresses and telephone numbers of parent(s)/guardian(s);
 - C. Date of enrollment and hours/days child is scheduled to attend the Family Child Care Home;
 - D. Name, address and telephone number of emergency contact person;
 - E. Name of person(s) designated by parent(s)/guardian(s) to whom the child may be released;
 - F. The name and telephone number of the child's health care provider, health appraisal reports and health insurance and policy number for the child;
 - G. A written statement signed by the parent(s)/guardian(s) describing any special problems, medical, developmental, or educational needs of the child including allergies, existing illnesses, or injuries, previous serious illness or injuries and any prescribed medication including those for both continuous, long-term and emergency situations;
 - H. Written consents signed by parent(s)/guardian(s) for special dietary needs, emergency medical treatment, release of child, swimming activities, and when applicable, administration of medication and permission for transporting the child on a routine or field trip basis;
 - I. If provided by parent(s)/guardian(s), copies of court orders on custody and visitation arrangements;
 - J. "Licensing Information for Parents" form (*The Parents Right to Know Act* information) signed by the parent(s)/guardian(s); and
 - K. Reports of accidents, injuries or illnesses involving the child.
148. The Licensee shall keep emergency information about the child accessible at all times and ensure such information will accompany the child any time taken off-premises of the Family Child Care Home. This information shall include copies of the same information in the child's file except for the following:
- A. Date of enrollment and hours/days child is scheduled to attend the Family Child Care Home;
 - B. "Licensing Information for Parents" form signed by the parent(s)/guardian(s); and
 - C. Reports of accidents, injuries or illnesses involving the child.
149. The Licensee shall not disclose or permit the use of any information pertaining to an individual child or family unless the parent(s)/guardian(s) of the child has granted written permission to do so, except in the course of official duties by any authorized representative(s) of the Office of Child Care Licensing, Division of Family Services, or other entities with statutory responsibility for issues relating to the health, safety and protection of children.

DAILY ATTENDANCE OF CHILDREN

150. The Licensee shall ensure that daily attendance records are kept for children which identify the hours of the children's attendance each day.
151. The Licensee shall ensure a system is established for taking attendance when the children arrive and depart the Family Child Care Home and periodically throughout each day to ensure the whereabouts of children in attendance at any given time.

RELEASE OF CHILDREN

152. The Licensee or Substitute shall release children only to persons authorized by the parent(s)/guardian(s) to receive the child.
153. The Licensee shall have and use written policy and procedures for the release of children including:

- A. Ensuring documentation of the release of the child from the responsibility of the Licensee or Substitute to an authorized person;
 - B. Procedures for emergency release of children as individually requested by parent(s)/guardian(s);
 - C. Procedures regarding the release of the child to any person not known to the Licensee or Substitute;
 - D. Procedures for handling situations in which a non-custodial parent attempts to claim the child without the consent of the custodial parent/guardian; and
 - E. Procedures to be followed when a person not authorized to receive a child, or a person who appears to be intoxicated or otherwise incapable of bringing the child home safely, requests release of a child.
154. The Licensee shall have a procedure to verify the identity of any individual receiving a child prior to releasing the child when that person is not known to the Licensee or Substitute and keep written documentation of such verification for at least twenty-four (24) hours.
155. The Licensee shall ensure that when a parent/guardian calls the Family Child Care Home requesting emergency release of a child, the identity of the parent/guardian is verified prior to the release of the child.